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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. STANISLAV KIRSANOV, Defendant and Appellant.	B286542 (Los Angeles County Super. Ct. No. GA100249)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael Villalobos, Judge. Affirmed.

Alan Fenster for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, and Shawn McGahey and Nima Razfar, Deputy Attorneys General, for Plaintiff and Respondent.

Stanislov Kirsanov pleaded no contest to two counts of first degree burglary and was sentenced to two years in state prison. On appeal, Kirsanov argues that the trial court erred in denying his motion to suppress evidence seized during a warrantless search of his vehicle, and in denying his motion to quash a search warrant executed for his residence and other vehicle. Kirsanov also asserts that, to the extent he forfeited his challenge to the search warrant based on a failure to raise the issue in the trial court, he received ineffective assistance of counsel. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

I. Burglaries of Moving Company Customers[1]

On November 17, 2016, Adam Flores hired Kirsanov's company to move his family's belongings into a new house in Alhambra, California. Kirsanov arrived with two other workers, and identified himself as the owner of the moving company. After the move was completed, Flores noticed that his Rolex watch, his wife's wedding ring, and a safe containing his family's identification documents were missing. Flores had packed the watch himself and had placed it in a closet in his new house. A few days later, Flores visited the Craigslist website, and saw an advertisement for the sale of a Rolex watch. The Craigslist photos showed the advertised watch had the same serial number and scratch marks as Flores's missing Rolex. Flores contacted the police to report that his Rolex watch had been stolen and was being offered for sale on Craigslist.

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1 The factual background of the charged crimes is taken from the preliminary hearing transcript.

Alhambra Police Detective Jesus Romero and a team of officers set up an undercover operation to meet the seller listed on the Craigslist advertisement. After contacting the seller, the officers arranged to meet him in the parking lot of a Sherman Oaks mall under the pretense of buying the Rolex watch. Kirsanov arrived to the meeting in his Range Rover, and showed the watch to an undercover officer posing as the potential buyer. Upon examining the watch, the undercover officer determined it matched the description of Flores's stolen Rolex. The officers then arrested Kirsanov. Flores later confirmed that the watch belonged to him based on its distinct scratch marks and matching serial number.

The officers searched Kirsanov's Range Rover at the scene, and recovered watches, jewelry, a large sum of cash, and several moving contracts in the names of various business, including U.S. Moving Services. One of the contracts was for Adam and Emily Flores. A second Rolex watch found inside the Range Rover was determined to belong to Maria Villareal. A few months earlier, Villareal had hired Kirsanov's company for a move, and she later discovered that some of her family's belongings were missing, including a Rolex watch. Following Kirsanov's arrest, the police conducted a search of his residence pursuant to a warrant, and found a checkbook in the name of U.S. Moving Services, Inc. that listed Kirsanov's home address.

II. Kirsanov's Motion to Suppress Evidence and to Quash the Search Warrant

In a March 15, 2017 information, the Los Angeles District Attorney charged Kirsanov with three counts of first degree

burglary of an inhabited dwelling (Pen. Code,[2] § 459). In April 2017, Kirsanov filed a motion to suppress evidence seized during the search of his 2013 Range Rover on the ground that the search was conducted without a warrant. He also filed a motion to quash or traverse the search warrant for his residence and his 2008 Infinity; he asserted that the warrant was issued without probable cause because it was based on the prior illegal search of the Range Rover, and was supported by an affidavit that was overbroad and contained materially false statements and omissions. Kirsanov's moving papers included a copy of the warrant, which incorporated an affidavit submitted by Detective Romero. The affidavit described the police investigation of the thefts at the Flores and Villareal residences, and stated that a search of Kirsanov's residence was necessary to locate the victims' unaccounted for property and possibly to identify other victims of theft by Kirsanov's moving companies. The warrant issued by the magistrate authorized the search of (1) the premises at 5405 Kester Avenue, #101, Sherman Oaks, California (the "Kester Avenue residence"), (2) a 2008 Infiniti registered to Kirsanov, and (3) any vehicles parked on or near the property that were owned by or under the control of any occupant at the Kester Avenue residence.

