

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

CYNTHIA ANNE ANDERSON,

Defendant and Appellant.

E059009

(Super.Ct.No. RIF1203155)

OPINION

APPEAL from the Superior Court of Riverside County. Becky Dugan, Judge.

Affirmed with directions.

Janice R. Mazur, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and Teresa Torreblanca, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Cynthia Anne Anderson pled guilty to one count of passing a false instrument with intent to defraud (Pen. Code,¹ § 470, subd. (d), count 1), and one count of publishing a fictitious check with intent to defraud (§ 476, count 2). The trial court granted defendant three years of formal probation, which included service of 180 days in custody.

Defendant raises two issues on appeal: (1) whether the trial court erred in denial of defendant's motion to suppress evidence based on the statements of a purported confidential informant; and (2) whether the costs of probation supervision were properly imposed. We affirm the denial of the motion to suppress evidence, and remand to the trial court to clarify in the minute order for the sentencing hearing that the order to pay all or any of the costs of probation supervision was not a condition of probation. Moreover, we find that the issue of a hearing on defendant's ability to pay, prior to imposition of the costs of probation supervision, is premature.

I

FACTUAL BACKGROUND AND PROCEDURAL STATUS

The victim, an aspiring model in Denver, Colorado, came in contact with defendant via the internet. Defendant sent the victim a check in the mail in the amount of \$2,800. In an email, defendant instructed the victim to keep a portion of the money, and send the remaining \$2,100 to a Western Union in the city of Corona, California. Defendant instructed the victim to send the \$2,100 to Ramiro Rodriguez, whom she

¹ All further statutory references are to the Penal Code, unless otherwise stated.

represented to be a photographer. The victim complied with the emailed instructions. After attempting to deposit the check, the victim learned that the check from defendant was fraudulent. The victim reported the incident to the Denver Police Department.

A detective with the Corona Police Department received two reports from the Denver Police Department. There was an initial report by Officer Mark Hart, and a supplemental report by Detective Palombi. The Corona detective contacted the victim's brother, as the victim was out of the country. The brother advised that they had received two checks. They attempted to cash the first one but not the second because they learned that the first check was fraudulent.

The detective went to a Western Union branch in Corona where the victim sent the \$2,100, and confirmed that the money was retrieved. Using a copy of Rodriguez's identification card left at the branch when he collected the money, the detective eventually made contact with Rodriguez. After he discovered that Rodriguez did not live at the address given, the detective left his card with a woman there. Rodriguez then called the detective and met with him. Rodriguez admitted that he picked up the \$2,100. He told the detective that at defendant's request, Rodriguez drove defendant to the Western Union branch to pick up the \$2,100. He was given \$10 for gas, and defendant kept the rest of the money. He had done this for her before. The detective identified defendant as a possible suspect from law enforcement databases, and Rodriguez identified her from a photograph on the database.

Based on the information from the initial and supplemental Denver Police Department reports, interview of the victim's brother, and interview of Rodriguez, the detective wrote a "stop and arrest" flier for defendant. Defendant was charged with violations of section 470 (count 1) and section 476 (count 2).

Defendant's motion to suppress evidence was heard during the preliminary hearing. At the preliminary hearing, the parties stipulated that defendant's arrest was based on the stop and arrest flier by the investigating detective, and there was no probable cause for the defendant's arrest outside of the stop and arrest flier. At the hearing, defendant contended that the only link between defendant and any potential illegal activity was the statement of Rodriguez. Defendant argued that Rodriguez had implicated himself in committing the crime, and was therefore a "quasi-codefendant." Defendant conceded that there was enough information for the officer to investigate her potential involvement, but alleged that the arrest was improper as it was made for investigatory purposes.

