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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

THE PEOPLE,  Plaintiff and Respondent,  v.  ELIESER BENCOMO,  Defendant and Appellant.	B278113  Los Angeles County Super. Ct. No. BA427826
THE PEOPLE,  Plaintiff and Respondent,  v.  SENDY FERNANDEZ ENRIQ,  Defendant and Appellant.	B281330  Los Angeles County Super. Ct. No. BA427826

APPEALS from a judgment of the Superior Court of Los Angeles County, Craig Richman, Judge. Affirmed.

Maxine Weksler, under appointment by the Court of Appeal, for Defendant and Appellant Elieser Bencomo.

Ava R. Stralla, under appointment by the Court of Appeal,  
for Defendant and Appellant Sendy Fernandez Enriq.

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Assistant Attorney General, Lance E. Winters, Assistant  
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Deputy Attorneys General, for Plaintiff and Respondent in  
No. B281330.

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## INTRODUCTION

Defendants Elieser Bencomo and Sendy Fernandez Enriq<sup>1</sup> appeal from a judgment entered after they pled no contest to trafficking more than four kilograms of cocaine. They contend the trial court erred by denying their motion to suppress the drugs found in a warrantless search of Bencomo's truck. We conclude the search was justified under the automobile exception because it was supported by probable cause. We therefore affirm.

## PROCEDURAL BACKGROUND

By information filed November 24, 2014, defendants were charged with one count of possession for sale of a controlled substance (Health & Saf. Code, § 11351; count 2) and one count of transportation of a controlled substance (Health & Saf. Code, § 11352, subd. (a); count 3). As to both counts, the information alleged that the controlled substance weighed more than 20 kilograms (Health & Saf. Code, § 11370.4, subd. (a)(4)).<sup>2</sup> Defendants pled not guilty and denied the allegations.

Defendants moved to suppress the evidence of cocaine found in Bencomo's truck, contending there was no probable

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<sup>1</sup> We refer to this defendant by his primary surname, Fernandez. We also note that though the appellate record refers to him variously as Enrique Fernandez, Enrique Sendy Fernandez, and Sendy Fernandez Enriquez, his true name appears to be Sendy Fernandez Enriq. We refer to Bencomo and Fernandez collectively as defendants.

<sup>2</sup> Gabriel Gonzalez was charged in the same information with one count of possession of more than \$100,000 to purchase a controlled substance (Health & Saf. Code, § 11370.6, subd. (a); count 1) as well as counts 2, 3, and their related allegations. He is not a party to this appeal.

cause to search the truck, the pre-search traffic stop was unlawfully prolonged beyond its traffic-related purpose, and they did not validly consent to the search. After a contested proceeding under Penal Code section 1538.5, the court concluded the search was supported by probable cause established during a narcotics task force investigation and denied the motion.

On September 21, 2016, in accordance with a negotiated plea agreement, defendants pled no contest to count 3 (Health & Saf. Code, § 11352, subd. (a)) and admitted that the substance's weight exceeded four kilograms (Health & Saf. Code, § 11370.4, subd. (a)(2)).<sup>3</sup> Each defendant was sentenced to an aggregate term of 10 years in county jail—the high term of five years for count 3 plus five years for the weight allegation, to run consecutively. The court suspended the last three years of each sentence and placed defendants on post-release mandatory supervision. The remaining count and allegations were dismissed.

Bencomo filed a timely notice of appeal based on the denial of the motion to suppress. With leave from this court, Fernandez filed a belated notice of appeal.

## **FACTUAL BACKGROUND**

On March 4, 2014, while conducting surveillance as part of a multiagency anti-narcotics-trafficking taskforce, Officer Ray Camuyi of the Montebello Police Department saw Gonzalez

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<sup>3</sup> Defendants and their attorneys represented that they had discussed the possible immigration consequences of the pleas, but conceded they didn't know how evolving diplomatic relations between Cuba and the United States might impact the potential deportation of defendants, who are both Cuban nationals.

loading a suspicious package into a commercial truck with two other men. Camuyi asked the California Highway Patrol to stop the truck, and a subsequent warrantless search yielded 28 kilograms of cocaine hidden in crates of oranges. Bencomo was the truck's driver. Fernandez was a passenger. We are asked to decide whether the taskforce investigation supplied sufficient evidence to justify the search.