At a May 31, 2017 hearing on the motion, Detective Romero testified about the undercover operation that led to Kirsanov's arrest and the search of his Range Rover. According to Detective Romero, the meeting with Kirsanov took place on November 22, 2016 in a parking lot of the Westfield Fashion Center in Sherman Oaks. A team of at least six officers, including Detective Romero,

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[2] All further statutory references are to the Penal Code.

was present in the parking lot; two of the officers initially met Kirsanov under the pretense of buying a Rolex watch advertised on Craigslist. Kirsanov had the watch on his person when he met the undercover officers. After Kirsanov made contact with those officers, Detective Romero approached. The detective determined that the watch in Kirsanov's possession matched the description of the watch taken from the Flores residence because it was engraved with the same serial or reference number and had the same distinct scratch marks described by the victim. Detective Romero asked Kirsanov for consent to search his Range Rover, which was in the parking lot; Kirsanov orally consented. Detective Romero did not have any written consent forms or a working recording device with him that day. During the search of the Range Rover, officers recovered jewelry, a large sum of money, and sales contracts for Kirsanov's moving company under different business names. One of the contracts was for the Flores family.

Kirsanov also testified at the hearing. According to his testimony, he purchased a Rolex watch for $500 from a private seller on Craigslist or another similar website. Kirsanov then placed an advertisement on Craigslist offering to sell the watch for $2,700. After he was contacted by a potential buyer, Kirsanov agreed to meet with that buyer at a mall in Sherman Oaks to complete the sale. Kirsanov arrived at the mall parking lot in his 2013 Range Rover. He parked and locked his vehicle, and began walking toward the entrance of the mall. When Kirsanov was 20 to 25 feet from his Range Rover, he was approached by two men whom he believed to be the potential buyers. Kirsanov walked another six feet from his vehicle, and then handed the watch to the one of the men. Seconds after Kirsanov handed over the

watch, six officers appeared in the parking lot with their guns drawn. The officers immediately placed Kirsanov in handcuffs and sat him on the ground. Detective Romero took Kirsanov's car keys, which were clipped to his waistband, handed the keys to another officer, and directed that officer to search Kirsanov's vehicle. Neither Detective Romero nor any other officer asked Kirsanov for consent to search his vehicle, and Kirsanov never consented to the search. Kirsanov admitted that his company, U.S. Moving Services, Inc., had provided moving services to the Flores family, and that he, along with two other men, had moved the Floreses' belongings to their new home in Alhambra.

The trial court denied the motion to suppress the evidence seized from Kirsanov's Range Rover, finding that Detective Romero had sought and obtained Kirsanov's consent to search the vehicle. The court noted that there was no evidence presented that guns were pointed at Kirsanov when he was asked to consent to the search. The court also found that, even in the absence of consent, the police had probable cause to search the Range Rover because it was reasonable to believe the vehicle contained other stolen property.

The trial court also denied the motion to quash or traverse the search warrant for Kirsanov's residence and Infiniti. Defense counsel acknowledged that the search warrant was not defective on its face, but argued that Detective Romero had made certain misstatements in his affidavit about his investigation of the burglaries. The court found Kirsanov had not made a prima facie showing that the warrant was defective, or that Detective Romero's affidavit contained any materially false statements or

omissions.[3]

III. Kirsanov's No Contest Plea

On October 3, 2017, Kirsanov pleaded no contest to the first degree burglary of the Flores residence and the first degree burglary of the Villareal residence. The trial court sentenced Kirsanov to a term of two years on each count to be served concurrently in state prison. On November 27, 2017, Kirsanov filed a notice of appeal from the denial of his suppression motion and thereafter obtained a certificate of probable cause.

DISCUSSION

On appeal, Kirsanov argues the trial court should have granted his motion to suppress the evidence seized in the warrantless search of his Range Rover because the search was conducted without valid consent or probable cause. He also contends the trial court should have granted his motion to quash the search warrant executed for the Kester Avenue residence and Infiniti because the supporting affidavit did not connect Kirsanov to the places to be searched. Because his trial counsel never challenged the warrant on those grounds, Kirsanov alternatively asserts he received ineffective assistance of counsel.

