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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

NICK S. HALL, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; THE PEOPLE, Real Party in Interest.	B265202 (Los Angeles County Super. Ct. No. BA433026) OPINION AND ORDER GRANTING PEREMPTORY WRIT OF MANDATE

ORIGINAL PROCEEDINGS; petition for writ of mandate. Craig J. Mitchell, Judge. Petition granted.

Ronald J. Brown, Public Defender, Albert J. Menaster, Robin Ginsburg and Dylan Ford, Deputy Public Defenders, for Petitioner.

No appearance for Respondent.

Jackie Lacey, District Attorney, Roberta Schwartz, Phyllis Asayama and John Harlan II, Deputy District Attorneys, for Real Party in Interest.

Petitioner Nick S. Hall seeks a writ to reverse the trial court's order denying his motion to suppress evidence of a sawed-off rifle the police discovered while searching his apartment. We hold that the search was unreasonable under the Fourth Amendment and therefore grant Hall's petition.

FACTS AND PROCEEDINGS BELOW

Hall resided in South Los Angeles with his wife, Melissa Hall (Melissa), and their infant child. Facing eviction from their apartment, they planned to move to New York. Shortly before the move, Hall began to have second thoughts, and on January 17, 2015, the day Melissa and the infant were scheduled to fly to New York, Hall attempted to destroy Melissa's luggage to prevent her from leaving. Melissa's sister called 911 from out of state and reported that Hall was mentally ill, in possession of a gun, and had threatened to kill himself.

Five Los Angeles Police Department officers responded to the call. At the door of the apartment, Melissa met the officers and told them that, although Hall had threatened to kill himself earlier that day if Melissa left for New York with the baby, the officers' presence was unnecessary and the situation was now under control. The officers decided that it was necessary to enter the apartment to evaluate the situation, and Melissa agreed to allow the officers to enter. Melissa ultimately signed a document consenting to the officers' entry and search of the apartment. Inside, the officers found Hall asleep in a bed near the baby. They woke Hall, and he obeyed the officers' commands to sit up, present his hands, stand, and walk backward toward them. They handcuffed Hall and removed him from the apartment. Brandon Flynn, the officer who testified at the suppression hearing, stated that he was "fixated on Mr. Hall" during this first entry into the apartment and did not notice any guns in the area.

Once outside the apartment, Hall told the officers that he did not consent to the officers' presence in his apartment. Nevertheless, the officers re-entered the apartment and searched for weapons. According to Flynn, the officers conducted the search pursuant to a Los Angeles Police Department policy that required the officers to search

for weapons within the wingspan of a person they encountered who appeared to be suffering mental health issues. During the search, the officers discovered an unlocked gun safe whose door was ajar containing a rifle whose barrel had been cut off.

Hall told Flynn that he suffered from depression and anxiety, but claimed he was able to care for himself and was not a danger to himself. According to Flynn, Hall's demeanor and behavior were inconsistent with his claims that he was capable of taking care of himself, and so the officers requested that the Los Angeles Police Department's mental evaluation unit come to the apartment to evaluate Hall's mental stability. When the mental evaluation unit learned that Hall had been detained on a weapons charge, they elected not to send a team to Hall's apartment, but instead to wait until Hall was booked before evaluating him. Flynn testified that he did not know if the mental evaluation team ever evaluated Hall.

An information charged Hall with one count of possession of a short-barreled rifle or shotgun, in violation of Penal Code section 33215. Hall filed a motion pursuant to Penal Code section 1538.5 to suppress evidence of the rifle. After a hearing, the trial court found that the search of the apartment was reasonable because Melissa had consented to it, and that because Hall's mental state was in doubt at the time of the search, his refusal of consent to a search was insufficient. The court further justified its conclusion by noting that "common sense and prudence" required the officers to seize the weapons.

DISCUSSION

The Lanterman-Petris-Short Act (Welf. & Inst. Code, §§ 5000 et seq.) (LPS Act) governs the treatment of individuals with potentially dangerous mental health disorders. Welfare & Institutions Code section 5150, allows government officials to take into custody "a person [who], as a result of a mental health disorder, is a danger to others, or to himself or herself." (*Id.*, subd. (a).) A separate code section, Welfare and Institutions Code section 8102 (§ 8102) requires law enforcement officials to seize dangerous weapons from individuals who fall within section 5150. It provides that, "[w]henever a person, who has been detained or apprehended for examination of his or her mental

condition . . . , is found to own, have in his or her possession or under his or her control, any firearm whatsoever, or any other deadly weapon, the firearm or other deadly weapon shall be confiscated by any law enforcement agency or peace officer, who shall retain custody of the firearm or other deadly weapon." (*Ibid.*) Hall does not deny that this section justified the police in seizing the sawed-off rifle once they found it. Instead, he contends that it was improper for the police to re-enter the apartment and search for weapons without a warrant after he objected to their presence.

