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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Petitioner,

v.

THE SUPERIOR COURT OF SANTA
CLARA COUNTY

Respondent,

JESUS ALBERTO PALACIOS,

Real Party in Interest.

No. H037378
(Santa Clara County
Super. Ct. No. C1197889)

The People petition for a writ of mandate directing the Santa Clara County Superior Court to vacate its order suppressing methamphetamine found in a search of defendant Jesus Alberto Palacios's van after he was arrested for being under the influence of a controlled substance (Health & Saf. Code, § 11550). We requested preliminary opposition to the petition, but real party in interest (Palacios) declined our invitation to submit any. Accordingly, we issued an order to show cause why a peremptory writ should not issue as requested in the petition for writ of mandate.

Again, Palacios declined to file a return in opposition to the writ. Accordingly, after reviewing the petition, including the record of the suppression hearing, we grant the

petition for writ of mandate and direct the superior court to vacate its order of August 30, 2011, suppressing the methamphetamine found in Palacios's van and to enter a new and different order denying Palacios's motion to suppress evidence.

Factual and Procedural Background

After waiving arraignment and a preliminary hearing, Palacios was charged by information with felony possession for sale of methamphetamine and misdemeanor being under the influence of methamphetamine. On August 2, 2011, Palacios filed a Penal Code section 1538.5 motion to suppress multiple items of evidence found in a search of his person and van.

According to testimony at the hearing on Palacios's motion to suppress, Palacios was sitting in a van parked on the street without any other cars parked in front or behind. Officer James Joines of the Campbell Police Department saw the van as he drove by in his patrol car. He made a U-turn in the middle of the street, and parked behind the van without turning on his lights or siren. Before Officer Joines got out of his patrol car, Palacios had already got out of the van and began walking towards the officer. The two men met in the middle, next to the hood of the patrol car. Officer Joines asked Palacios if everything was "okay"; Palacios said that it was. The officer asked Palacios if he could speak to him, and Palacios agreed.

The two then engaged in what Officer Joines characterized as a "generalized" and "casual" conversation. "Within the first couple minutes" of the conversation the officer noticed signs suggesting that Palacios was under the influence of a stimulant. Officer Joines told Palacios he believed he might be on a stimulant. After conducting a field test, which confirmed his suspicion, Officer Joines placed Palacios under arrest for being under the influence. Officer Joines then "informed [Palacios] of the process of what [he] was going to do next in searching his vehicle." Palacios told Officer Joines he would find methamphetamine in the van. On the floorboard of the van the officer found a tin containing four baggies of methamphetamine. When Officer Joines searched Palacios he

found a cellular telephone, cash in the amount of \$120 and cash in a money clip amounting to \$326. The officer elected not to seize and tow the van.

Officer Joines testified that he had probable cause to believe that there would be controlled substances or evidence of the "11550" found in Palacios's van based in part on Palacios "being under the influence" and his experience that people "under the influence do have paraphernalia or narcotics in their possession."

After hearing testimony from Officer Joines, the court concluded that it was "a close case." The court said that while the arrest was "copacetic" and the items found incident to that arrest were "well within the 4th," the People had not shown that there was probable cause for the officer to believe that narcotics would be found in the van. Citing *Arizona v. Gant* (2009) 556 U.S. 332, the court stated that the search could not be justified as a search incident to arrest. Accordingly, the court granted Palacios's motion to suppress the methamphetamine.

The People filed the instant petition challenging respondent court's decision to partly grant the motion to suppress.

Standard of Review

" 'A proceeding under section 1538.5 to suppress evidence is one in which a full hearing is held on the issues before the superior court sitting as a finder of fact.' [Citation.]" (*People v. West* (1970) 3 Cal.3d 595, 602.) "In such a proceeding the power to judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence and draw factual inferences, is vested in the trial court." (*People v. Lawler* (1973) 9 Cal.3d 156, 160.) "The trial court also has the duty to decide whether, on the facts found, the search was unreasonable within the meaning of the Constitution. Although that issue is a question of law, the trial court's conclusion on the point should not lightly be challenged by appeal or by petition for extraordinary writ. [Fn. omitted.] Of course, if such review is nevertheless sought, it becomes the ultimate responsibility of

the appellate court to measure the facts, as found by the trier, against the constitutional standard of reasonableness." (*Ibid.*)

At the outset, it is important to note that the trier of fact "applaud[ed] the officer for being straightforward and honest in this case."

Discussion

For reasons that follow, we conclude that respondent superior court erred in partly granting Palacios's motion to suppress evidence. Specifically, the court erred in suppressing the methamphetamine found in Palacios's van.

In their petition to this court, the People argue that the lower court misapplied the holding of *Arizona v. Gant*, *supra*, 556 U.S. 332 (*Gant*). We agree.