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[3] On the same day that the trial court denied the suppression motion, it also ruled on Kirsanov's motion to dismiss all three burglary counts pursuant to section 995. The court granted the motion to dismiss one of the counts, but denied the motion as to the two remaining counts.

I. Motion to Suppress the Evidence Seized in the Warrantless Search of Kirsanov's Range Rover

Kirsanov first challenges the denial of his motion to suppress the evidence seized in the search of his Range Rover at the time of his arrest. He claims the prosecution failed to prove that any consent to the search was voluntary, or that the police had probable cause to conduct the search.

A. Governing Legal Principles

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures." (U.S. Const., 4th Amend.) ""[T]he ultimate touchstone of the Fourth Amendment is 'reasonableness.'" [Citation.] . . . "[W]here a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing, . . . reasonableness generally requires the obtaining of a judicial warrant.'" [Citation.] 'In the absence of a warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement.' [Citation.] The burden is on the People to establish an exception applies. [Citations.]" (*People v. Macabeo* (2016) 1 Cal.5th 1206, 1213.)

"'In reviewing a suppression ruling, "we defer to the [trial] court's express and implied factual findings if they are supported by substantial evidence, [but] we exercise our independent judgment in determining the legality of a search on the facts so found."' [Citation.] [¶] Thus, while we ultimately exercise our independent judgment to determine the constitutional propriety of a search or seizure, we do so within the context of historical facts determined by the trial court. 'As the finder of fact . . . the superior court is vested with the power to judge the credibility of

the witnesses, resolve any conflicts in the testimony, weigh the evidence and draw factual inferences in deciding whether a search is constitutionally unreasonable.' [Citation.] . . . '[W]e view the evidence in a light most favorable to the order denying the motion to suppress' [citation], and '[a]ny conflicts in the evidence are resolved in favor of the superior court ruling' [citation]." (*People v. Tully* (2012) 54 Cal.4th 952, 979.)

B. The Search of the Range Rover Was Valid Based on Kirsanov's Voluntary Consent

In denying the suppression motion, the trial court found the warrantless search of Kirsanov's Range Rover was valid because he consented to the search. Kirsanov asserts this finding was erroneous because he provided uncontroverted testimony that the officers pointed their guns at him as they approached, and thus, any consent he may have given was involuntary. The Attorney General argues the motion was properly denied because there was substantial evidence to support the trial court's finding that Kirsanov voluntarily consented to the search of his vehicle.

A search conducted pursuant to consent is an exception to the warrant requirement. (*Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 219; *People v. Boyer* (2006) 38 Cal.4th 412, 445-446.) "Where . . . the prosecution relies on consent to justify a warrantless search or seizure, it bears the 'burden of proving that the defendant's manifestation of consent was the product of his free will and not a mere submission to an express or implied assertion of authority. [Citation.]' [Citation.]" (*People v. Zamudio* (2008) 43 Cal.4th 327, 341.) "The voluntariness of consent is a question of fact to be determined from the totality of circumstances. [Citations.]" (*People v. Boyer*, *supra*, at p. 445.)

At the suppression hearing, there was conflicting testimony about whether the police sought Kirsanov's consent to search his Range Rover at the time of his arrest. Detective Romero testified that he made contact with Kirsanov upon observing Kirsanov hand a Rolex watch to the undercover officer posing as the buyer. After detaining Kirsanov, Detective Romero asked him if he could search his vehicle; Kirsanov said yes. Kirsanov, on the other hand, testified that no one ever sought or obtained his consent to search his Range Rover. According to Kirsanov, after he handed the watch to the potential buyer, six officers approached him with their guns drawn and immediately placed him in handcuffs. Detective Romero took Kirsanov's keys from his waistband, handed them to another officer, and told that officer to search the vehicle. The officers then searched the Range Rover, including the trunk.

