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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

BRANDON ANTWAN FIELDS,

Defendant and Appellant.

E052536

(Super.Ct.No. RIF152538)

OPINION

APPEAL from the Superior Court of Riverside County. Eric G. Helgesen and Joe O. Littlejohn, Judges.¹ Affirmed.

Mark Yanis, under appointment by the Court of Appeal, for Defendant and Appellant.

¹ Judge Helgesen is a retired judge of the former Tulare Municipal Court and Judge Littlejohn is a retired judge of the San Diego Superior Court, both assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Melissa Mandel and James D. Dutton, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found defendant and appellant Brandon Antwan Fields guilty of carjacking (Pen. Code, § 215, subd. (a), count 1) with the personal use of a firearm (Pen. Code, § 12022.53, subd. (b)); vehicle theft of a motorcycle (Veh. Code, § 10851, subd. (a), count 2); and robbery (Pen. Code, § 211, count 4) with the personal use of a firearm (Pen. Code, § 12022.53, subd. b)).² Defendant subsequently admitted that he had sustained a prior prison term within the meaning of Penal Code section 667.5, subdivision (b). Defendant was sentenced to a total term of 19 years in state prison with credit for time served. On appeal, defendant contends that the trial court erred in denying his suppression motion. We reject this contention and affirm the judgment.

I

FACTUAL BACKGROUND

At approximately 3:00 a.m., on August 30, 2009, four African American males, including defendant, robbed the victim with a gun as the victim was sitting on his moped in a parking lot eating. While defendant was pointing a gun at the victim, defendant and one of his cohorts went through the victim's pockets and took a cellular telephone, \$90 in cash, and the victim's wallet. One of the other three suspects then took the victim's

² The jury found defendant not guilty of possessing a stolen vehicle. (Pen. Code, § 496d, subd. (a), count 3.)

moped and drove away. Defendant and the other two attackers thereafter followed the moped in a car they had arrived in.

The victim ran to a friend's house located down the street and called the police. About 30 minutes after the incident, the victim gave the police a detailed description of the four attackers, including what they were wearing. He also said that the suspects looked familiar, and that he may have seen them around before. The victim, who had been looking at defendant most of the time, was within inches of defendant, and he could see defendant very clearly.

Approximately one week after the incident, on September 7, 2009, the victim went to the police station to participate in a six-pack photographic lineup. The victim immediately identified defendant as the person involved in the carjacking.

II

DISCUSSION

Defendant moved, under Penal Code section 1538.5, to suppress all statements he made, all observations made by the arresting police officers, and all tangible and intangible items seized by the police officers as a result of an unlawful seizure. The following facts are derived from the transcript of the suppression hearing: On September 7, 2009, Riverside Police Officers McDonald and Coffey went to a house located at 5259 Norwood Avenue in Riverside to serve an arrest warrant for a Caucasian male named Elliott Heisser. The house appeared to be rundown and abandoned, and it was located on a large lot surrounded by a chain linked fence. After observing a "broken-down fence,"

the officers went onto the property. The officers initially walked to the front of the house, then to the back, checking the house for safety.

When the officers were in the backyard, they saw an open sliding glass door. They also observed a white van parked underneath the carport. The officers further noticed in plain view a “blue moped scooter at the end of the patio.” The moped caught the attention of Officer McDonald because it appeared “brand-new and the house looked abandoned and run down.” The house was nearly empty, but had a lot of animal feces inside. While standing near the open sliding glass door, the officers announced that they were from the Riverside Police Department and if anyone was in the house to make themselves known.

After no one came out, the officers entered the house and again announced their presence. They heard voices coming from a back bedroom, and then a female named Linsey Terry came out. The officers spoke to Terry and asked her if her brother Elliott Heisser was at the residence. While speaking with Terry, the officers saw a male “dart across the doorway of the bedroom . . . into a closet.”

