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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

LUZ MARINA CAMPOS HERNANDEZ,

Defendant and Appellant.

G048747

(Super. Ct. No. 12HF0330)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, David A. Hoffer, Judge. Affirmed as modified.

Jean Matulis, 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, Scott C. Taylor and Laura Baggett, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

A jury found defendant Luz Marina Campos Hernandez guilty of first degree residential burglary and grand theft. The court sentenced defendant to four years in state prison. On appeal, she contends the trial court erred in denying her motion to suppress evidence. She also argues the court made errors in calculating her sentence. We order that the abstract of judgment must be corrected and affirm the judgment of the court.

I FACTS

Defendant moved the court to suppress evidence collected from her home when she was arrested. Her motion states: “In a closed dresser drawer officers located numerous pieces of jewelry and documents from Rhodes Jewelry & Loan located on 4th St. in Santa Ana, CA county of Orange. The jewelry was left in defendant’s apt./house but police photographed said items of jewelry.”

At the hearing, it was revealed that defendant had worked for the Simpson family for seven to nine months. She was fired because Mr. Simpson suspected her of theft.

Brad Miller, a detective with the Newport Beach Police Department, testified. Miller and another detective, Sergeant Sailor, made contact with defendant on her back patio. They spoke in English. Miller had no concerns that defendant did not understand what he was saying in that he could understand what she was saying in English and she appeared to understand what he was saying.

When they first spoke with her, there was some sort of separation between the officers and the patio. Defendant went through her house to the front door and opened the door for the two detectives. Miller explained: “I believe she invited us in at that point through the front door.”

Miller was in plain clothes and showed defendant his badge. He was asked whether he had his gun, and responded: “I believe it was on my side, although it was

probably covered.” Sailor was also in plain clothes.

Miller related: “Ms. Hernandez denied being involved in any theft. She told me how she invited Mr. Simpson over to her house to search her home for any of his stolen property. At that point, I asked her if I could search her home for the same stolen property. She said I could.” Defendant was not threatened.

Miller said a search was then conducted to look for any of the stolen property identified by the victims. Miller found jewelry in defendant’s home that may or may not have been on the list of stolen items and took photographs of what he found. He also found paperwork for a pawn shop, and defendant told him she had pawned some jewelry. At no point did defendant tell Miller she did not want his search to go any further.

Defendant also testified at the hearing, through an interpreter. She was asked to describe her ability to speak English and responded: “The basics. I do the babysitting, I cook, I clean.” She said she did invite the detectives into her home but did not give them permission to search. While one detective stayed in the living room with her, Miller got up and conducted a search.

The court gave an explanation for denying the motion: “The court[] listened to the testimony carefully. And frankly, it just comes down to a credibility issue. In weighing the credibility of the witness, the court had decided that the officer’s testimony was far more credible. There’s evidence that she told the agency she spoke English, she worked in English-speaking households. She said she understood the officer. [¶] And her testimony was also contradictory. At first, she says she didn’t have much contact with Detective Miller, but she had a lot — sorry, with Sergeant Sailor. At the end, suddenly the whole conversation with Sergeant Sailor and very little with Detective Miller. And so based on testimony I’ve heard, I’m going to accept the officer’s version that she gave verbal consent and deny the motion under [Penal Code section] 1538.[5]. I find it’s not coerced.”

II DISCUSSION

Motion to Suppress

Defendant contends her Fourth Amendment right against unreasonable searches and seizures was violated by the warrantless and nonconsensual search of her home. She argues the trial court erred when it denied her motion to suppress.

“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. [Citations.]’ [Citations.]” (*People v. Redd* (2010) 48 Cal.4th 691,719, fn. omitted.)

Here, the trial court determined defendant was not as credible as Miller, and that defendant told contradictory stories. The court noted defendant told an employment agency she spoke English and worked in English-speaking households. Based on the totality of the circumstances, the trial court concluded defendant understood English and voluntarily consented to the search. Thus, in lieu of a warrant, the legal justification for the search of defendant’s home was defendant’s own consent to search. Under the circumstances found in this record, we find no error.

Sentence

Next defendant argues the sentence imposed violates her right to due process because the trial court made erroneous findings regarding aggravating factors. She says her case must be remanded for resentencing.

“When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court. . . .” (Pen. Code, § 1170, subd. (b).) In exercising discretion in sentencing choices, “the sentencing judge may consider circumstances in aggravation or mitigation, and any other factor reasonably related to the sentencing decision. The relevant circumstances may be obtained from the case record, the probation officer’s report, other reports and statements properly received, statements in aggravation or mitigation, and any other evidence introduced at the sentencing hearing.” (Cal. Rules of Court, rule 4.420(b).)

The probation officer reported several circumstances in aggravation, noting the stolen items included cash and jewelry valued at over \$70,000 and that defendant took advantage of a position of trust. The report lists no circumstances in mitigation. The report also notes: “The defendant intentionally sought employment that allowed her to be unsupervised in the victims’ home, so she had the opportunity to steal from them for her own personal gain. Of concern is this is not the first time the defendant has engaged in this type of behavior. She has two prior arrests for exactly the same type of offense. In the past offenses, the defendant was caught by her employers and terminated. However, it did not stop her from continuing in this type of behavior, as seen in the instant offense. It leads one to believe that the defendant has committed this crime numerous other times in the past without being caught.”

Also in the probation report is a statement from the victim: “Luz (Marina) was hired to work in the privacy of our home with our three children. Our family had just moved to Newport Beach. Luz was granted our trust and the confidence that she would help us. She abused it all. Her burglary and grand theft of our money and personal goods was a deep-felt violation that has affected us all. Our kids . . . are angry and confused. They are also scared to have workers/strangers, or even child-sitters, in our home. As a caring individual, my trust in others has been shattered, and I am angry

to have been grossly abused. My wife . . . had her jewelry collection pilfered from the secrecy of her closet and then pawned-off. All of which leaves her enraged with the loss of her irreplaceable, sentimental gifts and knowing the threat that had existed for our children. The damage goes beyond the physical theft. We feel it in our family today.”

During sentencing, the court consumed many pages of the reporter’s transcript outlining the circumstances in aggravation and its reasons for selecting the sentence it did, and demonstrating both an impressive familiarity with the facts and the serious considerations it gave to its decision. One of the court’s observations was: “And again, the seriousness of the offense here, I think, militates strongly against a probationary sentence. [¶] When it comes to the sentence, the court does not believe that the low term is appropriate here for a number of reasons. First of all, under Rule of Court 4.421(a) subdivision eight, discussing planning, this was a planned systematic attempt to fleece her clients, executed step by step over a long period of time, intentionally, deliberately and repeatedly.”

In her brief, despite the detailed reasons describing appropriate circumstances in aggravation provided for the court’s sentence, defendant seizes upon the trial judge’s remark: “This could have been charged as theft after theft after theft” Under the circumstances we find in this record, we cannot conclude the trial court abused its discretion in sentencing defendant to the middle term of four years for the first degree burglary count, while staying execution of the two-year sentence on the grand theft count.

Abstract of Judgment

The abstract of judgment does not denote the grand theft count was stayed pursuant to Penal Code section 654. For the limited purpose of correcting that error, we remand this matter to the trial court.

III
DISPOSITION

The judgment is affirmed as modified. The matter is remanded with directions to the clerk of the trial court to prepare an amended abstract of judgment and forward a copy to the Department of Corrections and Rehabilitation.

MOORE, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

THOMPSON, J.