Kirsanov argues the prosecution failed to establish that he voluntarily consented to the search of his vehicle because his testimony that he was confronted by six officers with their guns drawn was not refuted by Detective Romero or any other witness. We defer to the trial court's resolution of the facts where, as here, there is substantial evidence to support that conclusion. Even if we consider Kirsanov's version of events, we reach no different conclusion. A consent to search is not per se invalid "solely because the officers originally drew their guns when confronting defendant." (*People v. Ratliff* (1986) 41 Cal.3d 675, 686 (*Ratliff*).) "Similarly, the fact that defendant was handcuffed when his consent was sought does not demonstrate that his consent to a search was involuntary. Instead, that fact is to be weighed in the balance along with all the other circumstances bearing on this issue. [Citation.]" (*Ibid.*; see also *People v. Byers* (2016) 6

Cal.App.5th 856, 864 ["[a] 'person's in-custody status, even when he is handcuffed, does not automatically vitiate his consent; this is '"but one of the factors, but not the only one, to be considered by the trial judge"'"].)

In *Ratliff*, for instance, the defendant claimed his consent to the search of his car was not voluntary because the evidence showed that he was abruptly awakened in his bedroom by officers with their guns drawn, was handcuffed, and was told that unless he consented to a vehicle search they would obtain a warrant and break into the trunk. (*Ratliff*, *supra*, 41 Cal.3d at p. 686.) In their testimony, the officers could not recall approaching the defendant with drawn guns, but testified that a few minutes after they handcuffed the defendant and took him into the living room, they asked if they could search his car and he agreed. (*Id*. at pp. 685-686.) The Supreme Court concluded there was substantial evidence to support the trial court's finding that the defendant voluntarily consented to the search. The Court explained that, even "[a]ssuming that the officers initially drew their weapons, the evidence did not indicate that any of them kept their guns drawn when, in the living room, the actual request for consent to search was made." (*Id*. at p. 686.) Moreover, although the officers handcuffed the defendant, "the request for consent to search occurred several minutes later in another room." (*Id.* at p. 687.) The Court further noted that, while the defendant's father testified that the officers threatened to break into the trunk of the car unless the defendant consented to a search, "the trial court was entitled to disbelieve this testimony in favor of the officer's testimony that defendant freely consented to the search upon being asked whether or not he objected thereto." (*Ibid*.)

In this case, Kirsanov testified that, when Detective Romero and the other officers approached him in the parking lot, they had their guns drawn. He also testified that the officers immediately handcuffed him and had him sit on the ground. Kirsanov did not, however, testify that any of the officers kept their guns drawn when Detective Romero made the request to search his Range Rover, or that he was coerced by any officer into consenting to the search. To the contrary, Kirsanov emphatically denied that anyone ever sought or obtained his consent. Thus, Kirsanov's undisputed testimony that the officers had their guns drawn when they first approached him does not demonstrate that any subsequent consent he may have given to the search of his vehicle was invalid. Rather, it was one factor for the trial court to consider in determining the voluntariness of the consent. Moreover, in ruling on the suppression motion, it was the exclusive province of the trial court to evaluate the credibility of the witnesses and to resolve any conflicts in their testimony. The trial court therefore was entitled to disbelieve Kirsanov's testimony that he was never asked to consent to a vehicle search in favor of Detective Romero's testimony that such consent was requested and received. On this record, the trial court's finding that Kirsanov voluntarily consented to the search of his Range Rover was supported by substantial evidence.[4]

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[4] In light of our conclusion that the warrantless search of Kirsanov's Range Rover was valid based on his consent, we need not decide whether the police also had probable cause to search the vehicle.

II. Motion to Quash the Search Warrant for the Kester Avenue Residence and Infiniti

On appeal, Kirsanov also contends the trial court erred in denying his motion to quash the search warrant executed for the Kester Avenue residence and 2008 Infiniti. He specifically claims the search warrant was not supported by probable cause because the affidavit submitted by Detective Romero never mentioned that particular address or vehicle, or showed any connection between Kirsanov and the places to be searched.

A. Forfeiture

The Attorney General argues that Kirsanov forfeited this claim on appeal because he failed to raise it in the trial court as part of his motion to quash the search warrant. While Kirsanov asserts that the motion to quash preserved the claim for appeal, he acknowledges that he never presented the issue in his moving papers or in his argument before the trial court. We agree with the Attorney General that the claim has been forfeited.