Because the officers were at the location to serve an arrest warrant on a male subject, the officers thereafter went into that back bedroom. Defendant exited the closet of the bedroom, and the officers immediately established that defendant was not Elliott Heisser. The bedroom belonged to Terry, and defendant was Terry’s overnight guest for about a week.³ Terry explained that she gave defendant “a place to sleep at night” when

³ Terry’s father also lived in the house and was the homeowner.

he needed it, and that he was not able to come into the house if she was not there. In addition, defendant was not allowed to freely walk around the house, only as far as the kitchen, and was told to stay away from her father, who was a racist. Defendant slept on the couch in the living room, and he had a bag with some clothes in the residence. He did not receive any mail at the house or shower there or have any visitors at the house.

As the officers were speaking with defendant and two other females who were also in the bedroom, the officers noticed a set of keys on the floor. The officers asked who the keys belonged to. Defendant eventually stated that the keys belonged to him and that they were for a go-cart.

After searching the rest of the house and determining that Elliott Heisser was not in the house, the officers went outside and ran the plates on the moped and the white van.⁴ The officers discovered that the moped was reported stolen during a carjacking. The officers also learned the description of the suspect in the carjacking. The description of the suspect matched defendant.

Subsequently, the officers went back into the residence and contacted defendant. Officer McDonald asked defendant where the keys were because they were no longer on the floor of the bedroom. The officers detained defendant and found the keys in defendant's left pants pocket. The officers then went back outside, and checked to see if the keys fit in the moped. As the officers were checking the keys, defendant stated that

⁴ On cross-examination, Officer McDonald acknowledged that he and his partner had ascertained "relatively quickly" that Elliott Heisser was not in the house; and that they did not intend to leave the property when they exited the house the first time but wanted to run the plates on the vehicles.

he had found the moped with the keys in it on Gramercy and Norwood. Defendant also indicated that he had brought the moped to the residence. Defendant was eventually arrested. The officers were at the house for about an hour and a half.

After the parties had an opportunity to present further authority on the suppression issues, on September 24, 2010, the trial court denied defendant's suppression motion. The court explained: "[J]ust to reiterate briefly the facts of this case, the officers went to an address to—with an arrest warrant for somebody who had given that address as their place of residence. They got there, were told he didn't live there. They went ahead and looked around anyway, which I don't see anything wrong with that. They don't have to take people's word that he is not there, because I've seen numerous cases where they have been told that and, lo and behold, someone was there. [¶] When they—basically, as part of their conducting their investigation of whether or not he was there, after they left the inside of the residence, they went outside and ran the plates on the vehicles that were there—and I think that was totally reasonable—to determine if anything was registered to the person whom they were looking for. That is when they discovered that the moped in question had been stolen. And they had previously seen the defendant with keys, and they went back in and recontacted him. [¶] I think—I do not see any violation at all, so I will deny the motion to suppress."

Defendant contends that the trial court erred in denying his suppression motion because the second warrantless entry into the residence exceeded the scope of the arrest warrant in violation of his Fourth Amendment rights.

The People argue that defendant did not have standing to object to the officers' second entry into the residence and, in the alternative, the second entry was reasonable in light of exigent circumstances.

In response, defendant asserts that the People are barred from raising the exigent circumstance theory for the first time on appeal; and, even if not forfeited, the exigent circumstances exception did not apply under the facts of this case. Defendant also argues that he has standing to raise his Fourth Amendment violation issue because an overnight guest has a reasonable expectation of privacy.

A. *Standard of Review*

The standard of appellate review of a trial court's ruling on a motion to suppress evidence is well established. In reviewing the denial of a suppression motion pursuant to Penal Code section 1538.5, we evaluate the trial court's express or implied factual findings to determine whether they are supported by substantial evidence; but, we exercise our independent judgment to determine whether, on the facts found, defendant's Fourth Amendment rights have been violated. (*People v. Glaser* (1995) 11 Cal.4th 354, 362; *People v. Williams* (1988) 45 Cal.3d 1268, 1301.)

On appeal, it is defendant's burden to demonstrate error. (*People v. Sullivan* (2007) 151 Cal.App.4th 524, 549.) We review the evidence in the light most favorable to the trial court's ruling. (*People v. Renteria* (1992) 2 Cal.App.4th 440, 442.) We will affirm that ruling if it is correct on any applicable legal theory. Our review is confined to the trial court's ruling, not the reasons given for its ruling. (*People v. Zapien* (1993) 4 Cal.4th 929, 976.)

