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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.

JAIME LYNN WHITLOCK,

Defendant and Appellant.

G045862

(Super. Ct. No. 10HF1842)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Frank F. Fasel, Judge. Affirmed.

Donna L. Harris, 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, Collette C. Cavalier and Steve Oetting, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

Defendant Jaime Lynn Whitlock pleaded guilty to possession of methamphetamine for purposes of sale (Health & Saf. Code, § 11378). The trial court placed defendant on formal probation, which included 120 days in local custody. On appeal, defendant contends the court erred by denying her motion to suppress evidence. (See Pen. Code, § 1538.5, subd. (m) [“A defendant may seek further review of the validity of a search or seizure on appeal from a conviction in a criminal case notwithstanding the fact that the judgment of conviction is predicated upon a plea of guilty”].) The record supports the court’s finding that the police had a reasonable suspicion that defendant’s boyfriend, a parolee, had joint possession or control over the searched areas in which the evidence was found. We therefore affirm the judgment.

FACTS

Surveillance of the Property

In September 2010, a Newport Beach police officer “received a tip [from a confidential informant] that methamphetamine was being sold by [two individuals] at the residence located at 123 1/2 18th Street in Costa Mesa” (the Property). According to the informant, the drugs were kept in the backyard. The police officer identified the two individuals residing at the Property as defendant and Mike Seminoff. The police officer learned Seminoff was on parole for grand theft. The officer contacted Seminoff’s parole agent, who confirmed that Seminoff lived at the Property. The parole agent responded favorably to the officer’s request to conduct a parole search at the Property. After receiving the tip and talking to the parole agent, the police officer and a detective began conducting surveillance of the Property.

The Property includes “a second-story residence” with a stairwell leading to a security gate, beyond which the front door to the residence is located. At the back of the porch, a rear stairwell connects to the backyard. The backyard is fenced-in with

access points located at the bottom of the rear stairwell and one or two other gates at the ground level. Although it is unclear from the record what function the ground floor of the Property served, an officer testified that no other residential units are located at the Property and no other residential units share the backyard.

The backyard is approximately 40 feet wide and approximately 40 feet long. A metal storage shed, approximately 12 feet long, 6 feet wide, and 8 feet tall, is located in a rear corner of the backyard. The storage shed is the only container in the backyard.

During the first day of surveillance, the police officers saw Seminoff “ride up into the driveway on a scooter,” go “up the stairwell,” unlock the security gate, and then unlock the front door with a key before he walked inside. “[W]ithin a few minutes time, [Seminoff] exited the residence. He looked out towards the street and then he walked to the rear stairwell, which goes down to the backyard, and he went down that stairwell.” Seminoff then returned to the house approximately one minute later. For the next five to 10 minutes, Seminoff repeatedly (approximately five times) exited the residence, walked down the rear stairwell, and entered the backyard. On one occasion, Seminoff “went to the backyard . . . from the house” “carrying an object that was large enough that it required both hands to carry.” When Seminoff went back up the stairwell to return inside, the object was no longer in his hands.

During the second day of surveillance, the police officers saw defendant at the Property. While defendant was inside the residence, the police officers saw three men enter the residence. While the three men were inside, “[defendant] exited the residence and walked down the stairs into the backyard” and then returned back to the house “about a minute” later. Within the next hour and a half, the three men left the residence. Soon after, “defendant exited the residence and went out to” her motorcycle.

Search of the Property

At this point, the police officers contacted defendant and told her they “were there to investigate drug sales and that [they] knew that Mike Seminoff lived there and he was on parole and [they] were going to conduct . . . a parole search of the residence.” Defendant responded, “[I]t’s okay if you search the house. I know he’s on parole and he’s subject to search.” Defendant noted that Seminoff was her boyfriend. The officers did not threaten defendant, make promises to her, draw their weapons, handcuff her, or place her under arrest.

The police first searched defendant’s automobile, but did not find any contraband. The officers then began searching inside the residence at the Property. Seminoff arrived at the Property on his scooter while the search was in progress. After beginning their search inside the residence, the police officers, including a canine officer, began “to search the backyard of the residence.” The dog “alerted on the exterior door of [the storage shed]. It alerted indicating that the odor of narcotics was present inside of the storage [shed].” The only door to the storage shed was locked with a padlock.

