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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JULIO CESAR CHAVEZ,

Defendant and Appellant.

H052979
(Santa Cruz County
Super. Ct. No. 24CR03518)

Following the denial of his motion to suppress (Pen. Code, § 1538.5), defendant Julio Cesar Chavez pled no contest to possession of a controlled substance for sale (Health & Saf. Code, § 11351). On appeal, Chavez argues the trial court erred in denying his suppression motion because the search violated his Fourth Amendment rights and there is no valid exception to the warrant requirement. Based on our independent review of the record, we hold the search was permissible as incident to arrest. Accordingly, we affirm the judgment.

I. FACTS AND PROCEDURAL BACKGROUND

In July 2024, around midnight, Santa Cruz County Sheriff's Deputy Michael Moise was patrolling a secluded area of Santa Cruz County where he knew people drank and partied. At approximately 12:56 a.m., Deputy Moise observed three people—including Chavez and Candy Aguilar—standing in some shrubbery, on the right side of a

parked Honda Accord. Although there were a few other vehicles parked on the same street, Deputy Moise noted none of those vehicles were in direct proximity to the Honda. Deputy Moise also noticed there was a male occupant in the driver's seat of the Honda. Based on the group's interaction, it appeared to Deputy Moise that the group of four people were together.

When Deputy Moise approached the individuals, he observed an empty box of beer cans on the ground close by. While speaking with Chavez, Deputy Moise noticed he had a collection of thick white saliva on the corner of his mouth and a slur to his speech. Deputy Moise then detained Chavez, Aguilar, and the two other individuals¹ to investigate whether they were consuming alcohol in public, and ordered all four of them—including the driver who was now outside of the car—to sit on the ground. Based on his observations, Deputy Moise suspected Chavez and his companions were under the influence of drugs or alcohol. However, given the size of the group, Deputy Moise permitted the individuals to use their cell phones to call for rides home.

At that point, Aguilar stated her phone was inside the Honda, likely on or near the center console. When Deputy Moise reached for the cell phone, he noticed several lines of a white powdery substance on top of the phone screen. Based on his training and experience, Deputy Moise suspected the substance was cocaine and believed at least one of the occupants possessed a controlled substance. Consequently, he searched the four individuals, beginning with Aguilar. After finding nothing on Aguilar's person, Deputy Moise proceeded to search Chavez and found a large plastic bag containing 25.5 grams of cocaine in his left jacket pocket. Deputy Moise also found a scale, several bills, and two smaller plastic bags—one was empty and another had .90 grams of cocaine—on Chavez's person. Given the amount of cocaine and the related paraphernalia, Deputy Moise arrested Chavez on suspicion of possessing cocaine for sale.

¹ The record does not disclose the identity of Chavez's other two companions.

The Santa Cruz County District Attorney filed an information charging Chavez with possession of cocaine for sale (Health & Saf. Code, § 11351) with allegations that he suffered a prior strike (Pen. Code, §§ 667, subds. (b)-(i), 1170.12), and a prior prison term enhancement (*id.*, § 667.5, subd. (c)).

Thereafter, defense counsel moved to suppress the evidence found on Chavez's person claiming it was obtained through an unlawful search. The People opposed, arguing officers had "probable cause to search [Chavez]" based on "the totality of the circumstances."

At the hearing on the motion, Deputy Moise testified that he believed he had "enough probable cause to search all of the occupants associated to the vehicle" since he saw several lines of cocaine on the phone inside the Honda. Afterwards, the prosecutor stated: "[A]s my briefing makes clear, I've only discussed it's a *probable cause search*, so I'm not claiming the search incident to arrest or a patdown of areas of the officer's safety." (Italics added.) Rather, the prosecutor claimed the warrantless search was permissible because "there was a fair probability that contraband or evidence of a crime would be found on [Chavez]" because he was associated with the Honda where the cocaine was found. Defense counsel countered that the search was unconstitutional because police lacked specific and articulable facts Chavez was associated with the Honda or that he had contraband on his person.²

At the conclusion of the hearing, the trial court found Deputy Moise had "probable cause and reasonable suspicion to search [Chavez]." The trial court reasoned Chavez was intoxicated, in an isolated area, associated with the Honda where the cocaine was found, and "that upon the search of the individual who was associated with the phone where . . . known narcotics [were] found, . . . [it was] reasonable to have searched the other individuals." The trial court therefore denied the motion to suppress.

² It is unclear whether anyone other than Chavez was arrested for possession of a controlled substance.

Subsequently, Chavez pled no contest to possession of cocaine for sale. The trial court then granted defense counsel's *Romero* motion (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497) to strike the prior strike conviction, suspended imposition of sentence, and placed Chavez on two years of formal probation with credit for one day served in custody and other conditions of probation. The court waived all fines and fees.

Chavez timely appealed.

