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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

PAUL MORRIS BLAKE,

Defendant and Appellant.

G045502

(Super. Ct. No. 09CF3124)

OPINION

Appeal from a judgment of the Superior Court of Orange County, Patrick Donahue, Judge. Affirmed.

Michelle C. Zehner, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Natasha Cortina and Heidi T. Salerno, Deputy Attorneys General, for Plaintiff and Respondent.

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Paul Morris Blake pleaded guilty to felon in possession of a firearm (former Pen. Code § 12021, subd. (a), see now § 29800; all statutory citations are to the Penal Code), and felon in possession of ammunition (former § 12316, subd. (b)(1), see now § 30305). Blake contends he did not give police officers voluntary consent to search his residence, and the trial court erred in denying his motion to suppress evidence. (§ 1538.5.) For the reasons expressed below, we affirm.

I

FACTUAL AND PROCEDURAL HISTORY

Santa Ana Police Officer Justo Capacete testified at the January 2011 hearing on Blake's motion to suppress evidence (§ 1538.5) that on the morning of December 22, 2009, he and several officers went to Blake's home to conduct a parole compliance check on Blake's nephew, parolee Christopher McDonald. As Capacete approached the front door, he looked over to the open garage door and spotted a rifle on the garage floor in a partially open grey gun case.

Blake answered the door, and the officers, in police polo shirts and jeans, explained they were there to check on McDonald. Capacete asked Blake about the rifle in the garage, and Blake informed him it belonged to his father, who had instructed him to conceal it in the garage. Capacete informed Blake two individuals who left his residence were arrested for possessing narcotics with intent to sell. Blake claimed he knew nothing about the incident. They also asked Blake if he knew Cali Chang. Blake responded he did, and that Chang worked out of the garage. Earlier in the day, officers had stopped Chang for a traffic violation and discovered a pay/owe sheet consistent with narcotics sales.

Blake said McDonald was not home. Capacete asked Blake, who claimed he owned the house, for consent to enter the residence and look for McDonald. Blake stepped aside and said, ““Sure, go ahead, but he hasn’t been here for a couple of days.””

After a fruitless search of the residence for McDonald, Capacete asked Blake, who was seated outside in a chair by the front door, for consent to search the garage because of the rifle, and to investigate for narcotics. Blake agreed to a search of the garage. Officer Gustavo Moroyoqui also testified he heard Blake consent to a search of the house and the garage. In addition to the rifle, the officers found a black briefcase containing empty Ziploc bags, a letter addressed to Chang, and approximately 20 grams of crystal methamphetamine in a three- by five-inch metal box with an attached magnet that could be affixed to a vehicle. Blake denied knowing about the methamphetamine, but acknowledged he shared the garage with Chang.

Blake confronted Capacete on cross-examination with a search warrant affidavit prepared on December 23 by a nontestifying officer, Sergeant Carillo, that stated, “Blake did not give consent for a search of a residence.” Capacete explained he told Carillo that “Blake, Sr. [defendant’s father], the owner of the residence . . . did not give us consent to search the residence.” Capacete said Carillo’s reference was “a mistake.”

The trial court found the testifying officers credible and that Blake consented to their search of the house and garage. In June 2011, Blake pleaded guilty as noted above. The court suspended imposition of sentence and placed Blake on supervised probation on various terms and conditions, including a 365-day jail term.

II

DISCUSSION

Substantial Evidence Supports the Trial Court's Conclusion Blake Voluntarily Consented to the Searches

Blake contends his consent to search was not “given voluntarily [but rather] in response to a substantial showing of police authority.” The Attorney General asserts Blake forfeited the claim because he did not argue in the trial court consent “was involuntary Instead, he argued that he did not consent to the search and that the testimony of the detectives was not credible.”