The trial court denied defendant's motion to suppress evidence; it found that there was probable cause for an arrest. The court based the denial on the following: at the time the flier was prepared, the detective was aware that a victim had been scammed; that there was a second fake check; that the money was delivered; and that it was picked up. Rodriguez provided credible evidence that defendant was the person who received the money. The trial court found that Rodriguez was not a defendant, but a person who gave

defendant a ride in exchange for receiving \$10. The court found that there was sufficient cause to hold the defendant to answer on all charges.

At the trial readiness conference, defendant entered a guilty plea, which was accepted by the court. Defendant was sentenced on June 12, 2013. A sentencing memorandum included terms and conditions of probation, as well as additional orders. Defendant signed the sentencing memorandum, indicating her understanding and acceptance of the terms and conditions of her probation. The court signed the sentencing memorandum, indicating that it was ordering defendant to comply with its terms and conditions. Defendant orally affirmed that she both understood the terms of her probation, and accepted them. When the trial court orally inquired as to whether defendant was working, defendant advised that she lost her job and would be homeless when she left prison. The trial court therefore found that defendant lacked the ability to pay the resource fees for the jail. The court noted that there would be other fines and fees. The court advised defendant that if she “successfully complete[d] probation, [made her] payments, and stay[ed] out of trouble, after two years, [the court would] make it a misdemeanor.” Included as an “additional order” in the sentencing memorandum was a probation supervision fee in the range of \$591.12 to \$3,744.00, to be determined by probation. The minute order also reflected that order.

On June 14, 2013, defendant filed a timely notice of appeal.

II

DISCUSSION

a. Motion to Suppress

i. Issue

On appeal of the trial court's denial of defendant's motion to suppress evidence, defendant contends that there was not probable cause to support her warrantless arrest, based upon the information known to the investigating detective at the time of preparation of the stop and arrest flier.

ii. Standard of Review

“A defendant may move to suppress evidence on the ground that “[t]he search or seizure without a warrant was unreasonable.” (§ 1538.5, subd. (a)(1)(A).) A warrantless search is presumed to be unreasonable, and the prosecution bears the burden of demonstrating a legal justification for the search. [Citation.] “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 factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment.””
(*People v. Suff* (2014) 58 Cal.4th 1013, 1053.)

iii. Probable Cause

Defendant moved to suppress all evidence seized or obtained as a result of her warrantless arrest, arguing that there was no probable cause for arrest. Defendant

contends that the investigating detective could not reasonably rely on the statements of Rodriguez implicating defendant to draft the stop and arrest flier. Defendant refers to Rodriguez as an unknown informant or criminally disposed, whose information required corroboration in order for the investigating officer to rely on it for probable cause for arrest. The People assert that Rodriguez was merely a citizen who provided information as a witness to a crime, and therefore no corroboration was required. The People further argue that defendant forfeited the suppression issue by failing to make it below; however, as the People did not cite to any legal authority or engage in any analysis of the forfeiture argument, we will not consider it. (*People v. Stanley* (1995) 10 Cal.4th 764, 793.)

A warrantless arrest in a public place is reasonable under the federal standard if the arresting officer had probable cause to believe that the suspect committed a felony. (*Payton v. New York* (1980) 445 U.S. 573, 590, fn. 30.) Probable cause for a warrantless arrest exists if “at that moment the facts and circumstances within [the officers’] knowledge and of which [the officer] had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offense.” (*Beck v. Ohio* (1964) 379 U.S. 89, 91.) “Probable cause based on an informant’s tip is evaluated under a ‘totality-of-the-circumstances’ test.” (*People v. Brueckner* (1990) 223 Cal.App.3d 1500, 1504 (*Brueckner*), citing *Illinois v. Gates* (1983) 462 U.S. 213, 230.)

Information from a citizen informant can establish probable cause, if the information is sufficiently specific to cause a reasonable person to believe that a crime

was committed and that the named suspect was the perpetrator. (*Gillan v. City of San Marino* (2007) 147 Cal.App.4th 1033, 1045, citing *People v. Ramey* (1976) 16 Cal.3d 263, 269.) A tip given for both motives of good citizenship and to divert attention from an informant's own infraction will not eliminate the reliability of the informant's tip where the informant provided detailed information of wrongdoing, along with a statement that the event was observed firsthand. (*Brueckner, supra*, 223 Cal.App.3d at p. 1504.)

