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COURT OF APPEAL, FOURTH DISTRICT

DIVISION TWO

STATE OF CALIFORNIA

THE PEOPLE,	
Plaintiff and Respondent,	E028171
v.	(Super.Ct.No. FCH03442)
PAUL VALENCIA, JR.,	O P I N I O N
Defendant and Appellant.	

APPEAL from the Superior Court of San Bernardino County. Robert E. Law, Judge. (Retired judge of the Municipal Court for the Central Orange County Judicial District assigned by the Chief Justice pursuant to art VI, § 6 of the Cal. Const.) Judge. Affirmed.

Corinne S. Shulman, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Acting Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General, James D. Dutton and Scott C. Taylor, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant unsuccessfully challenges the denial of his suppression motion and the imposition of his three strikes sentence.

I.

DEFENDANT'S SUPPRESSION MOTION

A. Factual and Procedural Background.

At the hearing on defendant's suppression motion, Chino Police Officer Jones testified that on September 2, 1999, he was dispatched to 12950 Fourth Street in the City of Chino for a medical assist. When Officer Jones arrived, he found defendant in a child's wading pool in his backyard, surrounded by numerous family members. Defendant appeared to be suffering from a drug overdose. He was having difficulty breathing and was unconscious. Officer Jones had observed similar symptoms exhibited by individuals who had overdosed on controlled substances.

Officer Jones spoke to Annie Valencia who told him she found defendant in a camper, "barely breathing, unconscious, and that [she] and some other family members dragged or carried him to the wading pool where they immersed him in the water in hopes that that would bring him out of the overdose that he was suffering." Officer Jones entered the camper to see if he could discover what caused defendant's condition. He wanted to be able to tell the paramedics as much as possible.

Upon entering the camper, Officer Jones saw a syringe containing a brown liquid that appeared to be heroin, a spoon, and other paraphernalia for heroin use. Officer Jones had seen a fresh puncture wound that was consistent with a heroin injection on defendant's left arm. The puncture wound was bleeding. Officer Jones asked Officer Mensen to stand at the camper door so no one would enter. Officer Jones then asked Ms. Valencia for permission to enter the camper and told her about what he had found inside the camper.

Officer Jones contacted a parole agent who said defendant was on active parole. After Officer Jones told the parole agent what he had found inside the camper, he was given permission to search the camper and defendant's residence.

Officer Mensen testified that when he arrived Officer Jones was present and there were quite a few people in the backyard. Defendant was unconscious and the fire department was removing him from a child's wading pool. Officer Jones told him that defendant had overdosed on a controlled substance. Defendant had been pulled from the camper and Officer Jones directed Officer Mensen to check the camper for anything that would assist the paramedics. Officer Mensen found items consistent with heroin use. Officer Jones entered the camper later.

Officer Mensen did not speak with either Ms. Valencia or a parole agent before entering the camper. He did not know whether there were other people inside the camper. He entered the camper to collect items that would assist in defendant's treatment, to check for other people, and for safety purposes. The camper door was closed, but not locked. No one was ordered from the area or handcuffed. Officer Mensen did not check the house or the garage.

The trial court denied defendant's suppression motion, concluding the search was authorized by *People v. Reyes* (1998) 19 Cal.4th 743,[1] and the officers' entry for the limited purpose of determining what caused defendant's condition was reasonable.

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[1] *Reyes* held reasonable suspicion is not required for a lawful search based on a properly imposed search condition. (*People v. Reyes, supra,* 19 Cal.4th 743, 747, 753.)

B. Discussion.

Defendant contends the trial court erred in failing to suppress the evidence obtained in the officers' warrantless search of his camper. He claims the sole justification for the search was his parole status and the sole issue at the hearing was whether, under *People v. Reyes, supra,* 19 Cal.4th 743, the police had to know he was on active parole. The parole search issue is currently pending before the Supreme Court in *People v. Moss*, review granted on June 28, 2000, S087478. However, it is unnecessary for this court to address that question because the record reveals the People's opposition to defendant's motion was based on the exigent circumstances doctrine as well as on defendant's parole status and, as indicated above, the trial court found the exigent circumstances theory was applicable. We affirm.

