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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE M. NAVARETTE,

Defendant and Appellant.

2d Crim. No. B268463  
(Super. Ct. No. 2015018119)  
(Ventura County)

Jose M. Navarette appeals a judgment following the denial of his motion to suppress evidence (Pen. Code, § 1538.5) and his subsequent guilty plea to possession of marijuana for sale (Health & Saf. Code, § 11359). We conclude, among other things, that the trial court did not err by denying the motion to suppress. We affirm.

FACTS

On June 5, 2015, Sheriff Deputy Jarrod Foote conducted a probation search at the residence of Navarette's brother, Joel. Joel was on probation with search conditions. Navarette, who also lived there, was not on probation. Heidi Harold also lived there. She too was on probation with search terms and had "two outstanding warrants for her arrest." Marissa

Gonzales was visiting Navarette at that residence. She was on probation with search terms.

Foote went to the garage of the residence. Navarette, Joel, Harold and Gonzales were living there. The garage was “partially sectioned off” with “shelving units” and sheets hanging on ropes and cords. The area of the garage where Navarette resided was “accessible” to the other people who lived there.

When the officers entered the garage, Navarette, Joel and Gonzales left. Harold remained. She was hiding inside with a pit bull. When she came out with the dog, the police “conducted a protective sweep of the garage.” Foote was concerned that Harold “had plenty of time to hide stuff.” Police later discovered that “she had hidden stuff . . . on her person.”

In the area of the garage where Navarette resided, police found, among other things, “baggies,” a methamphetamine pipe, 5.4 grams of methamphetamine, hydrocodone pills, and a digital scale.

Navarette moved to suppress the items police confiscated. The trial court found that “it was reasonable for the officers to conduct a search of the entire area,” and it denied the motion. It said that Navarette’s area of the garage “was not secured in such a way that the other occupants of the garage could not have gained access to it . . . .”

## DISCUSSION

### *Motion to Suppress*

Navarette contends the warrantless search of his “sleeping quarters violated his Fourth Amendment rights.” We disagree.

“As the finder of fact in a proceeding to suppress evidence (Pen. Code, § 1538.5), the superior court is vested with the power to judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence and draw factual inferences in deciding whether a search is constitutionally unreasonable.” (*People v. Woods* (1999) 21 Cal.4th 668, 673.) “But while we defer to the superior court’s express and implied factual findings if they are supported by substantial evidence, we

exercise our independent judgment in determining the legality of a search on the facts so found.” (*Id.* at pp. 673-674.)

Where a person is “subject to a probation search condition,” the police may “conduct a warrantless search” of that person’s residence. (*People v. Woods, supra*, 21 Cal.4th at p. 676.) “[I]f persons live with a probationer, common or shared areas of their residence may be searched by officers aware of an applicable search condition.” (*People v. Robles* (2000) 23 Cal.4th 789, 798.) “Persons who live with probationers cannot reasonably expect privacy in areas of a residence that they share with probationers.” (*People v. Pleasant* (2004) 123 Cal.App.4th 194, 198.)

In *People v. Pleasant*, police conducted a probation search at the residence of the defendant’s mother. Defendant’s mother was on probation with search conditions. The defendant was not home and his room was locked. Mother gave the police the key to the door of the defendant’s room. Police officers opened the door and searched the room. They confiscated a rifle which was unlawful for him to possess as a felon. In ruling the search was valid, the appellate court wrote that since mother “had access to the keys to the room in which the gun was found, [the defendant] could not reasonably expect privacy in the room and the officers reasonably entered the room under the authority of [his mother’s] probation waiver.” (*People v. Pleasant, supra*, 123 Cal.App.4th at p. 197.)

Here Navarette resided in a garage with three other people, all of whom were on probation with search terms. Navarette claims Foote’s testimony showed the garage was not “a communal sleeping area,” because it was “partitioned” into separate living quarters. But Foote testified that the garage was only “*partially* sectioned off with shelving units and sheets that were hanging on ropes and cords . . . .” (*Italics added.*) He said Navarette’s “living space” was “accessible” to the other occupants. Foote was asked, “Was there any portion of the garage that was not accessible that was locked off from the other occupants of the garage?” He said, “No.” (*People v. Pleasant, supra*, 123 Cal.App.4th at p. 197.)

Moreover, there is evidence from which the court could reasonably infer that Navarette was sharing his area of the garage with a probationer. Foote testified that Gonzales was on probation with search terms. She was visiting Navarette, and her personal property was in Navarette's area of the garage. She even asked Foote to go to Navarette's area to retrieve some property she had put there. She said, "Hey, my phone and flip-flops are over there. Can you go retrieve them for me?" In addition, Harold was hiding in the garage with the pit bull. She was on probation with search conditions and there were "two outstanding warrants for her arrest." Police officers "conducted a protected sweep of the garage" and believed she was hiding items there. The trial court found the officers acted reasonably in conducting the search.

We have reviewed Navarette's remaining contentions and we conclude he has not shown grounds for reversal.

#### DISPOSITION

The judgment is affirmed.

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GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

David M. Hirsch, Judge

Superior Court County of Ventura

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John Derrick, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief  
Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney  
General, Margaret E. Maxwell, Supervising Deputy Attorney General,  
Timothy L. O'Hair, Deputy Attorney General, for Plaintiff and Respondent.