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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHNNY HARRIS,

Defendant and Appellant.

A135316

(Solano County
Super. Ct. No. FCR270729)

The trial court denied defendant's motion to suppress evidence seized during a search of his hotel room. We conclude that the seizure of all of the items from defendant's room was lawful under the plain view doctrine, and affirm the judgment.

STATEMENT OF FACTS

Detective Brian Pereira of the Fairfield Police Department investigated a series of over 30 early morning "hot prowl" burglaries committed on the west side of Fairfield until late September of 2009. The primary loss during the burglaries was "U.S. Currency from wallets and purses." During one of the burglaries committed on June 17, 2009, at 2192 Vista Luna, Fairfield, video surveillance at the residence depicted the suspect as "an African-American male" wearing a grey and black plaid heavy shirt or jacket and blue sweatpants with the "words 'New York' written down the side in white letters on the left leg."

Detective Pereira learned that similar burglaries occurred in Vallejo during 2008. He was informed by Vallejo Police Department officers that the manner of entry and

commission of the Vallejo burglaries – through open rear windows or slider doors – was identical to the Fairfield burglaries. He was also told that a suspect in the Vallejo burglaries had been identified as “Johnny Harris DOB 10/22/1964.”

Detective Pereira determined during the course of his investigation that defendant was residing in room 226 of the Motel 6 on Holiday Lane in Fairfield (room 226), a room registered to Priscilla Lovey Jackson. An incident of domestic violence between defendant and Jackson was documented with the Fairfield Police Department.

Detective Pereira and fellow police officers commenced surveillance of defendant and room 226. On September 28, 2009, a detective observed defendant leave the room wearing dark colored pants, a white undershirt and a plaid flannel jacket. The male suspect in an attempted burglary that occurred 30 minutes later on Barton Drive in Fairfield was described by the victims as wearing very similar clothing.

Between 2:00 and 4:30 the next morning the officers observed defendant, again wearing the grey flannel plaid jacket and blue sweatpants, leave room 226, walk behind a business complex, and jump over fences into the yards of nearby residences, then later return to the motel room “looking around nervously.”

At around 6:45 a.m., Detective Pereira drafted an affidavit and obtained a warrant to search room 226. The affidavit recited the information known to the investigating officers, and the assertion that “persons who commit these crimes often keep possession of both implements and fruits of these crimes including weapons, masks, clothing worn during the crime, as well as property stolen, and newspaper stories about the crime, within their residence or vehicles.” The warrant authorized seizure of defendant, indicia of his residency in the motel room, blue sweatpants with white lettering, a grey checkered flannel jacket, and white tennis shoes.

Detective Pereira and other officers arrived at room 226 to serve the search warrant at 7:00 a.m. on September 29, 2009. Lovey Jackson and her son were detained and interviewed. They mentioned that defendant often left the room late at night and would “return in the early morning with I-Pods,” money and other property they believed was stolen during burglaries. After Detective Pereira briefly looked in the room, he

provided the other officers with a list of items from the stolen property reports to be examined while the search was conducted. The officers knew that eight to ten I-Pods and Gateway laptop computers were reported stolen by the burglary victims. Detective Pereira carried a “binder” with the theft reports from the burglaries that listed the stolen items.

During the search the officers seized indicia of defendant’s occupancy of room 226, along with “numerous” electronic items and other personal property: five to six I-Pods, portable gaming devices, laptop computers, a silver money clip and jewelry. Also seized were a box cutter and a Leatherman utility tool, items Detective Pereira believed were tools used to enter the burglarized residences through window screens. Although Detective Pereira was aware from the stolen property reports of the burglaries he was investigating that two Gateway laptop computers, other models of laptops, and at least eight to ten I-Pods had been stolen, he could not “specifically” identify some of the items seized from room 226 as property stolen in the burglaries. In fact, some I-pods and laptops recovered from room 226 had not yet been reported stolen. However, based on the burglary reports, the statements from Jackson and her son that defendant was “burglarizing” residences, and the shirt and sweatpants defendant was wearing that matched the clothing seen on the video surveillance of one of the burglaries, Detective Pereira “definitely” believed that all of the I-pods and laptops found in the room were stolen, and all of them were seized. Some of the “electronic items” found in room 226 were not associated with any of the theft reports in Detective Pereira’s binder; those were left in the room.

DISCUSSION

Defendant challenges the “seizure of the items from the hotel room” that were not listed in the warrant. He argues that the officers did not have probable cause to believe that the “items in the room were stolen property.” Defendant therefore asserts that the “items were not subject” to seizure under the plain view doctrine, and “must be suppressed.”

