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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

RAUL CASIAN, JR.,

Defendant and Appellant.

B159131

(Super. Ct. No. BA225551)

APPEAL from a judgment of the Superior Court of Los Angeles County, Craig E. Veals, Judge. Affirmed.

Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, William T. Harter and Marc E. Turchin, Supervising Deputy Attorneys General, for Plaintiff and Respondent.

Raul Casian, Jr., appeals a judgment convicting him of possession of cocaine base for sale (Health & Saf. Code, § 11351.5). He contends the evidence against him should have been suppressed because the arresting officer was unaware of Casian's parole search condition at the time of the search. Casian asks this court to withhold its ruling until the California Supreme Court decides a case presenting this same issue, *People v. Sanders*, review granted February 28, 2001, S094088. Casian also contends the search was not justified by exigent circumstances or as a search incident to an arrest, and in any event the matter should be remanded to the trial court to consider those grounds in the first instance.

We decline to withhold our ruling and conclude that the search was lawful under *People v. Reyes* (1998) 19 Cal.4th 743.

FACTUAL AND PROCEDURAL BACKGROUND

Narcotics users informed a police officer that gang members were selling narcotics from a residence in an alley. The officer entered the driveway from the alley and approached the door. The door was open, but a security screen was closed. Standing approximately one foot from the doorway, the officer observed Casian and another person inside playing a video game together. The officer also observed what appeared to be a large quantity of rock cocaine on a table in front of Casian together with a small scale and a cigar box.

The officer knocked, and Casian's companion approached the doorway. The officer identified himself as a police officer and, as a ruse, asked whether the man had heard a woman scream. Casian put the items on the table into the cigar box and carried the box out of the officer's view, then returned a few seconds later and approached the doorway. The officer asked whether Casian had heard a woman scream. Casian responded "No."

Another officer stated, "Can you open the door so I can see who I'm talking with?" The suspects then opened the door, and the officers arrested them. The officers found rock cocaine in a cigar box on the kitchen counter.

Casian was on parole at the time of his arrest and was subject to a search condition. The arresting officer was unaware that Casian was on parole.

An information charged Casian with one count of possession for sale of cocaine base in violation of Health and Safety Code section 11351.5, and alleged that he had served a prior prison term for unlawful possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a)). Casian pled not guilty and denied the special allegation.

Casian moved to suppress evidence obtained as a result of an unreasonable warrantless search (Pen. Code, § 1538.5, subd.(a)(1)(A)).¹ The trial court denied the motion on the ground that the search was justified by Casian's parole condition. Casian then withdrew his plea of not guilty and pled no contest to the count charged, and the special allegation was dismissed. The court sentenced him to the low term of three years in prison.

CONTENTIONS

Casian contends (1) the evidence against him should have been suppressed because the arresting officer was unaware of Casian's parole search condition at the time of the search; and (2) the search was not justified by exigent circumstances or as a search incident to an arrest, and in any event the matter should be remanded to the trial court to consider those grounds in the first instance.

DISCUSSION

1. The Search Was Reasonable Due to the Parole Search Condition

The California Supreme Court in *In re Tyrell J.* (1994) 8 Cal.4th 68 held that a minor who was subject to a valid condition of probation requiring him to submit to a warrantless search by any law enforcement officer had no reasonable expectation of privacy that the marijuana he was carrying could remain concealed. "We conclude a juvenile probationer subject to a valid search condition does not have a *reasonable* expectation of privacy over his or her person or property." (*Id.* at p. 86, original italics.)

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

The court presumed that the minor was aware of the search condition, noted that under the condition permission to conduct a warrantless search was not limited to officers who were aware of the condition, and therefore concluded that the minor could not reasonably believe that the officer would not search him. (*Ibid.*)

The court in *In re Tyrell J.*, *supra*, 8 Cal.4th 68 noted that a juvenile probationer retains a reasonable expectation of privacy to be free from searches that are arbitrary or intended to harass. (*Id.* at p. 87, fn. 5.) “Indeed, we hold today that a juvenile probationer subject to a search condition simply has a greatly reduced expectation of privacy, not that he or she has no legally recognizable privacy rights at all. [Citation.]” (*Ibid.*)

The California Supreme Court in *People v. Reyes*, *supra*, 19 Cal.4th at page 751 concluded that the reasoning of *In re Tyrell J.*, *supra*, 8 Cal.4th 68 applies equally to an adult parolee. The *Reyes* court overruled *People v. Burgener* (1986) 41 Cal.3d 505, 533, in which the court had held that a warrantless search of a parolee must be justified by “reasonable suspicion.” (*Reyes*, at pp. 753-754.) The *Reyes* court concluded, “When involuntary search conditions are properly imposed, reasonable suspicion is no longer a prerequisite to conducting a search of the subject’s person or property. Such a search is reasonable within the meaning of the Fourth Amendment as long as it is not arbitrary, capricious or harassing.” (*Reyes*, at p. 752.)

A parole search condition ordinarily requires that the parolee submit to a warrantless search of his person or property within his control by any law enforcement officer, as the People note in their respondent’s brief. Casian does not contend the search condition here was more narrow in scope.

People v. Reyes, *supra*, 19 Cal.4th 743 is directly on point. Its reasoning and the reasoning of *In re Tyrell J.*, *supra*, 8 Cal.4th 68 apply here. As a parolee subject to a search condition, the validity of which Casian does not challenge, Casian had no reasonable expectation of privacy over his person or property, other than the expectation that he would not be subject to an arbitrary, capricious, or harassing search. Casian’s

argument that the search was arbitrary and capricious simply because the officer did not know that Casian was subject to a parole search condition is contrary to *Reyes* and *Tyrell*. Accordingly, we conclude that the search was reasonable under the Fourth Amendment.

2. *We Need Not Decide Whether Other Grounds Justify the Search*

In light of our conclusion that the search was justified based on the parole search condition, we need not decide whether the search was justified on another ground. Moreover, since the trial court concluded that the search was reasonable based on the parole search condition and did not rule on the other grounds asserted, we will not consider the other grounds without the benefit of factual findings by the trial court in the first instance. (*People v. LeBlanc* (1997) 60 Cal.App.4th 157, 168.)

DISPOSITION

The judgment is affirmed.

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KITCHING, J.

We concur:

CROSKEY, Acting P.J.

ALDRICH, J.