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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

CHAKA GROSSMAN,

Defendant and Appellant.

B283101

(Los Angeles County
Super. Ct. No. LA081994)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gregory A. Dohi, Judge. Reversed.

Michael L. Becker for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Idan Ivri and Michael J. Wise, Deputy Attorneys General, for Plaintiff and Respondent.

Chaka Grossman appeals from a conviction entered after he pleaded no contest to a charge of possession of a controlled substance with a firearm. Grossman contends the trial court erred in denying his motion to quash the search warrant and suppress evidence obtained from a search of his house, pursuant to Penal Code section 1538.5. Grossman argues that once information gathered during the unlawful protective sweep was properly excised from the search warrant affidavit, there was no probable cause to support a search of his residence. He also contends the trial court should have excised statements he made during his unlawful detention, and the sole remaining support for the search warrant—the presence of a stolen vehicle in his driveway—did not establish probable cause to search his house.

We agree and reverse the judgment. We remand for the trial court to allow Grossman to withdraw his plea of no contest. In the event Grossman withdraws his plea, the trial court is directed to vacate its order, and grant the motion to quash and to suppress the evidence gathered during the search of his house.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Information*

The information charged Grossman with four felonies: receiving a stolen motor vehicle (§ 496d, subd. (a); count 1); possession of heroin and methamphetamine while armed with a bolt action M91 rifle (Health & Saf. Code, § 11370.1, subd. (a); count 2); possession for sale of heroin (Health & Saf. Code, § 11351; count 3); and possession for sale of methamphetamine (Health & Saf. Code, § 11378; count 4).

B. *The Investigation*

At approximately 8:30 a.m. on September 25, 2015 Los Angeles police officers went to Etiwanda Avenue to investigate a report of a stolen Suburban sport utility vehicle (SUV) parked on the street.¹ They found a “run-down looking SUV” with a missing steering column. The SUV was parked on the street in front of Grossman’s house on Etiwanda Avenue. The officers conducted a vehicle identification number (VIN) search of the SUV and found it had not been reported stolen.

While the officers were investigating the SUV, they saw a gold 1987 Chevrolet truck with a unique custom paint design parked in the driveway of Grossman’s house. The custom paint on the truck matched the description of a stolen vehicle. When the officers looked in the truck, they observed the speakers were missing, as were some of its seats. The officers conducted a VIN search of the truck, confirming the vehicle was stolen. They also observed parts left directly in front of the garage, which appeared to be speakers.

The officers then knocked on the front door of the residence. A female identified as Tracy Vesta answered the door.² Officer Quals observed “a figure quickly move within the rear of the residence[,] and then shortly afterwards, that was when [Grossman] approached.” The officers advised Vesta and Grossman that they were conducting a stolen vehicle

¹ The facts are taken from the search warrant and the testimony of Los Angeles Police Officer Derrick Quals at the suppression hearing.

² At the suppression hearing Officer Quals identified this occupant as “Ms. Vestelhong,” but the affidavit states she was Tracy Vesta.

investigation regarding the two vehicles they found in front of the house. Neither Vesta nor Grossman responded to the officers' advisements, but they were cooperative. When asked who else was inside the house, Grossman said his girlfriend was in the bedroom. The officers asked all the occupants to step outside so they could conduct a "protective sweep" of the residence. They complied, and the officers detained Grossman and the other occupants in the front yard while they conducted the sweep.

During the course of the protective sweep, the officers observed a license plate in the house and one in the backyard. When officers searched in their database for one of the plates, it matched a plate that was reported lost or stolen. The officers also observed a speaker and a car battery in the house.

C. *The Affidavit for the Search Warrant*

Los Angeles Police Officer Vincent Allard in his affidavit described the truck in the driveway, that the VIN showed it was reported stolen, that a protective sweep was conducted during which a stolen license plate was observed on the ground, and that the occupants were detained during the sweep.