"When police are confronted by 'an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property' [citation], the failure to comply with the warrant requirement is justified. [Citation.]" (*People v. Frye* (1998) 18 Cal.4th 894, 989.) "There is no ready litmus test for determining whether such circumstances exist, and in each case the claim of an extraordinary situation must be measured by the facts known to the officers." (*People v. Ramey* (1976) 16 Cal.3d 263, 276.)

California cases have recognized "the principle that in emergency situations it is proper for the police to conduct a search in order to assist medical personnel in diagnosis and treatment of the victim, and that the ordinary rules of search and seizure are inapplicable under such circumstances." (*People v. Neth* (1970) 5 Cal.App.3d 883, 887.)

In *Neth*, this court upheld the search where officers, who went to the residence following a report of an LSD overdose, searched for the purpose of assisting medical authorities in diagnosis and treatment. (*People v. Neth, supra,* 5 Cal.App.3d 883, 885-888.)

In *People v. Zabelle* (1996) 50 Cal.App.4th 1282, 1287-1288, the exigent circumstances doctrine justified the officer's warrantless entry into the defendant's hotel room to investigate a possible overdose.

In *People v. Gomez* (1964) 229 Cal.App.2d 781, the defendant was found unconscious in his car, experiencing convulsions. The ambulance driver was a police officer and, while a doctor was treating the defendant, the officer went through his pockets in an attempt to identify him. After the officer found the defendant's identification, he continued the search to attempt to discover the cause of the illness and to assist the doctor. The court concluded the officer acted reasonably under the circumstances. (*People v. Gomez, supra*, 229 Cal.App.2d 781, 783.)

In *People v. Gonzales* (1960) 182 Cal.App.2d 276, an officer discovered the defendant in his car in a state of shock, bleeding profusely from a knife wound. An ambulance was called and the defendant was taken to the hospital where hospital personnel, in the presence of the officer, conducted a search for identification and discovered narcotics. The court held the search was proper since the hospital had a duty to report the identity of any knife victim and a search by the police officer also would have been justified since a conscientious officer has a duty to identify a victim. (*People v. Gonzales, supra,* 182 Cal.App.2d 276, 279-280.)

In the case before us, the officers responded to the scene on a "medical assist" and found defendant in a child's wading pool. He was unconscious and having difficulty breathing. He had a fresh puncture wound that was bleeding. Family members and friends said he had been removed from a nearby camper. The officers testified one reason they entered the camper was to determine what caused defendant's medical condition so as to assist the paramedics in his diagnosis and treatment. The trial court did not doubt the officers' sincerity concerning the purpose for the entry (*In re Andrew I.* (1991) 230 Cal.App.3d 572, 578) and, viewed objectively, the facts supported entry for that purpose. Thus, the officers' entry into the camper was justified by exigent circumstances and the seizure of the heroin and drug paraphernalia in plain view was lawful. (*People v. Zabelle, supra*, 50 Cal.App.4th 1282, 1288.) In these circumstances, the trial court properly denied defendant's suppression motion.

II.

DEFENDANT'S SENTENCE

A. Factual and Procedural Background.

A jury convicted defendant of possessing a controlled substance (Health & Saf. Code, § 11350, subd. (a)) and a misdemeanor offense of being under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (a)). The jury found he had suffered seven prior convictions for serious or violent felonies. (Pen. Code,[2] § 1170.12, subds. (a)-(d), § 667, subds. (b)-(i).) He filed a motion to dismiss six of the seven prior

[2]All statutory references are to the Penal Code unless otherwise indicated.

conviction findings pursuant to section 1385. The People opposed his motion, arguing it would be an abuse of discretion to grant the motion. The trial court denied the motion and sentenced him to prison for 25 years to life pursuant to the "Three Strikes" law.

B. Discussion.

Defendant contends his sentence constitutes cruel and unusual punishment under the United States and California Constitutions. The contention lacks merit.

Assuming the issue is properly before this court, we reject defendant's arguments because his three strikes sentence was not calculated merely on the basis of his current offense, but on the basis of his 20 years of recidivist behavior. "Recidivism in the commission of multiple felonies poses a manifest danger to society justifying the imposition of longer sentences for subsequent offenses." (*People v. Kinsey* (1995) 40 Cal.App.4th 1621, 1630.) The purpose of the Three Strikes law is "to protect the public from the imminent threat" posed by repeat felony offenders through imposing longer prison sentences and greater punishment. (Stats. 1994, ch. 12, § 2.) Like other recidivist statutes, the Three Strikes law seeks to segregate the repeat felony offenders from the rest of society for an extended period of time. Such segregation is based on their most recent offenses *and* their history of convictions for other crimes.

