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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.

MOHSEN MOADDAB,

Defendant and Appellant.

B275838

(Los Angeles County
Super. Ct. No. LA082477)

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

Richard L. Fitzer, under appointment by the Court of
Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler,
Chief Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Victoria B. Wilson and Idan Ivri, Deputy
Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Mohsen Moaddab appeals his conviction for identity theft, asserting that the trial court erred when it denied Defendant's motion to suppress. We affirm because the police did not violate Defendant's Fourth Amendment rights when they entered Defendant's mother's home and arrested him without a warrant to prevent destruction of evidence.

FACTS AND PROCEDURAL BACKGROUND

1. The Break-In and Warrantless Arrest

Defendant's mother lives in an apartment complex, and he often visits and sometimes stays with her. The apartment complex's security guards noticed that the complex's mailboxes were repeatedly broken into and that the break-ins typically occurred shortly after Defendant arrived at the complex. The security guards set up a "sting operation" to catch Defendant stealing the mail. When Defendant arrived at the complex, one security guard radioed fellow security guard Henry Depaz to position himself in a location to watch the mailboxes. Depaz then observed Defendant pull open the security door of the mailbox bank and appear to take envelopes from the boxes and place them in his bag. Startled by another tenant entering the area through a garage door, Defendant ran up the stairs. Depaz ran after him but could not get to Defendant before he entered his mother's apartment, unit 126. Although Depaz did not see unit 126's door close, he heard it slam. Depaz then promptly called the police and waited in the hallway outside the apartment until the police arrived.

Ten minutes later, four police officers met Depaz, who informed them of what transpired. Officer James Jester knocked on the door to unit 126 three times before Defendant's mother

answered the door. Officer Jester asked if Defendant was home. In broken English, the mother stated that he was not home. Due to the language barrier, Officer Jester repeated several times that the police needed to look for Defendant in the apartment. After some back and forth between the officer and Defendant's mother, the mother stepped back, opening the door, and the police entered. The police never obtained verbal consent from Defendant's mother to enter. The mother testified that the officer pushed the door open.

Police officers found Defendant hiding inside a closet and arrested him. During the search inside the residence, Officer Oscar Cordoba saw mail in plain view which was not addressed to unit 126.

2. Defendant's Motion to Suppress and Conviction

In an information filed March 7, 2016, the State charged Defendant with four counts of identity theft with a prior conviction (Pen. Code, § 530.5, subd. (c)(2)), and one count of theft (Pen. Code, § 484e, subd. (d) ¹). Defendant moved to suppress all evidence resulting from the officers' entry into his mother's home.

Police officers who entered the mother's apartment and arrested Defendant testified at the hearing. Much of the questioning focused on consent to search.² Nonetheless, Officer Jester who first entered the apartment, explained that he did so because Defendant could easily destroy the evidence. He testified: "From what I'd been told by the security guard I

¹ All subsequent statutory references are to the Penal Code.

² We do not decide this case on the issue of consent to search, as it does not appear that consent was obtained from Defendant's mother.

believed he had mail in his possession, some sort of a tool that enabled him to gain access to the mailbox area. And now had the ability to either destroy the mail that he had on him or use it to commit other criminal acts, thanks to the internet. And so that's why I didn't feel like there was . . . time [to secure a warrant]." Officer Jester explained that when he said "thanks to the internet," he meant Defendant could easily open accounts, order things, use credit cards, and utilize someone's identity on the internet if the police took the time to obtain a warrant.

In addition to arguing consent to search, the State contended exigent circumstances existed because Defendant could easily destroy the evidence by shredding, burning, or flushing it down the toilet. Defendant could also utilize the mail to commit crimes with people's identities and account information. The State further argued that the police were in hot pursuit as a short period of time had passed from the time the security guard chased Defendant up the stairs and from the time of their arrival. Defense counsel argued that there was no consent to enter the apartment, there was no evidence that Defendant would destroy the mail, and there was no hot pursuit to authorize a warrantless entry.

The court denied Defendant's motion to suppress, reasoning that exigent circumstances existed due to the destructibility of the evidence. The court explained, "the circumstantial evidence was that he was taking mail. And the reality is, is that the officers are at the door. They're talking to the mom. The Defendant knows that the police are there. All he has to do is burn the mail or put it into the toilet. By the time they get a search warrant[,] and the [mail] because it's all made of paper is destroyed. So based on all that the motion is denied."

Defendant then pleaded no contest to one count of identity theft and the remaining counts were dismissed pursuant to a plea negotiation. The court sentenced Defendant to the upper term of three years in county jail, with the final 20 months of the term suspended with various terms and conditions. He was awarded a total presentence credit of 340 days. The court also imposed a restitution fine of \$300 under section 1202.4, subdivision (b), and imposed but stayed a parole/post-release community supervision revocation fine of \$300 under section 1202.45.