Officer Allard also stated that while Grossman was detained in the front yard, Officer Allard advised him the officers were conducting a stolen vehicle investigation and the vehicle in his driveway had been reported stolen. Grossman "then stated the vehicle and vehicle parts in the residence were all brought to his residence by a client of his named Lavaie, John." Grossman added that he was Lavaie's attorney.

Officer Allard opined that based on the stolen truck in the driveway, the stolen license plate, and Grossman's statement, a search of Grossman's house would produce "evidence of the crime

and property belonging to victims inside and to the rear of the residence.”

D. *The Search Warrant and the Search*

Approximately 45 minutes after receiving the affidavit, a magistrate judge issued the search warrant, and the officers searched Grossman’s house. The search resulted in the seizure of the truck parked in the driveway; two firearms and a pellet gun; substances resembling heroin and methamphetamine; a digital video recorder; mail in Grossman’s name; seven license plates, including one reported lost or stolen; hypodermic needles; and a digital scale.

E. *The Motion To Quash and To Suppress Evidence*

Grossman moved to quash the search warrant and suppress the evidence seized from his residence, contending the protective sweep was unlawful and, therefore, the observations made by the officers during the sweep and the statements Grossman made during his detention could not properly be included in the search warrant affidavit.

Grossman argued that once the impermissible observations and statements in the search warrant affidavit were redacted, all that remained was the presence of a stolen vehicle in the driveway outside the house. He contended under *People v. Hernandez* (1994) 30 Cal.App.4th 919 (*Hernandez*) the mere presence of a suspicious vehicle was not sufficient to obtain a search warrant of his residence. Rather, *Hernandez* required some nexus between the suspicious vehicle and the residence before a warrant could be issued.

F. *The Trial Court's Denial of the Motion To Suppress*

At a March 30, 2017 hearing the trial court denied Grossman's motion to quash and to suppress evidence. The trial court first addressed the protective sweep, and found it was unlawful because it was not based on any articulable presence of a danger to the officers. The trial court found the individual whom Officer Quals observed "quickly move within the rear of the residence" was Grossman. Because the sweep violated Grossman's Fourth Amendment rights, the court held evidence gathered during the sweep could not be considered when reviewing whether the supporting affidavit provided probable cause. However, the court concluded Grossman was properly detained, stating, "He is properly asked to step outside. We can do that while you try and get a search warrant." The trial court therefore considered Grossman's statements as reflected in the affidavit. The court concluded the presence of the stolen vehicle in the driveway, along with Grossman's statements, provided probable cause for the search.

G. *Grossman's Negotiated Plea and Sentencing*

Following denial of his motion to suppress, Grossman entered into a negotiated plea agreement. He pleaded no contest to possession of a controlled substance with a firearm (Health & Saf. Code, § 11370.1, subd. (a)). Pursuant to the terms of the plea agreement, the trial court suspended imposition of sentence and placed Grossman on three years' formal probation on the condition he serve five days in county jail, with five days presentence custody credit (three actual days plus two days conduct credit), complete a one-year residential drug treatment program, pay \$5,497.50 in restitution, and other terms and

conditions. The trial court granted the People’s motion to dismiss the remaining counts.

Grossman timely appealed the trial court’s denial of his motion to suppress.

DISCUSSION

A. *Standard of Review*

““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; accord, *People v. Celis* (2004) 33 Cal.4th 667, 679 (*Celis*) [reviewing denial of motion to suppress evidence seized as part of protective sweep, giving deference to trial court’s factual findings, but “independently apply[ing] the requisite legal standard to the facts presented”]; *People v. Johnson* (2018) 21 Cal.App.5th 1026, 1032.)

