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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FIVE

THE PEOPLE, Plaintiff and Respondent, v. RONNIE YEARNELL CONRAD, Defendant and Appellant.	B284790 (Los Angeles County Super. Ct. No. VA128106)

APPEAL from an order and judgment of the Superior Court of Los Angeles County, Robert Higa, Judge. Affirmed.

H. Russell Halpern, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Zee Rodriguez and Michael C. Keller, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

A jury convicted defendant Ronnie Yearnell Conrad of torture, mayhem, corporal injury, methamphetamine possession, possession of cocaine base for sale, firearm possession by a felon and ammunition possession. Defendant's torture, mayhem and corporal injury convictions rested on substantial evidence that in December 2012 he tortured his teenage girlfriend for several hours in a motel room. Law enforcement officers, acting on an anonymous phone tip, and without a warrant, entered the motel room, rescued the badly injured victim and seized multiple items of incriminating evidence. Defendant argues the unidentified informant's tip was insufficiently corroborated as to criminal activity.

This appeal is from a trial court order denying defendant a new trial on ineffective assistance of counsel grounds. This is the third appeal arising out of the trial court's rulings on defendant's new trial motion.[1] Defendant argues his trial attorney was

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[1] The first appeal was by the People from an order granting defendant a new trial. The trial court concluded defendant's prior attorney, Chad Calabria, had a conflict of interest that was *presumptively prejudicial*. On appeal, we reversed the new trial order and remanded for the trial court to assess whether the conflict of interest resulted in *actual prejudice* to defendant. (*People v. Conrad* (Feb. 6, 2015, B256866) [nonpub. opn.].) On remand, the trial court found no actual prejudice and denied defendant's new trial motion.

The second appeal was by defendant from the new trial denial order. We concluded there was "an arguable, unresolved question whether Mr. Calabria was prejudicially ineffective for failing to file a section 1538.5 evidence suppression motion."

ineffective in failing to file an evidence suppression motion; the motion would have been granted because the anonymous tip that led law enforcement officers to defendant's motel room was insufficiently corroborated as to illegal activity; and, as a result, the officers had no objectively reasonable belief exigent circumstances justified their entry. We conclude the unidentified informant's tip was sufficiently corroborated in significant innocent detail and actual observation of illegal activity was not required. Accordingly, we affirm the new trial denial order and the judgment.

(*People v. Conrad* (May 10, 2017, B266604) [nonpub. opn.] typed opn. at p. 14.) We conditionally reversed the new trial denial order and remanded for the trial court to consider whether "defendant may be able to prove his Fourth Amendment claim is meritorious, his attorney's performance was deficient, and it is reasonably probable the verdict would have been more favorable to [defendant] absent the [evidence seized from the motel room]." (*People v. Conrad, supra*, typed opn. at p. 27.) Based on this language, defendant argues that this court has already ruled it was reasonably probable the verdict would have been favorable to defendant. We disagree; we remanded for the trial court to consider the issue.

On remand, in addition to denying defendant's new trial motion, the court resentenced defendant consistent with our opinion in the second appeal. This third appeal is by defendant from the judgment and the new trial denial order.

II. THE EVIDENCE

There is no material dispute as to the underlying facts. Rather than restate them, we quote our prior opinion in this case: "[L]aw enforcement officers entered [defendant's] motel room after receiving an anonymous tip. [The] '"WeTip"' caller said a male Black named 'Ronnie Conrot' was holding a 17-year-old girl named 'Tanya' against her will at the Lucky Lodge Motel in Bellflower, room 108, and was beating her. The caller also said Mr. 'Conrot' drove a silver Chevrolet Camaro with the license plate 5JFB122. Upon arrival at the motel, Detective Michael Garfin noticed a silver Ford Mustang with license [plate] 5JFB122 parked in front of room 108. A Department of Motor Vehicles records search revealed the Ford was registered to 'Ronnie Conrod.' Detective Garfin and his partner, identified only as Deputy Meyers, approached the door to room 108. Both officers observed that the curtains were completely closed and there was condensation on the window. The condensation led Deputy Meyers to believe the room was occupied. The door was closed and locked. Deputy Meyers knocked on the door several times and announced, "Sheriff's Department." There was no response. Detective Garfin did not hear any movement inside the room. The officers requested back up.

"Deputy Martin responded to the back-up call. Deputy Meyers told her, '[T]here was possibly a barricaded suspect holding a 17[-]year[-]old hostage' in room 108. Deputy Martin observed the door to the motel room was shut, the blinds were closed, and there was condensation on the inside of the window. The condensation indicated the room was probably occupied.

