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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.

TERRY CURTIS MARTIN et al.,

Defendants and Appellants.

E053638

(Super.Ct.No. FMB1000083)

OPINION

APPEAL from the Superior Court of San Bernardino County. Rodney A. Cortez,
Judge. Affirmed.

Eric Cioffi, under appointment by the Court of Appeal, for Defendant and
Appellant Terry Curtis Martin.

Dennis L. Cava, under appointment by the Court of Appeal, for Defendant and
Appellant Emma Neil Giron.

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

I. INTRODUCTION

Defendant Terry Curtis Martin appeals from his conviction of possession for sale of a controlled substance (Health & Saf. Code, § 11378) and possession of a firearm by a felon (Pen. Code, § 12021, subd. (a)(1)). Defendant Emma Neil Giron appeals from her conviction of possession for sale of a controlled substance. (Health & Saf. Code, § 11378.) Defendants contend the trial court erred in denying their motions to quash and traverse the search warrant. Specifically, defendants contend there was no probable cause to support the issuance of the search warrant; the officer omitted material information from the search warrant affidavit; and the “good faith” exception does not apply.

We agree that no probable cause existed for the issuance of the search warrant, but the good faith exception applies. We therefore affirm.

II. FACTS AND PROCEDURAL BACKGROUND

A. Defendants’ Crimes

The facts underlying defendants’ crimes are not at issue in this appeal and will therefore be set forth summarily, based on evidence adduced at the preliminary hearing.

In a search of defendants' residence on March 2, 2010, pursuant to a search warrant, officers found \$1,060 in cash, multiple baggies that contained methamphetamine, scales, pay-owe sheets, and five firearms.

Pursuant to a plea bargain, Martin entered a plea of nolo contendere to counts 1 (Health & Saf. Code, § 11378) and 2 (Pen. Code, § 12021, subd. (a)(1)) and admitted a prior strike. The trial court sentenced him to a total term of five years four months. Additional counts were dismissed.

Pursuant to a plea bargain, Giron entered a plea of guilty to count 1. (Health & Saf. Code, § 11378.) The trial court granted her probation for 36 months on the condition, among others, that she serve 180 days in jail. Additional counts and allegations were dismissed.

B. Events Preceding the Search

On February 16, 2010, Martin purchased an item from the AutoZone store in Yucca Valley, for which he paid with a counterfeit \$100 bill. Because the item purchased had a warranty, the sales clerk asked Martin for his telephone number, and Martin provided the number. The clerk started searching that number in the store's computer, and Martin said the name on the account was "Dale." The clerk located a Dale Meeks¹ associated with that telephone number.

¹ Meeks was Giron's deceased father.

A few days earlier, on February 12, 2010, Detective Tyson Niles had conducted a search pursuant to a search warrant at the home and vehicle of Justin Roling in Yucca Valley; Roling was believed to have been passing fictitious money. In Roling's vehicle, the detective found, among other things, scissors and cut pieces of paper consistent with the color of money and having a design consistent with that of currency. Roling's father told the detective that Roling had printed the fictitious money at his mother's house. Roling's mother gave consent to a search of her house, and she said Roling had used her computer printer. Roling was arrested for passing a \$100 bill with the same serial number as the one Martin passed at the AutoZone store. Detective Niles concluded in his report of the incident: "Based on the fact [Roling's mother] stated [Roling] was at her residence prior to the passing of the money printing, based on the fact I located scissors in the vehicle [Roling] drives, based on the fact I located scrap pieces of paper inside with what appeared to have the same color and design as the fictitious money and based on the fact [Roling] was witnessed at several locations attempting to pass the fictitious money it appears to me [Roling] did make the fictitious money and attempted to pass it with the intent to defraud."

C. Search Warrant Affidavit

On February 25, 2010, Detective Niles prepared a search warrant affidavit for defendants' home at 6412 Camarilla Avenue, Apartment B, in Yucca Valley.

The probable cause declaration in the search warrant affidavit stated: "On 02/16/10, an adult male purchased items from the AutoZone in Yucca Valley using a fake

one hundred dollar bill. At the time of the purchase the sales clerk asked for the male's phone number since the product being purchased would fall under warranty. The male stated his phone number was 760-369-5036. As the clerk began to search that number the male indicated the warranty information would be under the name 'Dale.' The only 'Dale' the clerk located associated to that phone number is Dale Meeks. The vehicle listed on that account was a 1995 Dodge Neon.

“There was only one—one hundred dollar bill passed during the course of business prior to realizing the bill was not real.