B. *The Protective Sweep Was Unlawful Because There Were No Articulable Facts Supporting a Reasonable Suspicion of Danger*

“It is a ‘basic principle of Fourth Amendment law’ that searches and seizures inside a home without a warrant are presumptively unreasonable.” (*Payton v. New York* (1980) 445 U.S. 573, 586; accord, *Celis, supra*, 33 Cal.4th at p. 676.) This presumption can be overcome by recognized exigent circumstances, including a protective sweep of a residence.

(*Maryland v. Buie* (1990) 494 U.S. 325, 333-334 (*Buie*); *Celis*, at pp. 676-677.) A protective sweep is “a quick and limited search of premises, . . . conducted to protect the safety of police officers or others.” (*Buie*, at p. 327; accord, *Celis*, at pp. 678-679.)

“A protective sweep can be justified merely by a *reasonable suspicion* that the area to be swept harbors a dangerous person.” (*Celis*, *supra*, 33 Cal.4th at p. 678; accord, *People v. Werner* (2012) 207 Cal.App.4th 1195, 1205 (*Werner*).) Reasonable suspicion must be based on “‘articulable facts’ considered together with the rational inferences drawn from those facts, that would warrant a reasonably prudent officer to entertain a reasonable suspicion that the area to be swept harbors a person posing a danger to officer safety.” (*Celis*, at pp. 679-680, citing *Buie*, *supra*, 494 U.S. at pp. 327, 334; accord, *Werner*, at p. 1206; *People v. Ormonde* (2006) 143 Cal.App.4th 282, 295.)

The United States Supreme Court in *Buie* established the standards for a protective sweep “in conjunction with an in-home arrest.” (*Buie*, *supra*, 494 U.S. at p. 337.) In *Celis*, the California Supreme Court applied the doctrine to the detention of a suspect. (*Celis*, *supra*, 33 Cal.4th at p. 671; see *Werner*, *supra*, 207 Cal.App.4th at p. 1206 [“A protective sweep is not limited to situations immediately following an arrest; it may occur in conjunction with a suspect’s detention”].) However, the court in *Celis* questioned, without deciding, whether the doctrine should be applied where a defendant was detained outside his home. (*Celis*, at p. 679.) The court did not reach the issue because it concluded the People had not met the standard of reasonable suspicion. (*Ibid.*)

The People bear the burden of demonstrating that the warrantless entry into a home is justified by the exception for a

protective sweep. (*Werner, supra*, 207 Cal.App.4th at p. 1206; see *People v. Redd* (2010) 48 Cal.4th 691, 719 [“A warrantless search is presumed to be unreasonable, and the prosecution bears the burden of demonstrating a legal justification for the search.”].)

In *Celis*, undercover officers conducted surveillance of the defendant’s home, suspecting him of drug trafficking by concealing narcotics and cash in car tires. (*Celis, supra*, 33 Cal.4th at pp. 671-672.) The officers detained him after observing him roll a large tire from his house toward the alley, suspecting he was concealing narcotics in the tire. While he was detained, the officers conducted a protective sweep of his home. The court noted the officers had observed the defendant’s wife and possibly a male juvenile in the house on prior occasions, but they had no knowledge anyone else was present at the time of the defendant’s detention. (*Id.* at p. 679.) In addition, there was no indication the defendant or another suspect who was also detained were armed. (*Ibid.*) The court concluded there were no “articulable facts” that “would warrant a reasonably prudent officer to entertain a reasonable suspicion that the area to be swept harbor[ed] a person posing a danger to officer safety.” (*Id.* at pp. 679-680.)

Here, as in *Celis*, there was no evidence the officers had any reason to suspect Grossman or another person in the house was armed or violent, or that there was ongoing criminal activity within the residence. Indeed, the suspected crime—receipt of stolen property—was not a violent crime. We defer to the trial court’s factual finding the “figure quickly mov[ing]” inside the residence, who then approached the door, was Grossman. (*Celis, supra*, 33 Cal.4th at p. 679.) Further, after knocking on the door, the occupants were cooperative and did not take any action to

show they were dangerous or harboring a dangerous person. Upon the officers' request, the occupants exited the residence without resistance. The only evidence there was anyone in the residence other than Grossman and Vesta was Grossman's statement his girlfriend was in the bedroom. The officers had no reason to believe anyone else was in the house.