An anonymous informant cannot qualify as a citizen informant. (*People v. Galosco* (1978) 85 Cal.App.3d 456, 461 [stating that a citizen informant acts openly in aid of law enforcement].) In contrast to a citizen informant, an anonymous or criminal informant is often criminally disposed or implicated, and provides information in secret for pecuniary or other personal gain. (*Humphrey v. Appellate Division* (2002) 29 Cal.4th 569, 576.) Information from a criminal informant requires other indicia of reliability, including corroboration (*People v. Mason* (1982) 132 Cal.App.3d 594, 597), that the criminal informant has given reliable information in the past (*ibid.*), or that the informant's tip would subject him or her to criminal prosecution (*People v. Terrones* (1989) 212 Cal.App.3d 139, 149 (*Terrones*)).

Based on the totality of the circumstances at the time of preparation of the stop and arrest flier, we find that the detective's investigation supported a reasonable belief that defendant had committed the felony of passing a bad check with intent to defraud. Contrary to defendant's contention, the officer's stop and arrest flier did not rely exclusively on the statements of Rodriguez. There was information from multiple

sources regarding a check fraud scheme, including from two officers from the Denver Police Department, from the brother of the victim, from the location where the check was picked up, as well as from Rodriguez. Rodriguez did not provide information anonymously but rather acted openly and did not attempt to conceal his identity. (*People v. Galosco, supra*, 85 Cal.App.3d at p. 461.) Rodriguez also stated specific information about the crime that came from his personal knowledge. (*Brueckner, supra*, 223 Cal.App.3d at p. 1504). Rodriguez also volunteered information that he had done the same acts for defendant in the past. Although the Corona detective was unable to find Rodriguez initially, Rodriguez called the detective in response to the detective's request. This action does not indicate an attempt to avoid responsibility by Rodriguez. Rodriguez's admission of involvement could have subjected him to prosecution, which further supports a finding of reliability of his information. (See, *Terrones, supra*, Cal.App.3d at p. 149.) The trial court, in relying in part on Rodriguez's tips for the factual finding in denial of defendant's motion to suppress, implicitly found Rodriguez's tip was reliable. We agree. We therefore hold that there was sufficient probable cause for the arrest for violation of section 476. Thus, the court properly denied defendant's motion to suppress evidence.

Defendant contends that for an officer to reasonably rely on information from a known informant, the informant must be known to the officer to be reliable, and must be a person whom the officer in good faith believes to be trustworthy. Defendant relies on *People v. Cedeno* (1963) 218 Cal.App.2d 213 to support her contention. *Cedeno* is

distinguishable. In that case, there were no statements about the informant's personal involvement in the criminal scheme upon which she provided information that would have subjected her to criminal prosecution. (*Id.* at pp. 216-218). All of the specific information provided by the informant followed her agreement to purchase drugs at the request of the police, and all of the corroboration came from the informant herself. (*Id.* at pp. 221-222.) The police had no prior experience with the informant upon which to determine that her information was reliable, such as a past history of reliable information. (*Ibid.*) In contrast, Rodriguez's reliability was established as discussed *ante*.

Defendant further contends that there was no corroboration of Rodriguez's statements implicating defendant, and that corroboration was required for the officer to rely on his tip. Yet, this statement ignores the extent of the investigation prior to the police's interview of Rodriguez, from the Denver Police Department reports, interview of the victim's brother, and contact with the Western Union branch where the check was picked up. Furthermore, corroboration is not the only method that an informant's tip may be found to be reliable. (See, *Terrones, supra*, 212 Cal.App.3d at pp. 146-147.)

Defendant's contention lacks merit.