1. Governing Legal Principles

Under section 1538.5, a motion made for the return of property or to suppress evidence obtained as a result of a search or seizure must "set forth the factual basis and the legal authorities that demonstrate why the motion should be granted." (§ 1538.5, subd. (a)(2).) Therefore, "when defendants move to suppress evidence under section 1538.5, they must inform the prosecution and the court of the specific basis for their motion." (*People v. Williams* (1999) 20 Cal.4th 119, 129.) "[D]efendants who challenge some specific aspect of a search or seizure other than the lack of the warrant must specify the nature of that challenge at the outset. [Citation.] The determinative inquiry in

all cases is whether the party opposing the motion had fair notice of the moving party's argument and fair opportunity to present responsive evidence." (*Id*. at p. 135, italics omitted.) Consistent with this "elemental matter of fairness in giving each of the parties an opportunity adequately to litigate the facts and inferences relating to the adverse party's contentions," the scope of appellate review is limited to the specific factual and legal issues that were raised before the trial court. (*Id*. at p. 136.)

2. Kirsanov Has Forfeited His Claim That The Affidavit Was Deficient

In his motion to quash or traverse the search warrant, Kirsanov challenged the legality of the warrant on three grounds: (1) the warrant was based on the prior illegal search of the Range Rover; (2) Detective Romero's affidavit contained materially false statements and omissions in violation of *Franks v. Delaware* (1978) 438 U.S. 154; and (3) Detective Romero's affidavit was overbroad in describing the items to be seized. Kirsanov never asserted in his motion that the affidavit was deficient because it failed to state that Kirsanov lived at the Kester Avenue residence or owned the Infiniti; nor did he argue in more general terms that the affidavit failed to show a connection between the alleged criminal activity and the places to be searched. In fact, Kirsanov expressly stated in his moving papers that the warrant had been issued for the search of "Defendant's house located at 5405 Kester Ave." and his "2008 Infiniti," and that he had "an interest in the area searched." At the hearing on the motion, defense counsel acknowledged that the search warrant was not facially deficient, and solely challenged the affidavit on the ground that Detective Romero had misrepresented certain facts about his investigation of the burglaries, such as referring to the identification number

on Flores's watch as a unique serial number rather than a generic model number. Defense counsel never mentioned the affidavit's failure to identify the Kester Avenue residence or the Infiniti as belonging to Kirsanov. As a result, the prosecution did not have an opportunity to respond to these alleged deficiencies in the affidavit, and the trial court was not asked to consider the issue in ruling on the motion to quash.

Because the record reflects Kirsanov never challenged the legality of the search warrant on the ground that the supporting affidavit failed to establish a link between Kirsanov and the locations to be searched, he is not entitled to assert this claim for the first time on appeal. (See *People v. Tully*, *supra*, 54 Cal.4th at p. 980 [where defendant's suppression motion in the trial court did not include the specific claim raised on appeal, the claim was forfeited]; *People v. Amezcua and Flores* (2019) 6 Cal.5th 886, 913 [same]; *People v. Linton* (2013) 56 Cal.4th 1146, 1170 [same].)

B. Ineffective Assistance of Counsel

Kirsanov alternatively contends that he received ineffective assistance of counsel because his trial counsel never argued that the supporting affidavit failed to establish probable cause to search the Kester Avenue residence and Infiniti by connecting Kirsanov to the places to be searched.

1. Governing Legal Principles

To establish a claim for ineffective assistance of counsel, "'a defendant must show that (1) counsel's representation fell below an objective standard of reasonableness under prevailing professional norms, and (2) counsel's deficient performance was prejudicial, i.e., there is a reasonable probability that, but for counsel's failings, the result would have been more favorable to

the defendant.'" (*People v. Johnson* (2015) 60 Cal.4th 966, 979-980; see *Strickland v. Washington* (1984) 466 U.S. 668, 694.) Generally, "[w]here a defendant claims ineffective assistance based on counsel's failure to litigate a Fourth Amendment claim, [the] performance prong requires [him] or her to show that it was objectively unreasonable—'that is, contrary to prevailing professional norms'—to forgo the motion. [Citations.]" (*People v. Caro* (2019) 7 Cal.5th 463, 488.) "The prejudice prong . . . then requires the defendant to 'prove that [the] Fourth Amendment claim is meritorious and that there is a reasonable probability that the verdict would have been different absent the excludable evidence.' [Citations.]" (*Id.* at pp. 488-489.)

