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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.

GEORGE GARCIA,

Defendant and Appellant.

G050707

(Super. Ct. No. 13HF0235)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Gregg Prickett and Sherri L. Honer, Judges. Affirmed.

Loleena Ansari, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Randal D. Einhorn and Peter Quon, Jr., Deputy Attorneys General, for Plaintiff and Respondent.

Appellant George Garcia stands convicted of felony drug possession and other crimes. He contends the trial court violated his due process rights by failing to consider his motion to suppress evidence. However, because appellant failed to follow the procedural requirements for filing a suppression motion, no error occurred. We therefore affirm the judgment.¹

FACTUAL AND PROCEDURAL BACKGROUND

Appellant was charged with possessing a controlled substance and drug paraphernalia, driving under the influence, and hit and run with property damage. (Health & Saf. Code, §§ 11377, subd. (a), 11364.1, subd. (a); Veh. Code, §§ 23152, 20002, subd. (a).) After pleading not guilty, he waived his right to appointed counsel and represented himself throughout the remainder of the case. (See *Faretta v. California* (1975) 422 U.S. 806 [concerning the right of self-representation].)

The sole witness at the preliminary hearing was Irvine Police Officer Michael Fulks. He testified that around midnight on September 22, 2012, a call came in over his police radio regarding a possible drunk driver who had hit the center median at Irvine Boulevard and Yale Avenue. Fulks drove to that location, where he saw a car that matched the description of the suspect's vehicle. As Fulks was watching the car, it veered off the road and hit a light pole. Then it "redirected" and proceeded north on Highway 133.

Fulks activated his overhead lights and pursued the car. Although it slowed down and moved to the right, it continued travelling on the shoulder of the highway. Fulks could see smoke and debris coming from the front of the car. He also noticed the car's right front quarter panel was damaged. Eventually, the car stopped, and Fulks contacted its sole occupant – appellant.

¹ In his opening brief, appellant also alleged he was entitled to relief under Proposition 47. However, he has since abandoned that claim.

Appellant did not appear to be sober. His eyes were bloodshot, his pupils were constricted, his speech was slurred, and his breath smelled of liquor. Fulks had him exit the car, and while appellant was doing so, he reached back and threw something under the steering column. Fulks grabbed appellant's arm, directed him to the rear of his vehicle and patted him down. He also administered several field sobriety tests to appellant and had him blow into a breathalyzer. Appellant performed poorly on the tests, but his blood-alcohol reading was .02 percent. Suspecting appellant was under the influence of alcohol and/or drugs, Fulks arrested him for impaired driving. He then searched appellant and found a baggie of methamphetamine in his pocket.

Meanwhile, other officers at the scene were assessing appellant's car for damage. Upon looking through the windows of the car, they observed a smoking pipe near the driver's seat and alerted Fulks to this fact. Knowing appellant's car was going to be impounded, Fulks searched the vehicle and found the pipe and a second baggie of methamphetamine on the driver's floorboard. Later on at the police station, appellant provided a blood sample that tested positive for both methamphetamine and amphetamine.

Toward the end of the preliminary hearing, appellant asked the court if he could "make a motion to suppress all the evidence due to the fact [the officers] are lying and [have] manipulated everything[.]" The court told appellant that if he wanted to bring a suppression motion, he needed to follow the rules for doing so, which included putting the motion in writing and giving notice to opposing counsel. Because appellant had not done those things, the court refused to entertain his motion.

As the case proceeded to trial, appellant filed a variety of motions, including a motion to "stop the proceedings" on the basis the "officers took the alleged pipe and drug evidence and consumed it themselves." On December 3, 2013, appellant also filed an untitled motion which consisted of the following two sentences: "Motion to suppress all evidence based on tampering with evidence, fabricated and staged drugs &

paraphenalia [*sic*] obtained and transported procedures blood results after the fact. DUI after the fact and falsely pulled over.”