We conclude that the detective had reasonably trustworthy information sufficient to warrant a prudent man to believe that defendant had committed a felony at the time of preparation of the stop and arrest flier. Therefore, the trial court's denial of defendant's motion to suppress evidence was appropriate.

b. Probation Supervision Costs

Defendant contends the trial court improperly ordered payment of the costs of probation supervision as a condition of probation, and without a hearing on or making a finding of defendant's ability to pay pursuant to section 1203.1b, subdivision (a). The trial court's order was part of a two-page sentencing memorandum that was signed by defendant, the defense attorney, and the court. While portions of the sentencing memorandum are entitled "terms," the order defendant complains of here is under the subheading "additional orders of the court." Accordingly, the record indicates that the order to pay the costs of probation supervision was a separate order, and not a condition of probation. To the extent that the court's minute order for the sentencing hearing can be construed otherwise, we will direct the clerk of the court to modify the minute order to clarify that the payment of the costs of probation supervision is not a condition of probation, but rather an order of the court entered at judgment. (*People v. Acosta* (2014) 226 Cal.App.4th 108, 126-127.)

Section 1203.1b establishes the procedure to be followed before the trial court may impose a fee for the cost of supervised probation or for the cost of preparation of a probation report. First, the court must order the defendant to report to the probation officer, who is to make a determination of the defendant's ability to pay. (§ 1203.1b, subd. (a).) After the probation officer makes a determination of the amount that the defendant may be able to pay, the probation officer must notify the defendant of his or her rights under the statute, including that he or she is entitled to a hearing, during which

the court will make a determination of the defendant's ability to pay and the payment amount. (*Ibid.*) Defendant has a right to representation by counsel during this hearing. (*Ibid.*) A defendant may waive his or her right to a hearing, but this waiver must be made knowingly and intelligently. (*Ibid.*) If the defendant does not waive the right to a hearing, the probation officer must refer the matter back to the trial court, and the trial court will make a determination of defendant's ability to pay. (*Id.*, subd. (b).) The statute provides for additional subsequent hearings during the period of probation for further review of a defendant's ability to pay the costs of probation supervision. (*Id.*, subd. (c).)

Here, the trial court properly ordered defendant to report to the probation officer. The probation officer will then inquire into defendant's ability to pay these costs of probation supervision; however, there is nothing in our record to indicate that a determination of defendant's ability to pay had been made at the time of sentencing. The court's order set a range, which included a maximum amount for the costs of probation supervision. The order left open what portion, if any, of the costs of probation defendant would pay, which was to be determined by the probation department. It is only after the probation officer has determined defendant's ability to pay these amounts that the probation officer is required to inform defendant that he or she would have the right to challenge that determination at a hearing on defendant's ability to pay before the trial court. Accordingly, any challenge to the order to pay the costs for supervision of defendant's probation is therefore premature.

The People argue, based upon *People v. Valtakis* (2003) 105 Cal.App.4th 1066, 1072-1076,² that defendant has waived the issue of appellate review of the court's failure to comply with the notice provision of section 1203.1b, subdivision (a), regarding defendant's ability to pay. *Valtakis* is distinguishable, as here we have not a definite cost but a probation supervision cost range. We have found no authority for the proposition that a defendant has waived appeal of a probation supervision cost range where the statutory procedures were not followed. Defendant has not waived appellate review of this legal error. (*People v. Scott* (1994) 9 Cal.4th 331, 354.) However, as noted *ante*, a challenge to the imposition of the costs of probation supervision is premature.

III

DISPOSITION

We direct the clerk of the superior court to modify its minute order for the hearing held June 12, 2013, to clarify that the payment of the costs of probation supervision is not a condition of probation, but a separate order.

² A case that involves an appeal of various fees, including a probation supervision fee, is currently pending before the Supreme Court of California. (*People v. Aguilar* (2013) 219 Cal.App.4th 1094, review granted Nov. 26, 2013, S213571.)

In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ
P. J.

We concur:

KING
J.

CODRINGTON
J.