## **1. Task Force Investigation**

Between October 2013 and March 2014, a team of 10 federal agents and local law enforcement officers investigated suspected narcotics trafficking tied to Gonzalez. The team was led by Special Agent Theodore Russell of the Drug Enforcement Administration.

The task force placed Gonzalez under physical surveillance in November 2013, and ultimately secured a warrant to place GPS trackers on Gonzalez's cars. Between the in-person surveillance and the GPS tracking data from dozens of trips, a pattern emerged.

Gonzalez drove to a Brinks shipping office in downtown Los Angeles. He always left at the same time of day. Gonzalez picked up a package from Brinks and returned with it to his apartment in Sylmar. Each package was either in a Brinks bag or some kind of box. At least two of the packages contained money. Thirty to forty-five minutes after Gonzalez returned to his apartment, Jimmy Torres and Ismael Herrera arrived. Gonzalez handed them a package—either the Brinks package or another one. At least one of the packages leaving the apartment contained \$293,000. The next day, Torres and Herrera returned to Gonzalez's apartment with a box or garbage bag, which they handed to Gonzalez. Between 15 minutes and an hour later,

Gonzalez drove two miles to a Sylmar truck yard and deposited something in the trunk of a gold Honda. The gold Honda was covered in dust; it never moved.

This pattern repeated itself 30 to 40 times. Officers theorized that Gonzalez was receiving shipments of money at Brinks, using the money to buy drugs, and storing the drugs in the trunk of the Honda.<sup>4</sup>

## **2. Truck Yard Surveillance**

The team first saw cars going to the truck yard in December 2013. On January 1, 2014, Russell subpoenaed the truck yard's gate access codes, which allowed the team to enter the yard. A month later, the team secured a warrant to place a

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<sup>4</sup> We have intentionally omitted any reference to alerts by a federal drug-detection dog. We agree with defendants that the prosecution did not establish the dog's reliability. (See *Florida v. Harris* (2013) 568 U.S. 237, 243, 248 [prosecution must establish training and reliability of drug-detection canine].)

We also agree with defendants that because of the general contamination of America's paper money supply, the scent of narcotics residue on U.S. currency, without more, is of limited probative value. Notwithstanding the People's view that Bencomo's reliance on federal authority is "irrelevant" since his "case was not tried in federal court," "is not in the Ninth Circuit, and probably won't end up there," we find the cited cases persuasive. (See, e.g., *People v. Morales* (2001) 25 Cal.4th 34, 45, fn. 5 [citing *U.S. v. \$5000 in U.S. Currency* (6th Cir. 1994) 40 F.3d 846, 849 for proposition "that in recent years, 97 percent of all paper money circulating in the United States has been contaminated with cocaine [citation], 90 percent of it sufficiently so contaminated as to be detectable by a trained dog [citation]."]; *People v. Bradley* (1969) 1 Cal.3d 80, 86 [lower federal court decisions, though not binding, are entitled to great weight].) As such, we do not consider that evidence in our analysis below and do not address it here.

pole camera in the truck yard. Russell would also periodically subpoena the gate code records, and the manager would let the team review security footage. Each customer used a unique gate code to enter the facility, so the team could tell who was coming and going. Ultimately, the team monitored the truck yard using the GPS trackers, the pole camera, security footage, and the gate code records.

In February 2014, the pole camera recorded 10 to 15 incidents of Gonzalez and two other men visiting the truck yard and placing packages in the Honda. On March 1 and 3, 2014, Russell and his team saw Gonzalez remove a package from his car and place it in the trunk of the Honda. Russell had secured a search warrant for the Honda the week before, but on March 4, 2014, when a large tractor-trailer appeared in the truck yard and Camuyi saw Gonzalez place a package inside its trailer, Russell decided to pursue the truck instead of using the warrant.

### **3. Gonzalez Moves a Heavy Bag from the Honda to a Commercial Truck**

The evening of March 4, 2014, Camuyi was conducting surveillance on the Sylmar truck yard with DEA Agent Matt Principe. Camuyi saw a large commercial truck—a white tractor-trailer—parked next to the gold Honda. The truck was running and its brake lights were flashing. Camuyi parked nearby so he could see the driver's side of the truck. The yard was mostly dark with some ambient light, so Camuyi watched with night vision goggles.

A small, dark SUV arrived and parked between the truck and the Honda. Gonzalez got out, approached the front of the truck, and spoke with the people inside. Two men, later identified

as Bencomo and Fernandez, got out of the cab and walked back towards the trailer.

