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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. ROSALIO ORDORICA, Defendant and Appellant.	B279381 (Los Angeles County Super. Ct. No. BA446677)

APPEAL from an order of the Superior Court of Los Angeles County, Michael D. Abzug, Judge. Affirmed.

Ava R. Stralla, 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, Scott A. Taryle, Supervising Deputy Attorney General, Gregory B. Wagner, Deputy Attorney General, for Plaintiff and Respondent.

Defendant and appellant Rosalio Ordorica pleaded no contest to possession of a firearm by a felon. (Pen. Code § 29800, subd. (a)(1).)[1] He admitted suffering two prior strikes within the meaning of the three strikes law (§§ 667, subds. (b)–(i), 1170.12, subds. (a)–(d)), and five prior felony convictions.[2] Defendant was sentenced to 32 months in prison.[3] He appeals from the denial of his motion to suppress evidence under section 1538.5, arguing the trial court erred in concluding defendant had no reasonable expectation of privacy in his makeshift dwelling located on

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

[2] The exact nature of the prior conviction allegations admitted by defendant is unclear. Seven prior felony convictions were alleged for purposes of the felon in possession of a firearm charge. Six prior convictions were alleged as prior prison terms under section 667, subdivision (b). The transcript of the plea colloquy is unclear as to the purpose of the admission of the prior convictions. Because no additional custody time was imposed, we infer the admissions were for purposes of the substantive count rather than as prior prison terms.

[3] Count 2, possession of methamphetamine by a felon (Health & Saf. Code, § 11370.1, subd. (a)); and count 3, possession of ammunition by a felon (§ 30305, subd. (a)(1)), were dismissed per the plea agreement.

property owned by the Department of Water and Power (DWP) and marked with "no trespassing" signs. We affirm.

FACTS AND PROCEDURAL HISTORY[4]

Facts

On the morning of May 13, 2016, Bell Police Department Detective Jamie Baltazar and several other officers assisted Department of Mental Health agents in an outreach program at a known homeless encampment. The encampment was located on property owned by the DWP. Posted signs identified the property as belonging to the DWP, and warned: "private property, no trespassing." There was also a sign that cited the relevant Penal Code section. At the front of the property there were mechanical arms and concrete dividers prohibiting vehicle access. The back of the lot was fenced. There were five or six makeshift shacks on the property.

Detective Baltazar approached the shack where defendant lived by crouching down and crawling in between large metal dividers. The shack was a tarp structure supported by a cement wall on one side and plywood on the others. It was closed on all four sides. There was a wrought iron security door with plywood behind it that leaned against the wall and served as an entrance. From the outside of the

[4] The facts are based on testimony given at the preliminary hearing.

shack, Detective Baltazar could see "a little bit" inside, but "not a lot."

Detective Baltazar and Detective Chrisman knocked on the door, but no one responded. They removed the door and the plywood in front of the entrance. Defendant and a woman were asleep on a couch inside. Detective Baltazar identified himself twice. Defendant awoke and stood up. As he did, Detective Baltazar noticed a handgun falling between the couch cushions. The detectives instructed defendant and the woman to leave the shack. Detective Chrisman retrieved the handgun, which was loaded. The officers arrested defendant "[f]or being in possession of a handgun." Defendant explained he needed the gun "because he had been robbed in the past."

During booking, a clear plastic baggie containing a substance resembling methamphetamine and a live .22 caliber bullet were discovered in defendant's pockets.

Procedural History

On June 1, 2016, defendant moved to suppress evidence found after the police entry into his shack. The motion was heard in conjunction with the preliminary hearing. Detective Baltazar was the only witness who testified at the hearing.

After Detective Baltazar's testimony concluded, the preliminary hearing magistrate denied the motion. The magistrate ruled: "In light of the testimony regarding the

fact that it was private property with the sign no trespassing, there was no reasonable expectation of privacy and the court does not find the 4th Amendment violated."

Defendant filed a motion to set aside the information pursuant to section 995, which challenged the denial of his motion to suppress. The trial court denied the motion on the basis that defendant did not have a protected Fourth Amendment interest, citing *People v. Nishi* (2012) 207 Cal.App.4th 954 (*Nishi*).

Defendant petitioned for writ of mandate with this court on August 2, 2016. We denied the petition for failure to provide an adequate record. We also denied the petition on the merits, citing to *Nishi*, *supra*, 207 Cal.App.4th 954. (*Ordorica v. Superior Court* (Aug. 5, 2016, B276483) [nonpub. order].)

DISCUSSION

"In reviewing the trial court's denial of a motion to suppress evidence, we view the record in the light most favorable to the trial court's ruling, deferring to those express or implied findings of fact supported by substantial evidence. [Citations.] We independently review the trial court's application of the law to the facts. [Citation.]

"The threshold issue before us is '"whether the challenged action by the officer 'has infringed an interest of the defendant which the Fourth Amendment was designed to protect.' [Citations.] . . ." [Citations.]' [Citation.] '"An

illegal search or seizure violates the federal constitutional rights only of those who have a legitimate expectation of privacy in the invaded place or seized thing. [Citation.] The legitimate expectation of privacy must exist in the particular area searched or thing seized in order to bring a Fourth Amendment challenge." [Citation.]' [Citations.]

