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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.

EDDIE ESTRADA,

Defendant and Appellant.

B243274

(Los Angeles County
Super. Ct. No. BA396662)

APPEAL from a judgment of the Superior Court of Los Angeles County, Norm Shapiro, Judge. Affirmed.

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

No appearance for Plaintiff and Respondent.

Defendant and appellant Eddie Estrada appeals from the judgment entered following his plea of no contest to possession of concentrated cannabis (Health & Saf. Code, § 11357, subd. (c)). The trial court suspended imposition of sentence and placed Estrada on formal probation for a period of three years. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

*1. Facts.*¹

On May 1, 2012, Los Angeles Police Officer Danny Monterroso was assigned to a parole and probation compliance unit. At that time he supervised approximately 60 individuals on “supervised release” programs who had “been brought down from parole . . . to probation.” Under statutory authority, Assembly Bill No. 109, Monterroso was required to have “face-to-face contact” with each of his clients approximately every 30 days. An individual named Edward Diaz was one of Monterroso’s probationers.

At approximately 3:30 in the afternoon on April 17, 2012, Monterroso went to a residence at 922 West 82nd Street to meet with Diaz. When Monterroso, who was accompanied by his partner, Officer Davis, and a probation officer, Renee Brown, pulled up in front of the house in an unmarked car, he saw Diaz “behind his gate in the front yard.” Monterroso, who was in uniform, made eye contact with Diaz who, accompanied by a companion, ran into the house.² Monterroso, his partner and the probation officer got out of their vehicle and ran after Diaz. Monterroso’s partner and the probation officer entered the house through the open front door and detained Diaz in the living room. Monterroso went around the house and entered through the back door, which was “wide open.” As he walked into the house, Monterroso “smelled an odor of marijuana.”

¹ The facts have been taken from the transcript of the preliminary hearing, which included Estrada’s motion to suppress evidence (Pen. Code, § 1538.5).

² Running from a police or probation officer while on probation is apparently a violation of probation.

Diaz's wife and two children were in the living room with Diaz, but there was no sign of the companion with whom he had run inside. When Monterroso asked Diaz where his companion had gone, Diaz was uncooperative and did not answer. Diaz's wife then pointed to the bathroom, which was approximately 10 feet away, and indicated that he had gone in there. Monterroso and his partner called out to the individual in the bathroom and told him to come out. The individual complied with the order and Monterroso then detained the "subject" in the hallway until he was able to get assistance from additional officers.³

Once additional officers arrived, they moved Diaz, his companion, his wife and their two children "outside the front door." Although Diaz's wife told the officers there was no one else in the house, they "systematically searched the rest of the residence to make sure no one else was hiding." As they searched, Monterroso "could still smell the strong [odor] of marijuana and . . . could hear a loud noise coming from the [room] down the hall." When he reached the room, the officers could see that the door was "partially cracked." It was not "locked or secured." Monterroso opened the door and saw Estrada sitting on the bed approximately two feet in front of a television which was turned up so that it was quite loud. Estrada indicated that he lived at the house and that the room the officers had just entered was his room. He was seated on the bed "in the process of tying a clear plastic bindle of marijuana type substance." In addition to the one he was tying, there were approximately three other bindles on the bed and 34 bindles in a box. A larger plastic bag containing what appeared to be marijuana was on the television stand, next to a digital scale. Finally, there were empty baggies "all over the room."

For purposes of the preliminary hearing only, it was stipulated that "the items booked into evidence . . . [had been] analyzed by a certified criminalist by the name of M. Chance" and "[i]f called, duly sworn and testified, Ms. Chance would indicate that the total net weight of the item was 19.59 grams. The contents of the six bags had a net

³ Diaz's companion turned out to be another probationer, Geraldo Zepeda, who was also under Monterroso's supervision.

weight of 4.1 grams containing marijuana. And item two had a total net weight of 8.35 grams.” It was further stipulated that, “if called, duly sworn and testified, Detective Olivier would indicate that[,] based on his training, experience and expertise[,] . . . the marijuana was possessed for the purpose of sales[.]”

2. *Procedural history.*

After it was presented at the preliminary hearing, Estrada’s counsel made a motion to suppress the evidence of marijuana found in Estrada’s room. Counsel asserted that, during a parole or probationary search, the officer is not permitted to search the private belongings of someone living with the parolee “unless there’s joint control.” With regard to Estrada, the officers essentially conducted a search of his room, or “his home,” without a warrant. To search without a warrant, the officers needed “both probable cause and exigent circumstances.” Here, the officer could not articulate any exigent circumstances. The sound of a loud television and the smell of marijuana are “not enough for probable cause.” Nothing in these circumstances created a danger to the officers. There was “definitely no evidence of a violent crime.” Once the probationers had been detained, and the officers had not seen any new evidence or articulated any new reason why they were in danger, there was no “need to do a protective sweep for their safety.”

