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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

PATRICK JUAN MATTHEWS,

Defendant and Appellant.

B271533

(Los Angeles County
Super. Ct. No. MA066640)

APPEAL from a judgment of the Superior Court of Los Angeles County. Lisa M. Strassner, Judge. Affirmed.

Joseph R. Escobosa, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, and Steven E. Mercer, Acting Supervising Deputy Attorney General, for Plaintiff and Respondent.

* * * * *

Patrick Juan Matthews (defendant) stands convicted of carrying a concealed firearm in a vehicle. On appeal, he argues that his conviction must be overturned because the firearm should have been suppressed under the Fourth Amendment. We conclude the trial court properly denied defendant's motion to suppress, and affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

In early January 2015, two Los Angeles County Sheriff's deputies pulled over a car for having expired registration tags, for having illegally tinted windows, and for making a right turn without signaling. Defendant was driving. The deputies learned that defendant's license was suspended; they arrested him and placed him in the back of their patrol car. The deputies then spoke with the passenger in the front seat, who admitted that he was then on probation for burglary. Once the deputies verified that the passenger was on probation and that he was subject to search conditions, they arrested the passenger and searched defendant's car. The "center console" between the two front seats of defendant's car was "very loose" and "popped . . . off with ease," revealing a "hidden" compartment. The compartment contained a firearm.

II. Procedural Background

The People charged defendant with having a concealed firearm in a vehicle (Pen. Code, § 25400, subd. (a)(1)).¹

Defendant moved to suppress the firearm on the grounds that the deputies had conducted a search incident to arrest that

¹ All further statutory references are to the Penal Code unless otherwise indicated.

exceeded the bounds of *Arizona v. Gant* (2009) 556 U.S. 332 (*Gant*). The trial court denied the motion, reasoning that the search was both a valid probationary search as to the passenger and a valid inventory search of defendant's car.

Defendant proceeded to trial, and a jury convicted him. The trial court imposed a two-year state prison sentence.

Defendant filed a timely notice of appeal.

DISCUSSION

The Fourth Amendment guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." (U.S. Const., 4th Amend.) In evaluating a trial court's determination that a search or seizure was constitutionally valid, we review the court's factual findings for substantial evidence and its conclusion regarding the reasonableness of the search independently. (*People v. Glaser* (1995) 11 Cal.4th 354, 362; *People v. Loewen* (1983) 35 Cal.3d 117, 123.)

The search of a person who is on probation and subject to search conditions is reasonable under the Fourth Amendment as long as the law enforcement officials conducting the search know the person is on probation and as long as the search is not harassing and is conducted in an reasonable manner. (*People v. Bravo* (1987) 43 Cal.3d 600, 607 (*Bravo*); *People v. Douglas* (2015) 240 Cal.App.4th 855, 867.) That is because "a probationer consents to the waiver of Fourth Amendment rights in order to avoid incarceration." (*People v. Ramos* (2004) 34 Cal.4th 494, 506.) What is more, a probation search extends to the areas exclusively under the probationer's control as well as the areas over which the probationer jointly shares dominion and control with others. (*People v. Schmitz* (2012) 55 Cal.4th 909, 925-926

(*Schmitz*).) When a probationer is traveling in a car with others, a law enforcement officer may search “those areas of the passenger compartment where the officer reasonably expects that the [probationer] could have stowed personal belongings or discarded items when aware of police activity” (*id.* at p. 926), including “closed containers that he or she reasonably believes are in the . . . joint control of the . . . probationer” (*People v. Baker* (2008) 164 Cal.App.4th 1152, 1159 (*Baker*); *People v. Cervantes* (2017) 11 Cal.App.5th 860, 870-872 (*Cervantes*); see also *Schmitz*, at p. 926, fn. 16 [noting that search of closed containers in a car “must necessarily take into account all the attendant circumstances, including the driver’s legitimate expectation of privacy in those closed compartments, the passenger’s proximity to them, and whether they were locked or otherwise secured”])).

Given this precedent, the trial court correctly ruled that the search of defendant’s car was reasonable. Defendant’s passenger was on probation, and the deputies learned of this fact before commencing their search. Moreover, the center console was right next to the passenger’s seat and the compartment beneath it was readily accessible because the console was “loose” and “popped . . . off with ease.”

Defendant raises three arguments in response. First, he contends that the search exceeded the bounds of a lawful search incident to arrest under *Gant, supra*, 556 U.S. 332. This is irrelevant. A search is valid if it is valid on *any* ground (*People v. Letner and Tobin* (2010) 50 Cal.4th 99, 145; *People v. Gurley* (1972) 23 Cal.App.3d 536, 539, fn. 1), and the search here is a valid probationary search. Thus, whether it is *also* a valid (or invalid) search incident to arrest or, for that matter, a

valid (or invalid) inventory search, does not affect the search's bottom-line validity.

Second, defendant asserts that the search was *not* a valid probationary search because the deputies did not search the passenger's *person* before they searched the areas within the passenger's reach (that is, defendant's car). However, the law governing the reasonableness of probation searches does not mandate that law enforcement officers conduct those searches in any particular order. Probationary searches are valid as long as they are not harassing and are conducted in a reasonable manner (*Bravo, supra*, 43 Cal.3d at p. 607); the deputies' decision to start with the search of defendant's car after placing the passenger under arrest does not transgress either of the two limitations on probationary searches.

Lastly, defendant argues that the search exceeded the scope of a valid probationary search because the deputies searched *under* the center console. Defendant is correct that *Schmitz* "express[ed] no opinion on whether a search of . . . closed-off areas could be based solely on a passenger's parole [or probationary] status" (*Schmitz, supra*, 55 Cal.4th at p. 926, fn. 16), but that was because the facts in *Schmitz* did not present that issue (*ibid.*). More to the point, other cases have upheld probationary searches of closed-off areas (*Baker, supra*, 164 Cal.App.4th at p. 1159; *Cervantes, supra*, 11 Cal.App.5th at pp. 872-873), and *Schmitz* itself set forth the factors by which a search of closed-off areas might be evaluated—including the non-probationer's expectation of privacy in the closed-off area, the probationer's proximity to it, and whether the area was "locked or otherwise secured." (*Schmitz*, at p. 926, fn. 16.) As discussed

above, those factors all support the reasonableness of the search of the compartment beneath the center console.

DISPOSITION

The judgment is affirmed.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
CHAVEZ

_____, J.*
GOODMAN

* Retired judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.