In the context of a plea, the prejudice prong of an ineffective assistance claim "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. In other words, in order to satisfy the 'prejudice' requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." (*Hill v. Lockhart* (1985) 474 U.S. 52, 59 (*Hill*); accord, *Premo v. Moore* (2011) 562 U.S. 115, 129; *In re Resendiz* (2001) 25 Cal.4th 230, 253.) Under this standard, "[a] defendant who accepts a plea bargain on counsel's advice does not necessarily suffer prejudice when his counsel fails to seek suppression of evidence, even if it would be reversible error for the court to admit that evidence." (*Premo v. Moore*, *supra*, at p. 129.) Instead, the relevant inquiry in determining prejudice is whether the defendant "established [a] reasonable probability that he would not have entered his plea but for his counsel's deficiency." (*Id.* at p. 130.)

"When examining an ineffective assistance claim, a reviewing court defers to counsel's reasonable tactical decisions, and there is a presumption counsel acted within the wide range of reasonable professional assistance. . . . On direct appeal, a conviction will be reversed for ineffective assistance only if (1) the record affirmatively discloses counsel had no rational tactical purpose for the challenged act or omission, (2) counsel was asked for a reason and failed to provide one, or (3) there simply could be no satisfactory explanation. All other claims of ineffective assistance are more appropriately resolved in a habeas corpus proceeding. [Citations.]" (*People v. Mai* (2013) 57 Cal. 4th 986, 1009; see also *People v. Johnson* (2009) 47 Cal.4th 668, 684 ["if it cannot be determined from the record whether counsel had a reasonable strategic basis for acting or failing to act in the manner challenged, a claim of ineffective assistance 'is more appropriately decided in a habeas corpus proceeding'"].)

2. Kirsanov Has Failed to Establish a Claim for Ineffective Assistance of Counsel

In arguing he received ineffective assistance of counsel, Kirsanov contends his trial counsel should have known the search warrant was not supported by probable cause because a review of the affidavit clearly shows that it failed mention the subject premises or to establish an evidentiary link between Kirsanov and the locations to be searched. He further claims his counsel's performance was deficient because there was no reasonable tactical basis for forgoing this argument as part of the motion to quash. The Attorney General asserts Kirsanov has failed to show there could be no satisfactory explanation for the alleged omission because his trial counsel reasonably could have concluded that the police acted in reasonable reliance on a search

warrant issued by a neutral magistrate, and thus, that the good faith exception to the exclusionary rule applied.

We need not decide, however, whether Kirsanov has met his burden of demonstrating that his trial counsel's failure to challenge the search warrant on these grounds was objectively unreasonable. As our Supreme Court has observed, a reviewing court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. . . . If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed.'" (*People v. Carrasco* (2014) 59 Cal.4th 924, 982, quoting *Strickland v. Washington*, *supra*, 466 U.S. at p. 697.) In this case, Kirsanov has failed to show that he suffered any prejudice as a result of his counsel's alleged errors.

Kirsanov was charged with, and pleaded no contest to, two counts of first degree burglary of an inhabited dwelling. A third count was dismissed pursuant to section 995 at the same time the trial court denied the motion to suppress evidence and to quash the search warrant. The two counts to which Kirsanov pleaded no contest following the denial of his suppression motion were the burglary of the Flores residence and the burglary of the Villareal residence. There is no indication in the record, however, that any property taken in either the Flores or Villareal burglaries was recovered during the search of the Kester Avenue residence or Infiniti. Rather, the record shows that Flores's Rolex watch was recovered when Kirsanov tried to sell it to the undercover officer, and that Villareal's watch was recovered from Kirsanov's Range Rover at the time of his arrest. There is nothing in the record to

suggest that any of the other property reported stolen from the Flores and Villareal homes was ever found by the police.