One of the police officers asked defendant about the storage shed. Defendant stated “there was a massage bed inside the shed, that it belonged to a friend of hers, and she didn’t have any access to the shed.” Defendant claimed she did not have a key to the shed. Seminoff also claimed he did not have access to the shed. Based on the layout of the Property and the results of surveillance, the police officers did not believe Seminoff.

After speaking to defendant and Seminoff, the police officers “used bolt cutters and cut the hasp that secures the padlock to the door” of the storage shed. Inside the shed, the officers observed “a massage bed [and a] little file cabinet.” Inside the cabinet was “a plastic bag which contained [a half ounce of] methamphetamine,” a digital scale, a calculator, a paper funnel, two used methamphetamine pipes, numerous small plastic bags, and defendant’s business cards. It was discovered later by police that a key

on a key ring given to police by defendant unlocked the padlock to the storage shed. Seminoff did not have a key to the padlock on his person. The search of the residence disclosed several items in a safe, including hundreds of dollars in cash and a small plastic bag like those found in the storage shed. The police officers arrested defendant.

Procedural History

An information accused defendant of one count of possession of methamphetamine for purpose of sale (Health & Saf. Code, § 11378). Defendant filed a motion to suppress evidence found during the search, including the methamphetamine, drug paraphernalia, and business cards found in the storage shed.

The court denied defendant's motion to suppress evidence. "[T]here certainly is sufficient evidence before the court that indicates . . . joint possession." "I think everything that the officers did was reasonable" The court also discussed defendant's consent to the search of the Property and engaged in a hypothetical discussion of whether there was probable cause for a search of the Property, but we ignore the consent rationale and probable cause discussion for purposes of this opinion. The issue on appeal is whether the search of the storage shed (a search to which defendant did not consent) was reasonable as a parole search of Seminoff's residence.

Defendant then waived her right to a jury trial and pleaded guilty. The court accepted the plea, suspended imposition of sentence, and placed defendant on formal probation with various conditions, including that she serve 120 days in local custody.

DISCUSSION

A defendant may move to suppress evidence obtained as the result of an unreasonable search. (Pen. Code, § 1538.5, subd. (a)(1).) On appeal from the denial of a

motion to suppress, “[w]e defer to the trial court’s express or implied factual findings if supported by substantial evidence, but independently apply constitutional principles to the trial court’s factual findings in determining the legality of the search.” (*People v. Baker* (2008) 164 Cal.App.4th 1152, 1156 (*Baker*).)

“A search conducted without a warrant is unreasonable per se under the Fourth Amendment unless it falls within one of the ‘specially established and well-delineated exceptions.’” (*People v. Woods* (1999) 21 Cal.4th 668, 674.) One such exception applies to probationers and parolees subject to search upon demand “to ensure compliance with the terms of their release.” (*Baker, supra*, 164 Cal.App.4th at p. 1158.) “When involuntary search conditions are properly imposed, reasonable suspicion is [not] 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.” (*People v. Reyes* (1998) 19 Cal.4th 743, 752.)

Defendant does not contend it was unreasonable per se for the police to open and search a backyard storage shed as part of a warrantless search of the residence of a parolee. (See *People v. Reyes, supra*, 19 Cal.4th at pp. 746-747, 756 [warrantless search of shed in parolee’s backyard was constitutional].) Seminoff was a parolee and therefore subject to a warrantless search of his residence. (See Pen. Code, § 3067; *People v. Schmitz* (2012) 55 Cal.4th 909, 916; Cal. Code Regs., tit. 15, § 2511, subd. (b)(4) [parolee notified upon release that “[y]ou and your residence and any property under your control may be searched without a warrant at any time by . . . any law enforcement officer”].) Prior to conducting the search, the police confirmed with a parole agent that Seminoff was a parolee and resided at the Property. (See *People v. Sanders* (2003) 31 Cal.4th 318, 322 (*Sanders*) [parole status of one resident could not be used to retroactively justify warrantless search of residence when police were unaware of the parolee’s status at the time of the search].)

Nor does defendant contend, at least in the abstract, that cutting the hasp to gain entry to the storage shed was unreasonable as part of a search of a parolee's residence. (Cf. Pen. Code, § 1531 ["The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance"]; *United States v. Ross* (1982) 456 U.S. 798, 820-821 ["A lawful search of fixed premises generally extends to the entire area in which the object of the search may be found and is not limited by the possibility that separate acts of entry or opening may be required to complete the search"].)

