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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.

ANITA CHAVIRA SANCHEZ,

Defendant and Appellant.

B237013

(Los Angeles County Super. Ct.
No. BA384927)

APPEAL from a judgment of the Superior Court of Los Angeles County, Dennis J. Landin and Dorothy B. Reyes, Judges. Affirmed.

Law Offices of John F. Schuck and John F. Schuck, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Margaret E. Maxwell, Supervising Deputy Attorney General, Yun K. Lee, Deputy Attorney General, for Plaintiff and Respondent.

Following the denial of her motion to suppress evidence under Penal Code section 1538.5,¹ defendant and appellant Anita Chavira Sanchez entered a plea of no contest to two misdemeanor counts of counterfeiting a State of California seal in violation of section 472.² The trial court suspended imposition of sentence, and defendant was placed on probation without supervision for a period of three years. In this timely appeal from the judgment, defendant contends the evidence of the offense was the product of a warrantless search that violated the Fourth Amendment.³ We affirm the judgment.

FACTS⁴

On May 27, 2011, Los Angeles Police Department officers conducted a parole compliance check regarding defendant's son, Michael Zacarias, at 846½ South Oxford Street, where both defendant and Michael⁵ resided. The officers were attempting to locate an escaped convict who had been known to associate with Michael. They did not have a warrant for defendant and did not suspect her of committing any criminal activity at that time.

¹ Unless otherwise indicated, all statutory references are to the Penal Code.

² Defendant first moved to suppress evidence before the magistrate in conjunction with the preliminary hearing, and then moved to suppress again on the basis of the preliminary hearing transcript before the trial court.

³ The Fourth Amendment provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

⁴ The statement of facts is based on evidence presented at the preliminary hearing.

⁵ Michael and his father Gelbarto have the same surname, so we refer to them by their first names throughout this opinion.

According to Officer Abraham Santos, some officers searched the inside of the house, while he and others were outside. Officer Santos saw defendant drive up to the carport in a car known to be registered to Michael. After defendant exited the car, Officer Santos approached and asked if she had identification. Officer Scallon⁶ and Detective William Serra were with Officer Santos at the time. Officer Tyler Fox was also outside “holding the perimeter” of the house. None of the officers had their guns drawn, defendant was not handcuffed, nor placed in the back of the patrol car. Defendant handed Officer Santos a California identification card and a Mexican consulate card. The California identification card was issued to “Yolanda Garcia” at 846½ South Oxford Street. Officer Santos noted that the card lacked a seal, was in a different font and font color than an authentic California identification card, and that the laminate differed. Based on his training, he concluded that it had been forged. Defendant was arrested for possessing the counterfeit card. After her arrest, Officer Scallon searched defendant’s purse and discovered a social security card, which he gave to Officer Santos. Defendant did not give permission for the search of her purse. Defendant explained that she needed the cards for money and “to survive.”

Officer Santos then went into the house, where the parole search was still in progress. He found a wallet in a dresser drawer in the living room containing two social security cards, five California benefit cards, and a resident alien card. Two of the benefit cards were issued in defendant’s name, and the others were issued to her husband, Gelbarto Zacarias, her daughter, Susana Zacarias, and Michael. One of the social security cards was issued to defendant. The card did not appear to be genuine because the paper and font were not of the type used in an authentic social security card. The other social security card and resident alien card were issued to a “Yolanda Garcia.”

Officer Tyler Fox later examined the California identification card and concluded that it was counterfeit. He also ran a search to determine if the social security cards were

⁶ Officer Scallon’s first name is not included in the record.

valid. Neither the social security cards nor the California identification card “came back” to defendant.

Officers Santos and Fox testified that the police property report inaccurately stated the counterfeit California identification card had been recovered from the wallet inside the house, when, in fact, it had been recovered from defendant. The mistake was discovered on the morning of the hearing. Officer Santos testified that the main police report accurately stated the California identification card was recovered from defendant after she exited the car.

In contrast to Officer Santos’s version of events, defendant’s husband Gelbart, who the parties agree was in an open carport about 30 feet away when defendant arrived at the house, testified that Detective Serra was the officer who approached defendant and asked her for identification. Gelbart asserted that defendant produced a Mexican consulate card only. She did not give Detective Serra a California identification card and was not carrying one in her purse. Detective Serra told Gelbart the police were looking for a fugitive and that defendant was committing food stamp fraud. He then arrested defendant.

Gelbart testified the counterfeit California identification card, which had Yolanda Garcia’s name and defendant’s address on it, was in the wallet in his living room, along with benefit cards in the names of his children. He said defendant did not have a California driver’s license, but she had a valid California identification card issued by the Department of Motor Vehicles in 1980, which she carried in her purse. Gelbart had never seen defendant with a social security card in her name or in Yolanda Garcia’s name.

DISCUSSION

Defendant argues the officers lacked the “reasonable suspicion” required to perform a brief investigative stop under *Terry v. Ohio* (1968) 392 U.S. 1, because they suspected neither her nor Michael, whose car she was driving, of criminal activity. She

further asserts the stop was an unlawful detention because no reasonable person would have felt free to walk away and ignore the officers' request for identification. Defendant argues the officers would not have found the counterfeit social security card if not for her detention because the seizure of the counterfeit California identification card is what prompted officers to return to the house after the parole search had concluded. She contends that both the counterfeit California identification and social security cards should have therefore been suppressed.

The Attorney General asserts three grounds to justify the seizure of the counterfeit cards: (1) Officer Santos's act of approaching defendant and requesting identification did not constitute a seizure under the Fourth Amendment; (2) defendant was properly detained during the parole search; and (3) the counterfeit social security card would have inevitably been discovered in the course of the parole search regardless of whether the counterfeit California identification card had been found in defendant's possession.