In light of these facts, the trial court correctly found the warrantless search of Grossman's house was not justified by the protective sweep exception and violated Grossman's Fourth Amendment rights. Accordingly, under the "fruit of the poisonous tree" doctrine, the officer's observations during the protective sweep of the stolen license plates and vehicle parts found inside the house were properly excised from the search warrant affidavit in considering whether the affidavit provided probable cause for the search. (*People v. Willis* (2002) 28 Cal.4th 22, 29 [observations made during an unlawful warrantless search "cannot be used to establish probable cause" for a search warrant]; *People v. Machupa* (1994) 7 Cal.4th 614, 628 (*Machupa*) ["[C]onducting an illegal warrantless search and including evidence found in this search in an affidavit in support of a warrant is an activity that the exclusionary rule was meant to deter."]; *Werner, supra*, 207 Cal.App.4th at p. 1213 [trial court on remand should consider whether affidavit established probable cause for issuance of search warrant "after excising the illegally obtained information from the affidavit"].)

C. *Statements Made by Grossman While He Was Unlawfully Detained During the Protective Sweep Are Inadmissible*

Grossman contends the statements he made while he was detained in the front yard during the protective sweep should

also be excised from the affidavit for the search warrant. We agree.

“Because of the particular interests protected by the Fourth Amendment, a statement must be suppressed, even when knowing, voluntary, and intelligent, if it is the direct product of an illegal arrest or detention.” (*People v. Boyer* (1989) 48 Cal.3d 247, 267 (*Boyer*), disapproved on other grounds by *People v. Stansbury* (1995) 9 Cal.4th 824, 830, fn. 1; accord, *People v. Jenkins* (2004) 122 Cal.App.4th 1160, 1171, 1175-1176 [voluntary statements made during unlawful detention following an arrest for a traffic violation were properly suppressed under 4th Amend.]; *People v. Medina* (2003) 110 Cal.App.4th 171, 178-179 [defendant’s voluntary admission made while he was detained for unlawful search during traffic stop should have been suppressed as fruit of the poisonous tree].)

In *Boyer*, as part of their investigation of two murders, police officers sought to question the defendant, but acknowledged they did not have probable cause to arrest him. (*Boyer, supra*, 48 Cal.3d at p. 263.) The officers approached defendant at his home and requested he voluntarily come to the police station for questioning; he agreed. (*Id.* at pp. 263-264.) The Supreme Court concluded defendant was illegally detained at the police station, where he later made an incriminating statement, “I did it.” (*Id.* at p. 267.) Even though the defendant’s statement was made spontaneously while the officers were arranging to transport him back to his home, the Court concluded the statement must be suppressed under the Fourth Amendment because it was tainted by the illegal detention. (*Id.* at p. 269.)

Here, because the protective sweep of Grossman's home was unlawful, the officers' detention of Grossman to carry out the sweep was also unlawful. (See *Werner, supra*, 207 Cal.App.4th at pp. 1211-1212 [consent by defendant's roommate to search their home was invalid where roommate gave consent while he was unlawfully detained during protective sweep].)

It was during Grossman's detention that he made incriminating statements. Officer Quals testified that when he initially spoke with Grossman at the front door to the residence, Officer Quals and his partner advised Grossman they were conducting a stolen vehicle investigation regarding the two vehicles in front of his property. Grossman did not say anything in response. Grossman and the other occupants were then detained in the front yard while the officers conducted the protective sweep. It was while Grossman was detained in the front yard that Officer Allard advised Grossman again that the officers were conducting a stolen vehicle investigation and the vehicle in his driveway had been reported stolen. This time Grossman responded that "the vehicle and vehicle parts in the residence were all brought to his residence by a client of his named Lavaie, John." Grossman added that he was Lavaie's attorney.³