Instead, the question raised by this appeal is whether the police violated the constitutional rights of defendant, who was not a parolee, by the search of the outdoor storage shed. Defendant acknowledges the general rule that "[t]hose associating with a probationer [or parolee] assume the ongoing risk that *their property and effects* in common or shared areas of a residence may be subject to search." (*People v. Smith* (2002) 95 Cal.App.4th 912, 919 (*Smith*); see *People v. Sanders, supra*, 31 Cal.4th at p. 330 ["the expectation of privacy of cohabitants is the same whether the search condition is a condition of probation or parole"].) But defendant suggests the police went too far in this case because, in her view, the record does not support the inference that Seminoff controlled or possessed the backyard shed. "When executing a parole . . . search, the searching officer may look into closed containers that he or she reasonably believes are in the complete or joint control of the parolee or probationer. [Citations.] This is true because the need to supervise [parolees] must be balanced against the reasonable privacy expectations of those who reside with, ride with, or otherwise associate with parolees . . ." (*Baker, supra*, 164 Cal.App.4th at p. 1159.)

Whether the search remained within the boundaries of a reasonable parole search of Seminoff's residence is a question of fact and is "satisfied based on an examination of the totality of circumstances surrounding the search." (*Smith, supra*, 95

Cal.App.4th at p. 919; see also *People v. Schmitz*, *supra*, 55 Cal.4th at pp. 921, 926 [in context of automobile search in which parolee was a passenger, holds courts should examine the ““totality of the circumstances”” to decide whether “the officer reasonably expects that the parolee could have stowed personal belongings or discarded items” in the searched areas].)

In *Smith*, *supra*, 95 Cal.App.4th 912, police officers conducted a probation search of the residence of a probationer, who shared a bedroom with his girlfriend. (*Id.* at p. 914.) Police found marijuana in the pocket of a robe, methamphetamine in “knickknack containers on a shelf on the wall,” drug paraphernalia elsewhere in the room, a gun in a safe, and, ultimately, methamphetamine in a purse found on the bed. (*Id.* at pp. 914-915.) Girlfriend, charged with possession of methamphetamine, unsuccessfully moved to suppress the narcotics found in the purse based on the argument that a purse is a “distinctly female item” that should not have been subject to the probation search of her boyfriend. (*Id.* at p. 915.) The appellate court affirmed. “[T]he question was not whether the purse was ‘female’ or gender-neutral; the critical issue was whether the officers reasonably believed the item was one under [probationer’s] control or one to which he at least had access.” (*Id.* at p. 919.) “The officers limited their search only to the room occupied by [probationer], and searched only those items over which they reasonably believed [probationer] had complete or joint control.” (*Ibid.*) Moreover, the discovery of drugs and a weapon in the room suggested the room “was being used for a criminal enterprise” and “there was no reason for the officers not to believe the purse, regardless of its appearance, was one being jointly used, even if not jointly owned, by the probationer subject to search.” (*Id.* at pp. 919-920.)

In the instant case, there is substantial evidence supporting the court's conclusion that the officers reasonably believed the shed was being jointly controlled, possessed, or accessed by Seminoff. Defendant and Seminoff resided at the Property together as boyfriend and girlfriend. Seminoff was not merely renting a room from defendant. The storage shed was in the backyard of the Property. No other residential units shared the backyard. Defendant was seen by officers walking into the backyard, including on one occasion when he carried a large object into the backyard. Defendant was not carrying the object upon his return to the residence. When asked about the storage shed, defendant denied she had access to the shed (as did Seminoff). These denials were implausible and suspicious under the circumstances. Nothing about the shed itself suggested it was used only by defendant (or some other person) rather than Seminoff. Unlike the purse in *Smith, supra*, 95 Cal.App.4th 912, the shed cannot be classified as "feminine." The parole search of the storage shed was reasonable. Defendant objects that the police could have conducted further investigation to sort out the question of access before opening the storage shed. "That the officers could have taken additional steps to verify [their beliefs] does not undermine our conclusion that the officers acted reasonably based on the information they already had when they acted." (*People v. Downey* (2011) 198 Cal.App.4th 652, 660 [based on available information, it was reasonable for police to conclude probationer resided at the searched apartment].) The court correctly denied defendant's motion to suppress evidence discovered during the parole search.

DISPOSITION

The judgment is affirmed.

IKOLA, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

BEDSWORTH, J.