Blake did not raise his voluntariness claim in his moving papers, and he admits his reference to voluntariness at the suppression hearing was “meager.” At the hearing, counsel stated he was “caught . . . a little off guard” by the court’s comments concerning the relevance of the search warrant affidavit prepared the day after the warrantless search. Counsel argued he was using the affidavit “to impeach the testimony of the officer” and noted it had relevance for that purpose. Counsel then offered, “the other thing here, your honor, is that the prosecution has the burden of showing the *voluntariness* of the consent by a preponderance of the evidence.” (Italics added.) Counsel, however, never addressed the factors involved in determining whether Blake voluntarily consented to the search; indeed, counsel did not raise the issue again. Blake’s passing reference to voluntariness in the trial court does not establish he raised the matter below. Consequently, Blake is precluded from raising this contention on appeal. (*People v. Williams* (1999) 20 Cal.4th 119, 129 (*Williams*) [defendants must inform the prosecution and the court of the specific basis for their motion to suppress under section 1538.5 or forfeit the omitted basis as an issue on appeal].)

In any event, Blake’s claim he did not voluntarily consent is meritless. (See *People v. Glaser* (1995) 11 Cal.4th 354, 362 [review of suppression rulings].) Consent to search is a factual question, and the trial court’s determination will be upheld

if supported by substantial evidence. (*People v. James* (1977) 19 Cal.3d 99, 107 (*James*).) Relevant factors for evaluating the voluntariness of consent include whether the consenting person was in custody and given *Miranda* (*Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*)) warnings, whether the officer obtaining the consent had his weapon drawn, informed the person of his right to refuse consent, or used deceptive practices, whether the consent was obtained in the presence of many officers, and whether there was a substantial interruption of the consenting person's liberty. (*James*, at pp. 113-115; *People v. Ledesma* (1987) 43 Cal.3d 171, 234-235 (conc. opn. of Mosk, J.).)

In *James*, the Supreme Court found substantial evidence to support a finding of voluntary consent where four police officers arrested and handcuffed the defendant at his front door, then asked if they could look in the house for items taken during a robbery. (*James, supra*, 19 Cal.3d at pp. 106-107, 118.) *James* involved far more coercive circumstances than the present case. Here, Capacete informed Blake of the reasons for searching the house and garage. By all accounts, the conversation proceeded in a calm and amiable fashion, and as Blake admits, he “appears to have freely entered into the” conversation. He concedes the “tone, duration, and location of the encounter suggests” he was not in custody. The officers did not draw or display their weapons. Blake was not handcuffed and he did not experience ““a restraint tantamount to arrest.”” While several officers were at the scene, there is no evidence they were present when Capacete asked Blake for permission to search the residence and the garage. Nor does it appear the encounter was unduly protracted.

Blake relies on *People v. Superior Court (Casebeer)* (1969) 71 Cal.2d 265. There, a highway patrol officer stopped a car towing a trailer in violation of the Vehicle Code. The driver could not provide a license, and the officer arrested a female occupant when he found marijuana in her purse (the trial court found she had not consented to the search). The other male occupants, including the vehicle's owner who was in the back seat, were detained for 30 minutes until three more patrol cars arrived. The officers

asked for identification and warned they were “going to check them.” (*Id.* at p. 268.) After ordering the men out of the car to be frisked, an officer asked the owner “if he cared if I checked the vehicle and he stated no. . . .” (*Id.* at p. 268.) The Supreme Court observed “the circumstances under which [the owner’s consent] was given appear from the uncontradicted evidence to be highly coercive” (*id.* at p. 270) and there were “cogent reasons in support of defendants’ claim th[e owner’s] consent to the search of his car was involuntary as a matter of law,” (*id.* at p. 271) but the court declined to resolve the issue, concluding the evidence was the product of the unlawful search and seizure of the female passenger. (*Ibid.*)

Unlike the car owner in *Casebeer*, Blake was not detained unduly or improperly at the time he consented to the searches, nor was Blake confronted with coercive circumstances when he consented to the search of his house and garage. Although Blake may have been detained by the time he gave his consent to search the garage, his admission at the outset of the encounter that he knew about the rifle in the garage in plain view provided grounds for further investigation apart from the parole check justification. In viewing the totality of the circumstances, substantial evidence supports the trial court’s implied finding Blake voluntarily consented to the search of his residence and garage. The trial court did not err by denying his motion to suppress evidence.

III

DISPOSITION

The judgment is affirmed.

ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

MOORE, J.