³ Although the trial court noted that Grossman was "properly asked to step outside" while the officers sought a search warrant, Officer Quals testified he asked Grossman to step outside the house specifically for the officers to conduct the protective sweep. Officer Allard's affidavit similarly states that during the protective sweep the occupants were detained in the front yard. It was during this detention that Grossman made the statements used in the affidavit. Substantial evidence does not support a finding that Grossman made the statements *after* the

Because Grossman only made the incriminating statements after he was detained, the statements are the fruit of the poisonous tree, and must be excluded. (*Boyer, supra*, 48 Cal.3d at p. 267; *People v. Jenkins, supra*, 122 Cal.App.4th at p. 1171; *People v. Medina, supra*, 110 Cal.App.4th at pp. 178-179.) Moreover, there is no evidence to suggest the connection between Grossman's statements and the unlawful protective sweep became "so [attenuated] as to dissipate the taint." (*Murray v. United States* (1988) 487 U.S. 533, 537; accord, *Machupa, supra*, 7 Cal.4th at p. 628.) To the contrary, the statements were made during the protective sweep. Accordingly, Grossman's statements resulting from his unlawful detention should have been excised from the search warrant, leaving only the presence of a stolen vehicle in the driveway of the residence as a basis for issuance of the search warrant.

D. *Mere Presence of a Suspicious Vehicle on a Driveway Does Not Provide Probable Cause for Search of the House*

In reviewing a search conducted pursuant to a warrant, the role of the appellate court is to ask whether, "given all the circumstances set forth in the affidavit," the magistrate had a substantial basis for finding that a search would uncover evidence of wrongdoing. (*People v. Scott* (2011) 52 Cal.4th 452, 483 (*Scott*)). "Probable cause sufficient for issuance of a warrant requires a showing in the supporting affidavit that makes it

protective sweep while the officers sought the search warrant. (*People v. Suff, supra*, 58 Cal.4th at p. 1053; *Celis, supra*, 33 Cal.4th at p. 679.) Indeed, the fact that Grossman's statements were included in the affidavit shows that they were made prior to the officers seeking the search warrant.

substantially probable that there is specific property lawfully subject to seizure presently located in the particular place for which the warrant is sought.” (*Scott*, at p. 483; accord, *People v. Superior Court (Corbett)* (2017) 8 Cal.App.5th 670, 683, fn. 6.) “The magistrate’s determination of probable cause is entitled to deferential review.” (*People v. Kraft* (2000) 23 Cal.4th 978, 1041; accord, *People v. French* (2011) 201 Cal.App.4th 1307, 1315 [“[T]he magistrate’s determination will not be overturned unless the supporting affidavit fails as a matter of law to support the finding of probable cause.”].)

Grossman relies on the Court of Appeal’s opinion in *Hernandez* to support his contention the presence of a stolen vehicle in Grossman’s driveway was not sufficient alone to provide probable cause for the search. Grossman’s contention has merit. In *Hernandez*, the police conducted an undercover narcotics investigation, during which an undercover officer purchased narcotics from a suspected drug dealer. The officers later observed the two vehicles driven by the suspected drug dealer at the time of the controlled buys were parked behind a residence. (*Hernandez, supra*, 30 Cal.App.4th at p. 921.) Undercover officers knocked on the door of the residence and spoke to occupants, but were unable to ascertain whether the suspect lived there. (*Id.* at p. 922.) The officers obtained a search warrant of the residence based on the presence of the vehicles behind the residence; no information was provided that the suspected drug dealer ever entered the residence. (*Id.* at pp. 923-924.)