In a case such as this, where a suppression motion is raised before a magistrate in conjunction with a preliminary hearing, and then again in superior court on the basis of the preliminary hearing transcript, we disregard the ruling of the superior court and review directly the magistrate's factual findings for substantial evidence. (*People v. Ramsey* (1988) 203 Cal.App.3d 671, 679 (*Ramsey*).) We review *de novo* the magistrate's determination that the search did not violate the Fourth Amendment. (*Ibid.*)

““Evidence, to be ‘substantial’ [our italics] must be ‘of ponderable legal significance . . . reasonable in nature, credible, and of solid value.’” [Citations.] And when a [magistrate's] factual determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the finding of fact, and when two or more inferences can reasonably be deduced from the facts as found, a reviewing court is without power to substitute its deductions for those of the [magistrate]. It is of no consequence that the trier of fact believing other evidence, or drawing different

inferences, might have reached a contrary conclusion. [Citations.]’ [Citation.]” (*Ramsey, supra*, 203 Cal.App.3d at p. 682, italics omitted.)

“‘The Fourth Amendment protects against unreasonable searches and seizures. (U.S. Const., 4th Amend.; *Terry v. Ohio*[, *supra*] 392 U.S. 1.) . . . [Citations.]’ [Citation.]” (*People v. Greenwood* (2010) 189 Cal.App.4th 742, 746.) “A search conducted without a warrant is unreasonable per se under the Fourth Amendment unless it falls within one of the ‘specifically established and well-delineated exceptions.’” (*People v. Woods* (1999) 21 Cal.4th 668, 674 (*Woods*), quoting *Katz v. United States* (1967) 389 U.S. 347, 357.)

“It is ‘well settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent.’ [Citations.]” (*Woods, supra*, 21 Cal.4th at p. 674.) Many interactions between the police and the public fall into this category. (See *Immigration & Naturalization Service v. Delgado* (1984) 466 U.S. 210, 215.) Along with other common interactions, “interrogation relating to one’s identity or a request for identification by the police does not, by itself, constitute a Fourth Amendment seizure.” (*Id.* at p. 216.) Such an interaction remains consensual “[u]ntil [an] officer asserts some restraint on the [defendant’s] freedom to move” (*People v. Castaneda* (1995) 35 Cal.App.4th 1222, 1227.)

We conclude substantial evidence supports the magistrate’s finding that defendant produced the counterfeit California identification card to Officer Santos when he asked her for identification. Officer Santos’s testimony is sufficient to establish this fact, and any contradictory evidence offered by defendant is irrelevant to our inquiry.

We further conclude that defendant’s compliance with Officer Santos’s request for identification was consensual. Officer Santos’s request was not accompanied by a show of force or any attempt to restrain defendant. He merely asked defendant if she had identification. Officer Santos’s gun was not drawn, and defendant was not handcuffed or placed in a patrol car when the request was made. Officer Santos did not do or say anything beyond requesting defendant’s identification to persuade her to comply. The

fact that more than one uniformed officer with a holstered gun was in the area at the time does not transform the interaction into a detention in the absence of other factors indicating that a reasonable person would not have felt free to leave. (*United States v. Drayton* (2002) 536 U.S. 194, 204 [the presence of armed and uniformed officers carries “little weight in the analysis” of whether an encounter is consensual].) We therefore hold that the magistrate did not err in denying the motion to suppress as to the California identification card.

With respect to the social security card, “[i]n California, probationers may validly consent in advance to warrantless searches in exchange for the opportunity to avoid service of a state prison term. [Citations.] For nearly three decades, this court has upheld the legality of searches authorized by probation terms that require probationers to submit to searches of their residences at any time of the day or night by any law enforcement officer with or without a warrant. [Citations.]” (*Woods, supra*, 21 Cal.4th at pp. 674-675, fn. omitted.) The same rule applies to warrantless searches of parolees. (*People v. Reyes* (1998) 19 Cal.4th 743, 750-752.) Where the prosecution can establish by a preponderance of the evidence that evidence would have inevitably been discovered in the course of a parole check, it may be admitted into evidence. (See *People v. Carpenter* (1999) 21 Cal.4th 1016, 1040 [“Evidence need not be suppressed if the prosecution can establish by a preponderance of the evidence that the information would inevitably have been discovered by lawful means.”].)

We hold that the magistrate did not err in denying defendant’s motion to suppress with respect to the social security card, which the parties agree was found in a wallet inside a drawer in a common area of the house. Officers had reason to suspect that defendant’s son Michael, who was on parole at the time and therefore subject to a warrantless search, may have seen or had communications with an escaped prisoner, and undertook the search of the common areas of defendant’s home for the purpose of discovering leads as to the convict’s whereabouts. The search was therefore lawful. There is also substantial evidence to support the magistrate’s finding that the counterfeit social security card would have inevitably been discovered in the course of the parole

search. Officer Santos testified that the search was ongoing at the time he returned to the house. When he discovered the wallet it was in the living room, a common area of the house, as opposed to in defendant's bedroom or some other area that Michael would not have shared with defendant. Given its location, there is no reason to believe the officers would not have discovered the counterfeit social security card in a search related to Michael. Moreover, Officer Santos testified that a visual inspection revealed it was obviously counterfeit, because the color and type of font were atypical of a valid social security card. Identification of the social security card as counterfeit did not result from discovery of other counterfeit identification possessed by defendant outside of the residence.

DISPOSITION

The judgment is affirmed.

KRIEGLER, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.