II. DISCUSSION

Chavez contends his conviction must be reversed because the trial court erred by denying his motion to suppress. Specifically, Chavez argues the warrantless search of his person was unlawful because it cannot be justified under (1) the automobile exception nor (2) incident to arrest for possession of a controlled substance or public intoxication. We address these arguments in order.

A “challenge to the trial court’s ruling denying [a] motion to suppress presents a mixed question of law and fact that is subject to a two-tier standard of review. . . . ‘We defer to the trial court’s factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. [Citations.]’ ” (*People v. Sardinas* (2009) 170 Cal.App.4th 488, 493.) To satisfy the substantial evidence standard, the evidence supporting the trial court’s findings must be “reasonable, credible, and of solid value.” (*People v. Cole* (2004) 33 Cal.4th 1158, 1212.) “In deciding the sufficiency of the evidence, a reviewing court resolves neither credibility issues nor evidentiary conflicts. [Citation.] Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact. [Citation.]” (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) “We may affirm the trial court’s ruling if it is correct under any theory of the law applicable to the case, even if the ruling was based on an incorrect reason. [Citation.]” (*People v. Zabala* (2018) 19 Cal.App.5th 335, 340.)

“The Fourth Amendment to the United States Constitution prohibits ‘unreasonable searches and seizures.’ In general, a law enforcement officer is required to obtain a warrant before conducting a search. [Citation.] Warrantless searches ‘are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.’ [Citations.]” (*People v. Lopez* (2019) 8 Cal.5th 353, 359.) “[T]he burden of proving the justification for the warrantless search or seizure lies squarely with the prosecution.” (*People v. Johnson* (2006) 38 Cal.4th 717, 723.)

A. *Automobile Exception and Probable Cause to Search a Recent Passenger*

Chavez first claims the warrantless search here was unconstitutional because the automobile exception did not justify the search of his person. The Attorney General concedes the automobile exception does not apply but contends the warrantless search was justified since Deputy Moise had “probable cause to search [Chavez] for cocaine.” We agree with Chavez.

At the suppression hearing, the prosecutor argued that the probable cause exception for a vehicle search applied to searches of people. The prosecutor maintained the warrantless search of Chavez’s person was permissible because it was supported by probable cause since Chavez was associated with the Honda where the cocaine was found. In denying the motion to suppress, the trial court seemingly accepted the prosecutor’s justification, finding that Deputy Moise had “probable cause . . . to search [Chavez]” because he was associated with the Honda where the cocaine was found in an isolated area, was intoxicated, and no contraband was found on Aguilar.

One established exception to the warrant requirement is for a vehicle search based on probable cause the vehicle contains evidence of a crime. (*Carroll v. U.S.* (1925) 267 U.S. 132.) “Under the automobile exception, police who have probable cause to believe a lawfully stopped vehicle contains evidence of criminal activity or contraband may conduct a warrantless search of any area of the vehicle in which the evidence might

be found. [Citations.]” (*People v. Evans* (2011) 200 Cal.App.4th 735, 753 (*Evans*); *Arizona v. Gant* (2009) 556 U.S. 332.) When contraband is found during a vehicle search, police may arrest a recent occupant if there is probable cause to believe the passenger committed a crime related to the evidence “either solely or jointly.” (*Maryland v. Pringle* (2003) 540 U.S. 366, 372.) However, “ ‘a person’s mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person. [Citation.] Where the standard is probable cause, a search or seizure of a person must be supported by probable cause particularized with respect to that person. This requirement cannot be undercut or avoided by simply pointing to the fact that coincidentally there exists probable cause to search or seize another or to search the premises where the person may happen to be.’ ” (*People v. Temple* (1995) 36 Cal.App.4th 1219, 1225, quoting *Ybarra v. Illinois* (1979) 444 U.S. 85, 91.)

We hold that the warrantless search of Chavez’s person cannot be justified based solely on probable cause that he possessed contraband. Like the prosecutor below, the Attorney General appears to labor under the misconception that the search of a person is permissible under the Fourth Amendment when it is supported by probable cause. However, this argument misconstrues the Fourth Amendment warrant requirement. Warrantless searches are *per se* unreasonable unless a valid exception applies. While the search of a *vehicle* can be based on probable cause that it contains contraband under the automobile exception, there is no exception to the warrant requirement that permits the search of a *person* based only on probable cause he or she may possess contraband. As discussed further below, probable cause to believe Chavez possessed cocaine as a recent passenger of the Honda could support an *arrest* and a search incident to arrest, but probable cause alone did not permit Deputy Moise to *search* Chavez. Thus, the warrantless search here cannot be justified solely because Deputy Moise may have had probable cause to believe Chavez possessed cocaine.

B. Search Incident to Arrest³

Chavez next argues the search of his person cannot be justified under the search incident to arrest exception. He claims there was insufficient evidence that he was associated with the Honda where the cocaine was found, and probable cause did not support his arrest for possession of a controlled substance.