The Court of Appeal concluded there was not probable cause to issue the search warrant because the presence of the vehicles “raised suspicions, but failed to create a nexus between

the criminal activities and the residence.” (*Hernandez, supra*, 30 Cal.App.4th at p. 924.) The court observed there was no link between the vehicles and the residence, noting the absence of information that the suspect owned the vehicles, lived at the residence, or was ever seen carrying packages between the vehicles and the residence. (*Ibid.*) Thus, “there was no substantial basis for concluding that probable cause existed for the residential search.” (*Ibid.*; accord, *People v. Garcia* (2003) 111 Cal.App.4th 715, 722 [insufficient nexus between drug dealer who sold drugs in a bar and the possible presence of drugs in the bar to support issuance of search warrant where the drug dealer was a patron, not an owner or employee of the bar and there was no evidence the drug dealer stored drugs at the bar].)

The People point to Officer Qual’s description at the suppression hearing of the condition of the stolen vehicle and that there were strewn auto parts around the vehicle. But none of this information was included in the search warrant affidavit. A court’s review of whether there was sufficient probable cause to issue a warrant is necessarily limited to the information presented to the magistrate as ““set forth in the affidavit.”” (*Scott, supra*, 52 Cal.4th at p. 483; see *Illinois v. Gates* (1983) 462 U.S. 213, 238-239 [the “duty of a reviewing court is simply to ensure that the magistrate had a ‘substantial basis’” for finding probable cause existed].)

Accordingly, considering only the presence of the stolen vehicle in the driveway, the affidavit “raised suspicions, but failed to create a nexus between the criminal activities and the residence.” (*Hernandez, supra*, 30 Cal.App.4th at p. 924.)⁴ On

⁴ Grossman also contends the trial court should not have considered that the vehicle parked in the driveway was stolen

this basis, the trial court should have granted the motion to quash the search warrant and to suppress all evidence obtained from the search.⁵

because the officers conducted an unlawful search by entering the driveway to view the vehicle's VIN, citing to *Collins v. Virginia* (2018) 584 U.S. __ [138 S.Ct. 1663]. In response to this court's request, both parties submitted supplemental briefing on whether the observation of the vehicle's VIN in the driveway violated Grossman's Fourth Amendment rights under *Collins* because the vehicle was parked within the "curtilage" of the house. Because we conclude the presence of the vehicle on the driveway, even if stolen, did not support a finding of probable cause, we do not reach whether under *Collins* the officers unlawfully entered the driveway to obtain the VIN on the vehicle.

⁵ The People do not contend the evidence seized pursuant to the search warrant falls within the good faith exception to the exclusionary rule for "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." (*United States v. Leon* (1984) 468 U.S. 897, 900, 922; accord, *Machupa*, *supra*, 7 Cal.4th at p. 617.) Because it is the People's burden to establish the good faith exception applies (*People v. Willis*, *supra*, 28 Cal.4th at pp. 36-37), they have not met this burden. Even had the People raised this issue, the good faith exception does not apply to a search warrant based on evidence seized in an illegal warrantless search that is the "fruit of the poisonous tree." (*Machupa*, at pp. 617, 632.) Nor does the good faith exception apply where the search warrant was "based on an affidavit 'so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.'" (*Leon*, at p. 923.) Here, the search warrant, with the fruits of the illegal protective sweep excised, was "lacking in indicia of probable cause" because the sole remaining fact supporting probable cause was the presence of a stolen vehicle in Grossman's

DISPOSITION

The judgment is reversed. The matter is remanded with directions to allow Grossman to withdraw his plea of no contest. If Grossman withdraws his plea, the trial court is directed to vacate its order denying the motion to quash and to suppress, and to grant the motion.

FEUER, J.

WE CONCUR:

PERLUSS, P. J.

ZELON, J.

driveway. (*Hernandez, supra*, 30 Cal.App.4th at p. 925 [*Leon* good faith exception did not apply because, given the lack of a nexus between the criminal activity and the residence, a “well-trained officer, exercising his or her professional judgment, could not have objectively believed that probable cause existed for the residential search”].)