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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANK MORENO,

Defendant and Appellant.

B281577

(Los Angeles County
Super. Ct. No. BA427463)

APPEAL from an order and judgment of the Superior Court of Los Angeles County, Sergio C. Tapia II, Judge. Affirmed.

Christine C. Shaver, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews and Chung L. Mar, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

Defendant Frank Moreno appeals after a jury found him guilty of being a felon in possession of a firearm. (Pen. Code, § 29800, subd. (a)(1).)¹ Defendant challenges the trial court's order denying his pretrial motion to suppress evidence. (§ 1538.5.) He argues officers searched his residence, and found the firearm, prior to obtaining a warrant. His argument is premised on his contention that one of the two officers who testified at the hearing on the evidence suppression motion was not credible. Seeing no error, we affirm.

II. THE SUPPRESSION HEARING

“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.) The prosecution presented evidence officers had a warrant to search defendant's home; further, a protective sweep but no search for evidence was conducted before the warrant issued. Defendant raises no issue with respect to the protective sweep. Rather, he contends that officers searched his home prior to obtaining the warrant.

Frank Alvarado, a Los Angeles County Sheriff's detective, testified officers had first obtained a warrant to search a residence at 501 South Sadler Avenue in East Los Angeles.

¹ All further statutory references are to the Penal Code.

Defendant lived next door, at 505 South Sadler Avenue. After arriving at the 501 location and speaking with several people in the house, Alvarado decided to obtain a search warrant addendum extending the search to defendant's address. Alvarado returned to his office to secure the addendum. Judge Richard Ocampo signed the search warrant addendum at 6:33 p.m. and faxed it to Alvarado at 6:36 p.m. Alvarado "immediately" called Sergeant Martin Rojas who had remained at the search location. Alvarado testified that to his knowledge no one searched 505 South Sadler Avenue before he telephoned Rojas to say the search warrant addendum had been signed. Rojas testified that no one had searched 505 South Sadler Avenue for evidence before he received the telephone call from Alvarado.

Defendant's trial attorney attempted to show the search occurred before the warrant issued. Sergeant Rojas testified that once he knew the search warrant addendum had been signed, he used a handheld camera to video record the condition of the property prior to the search. On cross-examination, defense counsel introduced screenshots from a DVD menu. One screenshot contained two icons labeled July 22, 2013 (the search date) at 4:36 p.m. and 5:43 p.m. A second screenshot contained icons labeled July 22, 2013 at 5:49 p.m. and 6:43 p.m. Rojas did not know which location the respective icons referenced—501 or 505 South Sadler Avenue. He could not recall which location officers searched first. Rojas further testified the time stamp on the camera was off by an hour and six minutes. He did not say whether the time stamp was ahead of or behind the actual time. Defense counsel relied on the time stamps to argue officers

searched 505 South Sadler Avenue before Alvarado secured the search warrant addendum.

The trial court concluded there was credible, uncontroverted evidence officers searched defendant's residence after the judge issued the search warrant addendum. The trial court rejected defense counsel's arguments Sergeant Rojas's testimony regarding the time stamps was not credible, and the DVD screenshots established the search occurred without a warrant.

III. DISCUSSION

Substantial evidence supported the trial court's ruling. The applicable standard of review is well established: "[I]n ruling on a motion under section 1538.5 the superior court sits as a finder of fact with the power to judge credibility, resolve conflicts, weigh evidence, and draw inferences, and hence . . . on review of its ruling by appeal . . . all presumptions are drawn in favor of the factual determinations of the superior court and the appellate court must uphold the superior court's express or implied findings if they are supported by substantial evidence. [Citation.]" (*People v. Laiwa* (1983) 34 Cal.3d 711, 718; accord, *People v. Carrington* (2009) 47 Cal.4th 145, 166.) On the facts so found, an appellate court exercises independent judgment in determining whether the search was reasonable under the Fourth Amendment. (*People v. Macabeo* (2016) 1 Cal.5th 1206, 1212.)

Detective Alvarado and Sergeant Rojas both testified that no one had searched defendant's home before the judge issued the

addendum. This was substantial evidence officers conducted the search pursuant to a warrant.

Defendant reargues the evidence in an attempt to persuade this court that Sergeant Rojas was not a credible witness.² Defendant argues, “the motion should have been granted because contrary to [the] officers’ testimony, the search of the residence was conducted prior to the judge endorsing the addendum to the search warrant” Defendant deems it “highly likely” Rojas did not wait for the search warrant. Defendant reasons the DVD time stamps “show the search of 505 was completed at 6:43[, which] strongly suggests Rojas began the search well before the addendum was signed.” But there was no evidence that the time stamps referred to the search of 505, or that the time stamps were accurate. To the contrary, Rojas testified that the time stamps on the camera were off by an hour and six minutes. Rojas’s credibility was a question for the trial court to determine. (*People v. Thompson* (2010) 49 Cal.4th 79, 125 [“We reject defendant’s attempt to reargue the evidence on appeal and reiterate that ‘it is not a proper appellate function to reassess the credibility of the witnesses’”].) Substantial reasonable, credible evidence of solid value supported the trial court’s ruling on defendant’s evidence suppression motion. Accordingly, we affirm the denial order.³

² Defendant also complains that his booking sheet was “suspiciously altered.” We disregard this assertion because no evidence to that effect was introduced during the hearing on defendant’s evidence suppression motion.

³ Defendant does not dispute that the police obtained a valid search warrant for 505 South Sadler Avenue. The Attorney

IV. DISPOSITION

The order and judgment are affirmed.
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KIM, J.*

We concur:

BAKER, Acting P.J.

MOOR, J.

General does not argue and we need not consider whether the inevitable discovery doctrine additionally supports the denial of the motion to suppress. (*Murray v. United States* (1988) 487 U.S. 533, 539 [*since* the tainted evidence would be admissible if in fact discovered through an independent source, it should be admissible if it inevitably would have been discovered]; *People v. Superior Court (Corbett)* (2017) 8 Cal.App.5th 670, 682.)

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.