"Detective Garfin contacted the motel manager, John Wu. Mr. Wu said the room was registered to Ronnie Conrad who drove the silver vehicle; further, there was a young female with Mr. [Conrad]. The girl had been staying with Mr. Conrad for two weeks. Mr. Wu did not believe the girl was in any distress or that she was being held against her will. Mr. Wu believed Mr. Conrad and the young female were in the room at that time because he had not seen them leave. After obtaining a room key from the manager, forming a 'crisis entry team to rescue the female,' knocking several more times, and listening but hearing no sound, the officers entered the room." (*People v. Conrad, supra*, B266604, typed opn. at pp. 23-24.)

In connection with the most recent new trial motion hearing, the People introduced additional evidence—declarations by Detectives Martin and Garfin.[2] The facts contained in each of those declarations are consistent with the evidence set forth above. But the detectives added two new pieces of information. First, based on the detectives' background, training and experience, they opined that domestic violence or kidnapping victims generally do not reveal their distress to strangers—the inference being that the motel manager would not necessarily have had reason to know whether the victim was being held against her will or otherwise in distress.[3] Second, the detectives

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[2] The detectives were present on the date of the new trial motion hearing. The prosecutor advised the trial court the detectives were available to testify. However, there was no request that they do so.

[3] Detective Martin: "Based on my background, training and expertise involving situations of domestic violence and

both observed that the manager's office was some distance from room 108 and, therefore, the manager would not have heard any commotion or cries for help. The manager's office did, however, have a view of the parking lot making it possible to see people coming and going.

III. DISCUSSION

A. *Standard of Review*

We review the new trial denial order for an abuse of discretion. (*People v. Homick* (2012) 55 Cal.4th 816, 894.) We find no abuse of discretion here.

B. *Anonymous Tip May be Corroborated by Innocent Details*

The parties agree that an anonymous phone tip must be corroborated. (*Florida v. J.L.* (2000) 529 U.S. 266, 270-272 (*J.L.*); *People v. Wells* (2006) 38 Cal.4th 1078, 1088.) Defendant contends, however, that the officers could not rely on the anonymous tip to conclude exigent circumstances were present

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kidnapping, I know it is common for victims of both crimes to keep silent despite their abuse in an effort to defend their significant others and to avoid retaliation. Victims often hide or cover any injuries, especially when in contact with the public." Detective Garfin similarly explained: "[O]ften times in cases of domestic violence or kidnapping of vulnerable victims, such as underage females, victims do not voice distress to strangers or even to known individuals out of fear of retaliation from their assailants."

because, although corroborated in its innocent details, the tip "did not corroborate any criminal activity;" it was not "reliable in its assertion of illegality."[4]

Defendant does not dispute that *if* the anonymous phone tip *was* sufficiently corroborated, exigent circumstances justified entry into the motel room. Defendant argues: "The police arrived at the Lucky Motel after receiving an anonymous tip. *If the tip had been corroborated[,] a[n] entry into the Defendant's room would have been justified,* or if upon arrival they observed or heard a woman being beaten they could justify entry based upon a pressing emergency. The only corroboration offered by the officers[] established the Defendant as the person accused by the unidentified informant, *not the crime*. Here nothing close to a pressing emergency was observed by the officers, thus the entry into the motel room was clearly illegal and all physical and testimonial evidence discovered as a result thereof must be suppressed." (Italics added.)

Contrary to defendant's argument, an anonymous tip corroborated in its innocent detail may, under the totality of the circumstances, support an objectively reasonable suspicion of criminal activity even though no officer has personally observed any illegality. (*Alabama v. White* (1990) 496 U.S. 325, 331.) Although the tip must be corroborated beyond a physical description and location of a suspect (*J.L., supra*, 529 U.S. at p. 271), an anonymous tip's reliability is not dependent on a police officer corroborating illegal activity. "A tip's reliability . . . need

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[4] Defendant also requests that this court "consider and rule on all issues raised by" his opening brief in the prior appeal, case No. B266604. We have already done so. (*People v. Conrad, supra*, case No. B266604.)

not depend exclusively on its ability to predict the suspect's future behavior [citation] or the officer's ability to corroborate present illegal activity [citation]. Rather, the tip's reliability depends upon an assessment of 'the totality of the circumstances in a given case.' [Citations.]" (*People v. Dolly* (2007) 40 Cal.4th 458, 464.) Indeed, in *Dolly*, the court declined to follow decisional authority from other jurisdictions that barred reliance on an anonymous tip unless "corroborated by the officer's direct observation 'of conduct or other circumstances suggestive of criminal activity.'" The court held: "These cases are contrary to *Wells*, which eschewed such rigid categories in favor of an approach that assesses reliability under the totality of the circumstances. [Citations.]" (*People v. Dolly, supra*, 40 Cal.4th at p. 470.)