“The standard of appellate review of a trial court’s ruling on a motion to suppress is well established. We 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. Where the facts are undisputed, as here, we independently determine the legality of the search under the Fourth Amendment.” (*People v. Balint* (2006) 138 Cal.App.4th 200, 205.)

The only articles of property explicitly subject to seizure under the warrant were indicia of residency, blue sweatpants, a grey checkered flannel jacket, and white tennis shoes. While the remaining seized items at issue were not mentioned in the warrant, the “ ‘police may seize any evidence that is in plain view’ ” during the course of their legitimate activities. (*People v. Rogers* (2009) 46 Cal.4th 1136, 1156, quoting *Mincey v. Arizona* (1978) 437 U.S. 385, 392–393.) To prevent indiscriminate seizure under the “plain view” doctrine, the “nexus rule” requires the officer to “be aware of some specific and articulable fact from which a rational link between the item seized and criminal behavior can be inferred.” (*People v. Miley* (1984) 158 Cal.App.3d 25, 35; see also *People v. Lenart* (2004) 32 Cal.4th 1107, 1119; *People v. Superior Court (Meyers)* (1979) 25 Cal.3d 67, 73; *People v. Hill* (1974) 12 Cal.3d 731, 762, overruled on other grounds in *People v. DeVaughn* (1977) 18 Cal.3d 889, 896.) “Items in plain view, but not described in the warrant, may be seized when their incriminating character is immediately apparent.” (*People v. Lenart, supra*, at p. 1119.) “ ‘The plain-view doctrine permits, in the course of a search authorized by a search warrant, the seizure of an item not listed in the warrant, if the police lawfully are in a position from which they view the item, if its incriminating character is immediately apparent, and if the officers have a lawful right of access to the object.’ [Citation.] Thus, ‘[w]here an officer has a valid warrant to search for one item but merely a suspicion, not amounting to probable cause, concerning a second item, that second item is not immunized from seizure if found during a lawful search for the first item.’ [Citation.]” (*People v. Carrington* (2009) 47

Cal.4th 145, 166; see also *Horton v. California* (1990) 496 U.S. 128, 135–137 (*Horton*); *Texas v. Brown* (1983) 460 U.S. 730, 739.)¹

We conclude that the necessary nexus between the items seized and criminal activity is established by the record. Detective Pereira was aware from his investigation that the victims of the burglaries had reported the theft of I-pods and Gateway or other models of laptops. He was also told by Jackson and her son that defendant left the hotel room late at night and returned with “I-pods and stuff.” The officers had ample cause from the investigation to believe that defendant participated in multiple burglaries during which I-pods and laptops were stolen. The supporting affidavit noted that burglary suspects typically store stolen property and other fruits of their crimes in their residences.

While the officers did not relate many of the seized laptops or I-pods with particular burglaries, the presence of numerous electronic devices which were not presently functioning, connected or prepared for personal use, supported the inference that the seized property did not belong to the hotel room occupants. The remaining information known to the officers corroborated the reasonable belief that the seized items of property, even if not identified with an individual reported burglary, were stolen. The plain view doctrine does not require the officers to associate the seized item with a “particular” crime; it is sufficient that the investigators have the requisite cause “to believe the item *is evidence of some crime.*” (*People v. Kraft* (2000) 23 Cal.4th 978, 1043, italics added; see also *People v. Gallegos* (2002) 96 Cal.App.4th 612, 624.) Further, the search was not exploratory and the seizure of items was not indiscriminate. Detective Pereira declined to seize other “electronic items” found in room 226 which he failed to associate with any of the theft reports.

The incriminating nature of the seized items was readily apparent from information known to the officers and the observations made during the search.

¹ In the context of a search conducted pursuant to a valid search warrant the United States Supreme Court decided in *Horton, supra*, 496 U.S. 128, 138–139, that if an officer has merely a suspicion, rather than probable cause, that an item not listed in a warrant is connected with criminal activity, the incriminating character is immediately apparent and seizure of the item is lawful. (*People v. Bradford* (1997) 15 Cal.4th 1229, 1293–1294.)

Therefore, the trial court did not err in denying defendant's motion to suppress. (*People v. Lenart, supra*, 32 Cal.4th 1107, 1119; *People v. Bradford, supra*, 15 Cal.4th 1229, 1295–1296; *People v. Miley, supra*, 158 Cal.App.3d 25, 35–36.)

Accordingly, the judgment is affirmed.

Dondero, J.

We concur:

Margulies, Acting P. J.

Banke, J.