The Fourth Amendment to the United States Constitution protects citizens from unreasonable searches and seizures. It is a basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable. (*People v. Rios* (2011) 193 Cal.App.4th 584, 590.) The warrant requirement is not absolute, however, and the presumption of unreasonableness that attaches to a warrantless entry into one's home is overcome in a few "specifically established and well-delineated" circumstances. (*People v. Thompson* (2006) 38 Cal.4th 811, 817-818.) The prosecution always bears the burden of justifying the search by proving the search fell within a recognized exception to the warrant requirement. (*People v. James* (1977) 19 Cal.3d 99, 106; *People v. Jenkins* (2000) 22 Cal.4th 900, 972.)

A knowing and voluntary consent to search allows an officer to forgo obtaining a warrant. (*Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 222; *People v. Superior Court (Walker)* (2006) 143 Cal.App.4th 1183, 1198.) And a warrant is not necessary when "exigent circumstances" exist, requiring swift action and leaving no time to obtain a warrant before entering a residence. (*People v. Frye* (1998) 18 Cal.4th 894, 989, disapproved on another ground in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) Thus, a warrant need not be obtained when there is probable cause to believe the entry is justified by the hot pursuit of a fleeing felon, the imminent destruction of evidence, the need to prevent a suspect's escape, or the risk of danger to the police or other persons inside or outside the house. (*Minnesota v. Olson* (1990) 495 U.S. 91, 100; *People v. Thompson, supra*, 38 Cal.4th at p. 818.)

B. *Standing*

Initially, we address the issue of whether defendant's status as a short-term overnight guest at the Terry residence provided him with a reasonable expectation of privacy entitling him to challenge the reasonableness of the officers' second entry into the home.

“An illegal search or seizure violates the federal constitutional rights only of those who have a legitimate expectation of privacy in the invaded place.” (*People v. McPeters* (1992) 2 Cal.4th 1148, 1171, superseded by statute on another ground as stated in *Verdin v. Superior Court* (2008) 43 Cal.4th 1096, 1106-1107, superseded by statute on other grounds as recognized in *Sharp v. Superior Court* (2012) 54 Cal.4th 168, 172.) The burden is on defendant to establish he had a legitimate expectation of privacy. (*Id.* at p. 1172; *Rakas v. Illinois* (1978) 439 U.S. 128, 148.)

The courts have long recognized that a tenant, hotel guest, visitor, or other occupant may have a constitutionally protected legitimate expectation of privacy in nonowned premises. (See *McDonald v. United States* (1948) 335 U.S. 451, 452 [lodger in rooming house]; *Ware v. Dunn* (1947) 80 Cal.App.2d 936, 938, 944 [guest in hotel room]; *People v. Thompson* (1996) 43 Cal.App.4th 1265, 1268-1269 [rental tenant, despite being under restraining order to stay away from premises, had standing where he had not yet been evicted]; see also *Minnesota, supra*, 495 U.S. at pp. 96-97 [the defendant's status as an overnight guest was sufficient to show that he had an expectation of privacy in the home to invoke the rule against warrantless arrest]; *Rawlings v. Kentucky* (1980) 448 U.S. 98, 103 [while ownership is factor to consider in standing

cases, primary inquiry is whether government officials violated the defendant's legitimate expectation of privacy]; *People v. Koury* (1989) 214 Cal.App.3d 676, 688, 691 [the defendant had legitimate expectation of privacy in estranged wife's residence, where he regularly visited overnight with children, had key and unrestricted access, kept personal papers and clothing in bedroom, and was in front yard at time of search]; cf. also, e.g., *LaDuke v. Nelson* (9th Cir. 1985) 762 F.2d 1318, 1326, 1332 [a person can have an objectively reasonable expectation of privacy in a tent pitched on private property]; accord *LaDuke v. Castillo* (E.D.Wash. 1978) 455 F.Supp. 209; *United States v. Gooch* (9th Cir. 1993) 6 F.3d 673, 677 [notwithstanding that a tent is easily moveable, the reasonable expectation of privacy in a tent on private property "is not destroyed when a person's tent is pitched instead on a public campground where one is legally permitted to camp"].)