Defendant argues his indeterminate 25-year term is greatly disproportionate to his crime because the general penalty for possession of heroin is a term of 16 months, 2 or 3 years. However, he is not being punished simply because of his most recent felony conviction. Rather, he is being punished because of his recidivist behavior over a period of many years.

The hurdles defendant must surmount to demonstrate cruel and unusual punishment under the federal Constitution are, if anything, higher than under the state Constitution. (See generally *People v. Cooper* (1996) 43 Cal.App.4th 815, 820-824, and cases cited.) "[R]eliance on *Solem* [*v. Helm* (1983) 463 U.S. 277] is weakened by *Harmelin v. Michigan* (1991) 501 U.S. 957 . . . , the high court's most recent statement on whether the Eighth Amendment to the United States Constitution includes a proportionality guarantee in noncapital cases. In *Harmelin*, a life sentence without possibility of parole for possessing 672 grams of cocaine was upheld. While *Harmelin* did not contain a majority opinion with respect to the issue, two justices concluded the Eighth Amendment contains no proportionality guarantee (*id*. at p. 965 . . . (opn. of Scalia, J.)) and three other justices concluded the amendment forbids only those sentences that are '"grossly disproportionate"' to the crime (*id*. at p. 1001 . . . (opn. of Kennedy, J.)). Even those justices recognizing a guarantee of proportionality review stressed that, outside the context of capital punishment, successful challenges to particular sentences are '"'exceedingly rare'"' because of the 'relative lack of objective standards concerning terms of imprisonment . . . .' (*Ibid*.)" (*People v. Ayon* (1996) 46 Cal.App.4th 385, 396-397, overruled on other grounds in *People v. Deloza* (1998) 18 Cal.4th 585, 593-595.)

In *Rummel v. Estelle* (1980) 445 U.S. 263, the Supreme Court upheld a sentence under a Texas recidivist statute of life with the possibility of parole for obtaining $120.75 by false pretenses. The defendant's previous offenses consisted of fraudulent use of a credit card to obtain goods and services worth $80 and passing a forged check in the amount of $28.36. Here, defendant's current offense consists of possession of heroin and his

seven prior felonies are numerous and serious. On November 14, 1979, defendant was convicted of three counts of assault with a deadly weapon (§ 245, subd. (a)) and three counts of assault of a deadly weapon on an officer (§ 245, subd. (b)). He admitted using a firearm (§ 12022.5) and inflicting great bodily injury (§ 12022.7). He was sentenced to 11 years in state prison. He violated his parole in 1986 and again in 1987. On April 4, 1988, he was convicted of possessing a controlled substance (Health & Saf. Code, § 11377, subd. (a)) and was sentenced to three years in prison. In February of 1990, he was convicted of misdemeanor being under the influence of a controlled substance. On May 3, 1991, he was convicted of first degree burglary (§ 459) and was sentenced to six years in prison. He violated his parole twice in 1995, once in 1996, twice in 1997, and again in 1998. On January 22, 1999, he was convicted of being an ex-felon on prison or jail grounds and was sentenced to 16 months in state prison. He was released on parole the day before he committed the present offense. Since 1979, defendant has committed crimes, has been sent to prison, has violated parole, and has been returned to prison. Accordingly, his sentence passes muster under the federal Constitution.

We conclude that, on these facts, a three strikes sentence of 25 years to life is not so disproportionate "'. . . as to shock the conscience and offend fundamental notions of human dignity.' [Citation.]" (*People v. Cline* (1998) 60 Cal.App.4th 1327, 1338.) It, therefore, does not constitute cruel and unusual punishment. (See *People v. Goodwin* (1997) 59 Cal.App.4th 1084, 1093-1094 [three strikes sentence of 25 years to life was not cruel and unusual punishment for burglary and petty theft with a prior, committed by shoplifting pair of pants and trying to get refund for them].)

DISPOSITION

The judgment is affirmed.

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HOLLENHORST
Acting P. J.

We concur:

McKINSTER
J.

RICHLI
J.