The Fourth Amendment to the United States Constitution, enforceable against the states under the Fourteenth Amendment's guarantee of due process of law (*Mapp v. Ohio* (1961) 367 U.S. 643, 643-660), protects individuals from "unreasonable searches and seizures." A warrantless police search of a defendant's residence is presumed to be unreasonable, and thus in violation of the defendant's Fourth Amendment Rights, unless the prosecution can prove that the search fell within a recognized exception to the warrant requirement. (*Katz v. United States* (1967) 389 U.S. 347, 357.) Courts must exclude evidence that government officials obtained in violation of a defendant's Fourth Amendment rights. (*Mapp v. Ohio*, *supra*, 367 U.S. at p. 655.)

We review the trial court's factual findings regarding a challenged search or seizure under a substantial evidence standard. (*People v. Lawler* (1973) 9 Cal.3d 156, 160.) We review de novo the trial court's application of the facts to the constitutional standard of reasonableness. (*People v. Loewen* (1983) 35 Cal.3d 117, 123.)

The District Attorney contends that the search was proper because Melissa's consent to the search takes precedence over Hall's objection. Second, the District Attorney argues that Hall's apparent instability compelled the officers to search the apartment for any weapons for his safety and that of the occupants. We disagree with both of these arguments and conclude that the search violated Hall's Fourth Amendment rights.

I. *Consent To Search*

In *Georgia v. Randolph* (2006) 547 U.S. 103 (*Randolph*), the United States Supreme Court established a rule that when multiple inhabitants share a residence and

one of them consents to a search, "a physically present co-occupant's stated refusal to permit entry prevails, rendering the warrantless search unreasonable and invalid as to him." (*Id*. at p. 106.) In this case, Melissa consented to the officers' initial entry into the apartment. Yet after the officers entered and awakened Hall, but before the police discovered the rifle, Hall objected to the officers' presence in the apartment.

The District Attorney, however, points out that *Randolph* recognized exceptions to the general rule if "the people living together fall within some recognized hierarchy, like a household of parent and child or barracks housing military personnel of different grades." (*Randolph*, *supra*, 547 U.S. at p. 114.) Here, the District Attorney argues such an exception applies, and the consent of Melissa, an apparently mentally healthy individual, should take precedence over the refusal of Hall, an apparently mentally unstable individual. We are not persuaded.

In general, a defendant's decision whether to consent to a search is valid "unless the 'emotional distress was so profound as to impair her capacity for self-determination or understanding of what the police were seeking.'" (4 LaFave, Search and Seizure (5th ed. 2012) § 8.2(e), p. 125, quoting *U.S. v. Duran* (7th Cir. 1992) 957 F.2d 499, 503.) Although the police were called to the Halls' residence because Hall had been behaving erratically, he cooperated with police and showed no signs of failing to understand the nature of what was happening or the consequences of giving or withholding consent to a search. He may have been deeply and even dangerously depressed at the time of the incident, but he was able to express his disapproval of the police presence in his apartment clearly and vociferously. It would not be wise to establish a rule that a mere allegation of mental instability is enough to prevent an individual from asserting his Constitutional rights.

II. *Societal Interest In Securing The Weapon*

The District Attorney next contends that the search was justified because of a "societal interest in securing firearms away from persons suffering from mental impairment." That societal interest is undoubtedly important. For example, it is well

established that the police may enter a residence without a warrant or consent in case of an emergency. (*People v. Roberts* (1956) 47 Cal.2d 374, 377.)

For such an action to be proper, however, there must be "'an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property.'" (*People v. Duncan* (1986) 42 Cal.3d 91, 97.) At the time the police re-entered Hall's apartment to search for weapons, no such emergency existed. Hall was already in handcuffs surrounded by police officers. To avert any potential danger from the presence of weapons in the apartment, they could have secured the apartment and kept Hall and others out pending the issuance of a search warrant. (*Segura v. United States* (1984) 468 U.S. 796, 811.) Furthermore, to protect Hall from harming himself, the officers were entitled to keep him detained until the mental evaluation unit evaluated whether he presented a sufficient danger to himself or others to require his detention pursuant to Welfare & Institutions Code section 5150. (See *Heater v. Southwood Psychiatric Center* (1996) 42 Cal.App.4th 1068, 1080 ["The prior temporary restraint of [a person suspected to be a threat to himself or others] until professional evaluation could be obtained is inherent in the process contemplated by the provisions of the LPS Act authorizing detentions."].)

In this situation, the police could have as equally protected the public and Hall himself by obtaining a warrant to secure Hall's weapons as by searching without his consent. Penal Code section 1524 explicitly allows for police officers to obtain a search warrant "[w]hen the property or things to be seized include a firearm or any other deadly weapon that is owned by, or in the possession of, or in the custody or control of a person described in subdivision (a) of [s]ection 8102." (*Id.*, subd. (a)(10).) With the ability to secure the apartment and with Hall's absence from it, no emergency existed that required the police officers to search the premises without a warrant. There was no need for the police to search the apartment without Hall's consent or a warrant in order to protect the public.

DISPOSITION

The petition is granted. A peremptory writ of mandate is issued directing the trial court to vacate and set aside its June 5, 2015 ruling denying the motion to suppress the rifle recovered from Hall's apartment, and to enter a new order granting the motion to suppress that evidence.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J

We concur:

CHANEY, J.

JOHNSON, J.