Hence, "[e]ven a mere house guest "has a legitimate expectation of privacy in the home where he is staying because that residence has become his substitute home both in his own mind and in the mind of his host.'" [Citations.]" (*In re Rudy F.* (2004) 117 Cal.App.4th 1124, 1132.)

Here, the undisputed evidence showed that defendant was an overnight guest in the Terry home for about the past week. Defendant slept on a couch in the living room of the home and had a bag containing his clothes in the residence. Terry explained that she had given defendant "a place to sleep at night" when he needed it. Although defendant was not allowed to come into the house if Terry was not there, he was not allowed to freely walk around the house, and he did not receive any mail at the house, or shower

there or have any visitors at the house, we find that defendant met his burden of demonstrating a reasonable expectation of privacy. It is also undisputed that defendant had a legitimate expectation of privacy in most parts of the premises, including Terry's bedroom and the living room of the house. Plainly, defendant did have the right to object to the search, and the trial court properly ruled on the merits of defendant's motion to suppress.⁵

The People's reliance on *Minnesota v. Carter* (1998) 525 U.S. 83 (*Carter*) is misplaced. In *Carter*, the court determined that individuals *present* at another's apartment for the sole purpose of packaging cocaine have no legitimate expectation of privacy in the premises. There, the defendant and "the lessee of an apartment were sitting in one of its rooms, bagging cocaine." (*Carter*, at pp. 85-86.) "[The defendants] had never been to the apartment before and were only in the apartment for approximately 2 1/2 hours. In return for the use of the apartment, [the defendants] had given [the lessee] one-eighth of an ounce of the cocaine." (*Id.* at p. 86.) There was no suggestion that the defendants had a previous relationship with the lessee or that there was another purpose to their visit aside from packaging the cocaine. (*Id.* at p. 90.) "[The Defendants] here were obviously not overnight guests, but were essentially present for a business transaction and were only in the home a matter of hours." (*Ibid.*)

⁵ At trial, the People argued that defendant lacked standing to raise Fourth Amendment issues; however, the trial court did not deny defendant's motion based on a lack of standing.

In the present matter, unlike in *Carter*, and as the People acknowledge, defendant was an “overnight guest.” Defendant had been given permission by Terry to sleep at her residence and had been staying overnight at the premises for the last week. Although defendant “could not reasonably expect to exclude [Terry or her father] from the [bed]room [or living room], he could reasonably expect the room to remain free from governmental intrusion. [Citation.] The fact that [Terry or her father] had the right to consent to a search is a risk that defendant assumed, but should not undermine his expectation of privacy. [Citations.] To hold otherwise, would be to negate Fourth Amendment protection to any who share their dwellings with another. Based upon the facts in this record, defendant had standing.” (*People v. Hamilton* (1985) 168 Cal.App.3d 1058, 1066 [invited guest in another person’s apartment had sufficient expectation of privacy to challenge entry and search of the bedroom he was occupying where contraband was found].)

C. *Exigent Circumstances Theory*

In the alternative, the People argue that exigent circumstances justified the officers’ second entry into the home. Defendant responds that the People failed to raise the exigent circumstances theory in the lower court and are therefore barred from raising it for the first time on appeal. Defendant also asserts that even if the exigency theory can be raised, the facts here could not have justified the second entry into the home based on exigent circumstances.

At the suppression hearing in this case, in regard to the officers’ second entry into the home, the prosecution did not expressly rely upon the exigent circumstances

exception to the warrant requirement. Instead, the People appeared to rely on the grounds of lack of standing to raise the issue, the plain view doctrine in seizing the moped and the moped keys, and probable cause to arrest defendant. It appears that the trial court found probable cause alone was sufficient for the officers' reentry into the home once they discovered the moped had been stolen, that defendant matched the description of the suspect, and that defendant had previously been seen with the moped keys.