The People argued that, in the present matter, they not only had the prior approval of the probation officer, but the probation officer was present when they searched the house. Moreover, “the scope of the search [could properly] include the probationer’s property, vehicle, and residence.” The prosecutor continued, “And I think in this case, the officer has articulated reasons to justify a safety sweep based [not just on] Mr. Diaz’ action[s], but [those of the second probationer as well.]” When Diaz first saw the uniformed officer, both he and the second probationer ran. The prosecutor also noted that the police officers did not complete the search of the house without “back up.”

Following a short recess, the trial court indicated that, “taking into consideration the fact that the officer[s] seemed to feel it was necessary to delay searching the residence [until] back up [units had arrived,]” the court believed “that the officer felt that a protective sweep was necessary under the circumstances.” The trial court found that “the

officer was justified in conducting a limited protective sweep of the residence. And therefore, was acting lawfully in opening Mr. Estrada's bedroom door. [¶] Once he did that, [the trial court believed there was no] dispute that what he saw in plain view was enough to justify the seizure of that evidence." The court, therefore, denied Estrada's motion to suppress evidence. Believing that the evidence which had been presented was sufficient to support the belief that Estrada had possessed marijuana for sale, the court determined Estrada should be held to answer to the charge. He was, however, "continued on his own recognizance."

On May 15, 2012, an information was filed in which it was charged that, on or about April 17, 2012, Estrada committed the crime of possession of marijuana for sale in violation of Health and Safety Code section 11359, a felony. At a hearing held that same day, Estrada entered a plea of not guilty to the charge. The next proceedings in the matter were held on July 25, 2012. At that time, Estrada indicated that he wished to take advantage of the People's offer of a plea to Health and Safety Code section 11357, subdivision (c), possession of concentrated cannabis. He would serve three years on probation and do "30 [days of] CALTRANS." If the Caltrans was not completed within one year, he would be required to serve 180 days in county jail. In addition, the Caltrans service would reduce the crime to a misdemeanor and convert the remaining probation time to "unsupervised."

On the district attorney's motion, the information was amended to add as count 2 a violation of Health and Safety Code section 11357, subdivision (c), the possession of concentrated cannabis, a wobbler. The prosecutor explained that Estrada would be pleading to a felony, but that if he successfully completed his 30 days at Caltrans, the offense could be reduced to a misdemeanor.

Estrada waived his right to a jury or court trial, his right to cross-examine the witnesses called to testify against him, his right to use the subpoena power of the court to call witnesses to testify on his behalf, and the right to remain silent, also known as the privilege against self-incrimination. He then pled "no contest" to the allegation that he had "committed the crime of possessing concentrated cannabis in violation of Health and

Safety Code section 11357, subsection (c)[.]” Counsel joined in the plea, concurred in the waivers and stipulated to a factual basis for the plea based, at least in part, on the police reports.

The trial court accepted Estrada’s plea, found “a factual basis for it” and determined that the waivers had been knowingly, intelligently and voluntarily made. The trial court then placed Estrada on three years formal probation, some of the conditions of which included that he pay a \$240 restitution fine (Pen. Code, § 1202.4), pay a \$40 court security fee (Pen. Code, § 1465.8, subd. (a)), pay a \$30 criminal conviction assessment (Gov. Code, § 70373), pay a \$50 laboratory fee (Health & Saf. Code, § 11372.5) and register as a narcotics offender with his local police department (Health & Saf. Code, § 11590). Estrada was also to “submit [his] person and property to search or seizure at any time of the day or night by any law enforcement officer or by [a] probation officer with or without a warrant.” The trial court then dismissed in accordance with the plea negotiations the remaining charges and allegations.

On August 9, 2012, Estrada filed a timely notice of appeal “based upon the denial of [his] motion to suppress evidence made pursuant to Penal Code section 1538.5.”

CONTENTIONS

After examination of the record, counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record.

By notice filed November 1, 2012, the clerk of this court advised Estrada to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. No response has been received to date.

REVIEW ON APPEAL

We have examined the entire record and are satisfied counsel has complied fully with counsel’s responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The judgment is affirmed.

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KITCHING, J.

We concur:

CROSKEY, Acting P. J.

ALDRICH, J.