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COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

TERRY JEROME BASKIN,

Defendant and Appellant.

C068583

(Super. Ct. No. 10F0039)

Following a jury trial, defendant Terry Jerome Baskin was convicted of furnishing tar heroin and/or methamphetamine (Health & Saf. Code, § 11352, subd. (a)) and possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)). The trial court found true a strike allegation and sentenced defendant to nine years four months in state prison.

On appeal, defendant contends 1) the trial court erred in denying his motion to suppress the fruits of the warrantless entry into his apartment and 2) there is an error in the abstract. We order a correction to the abstract of judgment and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant challenged the legality of the entry into his apartment at his preliminary hearing. The magistrate denied his motion to suppress, finding there were exigent circumstances that justified the entry. Prior to trial, defendant renewed his motion to suppress pursuant to Penal Code section 1538.5, subdivision (i).¹ No additional evidence was presented in the trial court. The trial court denied defendant's motion, finding that the community caretaking exception to the warrant requirement applied. We take the following facts from the combined suppression motion and preliminary hearing.

On December 31, 2009, at 7:39 a.m., Sacramento County Sheriff's Deputy Todd Hengel responded to a 911 call concerning an abandoned infant. The caller reported that the infant's mother had been gone approximately one hour. Deputy Hengel arrived at the location at 7:55 a.m. At that time, he met

¹ Penal Code section 1538.5, subdivision (i) provides in pertinent part: "If the property or evidence obtained relates to a felony offense initiated by complaint and the defendant was held to answer at the preliminary hearing . . . , the defendant shall have the right to renew or make the motion at a special hearing relating to the validity of the search or seizure If the motion was made at the preliminary hearing, unless otherwise agreed to by all parties, evidence presented at the special hearing shall be limited to the transcript of the preliminary hearing and to evidence that could not reasonably have been presented at the preliminary hearing, except that the people may recall witnesses who testified at the preliminary hearing. . . . The court shall base its ruling on all evidence presented at the special hearing"

the caller, Randy Shutler, and his girlfriend, Kimberlie Higginbothom, who had a five-week-old baby with them. Shutler told Deputy Hengel that he had been awakened at 4:30 a.m. by the sound of a woman crying outside his apartment. He and Higginbothom went outside to investigate and found a woman later identified as Melissa Cekic, crying hysterically and holding an infant. Higginbothom took Cekic back to Cekic's apartment.

Higginbothom talked to Cekic for about 45 minutes. Cekic then asked if she could get a ride to another apartment to retrieve a wallet she left the previous night. Shutler and Higginbothom agreed and drove her there. Upon their arrival, Cekic told them she would be back in a couple of minutes and then left the infant with them and entered the complex. When Cekic did not return after 20 to 25 minutes, Shutler went to look for her inside the complex, but did not find her.

After another 25 to 30 minutes, Shutler searched for Cekic again. At this point, Cekic had been gone about 50 minutes. During this search, Shutler contacted a woman later identified as Marie Mayfield. Shutler described Cekic to Mayfield, who said that the woman he described lived in apartment 4 and had gone in there. Shutler knocked on the door of apartment 4 and got no response. Mayfield told him the residents would not answer the door because they did not want to go to prison. Shutler then called the police.

Shutler pointed out Mayfield to Deputy Hengel. Deputy Hengel made contact with Mayfield. Mayfield denied that she had ever spoken to Shutler and denied seeing anyone go into

apartment 4. She did say that she was friends with defendant, who lived in apartment 4. Deputy Hengel ran a warrant check for defendant, and learned he had two outstanding misdemeanor warrants.

Deputy Hengel knocked on the door of apartment 4 and identified himself as a police officer. No one answered, so Deputy Hengel got a pass key from the manager and entered the apartment, where he found defendant and Cekic in the bathroom. Deputy Hengel searched defendant and found syringes and methamphetamine in his pockets. Another deputy found a bottle cap containing a brown liquid and a piece of cotton on the bathroom counter, and on the bathroom floor, he found a knit glove containing two pieces of black tar heroin; one weighed approximately 12 grams, and the other weighed approximately 13 grams.

DISCUSSION

I. Exigent Circumstances

Defendant contends that the warrantless entry into his apartment violated his Fourth Amendment protection against unreasonable search and seizure. The People contend that the entry was justified under the exigent circumstances and community caretaking exceptions to the warrant requirement. We conclude that the exigent circumstances with which the deputy was presented here justified the warrantless entry.²

² We need not address whether the entry was also valid under the community caretaking exception to the warrant requirement as

"In reviewing the denial of a motion to suppress evidence, we view the record in the light most favorable to the trial court's ruling and defer to its findings of historical fact, whether express or implied, if they are supported by substantial evidence. We then decide for ourselves what legal principles are relevant, independently apply them to the historical facts, and determine as a matter of law whether there has been an unreasonable search and/or seizure." (*People v. Miranda* (1993) 17 Cal.App.4th 917, 922.)