An exception often applied to a warrantless entry into a home and search or arrest of a suspect is probable cause plus exigent circumstances. Under these principles, an officer may enter and arrest a person or enter and seize a container without a warrant if the officer has probable cause to believe the person has committed a felony or a container holds evidence of a crime *and* if there are exigent circumstances that require the immediate entry and seizure without a warrant. (*People v. Williams* (1989) 48 Cal.3d 1112, 1138; *Payton v. New York* (1980) 445 U.S. 573, 589-590; *United States v. Place* (1983) 462 U.S. 696, 701.) Probable cause alone does not permit the officer to enter a home to make a warrantless search or arrest. (*People v. Williams, supra*, 48 Cal.3d at p. 1138.) "The same constitutional protection extends to individuals sought to be arrested in someone else's private dwelling. [Citation.]" (*Ibid.*) Accordingly, both probable cause to search or arrest and exigent circumstances were required to justify the officers' second entry into the home.

The exigent circumstance theory, however, was not raised below as a justification for the warrantless reentry into the home, arrest of defendant, and seizure of the moped keys. In general, neither the prosecution nor the appellate court can rely upon a new

theory on appeal to validate a search or seizure. (*Green v. Superior Court* (1985) 40 Cal.3d 126, 137 (*Green*); *Mestas v. Superior Court* (1972) 7 Cal.3d 537, 542; *People v. Watkins* (1994) 26 Cal.App.4th 19, 30-31 (*Watkins*) [Fourth Dist., Div. Two].) The danger in late introduction of a new theory is that the defendant might have been prevented from developing relevant facts during examination (*People v. Limon* (1993) 17 Cal.App.4th 524, 539) and, thus, might have been deprived of a fair opportunity to present an adequate record in response. The defendant is entitled to assume that the prosecution is presenting its justification for the seizure at the suppression hearing, and he is entitled to an opportunity to mount a legal attack on the theory and to present evidence on cross—examination to rebut the factual basis underlying the justification for the seizure. (*Reinert v. Superior Court* (1969) 2 Cal.App.3d 36, 42; *People v. Adam* (1969) 1 Cal.App.3d 486, 489.)

However, the rule prohibiting consideration of a new justification on appeal is subject to exceptions. (See, e.g., *Green, supra*, 40 Cal.3d at p. 137.) For instance, where the facts—the circumstances surrounding and the reasons for the search or seizure—were thoroughly explored below, the appellate court may consider the new theory as applied to those fully developed facts. (*Id.* at pp. 137-139; *People v. Limon, supra*, 17 Cal.App.4th at p. 539.) In other words, “the rule does not apply ‘where there does not appear to be any further evidence that could have been introduced to defeat the theory in the trial court and therefore the question of application of the new ground to a given set of facts is a question of law.’ [Citations.]” (*Watkins, supra*, 26 Cal.App.4th at p. 31; see also *Green,*

at pp. 137-139.)⁶ In such a case, the appellate court applies the long-settled principle that it must affirm a correct decision, even if that decision is based on erroneous reasoning. (See *El Centro Grain Co. v. Bank of Italy, etc.* (1932) 123 Cal.App. 564, 567 [appellate court assesses judicial action, not judicial reasoning]; *People v. Selz* (1955) 138 Cal.App.2d 205, 210.)

In the present case, we can rely on the previously unstated exigency theory to determine whether the officers' second entry and seizure was lawful only if the facts adduced at the suppression hearing support the theory and the factual record was fully developed so that "there does not appear to be any further evidence that could have been introduced to defeat the theory" in the trial court. (*Green, supra*, 40 Cal.3d at pp. 138-139.) We turn to that question.

1. Probable Cause

Probable cause to search and seize requires only that the officer be presented with facts that would "warrant a [person] of reasonable caution" to believe that certain items may be evidence of a crime. (*Carroll v. United States* (1925) 267 U.S. 132, 162.)

Probable cause to arrest exists when the facts known to the arresting officer would lead a person of ordinary care and prudence to entertain an honest and strong suspicion that the person to be arrested is guilty of a crime. (*People v. Price* (1991) 1 Cal.4th 324, 410.)

