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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. JUAN RODRIGUEZ, Defendant and Appellant.	B238332 (Los Angeles County Super. Ct. No. BA 376521)

APPEAL from a judgment of the Superior Court for the County of Los Angeles. Frederick N. Wapner, Judge. Affirmed.

Craig C. Kling, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Linda C. Johnson, Supervising Deputy Attorney General, and Toni R. Johns Estaville, Deputy Attorney General, for Plaintiff and Respondent.

SUMMARY

Defendant Juan Rodriguez pled no contest to possession of an assault weapon and admitted a gang allegation. He was sentenced to three years' probation conditioned on serving 365 days in county jail. He appeals, contending the evidence (the assault weapon) was secured by an illegal search of his uncle's garage and he had a reasonable expectation of privacy in the garage, so that the evidence should have been suppressed. We disagree and affirm the judgment.

FACTS

Police Officer Peter Bueno and his partner went to the premises at 2105 Keith Street in Los Angeles in response to a radio call that a male Hispanic gang member, armed with a gun, was in the backyard at that location with other gang members. Officer Bueno was familiar with the residence because he had had "numerous contacts with Lincoln Heights gang members that loitered in front of that residence." The premises included one two-story building divided into four residences, plus a detached wooden garage about 25 to 30 feet to the rear of the main building. The garage was divided into four separate sections, sharing interior walls, each with its own set of double doors.

When the police arrived, no one was in the backyard, but they heard voices coming from the garage. The voices "appeared to be normal," and were coming from behind the garage door on the right, the "most northern" door. The garage doors were completely closed, but not locked.

Officer Bueno opened the garage door and saw defendant sitting on a sofa with an assault rifle between his legs, holding the top part of the barrel. Officer Bueno also saw two females and a male sitting toward the rear of the garage. As soon as defendant looked in the direction of the police, he tossed the rifle on the ground. The police ordered everyone to stand up and walk out of the garage. Officer Bueno observed gang graffiti on the walls of the garage, beer cans throughout, broken tables, and a torn-up sofa. There was no bed, no electricity, and no "male clothing or anything indicating that somebody was staying there."

After all the occupants were out of the garage, the police seized the assault rifle and arrested defendant. Defendant was charged by information with possession of an assault

weapon (former Pen. Code, § 12280, subd. (b), now Pen. Code, § 30605) and possession of a firearm by a felon (former Pen. Code, § 12021, subd. (a)(1), now Pen. Code, § 29800), both felonies, and it was alleged the offenses were committed in association with a criminal street gang. (Pen. Code, § 186.22, subd. (b)(1)(A).)

Defendant filed a motion to suppress the assault rifle and all observations of the police officers after they entered the garage. (Pen. Code, § 1538.5.) At the hearing on the motion, Officer Bueno testified to the facts just recited.

Defendant also testified. He said that his uncle owned the entire property at 2105 Keith Street, and lived there with his son, defendant's cousin, occupying two of the units. Defendant testified there was a separate garage for each of the units and his uncle owned the entire garage. Defendant visited "that location" "[l]ike, every other week," and had his uncle's permission to come and go as he (the defendant) pleased. Defendant did not stay at his uncle's house, but merely visited him "every now and then"; defendant stayed "at [his] sister's house on Parkside . . . ." On the evening in question, he was "just visiting [his] uncle" and "just stopped by."

When the police arrived, defendant was in the garage in the backyard, specifically, in the garage used by his uncle. Six other people were with defendant in the garage. Defendant's uncle was in his house, not in the garage. The other people, plus defendant's cousin, were in the garage before defendant arrived. The garage door was open when defendant got there. The garage had a table, couch, and an entertainment center with a radio and a TV; it was "somewhere where people can hang out." Defendant had no clothing in the garage, and did not own the radio, TV or couch; he had only the backpack that he brought in with him that evening.

Defendant's cousin had also been in the garage with defendant that evening, but was not there when the police arrived; his cousin had left "to go use the restroom." Defendant said that when his cousin left, he (defendant) "was in charge of the garage." No one else in the garage was related to defendant's uncle. Defendant testified that, if he wanted to, he could allow other people inside the garage, and he could exclude people from the garage. The garage door was closed, and was locked "[w]ith the rope around the two handles," because

"[i]f they're not locked with something, they would just open." When the police arrived, no one inside the garage opened the door for the police. The police "stuck a knife through the side of the door; and they cut the rope off." At the time, the people in the garage were sitting and talking; defendant did not have an assault rifle in his hands, did not see anybody there with a gun or a rifle, and at no time saw a rifle or a gun. When the police ordered everyone out, defendant walked out with his hands up.

Defendant testified he used to be a member of the Lincoln Heights gang, but had renounced the gang before this incident. Defendant believed his cousin knew all the other people in the garage that evening. His cousin was in the house during the entire time the police were there. His cousin was a Lincoln Heights gang member but, according to defendant, was not active at the time of the incident.