Meanwhile, Gonzalez returned to the driver's side of the Honda, opened the door, and popped the trunk.<sup>5</sup> Gonzalez walked to the Honda's trunk and pulled out a large suitcase or duffle bag. Camuyi watched as Gonzalez struggled with the bag and shuffled with it towards the trailer. The bag appeared to contain something heavy.

At this point, Camuyi left his car to get a better look and hid under a tractor 20 or 30 yards from the truck. From his new vantage point, Camuyi could see that the three men had disappeared into the trailer. Camuyi heard the men speaking Spanish with Cuban accents and heard loud, metallic banging noises but could not make out what the men were saying. After about 15 to 20 minutes, Camuyi heard gravel crunching as the men jumped down from the trailer.

Camuyi returned to his car and reported his observations over the radio to the rest of the surveillance team surrounding the truck yard. Bencomo and Fernandez drove away in the truck; Gonzalez drove away in the SUV; the Honda remained parked in the truck yard.

As the tractor-trailer left the yard, Russell took over the surveillance. He followed the truck in an unmarked car from the time it left the truck yard until the CHP stopped it about 90 minutes later.

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<sup>5</sup> When Gonzalez opened the door, the Honda's dome light turned on. The light allowed Camuyi to identify him.



#### 4. CHP Stops the Truck

Around 8:20 p.m. on March 4, 2014, CHP Officer Heath Kuhlmann received a call from a narcotics task force member. The officer asked Kuhlmann to conduct a wall stop<sup>6</sup> on a white tractor-trailer traveling east on Palmdale Road in Victorville. Kuhlmann parked in an area the truck was expected to pass and coordinated with the task force by phone to determine when it would be driving by.

The truck passed Kuhlmann between 9:30 and 10:00 p.m., and Kuhlmann followed it. A few minutes later, Kuhlmann saw the truck cross over a double yellow line while passing a slower commercial rig—a traffic violation (Veh. Code, § 21460, subd. (a)). Kuhlmann continued following the truck for a few miles until he found a safe place to pull over, then activated his light bar and stopped the truck. When Kuhlmann activated his emergency lights, the dashboard camera began recording automatically.

Kuhlmann approached the passenger’s side of the tractor and asked the driver, Bencomo, to step down. Meanwhile, Fernandez opened the curtains from inside the sleeper compartment but stayed inside. Kuhlmann asked Bencomo for his driver’s license, registration, and logbook.<sup>7</sup> Bencomo provided

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<sup>6</sup> A “wall stop” appears to be a pretext stop or an investigative detention based on reasonable suspicion. (See *Terry v. State of Ohio* (1968) 392 U.S. 1; *Berkemer v. McCarty* (1984) 468 U.S. 420, 439 [applying *Terry* to traffic stops]; *Whren v. U.S.* (1996) 517 U.S. 806 [if a traffic law was violated by the vehicle being stopped, the police officer’s subjective motivation for making the stop is irrelevant].)

<sup>7</sup> A commercial driver’s record of duty status, commonly known as a logbook, is a document the driver uses to record his compliance with the detailed regulations governing his work hours. Each log is a 24-

them. (See Cal. Code Regs., tit. 13, § 1213, subd. (a)(3) [logbook must be presented to law enforcement upon request]; Veh. Code, § 34501.4 [same].) Bencomo's driver's license was issued by the State of Florida.

After walking Bencomo to the squad car, Kuhlmann asked to see the bill of lading. Bencomo provided two bills of lading—one from the day before, March 3, 2014, and one from March 4, 2014. The March 4, 2014, bill of lading indicated Bencomo's cargo had been loaded at 12:00 or 12:30 p.m. in Sanger, California—near Fresno—but according to the logbook, Bencomo didn't leave Sanger until 6:00 p.m. Neither the logbook nor the bill of lading indicated that Bencomo had been driving during this period, that he had stopped in Sylmar, or that he had loaded additional cargo.

