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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Tehama)

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THE PEOPLE,

Plaintiff and Respondent,

v.

ROY LUDWIG PRATHER,

Defendant and Appellant.

C068474

(Super. Ct. No. NCR79236)

Following his plea of guilty to possession of concentrated cannabis and maintaining a place to sell a controlled substance, defendant Roy Ludwig Prather appeals the denial of his motion to suppress.

RELEVANT PROCEDURAL HISTORY AND FACTUAL BACKGROUND<sup>1</sup>

Defendant was charged with cultivation of marijuana and possession of marijuana for sale. He filed a motion to suppress

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<sup>1</sup> Because the substantive facts underlying the convictions are not relevant to any issue raised on appeal, we do not recount them.

contending he did not voluntarily consent to the search of his home and a suppression hearing was held.

Sergeant Dave Kain and two deputies were dispatched to a home on Dale Road to investigate a possible commercial marijuana operation. They knocked at what appeared to be the main door of the residence and defendant answered. Kain advised defendant they had received information about marijuana growing in the home and they were trying to determine if it was a Proposition 215 operation or an illegal commercial grow. Defendant appeared to understand and informed Kain it was a Proposition 215 growing operation. Defendant also reported he had medical recommendations for the marijuana. Kain asked defendant if he could come inside and inspect the operation to ensure it met county guidelines. Defendant answered "Sure" or "Okay," opened the door for the officers, and escorted them to the growing room.

Kain immediately noticed the room was very smoky and there was a large amount of marijuana being trimmed from the plant by four people. Kain also noticed scales and packaging materials. Kain told defendant he was concerned about whether the medical marijuana laws were being complied with, whether defendant was paying the workers in the room, and if so, whether defendant was paying them "under the table." Kain explained he wanted to further inspect the operation. Defendant was fully cooperative and allowed Kain to look further in the room.

Kain found two safes in the house and asked defendant to open them. Initially, defendant refused. Kain advised

defendant that based on what he saw in the room, Kain would apply for a warrant to search the safes. He also advised defendant that if the warrant issued later, they would have to take the safes out of the home. At that point, defendant consented to opening the tall safe, but refused to open the smaller safe. As to the smaller safe, defendant insisted Kain would have to get a search warrant. There was a substantial amount of processed, individually packaged marijuana in the tall safe. Although defendant refused to open the smaller safe, he did not revoke his consent for the officers to search the property.

Kain contacted Lieutenant David Greer and asked him for assistance transporting evidence to the sheriff's office and writing a search warrant for the smaller safe. Greer sought and obtained a warrant to open the smaller safe.

When Greer arrived at the scene, Kain asked defendant for consent to search the entire property. Defendant consented to a search of "the entire property for anything that would be consistent with the growing operation," including the house and other outbuildings on the property. Defendant assured Kain he had been cooperative throughout the investigation and would continue to be. Defendant told Kain the officers could search anything they wanted to search and offered to walk the officers out to the shed and show it to them.

At no time during the search was defendant handcuffed or prevented from leaving the home. Defendant was not told he could not leave. None of the officers drew their weapons. No

one else in the home was arrested or handcuffed. Kain did tell defendant that he had too much marijuana and he might be placed under arrest. Defendant was later told he would not be arrested that day.

Defendant claimed Kain had come to the back door, not his front door. When Kain informed defendant he was doing a Proposition 215 compliance check, defendant thought Kain only needed to see his paperwork. Accordingly, he walked around the back of the house to get his recommendation. He only opened the door about one-third of the way, but the officers followed him inside. Kain saw the marijuana trimming going on and advised everyone in the room they were all under arrest. The officers repeatedly tried to get defendant to open the safes. He did not want to, but eventually opened one safe because they told him "they were taking everything" and "at that point they'd already searched the whole house. They had searched the out-buildings. They had searched everything." Defendant denied giving consent for the officers to enter the house and denied consenting to the searches.

Defense counsel argued it was unclear to defendant what the officers meant when they advised him they were conducting a 215 compliance check. Accordingly, it was unclear to defendant whether the officers were seeking consent to search or simply wanted him to show his medical marijuana documentation. Counsel also argued defendant never consented to the searches and any consent was not voluntary.