DISCUSSION

Defendant appeals the denial of his suppression motion, arguing the officers' entry into his mother's home and his arrest violated his Fourth Amendment rights. The Fourth Amendment prohibits warrantless arrests within the home, absent exigent circumstances. (*People v. Hull* (1995) 34 Cal.App.4th 1448, 1455 (*Hull*).) As relevant here, " 'exigent circumstances' means an emergency situation requiring swift action to . . . forestall the imminent escape of a suspect or destruction of evidence. There is no ready litmus test for determining whether such circumstances exist, and in each case the claim of an extraordinary situation must be measured by the facts known to the officers." (*People v. Ramey* (1976) 16 Cal.3d 263, 276.) We engage in "a two-step inquiry: first, [asking] factual questions as to what the officer knew or believed and what action he took in response; [and] second, [evaluating] a legal question whether that action was reasonable under the circumstances." (*People v. Duncan* (1986) 42 Cal.3d 91, 97.) Relevant factors we consider include: the amount of time to obtain a warrant and urgency involved, the reasonableness of the officer's belief that the evidence will be

destroyed, information indicating that the perpetrator is aware the police are on his tail, and the destructibility of the evidence. (*People v. Bennett* (1998) 17 Cal.4th 373, 385.) The State bears the burden of establishing, by a preponderance of the evidence, that exigent circumstances justified the warrantless entry. (*Illinois v. Rodriguez* (1990) 497 U.S. 177, 181; *People v. Camacho* (2000) 23 Cal.4th 824, 830.) We review the trial court's factual findings under the deferential substantial evidence standard, but independently review the trial court's application of the law to these facts. (*People v. Ayala* (2000) 23 Cal.4th 225, 255.)

Here, based on the facts known to Officer Jester, it was objectively reasonable for the officer to suspect that Defendant committed a felony, conclude that evidence of mail theft in Defendant's possession could easily be destroyed, and believe that it would in fact be destroyed if he waited to obtain a search warrant. Depaz communicated to Officer Jester that he watched Defendant force open the security door to 15 to 20 mailboxes, and that Defendant fled to his mother's apartment when he was startled by a tenant. Jester testified that based on Depaz's observations of Defendant's conduct, he believed Defendant stole mail from the mailbox bank. Depaz also communicated to the police that Defendant did not leave unit 126 following the theft. Depaz watched unit 126's door until police arrived, only leaving the door for two minutes to meet the police officers when they arrived at the complex. Thus, it was reasonable to believe Defendant was hiding inside the unit with the mail he stole.

It was also reasonable for the officers to conclude Defendant would destroy evidence of his crime due to the nature of his offense. As the prosecutor and the court aptly noted, mail can easily be shredded, burned, or flushed. Based on the fact that Defendant believed he had been discovered in the act of stealing mail (evidenced by his act of fleeing), it was reasonable to conclude he would destroy the evidence of his crime to avoid prosecution. (*Hull, supra*, 34 Cal.App.4th at pp. 1455-1457 [warrant not required when police knew critical evidence was in the home with occupants and the occupants, knowing police action was imminent, could have disassembled or destroyed the evidence during the time it would have taken to obtain a warrant].)

Defendant argues that there was no evidence that Defendant was “in the process of, or had even contemplated, destroying the mail,” noting none of the officers heard noises of mail being destroyed coming from inside the apartment. Yet, police officers do not have to wait until they hear the sounds of evidence being shredded or flushed, or the smell of paper being burned in order to enter the home. (See *People v. Ortiz* (1995) 32 Cal.App.4th 286, 292-293 [because defendant might have detected presence of police officers in hotel hallway, it was reasonable for officer to conclude heroin was in danger of being destroyed].) Waiting for actual signs of destruction would render the exigent circumstances exception for destruction of evidence useless, especially because police may not be able to detect destruction depending on the method of destruction and the sound-proofing, size, and location of the abode.

It is well established that we look at the “totality of the circumstances” to determine whether the officers could reasonably and in good faith believe that the evidence will be destroyed. (*People v. Koch* (1989) 209 Cal.App.3d 770, 782, disapproved on another ground in *People v. Weiss* (1999) 20 Cal.4th 1073, 1075.) As explained above, Defendant knew he had been caught stealing the mail, fled the crime scene, and hid in his mother’s apartment with easily destructible evidence. The police arrived ten minutes after the crime was committed. These specific facts, when taken together with rational inferences support Officer Jester’s conclusion that the mail would be destroyed if he took the time to obtain a warrant. (See *Koch*, at p. 782.)

Based on the foregoing, we conclude the court did not abuse its discretion in denying Defendant’s suppression motion.

DISPOSITION

We affirm Defendant Mohsen Moaddab's conviction for identity theft in violation of Penal Code section 530.5, subdivision (c)(2).

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GOSWAMI, J.*

We concur:

EDMON, P. J.

ALDRICH, J.

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