Bencomo told Kuhlmann he was headed to Maryland. Kuhlmann found this strange, since Victorville is not on the way from Sanger to Maryland, and the detour meant Bencomo was driving extra miles for which he would not be paid. Finally, Kuhlmann told Bencomo he was free to leave. By this point, Bencomo and Fernandez had been detained for about 26 minutes.<sup>8</sup>

Yet as Bencomo walked away, Kuhlmann asked if he could speak with him for a few minutes. At this point, Kuhlmann attempted to speak to Bencomo in Spanish. (Earlier, Bencomo

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hour grid on which the driver records whether he is off duty, sleeping, driving, or on-duty but not driving. (Cal. Code Regs., tit. 13, § 1213, subd. (c)(1)–(4).) False log reports can subject a driver to prosecution. (*Id.*, subd. (f).)

<sup>8</sup> According to Kuhlmann, an average non-truck traffic stop usually lasts 10 to 20 minutes. Stops involving tractor-trailers can take longer if there is more paperwork or if the paperwork is not in order.

had told Kuhlmann that he spoke Spanish, not English.) Bencomo agreed and walked back toward Kuhlmann. Kuhlmann asked for permission to search the truck.<sup>9</sup>

Eventually, the truck was moved to a nearby CHP office, where members of the drug task force conducted a comprehensive search. Sometime after midnight, at the bottom of a crate of oranges, Principe found 28 single-kilogram bricks of cocaine wrapped in black tape. Each brick was about a foot long and three or four inches wide and deep. The bag Gonzalez had removed from the Honda was not recovered from the truck, and no one from the task force returned to search the Honda. The Honda was driven away sometime during the next few weeks.

## DISCUSSION

Defendants contend the warrantless search of the tractor-trailer was unreasonable under the Fourth Amendment because there was no probable cause to believe it contained contraband at the time of the traffic stop; the stop was prolonged beyond its traffic-related purpose; neither defendant validly consented to the search; and the second search exceeded the scope of any consent. Because we agree with the court below that probable cause justified the search under the automobile exception to the warrant requirement, we do not reach defendants' additional claims.

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<sup>9</sup> The reporter's transcript in Bencomo's appeal is missing the second half of Kuhlmann's direct examination and the entire cross-examination. Though the reporter's transcript in Fernandez's appeal contains that testimony, we do not address it or rely on it.

## 1. Legal Principles and Standard of Review

The Fourth Amendment to the United States Constitution 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.” (U.S. Const., 4th Amend.) The Fourth Amendment applies to state and local law enforcement officials through the due process clause of the 14th Amendment. (*People v. Banks* (1993) 6 Cal.4th 926, 934.)

Warrantless searches “conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.” (*Katz v. United States* (1967) 389 U.S. 347, 357, fns. omitted.) Accordingly, when a defendant challenges the legality of a warrantless search or seizure, the People must prove by a preponderance of the evidence that the search fell within one of the recognized exceptions to the warrant requirement. (*People v. Romeo* (2015) 240 Cal.App.4th 931, 939; *People v. Williams* (1999) 20 Cal.4th 119, 129 [ Pen. Code, § 1538.5 “by its terms, authorizes a motion to suppress if ‘[t]he search or seizure without a warrant was *unreasonable*.’ ”].)

“When reviewing the denial of a suppression motion, we defer to the trial court’s express or implied factual findings if supported by substantial evidence, but exercise our independent judgment to determine whether, on the facts found, the search or seizure was reasonable under the Fourth Amendment. [Citations.] We will affirm the trial court’s ruling if it is correct on

any theory of law applicable to the case, even if for reasons different than those given by the trial court. [Citation.]” (*People v. Evans* (2011) 200 Cal.App.4th 735, 742.)

**2. The search was reasonable under the automobile exception because it was supported by probable cause.**

“Under the automobile exception” to the warrant requirement, “police who have probable cause to believe a lawfully stopped vehicle contains evidence of criminal activity or contraband may conduct a warrantless search of any area of the vehicle in which the evidence might be found. [Citations.]” (*People v. Evans, supra*, 200 Cal.App.4th at p. 753; *United States v. Ross* (1982) 456 U.S. 798, 820–821.) The search may be “‘as thorough (as to location and type of container searched) as that which a magistrate could authorize by warrant[.]’” (*People v. Panah* (2005) 35 Cal.4th 395, 469.) But though the police may conduct a warrantless search, the automobile exception excuses only the *procedure* of acquiring a search warrant; there must still be probable cause on which a search warrant *could have* been issued. (*Ross*, at p. 809.)