“I conducted a records check for Dale Meeks and located a Dale Meeks DOB: 112152. Meeks California Driver's License shows Meeks listed 6412 Camarilla Avenue apartment B as his address. The license also showed Meeks was deceased.

“I drove by the residence and located a 1995 Dodge Neon . . . that shows to be registered to the same address.

“I ran a check on the Camarilla address in the Sheriff's Department computer system. Our records indicated a male by the name of Terry Curtis Martin DOB: 091054 used that as his address in October of 2009. I pulled up a photograph of Martin. The photograph of Martin appears to be the same person on the store video surveillance system who passed the fake one hundred dollar bill.

“Based on the fact the person who passed the fake bill used the name of a deceased person I feel it tends to show he intended to conceal his true identity and knew the money being passed was not real.”

The application sought authorization to search the residence at 6412 Camarilla Avenue, apartment B, for electronic storage devices, fictitious currency, items used in the production of fictitious currency, ink and ink cartridges, documents and publications relating to the production or distribution of fictitious currency, documents relating to the purchase of items from AutoZone, and documents tending to show the identity of the persons at the residence.

Detective Niles listed his experience as including eight and a half years as a uniformed patrol officer and stated: “AFFIANT has received extensive training, formal and on the job experience, in various types of investigations. Your Affiant has contributed to search warrants and or investigated a variety of crimes, including all of the following—Sales of illegal drugs, manufacturing of illegal drugs, possession of illegal drugs, use of illegal drugs, Your affiant has received formal training in theft investigations, property crimes, narcotic investigations, hostage situations, DUI offenses, tracking, domestic violence and more.”

The application concluded: “Based on the foregoing information, your Affiant believes there is presently probable cause to believe that the crimes of **PC 476—
FORGERY** . . . has occurred / is occurring and that evidence regarding those crimes will be located at the above described locations” (Italics omitted, bolding in original.)

Significantly, the affidavit omitted any reference to the arrest of Roling, the fact that evidence had recently been obtained indicating he had been printing counterfeit

money, or that the money Roling passed had the same serial number as the bill Martin passed.

The magistrate authorized the warrant, and officers conducted the search on March 2, 2010, during which they found firearms and drugs, but no evidence of counterfeiting.

D. First Motion to Quash Warrant

Defendants moved to quash the search warrant on the grounds the affidavit did not make a connection to defendants' house, and the warrant was not supported by probable cause. The court heard the motion at the preliminary hearing, at which time defendants declined an evidentiary hearing. The trial court denied the motion.

E. Motion for Rehearing of Motion to Quash Warrant and Motion to Traverse

Defense counsel became aware that on February 12, 2010, Detective Niles had applied for a warrant to search the Yucca Valley home of Roling in a forgery investigation. In September 2010, defendants moved for a rehearing on their motion to quash the warrant and filed a new motion to suppress the evidence under Penal Code section 1538.5 and to traverse the search warrant on the grounds that (1) there was no probable cause for the warrant, and (2) the affidavit omitted a material fact that would have affected the magistrate's decision to issue the warrant. Defendants argued the search warrant affidavit failed to establish probable cause because there was no expert opinion relating to counterfeiting, and Detective Niles had "deliberately withheld from

the magistrate the fact that he already knew who the counterfeiter was and where the production of the ‘funny money’ took place.”

The trial court conducted a hearing, following which it denied the motions. Thereafter, Martin entered a plea of nolo contendere to counts 1 and 2 and Giron entered a plea of guilty to count 1.

III. DISCUSSION

A. Standard of Review

In reviewing the trial court’s ruling on a motion to suppress evidence, we view the record in the light most favorable to the ruling and defer to the trial court’s express or implied findings of fact when supported by substantial evidence. However, we exercise our independent judgment in determining whether, on those facts, the search was constitutionally reasonable. (*People v. Carter* (2005) 36 Cal.4th 1114, 1140.)

B. Probable Cause

Probable cause supporting the issuance of a search warrant requires a showing that it is ““substantially probable that there is specific property lawfully subject to seizure presently located in the particular place for which the warrant is sought.”” (*People v. Carrington* (2009) 47 Cal.4th 145, 161; see also *Illinois v. Gates* (1983) 462 U.S. 213, 238.) The People argue that information that Martin misled the store clerk about his identity supports a reasonable inference that he knew he was passing a counterfeit bill, and a person is unlikely to come into possession of a counterfeit \$100 bill unwittingly, because, unlike bills of smaller denominations, such bills are not normally received as

change during ordinary transactions. Thus, the People argue, the magistrate could reasonably infer that a person passing a counterfeit \$100 bill is more likely to have made the bill himself or to have acquired multiple counterfeit bills and secreted evidence of such activities at his residence. The People rely on general language in *People v. Gonzalez* (1990) 51 Cal.3d 1179, superseded by statute on another ground as stated in *In re Steele* (2004) 32 Cal.4th 682, 691, in which the court stated: “[T]he nature of the crimes and the items sought, [can provide a basis for the] magistrate [to] reasonably conclude that a suspect’s residence is a logical place to look for specific incriminating items.” (*People v. Gonzalez, supra*, at p. 1206.)