Ten days later, on December 13, 2013, appellant supplemented that filing with a motion to object to the introduction of “any and all evidence” the prosecution intended to introduce against him at the time of trial. In particular, appellant objected to 1) the “blood results” on the basis they were “obtained after false arrest” and pursuant to “improper conduct and procedures”; 2) the “paraphenela” because it was “obtained illegally;” and 3) “the alleged drugs due to police planted and transported and illegally acquired.” [*Sic.*]

On January 7, 2014, the court, per Judge Gregg Prickett, summarily denied appellants’ motions on the basis they failed to comply with the procedural requirements set forth in Penal Code section 1538.5 and Orange County Superior Court Local Rules, rule 800 (Local Rule 800). The court also expressed skepticism as to whether appellant had served the motions on the prosecution, but it turned out he had properly done so, and therefore that was not an issue.

Three months later, in April 2014, appellant filed a “motion to dismiss all accounts based on the bad faith of the Irvine Police in violating my 4th Amendment right due to illegal search and seizure, tampering and destroying evidence, fabricating evidence, falsifying police reports, false testimony of police officer under oath, and inappropriate police conduct.”

That motion was taken up by Judge Sherri Honer at the trial readiness conference on June 26, 2014. During the conference, appellant insisted he had been “set up” by the police and was innocent of the charges. He claimed the police planted the drugs that were allegedly found on him and violated his Fourth Amendment rights by falsely stopping him, breaking into his vehicle and tampering with the evidence. In light of these allegations, the court sought clarification from appellant about the status of his prior motions. Here is how the colloquy played out:

“The Court: There was a suppression motion previously filed in this case, correct?”

“[Appellant]: Yes.

“The Court: And I think there was a request for suppression that – it was a request that the blood information and stuff be suppressed.

“[Appellant]: All of it, yes.

“The Court: And that motion was denied.

“[Appellant]: Yes.

“The Court: Okay. All right. So we’re going to be proceeding. So the information . . . is not being suppressed.”

Later on at the hearing, a similar conversation transpired in connection with appellant’s motion to dismiss. The court stated, “[M]y understanding is there was a suppression motion that was previously filed and was denied. So this is something that there has already been some determination made by the court earlier that . . . the detention, or whatever, was proper. [¶] So this is going to be denied also. Okay?” After appellant replied “uh-huh,” the discussion turned to other issues.

At trial, appellant renewed his request to suppress the drugs and pipe. The court denied the request, and the jury convicted appellant on all charges. He was sentenced to three years’ probation on the condition he serve 60 days in jail with credit for time served.

DISCUSSION

Procedural Infirmary

Appellant contends his suppression motion was properly presented, and therefore the trial court violated his due process rights by failing to address the motion on its merits. We disagree.

Pursuant to Penal Code section 1538.5, a motion to suppress evidence must be in writing and accompanied by a supporting memorandum. (Pen. Code, § 1538.5,

subd. (a)(2)). The memorandum must list “the specific items of property or evidence sought to be . . . suppressed and . . . set forth the factual basis and the legal authorities that demonstrate why the motion should be granted.” (*Ibid.*) The purpose of these requirements is to provide notice to the prosecution of the evidence and legal authority it will need to present in response to the motion. (*People v. Williams* (1999) 20 Cal.4th 119, 123, 135 [a motion brought under Penal Code section 1538.5 must specify the precise basis for suppressing the evidence in question].)

Local Rule 800 contains similar requirements. Among other things, it requires a defendant making a Penal Code section 1538.5 motion to “identify[] in what regard the search or seizure is defective” and to include a statement that contains all “authorities which will be offered in support of the theory or theories upon which suppression of evidence is urged.” (Local Rule 800, subds. (E)(1)(a)(c) & (d).) The rule also provides that the failure to comply with these requirements “shall constitute a waiver of the right to make the motion, but the court for good cause shown, may grant relief from the waiver.” (*Id.* at subd. (G)(1); see also Cal. Rules of Court, rule 4.111(b) [when hearing motions in criminal cases the trial court “may consider the failure without good cause of the moving party to serve and file a memorandum within the time permitted as an admission that the motion is without merit.”].)