Probable cause to search exists “where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found” in a particular place. (*Ornelas v. U.S.* (1996) 517 U.S. 690, 696; *Illinois v. Gates* (1983) 462 U.S. 213, 235, 238, 244, fn. 13 [probable cause requires only a “fair probability” or “substantial chance,” not a “prima facie showing, of criminal activity”].) Probable cause is “a fluid concept—turning on assessment of probabilities in particular factual contexts ... .” (*Gates* at p. 232.)

Under the collective knowledge doctrine, information provided by another officer or law enforcement agency is presumed reliable and may form the basis for probable cause. (*People v. Ramirez* (1997) 59 Cal.App.4th 1548, 1553–1558.) Thus, “a detaining officer who is not personally aware of all the facts on which a reasonable suspicion [or probable cause] might be based may nevertheless properly detain an individual on the basis of a direction or information transmitted by police officers who were personally aware of such facts. [Citations.]” (*People v. Soun* (1995) 34 Cal.App.4th 1499, 1521.) Put another way, “when police officers work together to build ‘collective knowledge’ of probable cause, the important question is not what each officer knew about probable cause, but how valid and reasonable the probable cause was that developed in the officers’ collective knowledge.” (*Ramirez*, at p. 1555.)<sup>10</sup>

Here, defendants concede the initial stop was lawful. Accordingly, if the prosecution proved, by a preponderance of the evidence, that the law enforcement team had probable cause to believe the truck contained contraband, the searches were valid under the automobile exception. We conclude the prosecution met its burden.

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<sup>10</sup> Although an officer may initiate a search based upon information furnished through official channels, the *Harvey-Madden* rule requires the prosecution, at a suppression hearing, to prove the source of the information is something other than the imagination of an officer who does not testify. (*People v. Madden* (1970) 2 Cal.3d 1017, 1021; *People v. Harvey* (1958) 156 Cal.App.2d 516.) *Harvey-Madden* is not implicated in this case because the prosecution presented testimony by the law enforcement officers with direct knowledge of the facts underlying probable cause to conduct the search.

The evidence gathered during the task force's five-month investigation established a "fair probability" or "substantial chance" that Gonzalez was smuggling contraband of some sort. (See *Illinois v. Gates, supra*, 462 U.S. at pp. 238, 244, fn. 13.) Gonzalez made dozens of trips to Brinks to pick up packages, at least two of which contained money. Within an hour of his return, he would hand a package to Torres and Herrera. At least one of *those* packages contained nearly \$300,000. This supported a reasonable inference that Gonzalez was picking up shipments of cash and giving some or all of it to Torres and Herrera. Based on this evidence alone, Gonzalez appeared, at minimum, to be either laundering money or transferring it without reporting the transactions to the necessary authorities.

But that was not the only evidence. Torres and Herrera then returned the next day carrying parcels of their own—sometimes packages, sometimes garbage bags—that they gave to Gonzalez. This evidence supports the inference that Torres and Herrera were using Gonzalez's money to buy something—and the unusual nature of the exchanges supported a further inference that the purchases, whatever they were, did not involve typical commercial activity. Given the quantity of cash involved, Gonzalez was apparently buying something valuable. Yet rather than store his purchases in his home, business, or a secure facility, Gonzalez opted to stash them in the trunk of a dusty Honda in a truck yard. That evidence also supports the inference that he was using his undeclared currency to buy something illicit from Torres and Herrera. On the strength of this evidence, the task force was able to obtain a warrant to search the Honda—but there was even more evidence to support the ultimate search of the truck.

On March 4, 2014, Bencomo and Fernandez helped Gonzalez transfer a heavy bag into a commercial truck in the dead of night. Given that Gonzalez had apparently been using the Honda to store his purchases, it would be reasonable to infer that the bag contained at least some of the items he received from Torres and Herrera. Moreover, Gonzalez did not give Bencomo a bill of lading, and Bencomo did not record the drive to Sylmar, the stop, or the new cargo in his logbook as required by commercial trucking regulations. (See, e.g., Cal. Code Regs., tit. 13, § 1213.) Instead, his logbook falsely indicated he didn't leave Sanger until 6:00 p.m. All of this evidence supported an inference that Gonzalez was using Bencomo and Fernandez to smuggle contraband cross-country to the people who had mailed him 30 to 40 packages of cash.

Accordingly, law enforcement had probable cause to search the truck under the automobile exception, and the court properly denied the motion to suppress the fruits of that search.



**DISPOSITION**

The judgment is affirmed.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

DHANIDINA, J.