Clarifying its own earlier opinions on automobile searches, the *Gant* court explained that "circumstances unique to the automobile context justify a search incident to arrest when it is reasonable to believe that evidence of the offense of arrest might be found in the vehicle." (*Gant*, *supra*, 556 U.S. at p. 335.) As the *Gant* court explained, "In many cases, as when a recent occupant is arrested for a traffic violation, there will be no reasonable basis to believe the vehicle contains relevant evidence. [Citations.]¹ But in others including [*New York v.*] *Belton* [(1981) 453 U.S. 454] and *Thornton* [*v. United States* (2004) 541 U.S. 615] the offense will supply a basis for searching the passenger compartment of an arrestee's vehicle and any containers therein." (*Id.* at pp. 343-344.)²

Following *Gant*, in *People v. Nottoli* (2011) 199 Cal.App.4th 531, a case from this court, the defendant was arrested for driving with an expired license and for being under the influence of a controlled substance. (*Id.* at p. 540.) A deputy searched Nottoli's

¹ By way of example, the court cited *Atwater v. Lago Vista* (2001) 532 U.S. 318, in which the petitioner was arrested for a misdemeanor seatbelt violation, and *Knowles v. Iowa* (1998) 525 U.S. 113, in which the petitioner was stopped for speeding. (*Gant*, *supra*, at p. 344.)

² In *New York v. Belton*, *supra*, 453 U.S. 454, the crime of arrest was unlawful possession of marijuana. (*Id.* at p. 456.) In *Thornton v. United States*, *supra*, 541 U.S. 615, the defendant was arrested after an officer found drugs in his pocket. (*Id.* at p. 618.)

vehicle and discovered drug paraphernalia, a firearm, and a cellular telephone photograph that depicted Nottoli posing with firearms. (*Id.* at p. 541.) This court concluded the search was valid under *Gant's* second prong. Although it was unreasonable to believe evidence of the expired license offense would be found in the car, the defendant's "arrest for 'being under the influence of a controlled substance' supplied a reasonable basis for believing that evidence 'relevant' to that type of offense might be in his vehicle." (*Id.* at p. 553.) "The presence of some amount of the controlled substance or drug paraphernalia in the interior of the vehicle would be circumstantial evidence tending to corroborate that a driver was in fact under the influence of the controlled substance." (*Id.* at p. 554, fn. omitted.) Citing Evidence Code section 210, this court opined that evidence need not directly prove an element of an offense to be considered relevant. (*Id.* at p. 553.) In *Nottoli*, we rejected the argument that some showing of particularized facts, in addition to or in place of analysis of the nature of the offense, was required. To the contrary, we said that "*Gant* indicated that the nature of the crime of arrest was determinative" (*Ibid.*) Further, we said that "nothing in *Gant* suggests that the Supreme Court was adopting a fact-intensive test similar to the reasonable suspicion standard established by *Terry v. Ohio* (1968) 392 U.S. 1 [88 S.Ct. 1868, 20 L.Ed.2d 889][.]" (*Ibid.*)

In *Nottoli* we dispelled "any misconception that *Gant* limits the scope of a vehicular search incident to arrest in the situation where 'it is reasonable to believe that evidence of the offense of arrest *might* be found in the vehicle.' [Citation.]" (*Nottoli, supra*, 199 Cal.App. 4th at p. 555.) A close reading of *Gant* makes clear that "warrantless vehicular searches are authorized in only two situations but, if authorized, the scope of vehicular searches incident to arrest as established by [*New York v. Belton*] is unchanged." (*Ibid.*) In *New York v. Belton, supra*, 453 U.S. 454, the United States Supreme Court held that police may search the passenger compartment of a vehicle and *any containers therein* as a contemporaneous incident of an arrest of the vehicle's recent occupant. (*Id.* at p. 460.)

Here, Palacios was arrested for being under the influence of a controlled substance, and it was reasonable for Officer Joines to believe Palacios's van might contain offense-related evidence such as narcotics or paraphernalia. Having determined that a vehicular search incident to arrest was justified because evidence relevant to the offense of being under influence might be found in Palacios's van, Officer Joines was justified in searching the vehicle's passenger compartment and "any containers therein" (*Gant, supra*, 556 U.S. at p. 344), including the tin he located on the floorboard of the van.

Accordingly, we conclude that respondent court erred in granting Palacios's motion to suppress the drug evidence found on the floorboard of his van.

For that reason, we grant the petition for writ of mandate.

Disposition

Let a peremptory writ of mandate issue directing the respondent superior court to vacate its order of August 30, 2011, granting defendant's motion to suppress evidence, and to issue a new and different order denying that request. This opinion is made final as to this court seven days from the date of filing. (Cal. Rules of Court, rule 8.490(b)(3).)

ELIA, J.

WE CONCUR:

PREMO, Acting P. J.

MIHARA, J.