Although appellant’s motions of December 3 and 13, 2013 indicated he was seeking to suppress the “the alleged drugs,” the “paraphenela” (*sic*) and the “blood results,” they did not include a statement of facts or supporting points and authorities. Appellant argues the fact he alleged he was “falsely pulled over” was sufficient to alert the prosecutor his motion to suppress was based on an invalid traffic stop. However, without any attendant facts or legal authority it would be very difficult to ascertain that from appellant’s paperwork. Given the barebones nature of appellant’s December 2013 motions, the trial court was within its discretion in rejecting them as being noncompliant with the statutory and local rules governing motions to suppress.

The trial court also properly denied appellant's April 25, 2014 motion to dismiss, which was essentially a rehash of his earlier filings. Appellant contends he did not get a fair shake on that motion because the court based its denial on the erroneous belief his suppression motion had been previously rejected on its merits. But it is hard to fault the court for believing that because 1) the suppression motion was considered by a different judge, and 2) when the court asked appellant if that motion had been denied, he answered in the affirmative. At no point – even though he was asked about the ruling on two separate occasions – did he attempt to explain the motion was denied on procedural grounds only. Thus, appellant has no basis for complaint. (See *People v. Meraviglia* (1925) 73 Cal.App. 402, 409 [a party who is given the opportunity but fails to assert his legal rights in the trial court cannot turn around and cry foul on appeal based on an alleged violation of those rights].)²

Moreover, it is clear appellant's dismissal motion was itself lacking from a procedural standpoint because, like his previous filings, it was devoid of any facts or supporting legal authority. Therefore, it too was properly denied. In reaching this conclusion, we are mindful appellant prepared his motions by himself. However, as a party appearing in propria persona, appellant was not entitled to any special rights or privileges. (*People v. Black* (2014) 58 Cal.4th 912, 919.) Thus, the trial court was not required to assist or advise appellant or otherwise “make up for counsel's absence.” (*People v. Barnum* (2003) 29 Cal.4th 1210, 1215.)

Still, after appellant inquired about making a suppression motion at the preliminary hearing, the judge kindly informed him, “If you make a motion to suppress evidence, this is a specific motion you can make. But you have to give notice and you have to have it in writing and all of that.” Even so, appellant's subsequent motions to

² Although appellant acquiesced to the court's misunderstanding, he did not cause it, nor can it be said he had a tactical reason for acquiescing. Therefore, contrary to respondent's claim, the doctrine of invited error does not apply. (*People v. Moon* (2005) 37 Cal.4th 1, 28; *People v. Tapia* (1994) 25 Cal.App.4th 984, 1031.)

suppress, object and dismiss were all procedurally defective for failing to adhere to even the most basic motion practices. Under these circumstances, good cause for noncompliance did not exist, and the court did not err by failing to consider the merits of his motions.

Harmless Error

Even were we to find otherwise, we would be required to affirm. Appellant concedes “it is uncertain what [he] would have presented in his motion to suppress hearing if he had been given the opportunity to do so[.]” The concession is well taken considering the evidence plainly shows the police had ample justification to stop and arrest appellant, as well as search his person and his car. It is difficult to see how appellant possibly could have prevailed in challenging the constitutionality of the officers’ actions. We recognize that throughout the case appellant has consistently alleged the police framed him by “planting” the drug evidence that was found during the stop. But “planting evidence” does not implicate the Fourth Amendment. It is not a search and seizure question, but one of guilt or innocence. And appellant was allowed to question the officers about their actions and present evidence on this issue during the course of the trial. So we cannot find that appellant’s right to due process was infringed in any respect.

DISPOSITION

The judgment is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

IKOLA, J.

THOMPSON, J.