A warrantless search inside a home is presumptively unreasonable. (*Welsh v. Wisconsin* (1984) 466 U.S. 740, 748-749 [80 L.Ed.2d 732].) A warrant is required "unless 'the exigencies of the situation' make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable" (*Mincey v. Arizona* (1978) 437 U.S. 385, 393-394 [57 L.Ed.2d 290].)

Child abandonment is an exigent circumstance which justifies a warrantless entry into a residence to find the child's missing parent. "An effort to return a small child to its home after it has been found locked out, lonely and unattended is not unreasonable." (*In re Dawn O.* (1976) 58 Cal.App.3d 160, 164; see *People v. Miller* (1999) 69 Cal.App.4th 190, 199-200 [two-year-old found wandering alone in streets clad in diaper and calling for his mother,

announced in Justice Brown's plurality opinion in *People v. Ray* (1999) 21 Cal.4th 464, 471-480.

unknown if parents home, warrantless entry justified under *Dawn O.*].) The exigency is particularly acute where, as here, the abandoned child is an infant who cannot communicate with the officer and the mother is missing for a lengthy period after saying she would be back in a couple of minutes.

Citing *People v. Smith* (1972) 7 Cal.3d 282 (*Smith*), defendant argues that "the concern for the welfare of children left unattended by a parent does not justify warrantless police intrusion into a person's home." In *Smith*, a six-year-old girl was left unattended at her apartment. (*Id.* at p. 284.) The child was crying outside the apartment and the landlord took the girl to the landlord's downstairs apartment. (*Ibid.*) An officer was dispatched, and the child told the officer that she had been left alone in her apartment and her mother was not there. (*Smith, supra*, at pp. 284, 296.) After the officer knocked on the door and got no response, he had the landlord open the door and made a warrantless entry into the apartment. (*Ibid.*) The California Supreme Court held the warrantless entry was unlawful, finding that only irrational speculation could lead the officer to believe that an exigent circumstance existed inside the apartment that justified a warrantless entry. (*Smith, supra*, at pp. 286-287.)

Smith is clearly distinguishable. In *Smith*, the six-year-old child was being cared for by the landlord, who had given her food, consoled her, and stopped her from crying. (*Smith, supra*, 7 Cal.3d at p. 286.) Here, an infant had been left with strangers. In *Smith*, the officer knew the mother was not in the

apartment; the child told him so and he got no response after knocking and announcing that he was an officer. (*Id.* at p. 286 & fn. 2.) By contrast, Deputy Hengel had reason to believe the mother was in the apartment. Shutler told Deputy Hengel that Mayfield told him a woman fitting the mother's description went into the apartment and that the occupants would not answer when he knocked. Under the circumstances, reuniting the abandoned five-week-old infant with a parent was an exigent circumstance justifying Deputy Hengel's warrantless entry of the apartment.

Another type of exigent circumstance is an emergency situation requiring swift action to prevent imminent danger to life. (*People v. Ormonde* (2006) 143 Cal.App.4th 282, 292.) This has been called the "'emergency aid'" exception. (*Brigham City v. Stuart* (2006) 547 U.S. 398, 401 [164 L.Ed.2d 650].) As this court has previously noted, under the emergency aid exception, "police officers may enter a home to render emergency assistance when they have an objectively reasonable basis to believe someone inside is seriously injured or imminently threatened with such injury. [Citation.]" (*People v. Gemmill* (2008) 162 Cal.App.4th 958, 960.) The "'emergency aid exception'" does not depend on the officers' subjective intent or the seriousness of any crime they are investigating when the emergency arises. [Citation.] It requires only 'an objectively reasonable basis for believing,' [citation], that 'a person within [the house] is in need of immediate aid,' [citation]." (*Michigan v. Fisher* (2009) 558 U.S. 45, ___ [175 L.Ed.2d 410, 413 (*per curiam*).)

Here, there was a valid concern for the welfare of the mother, who had gone off to retrieve a wallet. Since Cekic indicated she would be back in a couple of minutes and had not returned for her infant child, there was reason to believe something had happened to her to prevent her from doing so. Cekic's abnormal behavior that morning -- crying hysterically by a stranger's apartment at 4:30 a.m. while holding a baby, asking strangers to take her to another complex to retrieve a wallet she left there the night before, and then leaving her baby with those strangers as she disappeared into the complex, added to this concern. By the time the deputy arrived, the mother had been gone over 90 minutes. These circumstances provided an objectively reasonable basis to believe Cekic was in the apartment and some threat to her health or safety or an actual injury prevented her from coming back.

Since exigent circumstances supported the warrantless entry into defendant's apartment, the trial court did not err in denying the suppression motion.

II. Correction of the Abstract

The parties note that the abstract incorrectly lists defendant's conviction in count three for furnishing tar heroin and/or methamphetamine as possession of heroin for sale. The abstract must be corrected.

DISPOSITION

The judgment is affirmed. The trial court is directed to prepare a corrected abstract of judgment noting that defendant was convicted in count three of furnishing

methamphetamine and/or tar heroin and to forward a certified copy of the corrected abstract to the Department of Corrections and Rehabilitation.

_____ MURRAY _____, J.

We concur:

_____ ROBIE _____, Acting P. J.

_____ BUTZ _____, J.