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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. CARLOS DELGADO LAZALDE, Defendant and Appellant.	H022775 (Santa Cruz County Super. Ct. No. F01504)

Following the denial of his motion to suppress evidence brought pursuant to Penal Code section 1538.5, appellant pleaded guilty to one count of conspiracy to sell heroin and one count of possession of heroin for sale. (Pen. Code, § 182; Health & Saf. Code, § 11351.) Appellant also admitted an enhancing allegation that he possessed more than 14.25 grams of a substance containing heroin. (Health & Saf. Code, § 11352.5, subd. (1); Pen. Code, § 1203.07.) He was sentenced to three years in state prison. Appellant contends the court erred in denying his motion to suppress. We affirm.

In October 2000, after watching appellant conduct several hand-to hand transactions on different days, and following him to the Economy Inn Motel, Watsonville police officers obtained a search warrant. Searching room 139 where they found appellant, the police discovered heroin, packing materials, injecting paraphernalia and almost $600 in cash. Appellant was arrested, and admitted to the police he sold heroin for another person to support his own habit.

Appellant initially challenged the search of the motel room by arguing that "the search warrant affidavit in this matter totally lacks any competent and sufficient facts to support the issuance of a search warrant for room 139 at the Economy Inn." The prosecution opposed appellant's motion on the grounds probable cause existed for issuance of the warrant. Later, the prosecution conceded that, due to certain procedural irregularities, the search warrant was "invalid." The prosecution defended the search on the basis of a probation search condition to which appellant was subjected following his conviction for being under the influence of a controlled substance in January 2000.

At the hearing on appellant's motion to suppress, the parties discussed the search warrant, and defense counsel stated "there was some problems that were created with regard to the preservation of the actual search warrant itself and that's why . . . the district attorney is only now relying upon the search clause as the basis for justifying this search." The parties stipulated that at the time of the search, the officers were unaware of the probation search condition.

Defense counsel acknowledged that *In re Tyrell J.* (1994) 8 Cal.4th 68 permits a search even though officers are unaware of search condition. Counsel argued that there was reason to believe the California Supreme Court was retreating from its holding in *Tyrell J.* The court stated its belief that the court "may very likely reverse the *Tyrell J.* case," but, because it was current law, the court denied appellant's motion to suppress.[1]

Appellant contends "because the police were not aware of appellant's probation status and the attendant search clause at the time he was searched, the instant search could not have advanced the special needs of the state's probation system and was not a

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[1] The court and others believed *Tyrell J.* might be overruled because the Supreme Court had granted review in *People v. Moss* (S087478) on the issue of whether probation searches are valid if the searching officer is unaware of the search condition. That grant of review has since been dismissed and the matter remanded to the appellate court.

valid probation search; since no other justification existed for the search, it was unreasonable and unlawful . . . ."

We review the trial court's denial of appellant's Penal Code section 1538.5 motion by presuming that the factual determinations of the superior court were correct and upholding the court's express or implied findings if they are supported by substantial evidence. (*People v. Laiwa* (1983) 34 Cal.3d 711, 718.) We exercise independent judgment in resolving whether, on the facts found, the search was unreasonable within the meaning of the Constitution. (*People v. Leyba* (1981) 29 Cal.3d 591, 597.)

In *People v. Bravo* (1987) 43 Cal.3d 600, an anonymous informant told police that heavy traffic near defendant's home indicated he was selling drugs. The defendant was an adult probationer subject to a warrantless search condition. Although police saw no suspicious activity, they nevertheless searched the defendant's house after learning he was on probation. They found drugs, guns, and money. The defendant challenged the search as unlawful, arguing that the police lacked a reasonable suspicion of criminal conduct. The California Supreme Court rejected this claim. It explained that an adult probationer consents to a waiver of his Fourth Amendment rights in exchange for the opportunity to avoid serving a state prison sentence. (*Id*. at p. 608.) " '[W]hen [a] defendant in order to obtain probation specifically [agrees] to permit at any time a warrantless search of his person, car and house, he voluntarily waive[s] whatever claim of privacy he might otherwise have had.' " (*Id*. at p. 607.) The court considered the waiver of rights "complete," "save only [the probationer's] right to object to harassment or searches conducted in an unreasonable manner." (*Ibid*.) Thus, under *Bravo*, an adult probationer subject to a search condition may be searched by law enforcement officers having neither a search warrant nor even reasonable cause to believe their search will disclose any evidence. (*In re Tyrell J., supra,* 8 Cal.4th 68, 80; see *People v. Robles* (2000) 23 Cal.4th 789, 795.)

In *People v. Reyes* (1998) 19 Cal.4th 743, a case involving an adult parolee, the court reiterated these principles, stating, "When involuntary search conditions are properly imposed, reasonable suspicion is no longer 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." (*Id*. at p. 752.) Quoting *People v. Clower* (1993) 16 Cal.App.4th 1737, the court explained that a search " 'could become constitutionally "unreasonable" if made too often, or at an unreasonable hour, or if unreasonably prolonged or for other reasons establishing arbitrary or oppressive conduct by the searching officer.' " (*People v. Reyes, supra*, 19 Cal.4th at pp. 753-754.)

In *In re Tyrell J., supra,* 8 Cal.4th 68, 89, a majority of our Supreme Court held that a person under a probation search condition generally does not enjoy a reasonable expectation of privacy, and hence that an otherwise unjustified search was upheld even though the searching officer was unaware of the condition. Appellant recognizes that the rationale of *Tyrell J.* justifies the search in this case, but he argues that the case was wrongly decided and urges us not to follow it. We are, of course, bound to follow decisions of our Supreme Court. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal. 2d 450.)

It is undisputed that at the time of the search, appellant was subject to a condition of probation which included the warrantless search of his residence. Thus, the conduct of the police officers was reasonable under the Fourth Amendment because it did not infringe upon any reasonable expectation of privacy appellant retained over his person or property. The search was conducted after several days of surveillance in which appellant was seen engaging in a number of suspicious hand-to-hand transactions which led to the conclusion that he was involved in selling drugs. Thus, the search was reasonable under Fourth Amendment standards.

Appellant cites *Griffin v. Wisconsin* (1987) 483 U.S. 868, arguing that the United States Supreme Court has held warrantless probationary searches are only constitutional when they are conducted for a purpose which furthers the special needs of the probation system and therefore, must be conducted only by those who are aware of the search condition. The California Supreme Court expressly rejected *Griffin* as controlling in this context. (See *In re Tyrell J., supra*, 8 Cal.4th at p. 79.)

The trial court did not err in denying appellant's motion to suppress.[2]

The judgment is affirmed.

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Elia, J.

WE CONCUR:

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Premo, Acting P.J.

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Wunderlich, J.

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[2] At oral argument, appellant cited *People v. Black* (2002) 96 Cal.App.4th 1389, review filed May 1, 2002. Even if we were to apply the *Black* court's "legitimate, though limited, expectation of privacy" (*id*. at p. 1403) of a probationer to the facts of this case, we do not consider the police conduct here to be unreasonable.