C. *Officers Had Objectively Reasonable Belief of Exigency*

Here, the question is not whether the anonymous phone tip supported an objectively reasonable suspicion sufficient to warrant an investigatory detention, but whether, based on the tip, and the facts known to them, the officers had an objectively reasonable belief entry into defendant's motel room, a more intrusive privacy violation, was necessary to rescue a seriously injured occupant or to protect that person from imminent injury or death. (*Brigham City v. Stuart* (2006) 547 U.S. 398, 400, 403-404; *People v. Troyer* (2011) 51 Cal.4th 599, 605-606.)[5] We note

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[5] In *Troyer*, our Supreme Court discussed whether probable cause is required in these circumstances. The defendant argued, "[T]he objectively reasonable basis for a warrantless entry under

that cases such as *Wells*, which involve a drunk or erratic driver; are distinguishable on grounds the observed, possibly illegal activity does not require any inside knowledge. Such cases fall into a category our colleagues in Division Seven described as "'"illegality open to public observation."'" (*Lowry v. Gutierrez* (2005) 129 Cal.App.4th 926, 938.) In circumstances such as those presented in this case, however, the officers necessarily rely on the unknown informant's knowledge of conduct the police cannot observe. The officers, having found the information provided by the tipster, including information not observable by passers-by, to be reliable, reason that the allegation of illegal conduct is also likely to be true.

The United States Court of Appeals considered a warrantless entry based on an anonymous tip in *U.S. v. Holloway* (11th Cir. 2002) 290 F.3d 1331, 1334, specifically, "whether law enforcement officers may conduct a warrantless search of a

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the emergency aid exception must be established by proof amounting to 'probable cause' . . . ." (*People v. Troyer, supra*, 51 Cal.4th at p. 606.) The court noted that: "[S]ome courts have held that any probable cause requirement is automatically satisfied whenever there is an objectively reasonable basis for believing that an occupant is in need of emergency aid. [Citations.] Other courts have reasoned that the concept of probable cause simply has no role in the analysis of a warrantless entry into a residence under the emergency aid exception. [Citations.] We decline to resolve here what appears to be a debate over semantics. Under either approach, and in light of the fact that 'the ultimate touchstone of the Fourth Amendment is "reasonableness,"' our task is to determine whether there was an objectively reasonable basis for believing that an occupant was seriously injured or threatened with such injury. [Citations.]" (*Id.* at p. 607.)

private residence in response to an emergency situation reported by an anonymous 911 caller." The caller had reported shots fired during a domestic dispute at the defendant's residence. When responding officers arrived: "[N]othing at the mobile home dissuaded [them] from believing the veracity of the 911 calls. Rather, the presence of [the defendant] and his wife on the front porch supported the information conveyed by the 911 caller." (*Id.* at p. 1338.) The court concluded, "[W]hen exigent circumstances demand an immediate response, particularly where there is danger to human life, protection of the public becomes paramount and can justify a limited, warrantless intrusion into the home." (*Id.* at p. 1334; see also *U.S. v. Richardson* (7th Cir. 2000) 208 F.3d 626, 630 [because many 911 calls are inspired by true emergencies that require an immediate response, such calls can be enough to support warrantless searches under exigent circumstances exception particularly when caller identifies himself]; *U.S. v. Cunningham* (8th Cir. 1998) 133 F.3d 1070, 1072 [defendant acknowledged police had right to enter apartment to investigate 911 call in which caller identified herself and said she was being held against her will].)

The officers here relied on an anonymous call to a "WeTip" line rather than a 911 call. The facts of *Winchester v. Cosaineau* (D.Colo. 2005) 404 F.Supp.2d 1262, are therefore more analogous. In that case, a person identified only as "Jerry" telephoned the police/fire dispatch and reported a possible suicide/overdose at a specific location. Officers went to the location where they spoke with a neighbor. The neighbor confirmed the person in question took pain medication. Officers entered the apartment only after knocking loudly on the door and announcing their presence but receiving no response. (*Id.* at pp. 1264-1266, 1270.) The

apartment resident brought a civil rights action under 42 United States Code section 1983, alleging the officers violated her Fourth Amendment rights. The District Court held there was sufficient corroboration of an emergency to support the officers entry into plaintiff's apartment and thus no Fourth Amendment violation. (*Id.* at p. 1270.)