⁶ The rule "does not apply if the considerations that give rise to it are absent. 'The obvious reason for th[e] rule is to prevent "hunch" arrests on the street, based on nothing more than confidence that a smart prosecutor will discover a legal basis in the courtroom.' [Citation.] Thus, a theory which assumes illegal police conduct but nevertheless sustains the search or seizure, such as inevitable discovery, may be raised for the first time on appeal. [Citation.]" (*Watkins, supra*, 26 Cal.App.4th at pp. 30-31.)

“A ‘practical, nontechnical’ probability that incriminating evidence is involved is all that is required.” (*Texas v. Brown* (1983) 460 U.S. 730, 742.)

In this case, the evidence unambiguously supports a conclusion that the officers had probable cause to believe the moped keys were evidence of a crime. Additionally, the officers had probable cause to believe that defendant, who had previously claimed ownership of the keys, was guilty of a crime. After the initial entry into the home pursuant to an arrest warrant, the officers went outside the home, not intending to leave, but to run the license plates on the white van and the moped. The officers discovered that the moped was reported stolen during a carjacking. The officers also learned that the description of the suspect in the carjacking matched defendant. These facts were sufficient to supply the officers with the requisite probable cause to believe the moped keys were evidence of a crime, and that defendant was guilty of a crime. We cannot envision the existence of any material evidence that would compel a different conclusion.

2. Exigent Circumstances

Exigent circumstances are those that would cause a reasonable officer to believe immediate action is necessary to prevent imminent danger to life, serious damage to property, the escape of a suspect, the loss or destruction of evidence, or some other consequence improperly frustrating legitimate law enforcement efforts. (*People v. Williams, supra*, 48 Cal.3d at p. 1138; see also *United States v. Licata* (9th Cir. 1985) 761 F.2d 537, 543.) Thus, the threat that evidence will be destroyed or lost or a suspect will escape before the officer can obtain a warrant is a valid exigent circumstance justifying the officer’s immediate seizure of the evidence or arrest of a suspect. (See *Segura v.*

United States (1984) 468 U.S. 796, 808.) The foundation of the exigency is “a belief that society’s interest in the discovery and protection of incriminating evidence from removal or destruction can supersede, at least for a limited period, a person’s possessory interest in property, provided that there is probable cause to believe that that property is associated with criminal activity. [Citation.]” (*Ibid.*) The courts must examine the totality of circumstances existing at the time of the officers’ warrantless intrusion to determine whether the officers were presented with an exigency. (See *People v. Ramey* (1976) 16 Cal.3d 263, 276.) There must be specific and articulable facts which, when taken together with rational inferences, demonstrate an exigency supporting the warrantless intrusion. (See *Terry v. Ohio* (1968) 392 U.S. 1, 21).

In this case, there are facts supporting the justification of the officers’ second entry into the home, detention of defendant, and search and seizure of the moped keys. The officers had reason to believe defendant’s immediate arrest and immediate acquisition of the moped keys were necessary to prevent defendant from fleeing and to preserve evidence of the carjacking. The factual record was developed fully enough to permit application of this new theory on appeal. At the suppression hearing, the prosecution pursued the line of questioning regarding the officers’ purpose in being at the residence, the initial entry into the home, the observations made by the officers of the home both inside and outside, the discovery of the moped being stolen by a suspect that matched defendant’s description, and the reentry of the home. The evidence at the suppression hearing lends support to the theory that the officers had reason to immediately arrest defendant to prevent his escape and seize the moped keys as evidence of a crime. The

officers were aware that defendant had tried to hide from them during the first entry, and defendant knew the officers were interested in the moped keys. Further, the residence, which was located on a large lot, would have made it easier for defendant to escape while the two officers waited for additional officers to secure the property or obtain an arrest/search warrant. Under the totality of the circumstances, the officers did have reason to believe immediate arrest of defendant and seizure of the moped keys without a warrant was necessary to protect a suspect of a crime from fleeing or destruction of evidence.

The factual record at the suppression hearing was adequately developed to allow us now to apply a new and proper justification—the exigent need to preserve evidence and prevent the escape of a suspected violent criminal—for the search and seizure. Had the prosecution raised and argued this theory at the hearing, we would find on this record adequate evidence to support it. Therefore, the trial court properly denied defendant’s suppression motion.

III

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ
P. J.

We concur:

KING
J.

MILLER
J.