The magistrate specifically found defendant "opened the front door, never closed the front door, never said that the officers shouldn't follow him, made statements that they could follow him. . . . [H]is statements and his activities are consistent with consent." The magistrate found defendant's explanation, that he thought the officer only wanted to verify his paperwork, was unreasonable, as compliance with Proposition 215 has two components, paperwork and limited quantities. The court observed explicit consent was not necessary, but found explicit consent had been given. "[T]he officer's testimony was, 'Sure,' when he asked if he could come in. . . . I don't take that as implied consent, I take that as consent. Other words, actions such as nodding, pulling your head to the side, as the other officer noted, and leaving the door open and walking back, that might be implied consent. But it is on top of what I think is an explicit consent. [¶] As to the testimony of the officers, I found Officer Kain's testimony to be particularly cogent. He has an understanding of the questions, and always answered them in a reasonable and persuasive manner." Accordingly, the magistrate denied the motion to suppress.

Subsequently, the People amended the information, adding counts charging defendant with possession of concentrated cannabis and maintaining a place to sell a controlled substance. The parties then entered into a plea agreement whereby defendant pled guilty to the newly added counts in exchange for a stipulated sentence of no immediate state prison, three years'

formal probation, 120 days in county jail, and forfeiture of the assets in the case. Defendant was sentenced in accordance with the plea.

#### DISCUSSION

Defendant contends the magistrate erred in denying his motion to suppress "because the police did not have consent to enter his home because consent cannot be implied when the police do not request entry and when the resident does not expressly grant or refuse entry." Defendant's contention disregards the fact that the court found the consent to be explicit, not implicit.

"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.]" (*People v. Jenkins* (2000) 22 Cal.4th 900, 969.) "[W]e uphold the trial court's factual findings if they are supported by substantial evidence, but review independently its determination that the search did not violate the Fourth Amendment. [Citation.]" (*People v. Troyer* (2011) 51 Cal.4th 599, 605; *People v. Rogers* (2009) 46 Cal.4th 1136, 1157.) Whether consent was, in fact, given and whether it was freely and voluntarily given are factual issues, "'to be determined in the light of all the circumstances.'" [Citations.]" (*People v. James* (1977) 19 Cal.3d 99, 106.) As such, the trial court's findings on this issue, either express or implied, must be upheld on appeal if they are supported by

substantial evidence. (*Id.* at p. 107.) An officer's testimony that the accused freely consented to the search is substantial evidence, even in the face of conflicting testimony from defense witnesses. (*People v. Ratliff* (1986) 41 Cal.3d 675, 687.)

In this case, the determination of consent turns primarily on witness credibility and drawing reasonable inferences from the evidence. These are matters uniquely within the magistrate's purview. (*People v. Ratliff, supra*, 41 Cal.3d at p. 686.)

Here, Kain testified that he asked defendant if he could come inside and inspect the operation to ensure it met county guidelines. Defendant understood the request, answered "Sure" or "Okay," opened the door for the officers, and escorted them to the growing room. On at least two additional occasions, defendant was asked for further consent to search and expressly agreed. According to Kain, his requests to search were clear and defendant gave numerous affirmative responses. Kain was found credible by the magistrate. Thus, defendant's responses were sufficiently unequivocal to evidence consent. (See *People v. James, supra*, 19 Cal.3d at p. 113.) The trial court was entitled to disbelieve defendant's testimony, in favor of accepting the testimony of Kain and other officers that defendant voluntarily consented to the search. (See *People v. Ratliff, supra*, 41 Cal.3d at p. 687.)

The officers did not draw their weapons; no one in the home was handcuffed; the officers did not impermissibly claim a right to search, nor did they act as if they would enter the home

irrespective of defendant's consent. Well into the search, defendant asserted his Fourth Amendment rights relative to the smaller safe. He refused to consent to a search of that safe, and specifically advised the officers they would need to get a warrant to search it. Defendant's assertion of his rights as to the smaller safe undercuts any claim that his consent as to the search of the house and the rest of the property was the product of coercion, compulsion, or express or an implied assertion of police authority that might have vitiated the consent. (See *People v. Fierro* (1991) 1 Cal.4th 173, 217.)

Our review of the record shows substantial evidence to support the magistrate's finding that defendant's consent to the search was voluntary. There was no evidence of force or restraint, no evidence of coercion, compulsion, or express or implied assertion of authority. Defendant was repeatedly asked for consent to search and expressly gave that consent. We find no violation of the Fourth Amendment.

DISPOSITION

The judgment is affirmed.

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ROBIE, J.

We concur:

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BLEASE, Acting P. J.

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DUARTE, J.