“It is well settled that a search incident to a lawful arrest is a traditional exception to the warrant requirement of the Fourth Amendment.” (*United States v. Robinson* (1973) 414 U.S. 218, 224.) “[A] police officer who makes a lawful arrest may conduct a warrantless search of an arrestee’s person and the area within his or her immediate control.” (*Evans, supra*, 200 Cal.App.4th at p. 744.) “An arrest is valid if supported by probable cause. Probable cause to arrest exists if the facts known to the arresting officer would lead a person of ordinary care and prudence to entertain an honest and strong suspicion that an individual is guilty of a crime. [Citation.]” (*People v. Kraft* (2000) 23 Cal.4th 978, 1037.) “Probable cause must be viewed in the totality of the circumstances, not based on any isolated event.” (*In re J.G.* (2010) 188 Cal.App.4th 1501, 1506.) Notably, “[t]he fact that a defendant is not formally arrested until after the search does not invalidate the search if probable cause to arrest existed prior to the search and the search was substantially contemporaneous with the arrest. [Citations.]” (*In re Lennies H.* (2005) 126 Cal.App.4th 1232, 1239-1240.) As such, “[a]n officer with probable cause to arrest can search incident to the arrest before making the arrest.” (*People v Limon* (1993) 17 Cal.App.4th 524, 538 (*Limon*).)

Based on our independent review of the record, we conclude the warrantless search of Chavez’s person was justified incident to arrest for possession of a controlled substance. First, contrary to Chavez’s contention, the trial court’s finding that he was

³ Although the trial court did not address this theory, “ ‘we review the ruling, not the court’s reasoning and, if the ruling was correct on any ground, we affirm.’ ” (*People v. Zamudio* (2008) 43 Cal.4th 327, 351, fn. 11, citations omitted.)

associated with the Honda was based on more than just his “[m]ere physical proximity” to the vehicle. Although Chavez was not seen inside the car, the trial court found there was a “nexus” between Chavez and the Honda where Deputy Moise observed the cocaine in plain sight. The trial court noted Chavez was standing near the Honda in a secluded area, late at night, and there were no other vehicles in direct proximity. Deputy Moise also testified that Chavez and his companions appeared to be interacting with the person sitting inside the car. Thus, substantial evidence supports the trial court’s finding that Chavez was associated with the Honda. (See *People v. Zamudio*, *supra*, 43 Cal.4th at p. 358 [“Where the circumstances reasonably justify the trier of fact’s findings, a reviewing court’s conclusion the circumstances might also reasonably be reconciled with a contrary finding does not warrant the judgment’s reversal”], citation omitted; *People v. Tripp* (2007) 151 Cal.App.4th 951, 955 [“It is not our function to reweigh the evidence, reappraise the credibility of witnesses, or resolve factual conflicts, as these are functions reserved for the trier of fact”].)

We also conclude Deputy Moise had adequate probable cause to lawfully arrest Chavez for possession of a controlled substance. (See *Limon*, *supra*, 17 Cal.App.4th at p. 539 [“This court reviews the objective reasonableness of the facts known to the officer, not the officer’s legal opinion about those facts”], citations omitted.) Chavez was in a secluded area known for drinking and partying late at night, and he displayed symptoms of drug intoxication which included slurred speech and a collection of thick white saliva on the corner of his mouth. (See *People v. Sanchez* (1987) 195 Cal.App.3d 42, 48 [“plain-sight observations concerning [the defendant’s] demeanor,” which included droopy eyelids, slurred speech and constricted pupils, “clearly furnished probable cause to arrest [the defendant] for being under the influence of a controlled substance”].) Moreover, Deputy Moise did not find contraband on Aguilar—the person who claimed ownership of the phone. Thus, even though the search occurred before the arrest, Deputy Moise had particularized suspicion that Chavez possessed a controlled substance prior to

the search.⁴ (See *People v. Avila* (1997) 58 Cal.App.4th 1069, 1075 [“[W]hen the formal arrest follows quickly on the heels of the challenged search, it is not important that the search preceded the arrest rather than vice versa”].)

Accordingly, we hold the trial court did not err in denying the motion to suppress because Deputy Moise had independent probable cause to lawfully arrest Chavez for possession of a controlled substance before the arrest and therefore, the search of Chavez’s person was justified incident to arrest for that offense.⁵

III. DISPOSITION

The judgment is affirmed.

⁴ That Chavez was ultimately arrested on suspicion of possessing a controlled substance for sale and eventually charged with that crime does not change our conclusion. (See *Dix v. Superior Court* (1991) 53 Cal.3d 442, 451 [“The prosecutor ordinarily has sole discretion to determine whom to charge, what charges to file and pursue, and what punishment to seek”].)

⁵ Given our holding, we need not address Chavez’s argument that the warrantless search of his person was not justified incident to arrest for public intoxication.

Greenwood, P. J.

WE CONCUR:

Danner, J.

Bromberg, J.

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