Although research did not reveal any cases specifically addressing probable cause to search in counterfeiting cases, the People’s argument ignores a long line of analogous cases involving probable cause to search in drug cases. Those cases have consistently held that the seizure of drugs from a suspect, in a quantity or under circumstances suggesting the suspect was dealing drugs, *combined* with expert opinion that additional contraband would likely be found at the suspect’s residence, provided probable cause for a warrant to search that residence. (E.g., *People v. Cleland* (1990) 225 Cal.App.3d 388, 392-393 [seizure of 12 baggies of marijuana and cash from a suspect’s person, combined with a police officer’s expert opinion that sellers of marijuana often keep additional contraband at home, justified issuance of a search warrant for the suspect’s home]; *People v. Koch* (1989) 209 Cal.App.3d 770, 778-781 [discovery of five bindles of narcotics, a notebook of narcotics transactions, and \$3,605 in the defendant’s possession,

coupled with the affidavit of an experienced narcotics officer that dealers often keep contraband at their residences, provided probable cause that narcotics would be found at the defendant's home], disagreed with on another ground in *People v. Weiss* (1999) 20 Cal.4th 1073, 1075; *People v. Aho* (1985) 166 Cal.App.3d 984, 991-993 [affidavit of experienced narcotics investigator that dealers in drugs and stolen property often keep contraband at their residences, combined with evidence of the defendant's criminal activities, provided probable cause for the issuance of a search warrant for the defendant's residence]; *People v. Johnson* (1971) 21 Cal.App.3d 235, 242-246 [officers' discovery of a machine gun and a quantity of drugs in an apartment the defendant rented, but did not live in, along with an officer's expert opinion that drug traffickers often keep some of their stock at their residences, justified a search warrant for the defendant's home].)

In contrast, in *People v. Pressey* (2002) 102 Cal.App.4th 1178 (*Pressey*), the court distinguished the situation of a person found in possession of drugs for personal use. The court "conclude[d] that probable cause to search the residence of someone suspected of using illegal drugs requires more than an opinion or inference, available in every case, that drugs are likely to be present. This does not mean that probable cause to search a home could never arise from the particularized suspicions of an experienced narcotics officer, or the circumstances of an arrest for drug possession, only that illegal drug use does not necessarily provide probable cause to search the user's residence, and that such cases must be decided on their own facts." (*Id.* at p. 1190.)

Here, similar to the situation in *Pressey*, probable cause to search the residence of someone suspected of passing counterfeit currency “requires more than an opinion or inference, available in every case, that [evidence of forgery is] likely to be present.” (*Pressey, supra*, 102 Cal.App.4th at p. 1190.) Nor do the circumstances before us establish “particularized suspicions of an experienced [forgery investigator].” Detective Niles’s affidavit did not establish that he was an expert in investigating counterfeiting cases.² Passing a single counterfeit bill, without more, does not provide probable cause to search the suspect’s residence. Thus, we agree there was no probable cause to support the issuance of the search warrant.

C. Good Faith

The People next contend that even if the search warrant affidavit failed to provide probable cause to justify the search, the trial court properly denied the motions to suppress and traverse because Detective Niles reasonably relied on the decision of the magistrate to issue the warrant. (*United States v. Leon* (1984) 468 U.S. 897, 900 (*Leon*)). Under *Leon*, the Fourth Amendment exclusionary rule will not be used to exclude evidence “obtained by officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be unsupported by probable cause.” (*Ibid.*; see also *Herring v. United States* (2009) 555 U.S. 135, 137 [holding that “suppression is not an automatic consequence of a Fourth Amendment violation. Instead,

² We disagree with the trial court’s comment that his reference in his affidavit to training in “property crimes” qualified him as an expert in investigating counterfeiting cases.

the question turns on the culpability of the police and the potential of exclusion to deter wrongful police conduct.”].) By virtue of article I, section 28, subdivision (d) of the California Constitution, the federal standard as announced in *Leon* and *Herring* is controlling in this state. (*People v. Camarella* (1991) 54 Cal.3d 592, 596.)