A Florida District Court of Appeal reached the opposite conclusion on different facts in *Wheeler v. State* (Fla.App. 2007) 956 So.2d 517. An anonymous phone report to law enforcement personnel said a male was battering a female in the driveway of a residence. The report was later updated to say the combatants had gone inside the home. The court held the tip was not sufficiently corroborated and did not afford officers a reasonable basis to believe an emergency existed inside the house: "[T]he record shows that the dispatch consisted of an anonymous report that a male was battering a female in the driveway of the designated residence. It was reasonable for the deputies to infer that the report was made by an eyewitness, especially after the dispatch was later updated to report that the individuals involved had gone inside the residence. However, the report contained no other details. There was no description of either of the persons involved, no description of the nature of the battery, and no indication that anyone appeared injured. Upon arrival, the deputies found nothing to corroborate the report of a battery. They saw no physical evidence indicating a struggle or an injury to a person. No one they spoke with knew anything about the incident. There was nothing suspicious about the residence itself, such as an open door, and the deputies did not determine that there were persons inside the residence who refused to answer the door. Moreover, the deputies did not testify that there was

any indication from inside the residence that someone within was in need of their assistance. In fact, the only information that may have corroborated the dispatch was an indication by [a] male working on [a] car [outside the residence] that there were persons inside the house and [the defendant's] acknowledgment, after answering the door, that a female had left. [¶] Not only did the deputies not find anything at the scene to corroborate the anonymous report of a battery, the interviews with persons at the scene indicated that a battery had not taken place. [¶] With nothing more than these facts, we conclude that the deputies did not have a reasonable basis to believe that a grave emergency existed that made it imperative to the safety of the police and the community that they enter the home contrary to the requirements of the Fourth Amendment." (*Id.* at p. 521.) *Wheeler* is distinguishable for its complete lack of corroboration.

The authority discussed above supports a conclusion that, under the totality of the circumstances, an anonymous tip may support an objectively reasonable belief exigent circumstances warrant entry into a home or, as in this case, a motel room, even though officers have not personally observed or otherwise corroborated *illegal activity*. Moreover, here, the anonymous phone tip was sufficiently corroborated in its innocent detail and the officers, having also conducted further consistent investigation, could reasonably conclude the tipster's claim a young woman was being beaten was reliable. Officers on the scene confirmed that defendant, accompanied by a young woman, had rented room 108 and a car registered to defendant, matching the anonymous caller's description as to style, color and exact license plate number, was parked in front of room 108. Further investigation revealed that although the motel manager did not

think defendant's companion was being held against her will or was otherwise in distress, he was not in a position to know what was happening inside the motel room. The motel office was too far from room 108 for the manager to have heard any commotion or cries for help. And, in the detectives' experience, even if the victim was in distress, it was unlikely she would have revealed that information to the motel manager, a stranger. The motel manager did have a view from the office to the parking lot. He believed defendant and the young woman were in the motel room at the time the officers were present because he had not seen them leave. Moreover, condensation on room 108's window indicated the room was occupied, but there was no response to repeated knocking on the locked motel room door and announcements of law enforcement presence. Under the totality of the circumstances—the anonymous phone tip's accuracy in significant innocent detail, coupled with the information garnered from the motel manager and the officers' own observations—the detectives had an objectively reasonable basis for crediting the tipster's assertion of illegality and believing an occupant of room 108 was seriously injured or was threatened with imminent serious injury or death.

It is true that anyone passing the motel could have seen defendant's car parked in front of room 108. But such a person would not have known defendant's name, that it was his car parked there, that he was in room 108, or that he was accompanied by a young woman. Further, that the motel manager did not describe the victim as appearing to have been beaten, for example, or the officers did not hear anything consistent with a woman being physically harmed, did not undermine their objectively reasonable conclusion, on the

information provided and the facts known to them, that the anonymous caller's claim about the victim's plight was reliable.

D. *No Error in Denial of New Trial Motion*

Because the police officers reasonably relied on the anonymous phone tip and because their warrantless entry into defendant's motel room was legally justified by exigent circumstances, it is not reasonably probable that defendant would have prevailed in his suppression motion. Defendant therefore suffered no prejudice as a result of the fact his trial attorney never filed such a motion.[6] The trial court did not abuse its discretion when it denied defendant's new trial motion on ineffective assistance of counsel grounds. Given this resolution, we need not address other issues raised by the Attorney General. (*People v. Panah* (2005) 35 Cal.4th 395, 466, fn. 24; *People v. Butler* (2003) 111 Cal.App.4th 150, 162.)

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[6] It was defendant's burden to show he was entitled to a new trial because his trial attorney "failed to perform with reasonable competence and that it is reasonably probable a determination more favorable to . . . defendant would have resulted in the absence of counsel's failings. [Citation.]" (*People v. Fosselman* (1983) 33 Cal.3d 572, 584.) A court need not resolve the question whether counsel's performance was deficient before examining whether the defendant suffered prejudice. (*Strickland v. Washington* (1984) 466 U.S. 668, 697; *People v. Holt* (1997) 15 Cal.4th 619, 703.) "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." (*Strickland v. Washington, supra*, 466 U.S. at p. 697.)

IV. DISPOSITON

The new trial denial order and judgment are affirmed.
NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

KIM, J.*

We concur:

KRIEGLER, Acting P.J.

BAKER, J.

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