"'A defendant has the burden at trial of establishing a legitimate expectation of privacy in the place searched or the thing seized.' [Citation.] 'A person seeking to invoke the protection of the Fourth Amendment must demonstrate both that he harbored a subjective expectation of privacy and that the expectation was objectively reasonable. [Citation.] An objectively reasonable expectation of privacy is "one society is willing to recognize as reasonable." [Citation.] Stated differently, it is an expectation 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.]' [Citations.]

"""A 'reasonable' expectation of privacy is an objective entitlement founded on broadly based and widely accepted community norms. [Citation.]" [Citation.]' [Citation.] 'There is no set formula for determining whether a person has a reasonable expectation of privacy in the place searched, but the totality of the circumstances are considered. [Citation.] Among the factors sometimes considered in making the determination are whether the defendant has a possessory interest in the thing seized or

place searched [citation], "whether he has the right to exclude others from that place; whether he has exhibited a subjective expectation that it would remain free from governmental invasion; whether he took normal precautions to maintain his privacy and whether he was legitimately on the premises." [Citation.]' [Citation.]" (*Nishi*, *supra*, 207 Cal.App.4th at pp. 960–961.)

Defendant contends that the search of his shack without warrant, consent, or exigent circumstances was a violation of the Fourth Amendment because he had a reasonable expectation of privacy. The cases he cites in support of his position are readily distinguishable from the instant case. In *United States v. Sandoval* (9th Cir. 2000) 200 F.3d 659 (*Sandoval*), the Ninth Circuit held the defendant had a legitimate expectation of privacy in a "makeshift tent" located on Bureau of Land Management property. (*Id.* at p. 661.) The court distinguished the defendant's case from its earlier opinion in *Zimmerman v. Bishop Estate* (9th Cir. 1994) 25 F.3d 784, in which it held that squatters in a residential home did not have a reasonable expectation of privacy. (*Id.* at pp. 787–788.) Key to the court's distinction was that in *Zimmerman* it was clear the defendant had no lawful right to be in another's home, "whereas [in Sandoval's case, the tent was situated on] public land[, which] is often unmarked and may appear to be open to camping." (*Sandoval*, *supra*, 200 F.3d at p. 661.) Zimmerman had also been asked to leave the premises several times over a period of eight months. In contrast,

"[Sandoval] was never instructed to vacate or risk eviction, and the record does not establish any applicable rules, regulations or practices concerning recreational or other use of BLM land. Indeed, whether Sandoval was legally permitted to be on the land was a matter in dispute." (*Ibid.*)

In *People v. Hughston* (2008) 168 Cal.App.4th 1062 (*Hughston*), the defendant was camping at a music festival in an area specifically set aside for campers when authorities conducted a warrantless search. (*Id.* at p. 1065.) The appellate court held the defendant had a reasonable expectation of privacy in a "structure [] composed of an aluminum frame covered with tarps . . . tied to and draped over and around the frame and the [defendant's vehicle,] . . . tents, [and] an eating area . . . ." (*Id.* at pp. 1068–1069.) The *Hughston* court reasoned, "'One should be free to depart the campsite for the day's adventure without fear of this expectation of privacy being violated.'" (*Id.* at p. 1070, quoting *People v. Schafer* (Colo. 1997) 946 P.2d 938, 944.)

Here, there was no ambiguity as to whether defendant was permitted to live or camp on the property. The DWP posted signs warning that the property was privately owned and trespassing was not permitted. A sign citing to the specific Penal Code section prohibiting trespass on private property unquestionably notified any persons who wandered onto the property that it was unlawful to remain there. The presence of barriers, fencing, and metal arms prohibiting vehicle access further indicated that trespassing would not be tolerated. Unlike *Sandoval* and *Hughston*, no evidence

was presented that DWP property was regularly utilized for camping or open to the public for any purpose.

That police accompanied mental health workers to the site for the purpose of providing aid rather than for the purpose of clearing the camp does not persuade us the trial court erred. The encampment was subject to removal at any time, as defendant was undoubtedly aware. Defendant had no possessory interest in the place searched, did not have the right to exclude others, and was not legitimately on the premises. These factors heavily outweigh the fact that defendant took precautions to exclude others. Assuming defendant had a subjective expectation that others would not enter the shack—an assumption not supported by the evidence because defendant did not testify—that expectation was not reasonable under the circumstances. Viewing the evidence in the light most favorable to the trial court's ruling, substantial evidence supports its finding that defendant did not have an objectively reasonable expectation of privacy. (See *Nishi*, *supra*, 207 Cal.App.4th at pp. 961–963 [no reasonable expectation of privacy in campsite located illegally on public land]; *People v. Thomas* (1995) 38 Cal.App.4th 1331, 1334–1335 [no objectively reasonable expectation of privacy in temporary shelter situated on public sidewalk without permission and in violation of city ordinance].) The warrantless search of defendant's shack did not violate the Fourth Amendment.

DISPOSITION

The judgment is affirmed.

KRIEGLER, Acting P.J.

We concur:

BAKER, J.

LANDIN, J.*

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