The trial court denied defendant's motion to suppress the evidence, concluding defendant had no legitimate expectation of privacy in the premises searched and therefore no Fourth Amendment right to object to the search. Noting the continuum between the casual visitor (who has no reasonable expectation of privacy) and "the resident or somebody with a possessory interest" (who does have a reasonable expectation of privacy), the court stated:

> "And I believe what the defendant says about the fact that it's his uncle's place and that his—he was with his cousin part of the time in the garage—and that he doesn't stay with his uncle, he stays with his sister; and he comes and he visits his uncle, and he says hi, and he hangs out with his cousin.
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> "No, there wasn't any testimony on that day he went in to see the uncle. I don't know where the uncle was on this occasion. It doesn't really matter. It's not really relevant, but he went over to see his cousin. So if I go to my cousin's, and he says, come on in the garage and hang out, do I have a legitimate expectation of privacy in the garage? I don't think so.
>
> "He said as a conclusion and kind of in response to a leading question, do you have the right to exclude people? Yes. Well, the fact that his cousin was there, and then he left, and he's the only one related to anybody doesn't mean he's in charge, quote, unquote.

"Just means he's there. But he goes there sometimes. He hangs out sometimes. It's not his T.V. It's not his radio. It's not his room. I mean, I have to take the testimony that I'm given on this motion.

"I don't think this is really what happened. In that sense, the defendant's testimony is somewhat lacking. And I can—excuse me—lacking in credibility. And I can understand why. Don't make me out to be a gang member. On the other hand, I think what happened here is he's probably in the gang. The cousin's in the gang. The uncle doesn't care. Fine. That's your gang hangout. Go have your gang hangout.

"But that's not the testimony on this motion. And so he's a visitor at his uncle's house visiting his cousin. I don't think he has a legitimate expectation of privacy in the premises searched so even though there's no lawful entry, he doesn't have a right to object to it."

Defendant then pled no contest to the charge of possession of an assault weapon (former Pen. Code, § 12280, subd. (b)), and admitted the gang allegation. (Pen. Code, § 186.22, subd. (b)(1)(A).) The court sentenced defendant to three years, plus an additional three years for the gang allegation (stayed), and suspended execution of the three-year sentence. The court placed defendant on probation for three years, conditioned on serving 365 days in county jail and other terms, and made other orders not at issue on this appeal.

Defendant filed a timely appeal.

DISCUSSION

The sole issue is whether defendant's Fourth Amendment rights were violated by the police intrusion into the garage. We conclude they were not.

1. The Standard of Review

The trial court's ruling on a motion to suppress " ' "(1) finds the historical facts, (2) selects the applicable rule of law, and (3) applies the latter to the former . . . ." ' " (*People v. Ayala* (2000) 23 Cal.4th 225, 255.) We review the trial court's fact findings deferentially, under the substantial evidence standard. (*Ibid.*) Our review of the trial court's selection of the applicable rule of law is de novo. (*Ibid.*) The trial court's application of the rule of law to the facts " ' "is a mixed fact-law question that is . . . predominantly one of law [and] is also subject to independent review." ' " (*Ibid.*)

2. The Applicable Fourth Amendment Principles

"The proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure." (*Rakas v. Illinois* (1978) 439 U.S. 128, 131, fn. 1 (*Rakas*).) " '[I]n order to claim the protection of the Fourth Amendment, a defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable; *i.e.*, one that has "a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society." ' [Citation.] 'In other words, the defendant must show that he or she had a subjective expectation of privacy that was objectively reasonable.' [Citation.]" (*People v. Ayala*, *supra*, 23 Cal.4th at p. 255.)

"[A] person can have a legally sufficient interest in a place other than his own home so that the Fourth Amendment protects him from unreasonable governmental intrusion into that place." (*Rakas*, *supra*, 439 U.S. at p. 142.) For example, an overnight guest in a home may claim the protection of the Fourth Amendment. (*Minnesota v. Olson* (1990) 495 U.S. 91, 98-99 ["To hold that an overnight guest has a legitimate expectation of privacy in his host's home merely recognizes the every day expectations of privacy that we all share. Staying overnight in another's home is a longstanding social custom that serves functions recognized as valuable by society[]"; "when we cannot sleep in our own home we seek out another private place to sleep, whether it be a hotel room, or the home of a friend"].)

On the other hand, "one who is merely present with the consent of the householder may not" claim the protection of the Fourth Amendment. (*Minnesota v. Carter* (1998) 525 U.S. 83, 90; *People v. Ayala*, *supra*, 23 Cal.4th at p. 255 [" ' " '[O]ccasional presence on the premises as a mere guest or invitee' "' ' is insufficient to confer" an expectation of privacy]; *People v. Rios* (2011) 193 Cal.App.4th 584, 591, 592 ["[b]eing legitimately on the premises, without more, is insufficient"; "there was no suggestion [the defendant] was anything more than a casual, temporary visitor"].)