Thus, evidence obtained pursuant to a search warrant will be suppressed only when (1) the magistrate was misled by information in the affidavit which the affiant “knew was false or would have known was false except for his reckless disregard of the truth”; (2) the magistrate “wholly abandoned his judicial role”; (3) the affidavit itself was “so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable”; or (4) the warrant was so facially deficient, such as in failing to “particularize the place to be searched or the things to be seized—that the executing officers cannot reasonably presume it to be valid.” (*Leon, supra*, 468 U.S. at p. 923.)

Defendants contend their case falls within the first, third, and fourth bases for exclusion under *Leon*.

1. First Leon Exception

Defendants argue the magistrate was misled by the omission from Detective Niles’s affidavit that he had already investigated and arrested Roling for making counterfeit \$100 bills with the same serial number as the one Martin passed, and evidence regarding counterfeiting had been found at Roling’s residence. Detective Niles himself had concluded Roling was the person responsible for making the counterfeit money.

In *Franks v. Delaware* (1978) 438 U.S. 154 (*Franks*), the court held that if a defendant establishes by a preponderance of the evidence that an affidavit used to obtain a search warrant contained perjury or reckless disregard for the truth, then the court must determine whether the remaining content of the affidavit is sufficient to establish probable cause. If not, then “the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit.” (*Id.* at p. 156.) *Franks* also applies to material that has been “deliberately or recklessly omitted from a search-warrant affidavit.” (*United States v. Scott* (8th Cir. 2010) 610 F.3d 1009, 1013.) “[A] *Franks* violation cannot be excused under the *Leon* good faith exception to the exclusionary rule.” (*United States v. Cowling* (8th Cir. 2011) 648 F.3d 690, 695, fn. 4.)

A defendant seeking to traverse a warrant must make an offer of proof that the affidavit contains deliberate falsehoods or reflects a reckless disregard for the truth. “A defendant who challenges a search warrant based on *omissions* in the affidavit bears the burden of showing an *intentional or reckless omission* of material information that, when added to the affidavit, renders it insufficient to support a finding of probable cause. [Citations.] . . . [T]he defendant must make his showing by a preponderance of the evidence, and the affidavit is presumed valid.” (*People v. Scott* (2011) 52 Cal.4th 452, 484, second italics added; see also *People v. Maestas* (1988) 204 Cal.App.3d 1208, 1216.) In *Scott*, the court held that the defendant “failed to make the required substantial showing” that the search warrant affiant “omitted . . . information with the deliberate

intention to create a false impression or with reckless disregard for the truth.” (*People v. Scott, supra*, at p. 485.) Here, defendants failed to offer any evidence that Detective Niles’s omission of the Roling information was deliberate or in reckless disregard for the truth. Thus, defendants have failed to establish a *Franks* violation. It necessarily follows they have also failed to establish the first *Leon* exception.

2. *Third Leon Exception*

Defendants argue the affidavit so lacked probable cause that official belief in its existence was entirely unreasonable. “The question is whether ‘a well-trained officer should reasonably have *known* that the affidavit failed to establish probable cause (and hence that the officer should not have sought a warrant).’ [Citation.] An officer applying for a warrant must exercise reasonable professional judgment and have a reasonable knowledge of what the law prohibits. [Citations.] If the officer ‘reasonably could have believed that the affidavit presented a close or debatable question on the issue of probable cause,’ the seized evidence need not be suppressed.” (*Pressey, supra*, 102 Cal.App.4th at pp. 1190-1191.)

In *Pressey*, the court found no probable cause for a warrant but nonetheless applied the *Leon* good faith exception, in part because “the dearth of authority directly on point” made the issue of probable cause “‘debatable’ when the warrant . . . was sought, even though the issue, upon examination, [wa]s not a particularly close one.” (*Pressey, supra*, 102 Cal.App.4th at p. 1191; see also *People v. Garcia* (2003) 111 Cal.App.4th 715, 724 [reliance on a search warrant was reasonable when there was no contrary

controlling California authority at the time of the search].) Here, we have been unable to locate any contrary controlling authority addressing probable cause to search the home of a person suspected of passing a single counterfeit bill. We must therefore conclude the issue of probable cause was debatable when the warrant was sought, and defendants have failed to establish the third *Leon* exception.

3. *Fourth Leon Exception*

Defendants argue “the affidavit failed to ‘particularize the place to be searched or the things to be seized—[so] that the executing officers cannot reasonably presume it to be valid.’” We disagree. The affidavit did particularize the place to be searched and did identify the things to be seized. The fourth *Leon* exception is inapplicable to the facts before us.

IV. DISPOSITION

Defendants’ convictions are affirmed.

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HOLLENHORST

Acting P. J.

We concur:

MCKINSTER

J.

RICHLI

J.