With respect to the property seized pursuant to the search warrant, Detective Romero testified about only two items that were recovered in the search of the Kester Avenue residence. He described a high school championship volleyball ring belonging to a person named Brad Stall, and a checkbook under the name U.S. Moving Services, Inc. that listed the Kester Avenue address. The volleyball ring had no connection to either the Flores or Villareal burglaries, and Kirsanov was not charged with any crime relating to that item. The checkbook arguably had some relevance to the Flores burglary because Adam Flores reported to the police that he and his wife had contracted with U.S. Moving Services, Inc. to help them move their belongings to their new home. However, during the search of Kirsanov's Range Ranger, the police recovered the written contract between U.S. Moving Services, Inc., and the Floreses. The police also recovered a cell phone for U.S. Moving Services, Inc. that had the same telephone number that the Floreses had used to contact Kirsanov's moving company. The record thus reflects that virtually all the evidence connecting Kirsanov to the Flores and Villareal burglaries was obtained prior to the issuance of the search warrant. Given this record, Kirsanov has not shown how his counsel's alleged ineffectiveness in failing to properly challenge the validity of the warrant affected his acceptance of a plea. (*Hill, supra*, 474 U.S. at p. 59 ["the 'prejudice' requirement . . . focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process"].)

In his appeal, Kirsanov argues that his counsel's "failures substantially prejudiced [him] because it is clear that the

affidavit does not provide facts to establish probable cause to search" the Kester Avenue residence or Infiniti. This statement, however, merely describes why trial counsel's performance was deficient, and does not address how such deficiency resulted in any prejudice. Kirsanov also asserts in a conclusory manner that he pleaded no contest to the charges because, after his suppression motion was denied, "he was faced with the option of entering a plea or going to trial with all seized evidence being introduced against him." Kirsanov does not, however, explain what evidence was seized in the search of the Kester Avenue residence and Infiniti, or how the prospect of such evidence being admitted at trial impacted his decision to accept a plea.

In the context of plea acceptance, "'a defendant's self-serving statement . . . [regarding whether] with competent advice he or she would [or would not] have accepted a proffered plea bargain, is insufficient in and of itself to sustain [his or her] burden of proof as to prejudice, and must be corroborated independently by objective evidence. A contrary holding would lead to an unchecked flow of easily fabricated claims.'" (*People v. Breslin* (2012) 205 Cal.App.4th 1409, 1421, citing *In re Alvernaz* (1992) 2 Cal.4th 924, 938; see also *Jae Lee v. United States* (2017) 582 U.S. ___ [137 S.Ct. 1958, 1967] ["Courts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Judges should instead look to contemporaneous evidence to substantiate a defendant's expressed preferences."].) Here, Kirsanov does not point to any evidence to support his claim that he suffered prejudice from his trial counsel's alleged errors. Instead, he simply asserts in conclusory terms, and without any

factual or legal basis, that he was "substantially prejudiced" by his counsel's failures. This is insufficient to show prejudice.

In sum, there is nothing in the record to suggest that the outcome of Kirsanov's plea was affected by his counsel's failure to challenge the search warrant on the grounds alleged on appeal. Accordingly, Kirsanov has failed to demonstrate a reasonable probability that, but for his counsel's alleged errors, he would not have entered a no contest plea to the burglary charges and would have insisted on going to trial. (See *Hill*, *supra*, 474 U.S. at p. 59; *Premo v. Moore*, *supra*, 562 U.S. at pp. 129-130.) Kirsanov's claim for ineffective assistance of counsel fails.[5]

DISPOSITION

The judgment is affirmed.

ZELON, Acting P. J.

We concur:

SEGAL, J. FEUER, J.

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[5] On May 2, 2018, while his appeal was pending, Kirsanov filed a petition for writ of habeas corpus in which he raised the same ineffective assistance of counsel claim, and supported his petition with the same record of the trial court proceedings. By separate order, we summarily deny the petition.