The necessary analysis is "whether the facts of a particular case give rise to a legitimate expectation of privacy." (*Rakas, supra*, 439 U.S. at p. 144; *id.* at p. 152 ["The ultimate question, therefore, is whether one's claim to privacy from government intrusion is reasonable in light of all the surrounding circumstances."].) Among the factors courts have considered are the right to exclude others from the area searched (*id.* at p. 144, fn. 12), a property or possessory interest in the premises (*id.* at pp. 143, 147), an interest in the property seized (*id.* at p. 148), whether the defendant " ' "has exhibited a subjective expectation that [the area searched] would remain free from governmental invasion, whether [the defendant] took normal precautions to maintain his privacy" ' " (*People v. Hernandez* (1988) 199 Cal.App.3d 1182, 1189), and legitimate presence on the premises. (*Rakas, supra*, 439 U.S. at p. 148 [legitimate presence is not irrelevant, "but it cannot be deemed controlling"].)

3. This Case

This case fits the high court's description in *Minnesota v. Carter*: "If we regard the overnight guest . . . as typifying those who may claim the protection of the Fourth Amendment in the home of another, and one merely 'legitimately on the premises' as typifying those who may not do so, the present case is obviously somewhere in between." (*Minnesota v. Carter, supra*, 525 U.S. at pp. 91; *id*. at pp. 90-91 [holding defendants who were present in another's apartment for a "purely commercial" transaction (bagging cocaine), and were only in the home a matter of hours, with "no suggestion that they had a previous relationship with [the householder], or that there was any other purpose to their visit," had no legitimate expectation of privacy in the apartment].)

In this case, defendant was legitimately in the garage, having his uncle's "permission to come and go as [the defendant] please[d]." But that is all he had. The trial court reasonably could have found defendant did not have the right to exclude other persons. The court did not credit defendant's claim that he was "in charge" while his cousin stepped out to use the restroom, and properly so. There is no concept of property law, nor any understanding "recognized and permitted by society" (*Rakas, supra*, 439 U.S. at p. 144, fn. 12), to the effect that when the owner or possessor of premises

temporarily steps away from one area of the premises, his or her nearest relative present has the right to exclude others from that area. And there is no other basis in fact or law for defendant's claim to have been "in charge" of the garage. This is not a case with facts comparable, for example, to *Jones v. United States* (1960) 362 U.S. 257, overruled on other grounds in *United States v. Salvucci* (1980) 448 U.S. 83, described in *Rakas* this way: "Jones not only had permission to use the apartment of his friend, but had a key to the apartment with which he admitted himself on the day of the search and kept possessions in the apartment. Except with respect to his friend, Jones had complete dominion and control over the apartment and could exclude others from it. . . . [] Jones could legitimately expect privacy in the areas which were the subject of the search . . . ." (*Rakas, supra,* 439 U.S. at p. 149.)

Defendant likens himself to the babysitter in *People v. Moreno* (1992) 2 Cal.App.4th 577 (*Moreno*), where the court held a babysitter had a reasonable expectation of privacy "during the time the baby-sitter sits." (*Id.* at p. 579.) *Moreno* actually confirms a conclusion opposite to the one defendant suggests. *Moreno* observed that in general a baby-sitter "is in exclusive charge of the child and the premises[,]" and has "the exclusive right to 'determine who may or may not enter the household.'" (*Moreno*, at p. 584 ["Control alone brings the baby-sitter within the *Rakas* principle that '[o]ne of the main rights attaching to property is the right to exclude others, . . . and one who owns or lawfully possesses or controls property will in all likelihood have a legitimate expectation of privacy by virtue of this right to exclude.' "].) As is the case with overnight guests, "baby-sitting 'is a longstanding social custom that serves functions recognized as valuable by society.' " (*Id.* at p. 585.) Defendant has shown no similar right of control, and no function "recognized as valuable by society" in this case. (*Ibid*.)

In sum, defendant did not meet his burden to show a legitimate expectation of privacy in the garage. He had permission to use it but nothing more: no key or other way to exclude others (and indeed, others were already present with his cousin in the garage when he arrived), no belongings kept in the garage, and no other indication of any kind of possessory interest in or control over the garage. Like the high court in *Minnesota v.*

Carter, contrasting house guests with persons who are "merely 'legitimately on the premises,' " we "conclude that [defendant's] situation is closer to that of one simply permitted on the premises" (*Minnesota v. Carter*, *supra*, 525 U.S. at p. 91), and so hold the search did not violate his Fourth Amendment rights.

DISPOSITION

The judgment is affirmed.

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GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.