

NO. 70652-7-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JUAN MARTINEZ-CASILLAS,

Appellant.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2014 JUN 30 PM 3:01

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE MARY I. YU

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. To prove the crime of second degree criminal trespass, the law requires that a defendant knowingly enter or remain unlawfully in or upon the premises of another. Here, the State established that a homeowner's unit had been burglarized and her items stolen, and that the defendant had left his fingerprints on the broken screen rails covering the window that served as the point of unlawful entry. Is this sufficient evidence for a trier of fact to find that the defendant committed second degree criminal trespass?

2. Probable cause exists to issue a search warrant when the supporting affidavit sets forth sufficient facts for a reasonable person to conclude that the defendant is probably involved in criminal activity and the place to be searched contains evidence of the crime. Here, the search warrant was based on (1) the discovery of a \$10,000 racing bicycle with only one wheel in the defendant's garage while executing a separate search warrant for evidence of the defendant's recent armed robberies; and

(2) confirmation by the bike's true owner that it had been stolen off of his roof rack without its front wheel. Given these circumstances, has Martinez-Casillas failed to show that the trial court issued the search warrant on less than probable cause?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Defendant Juan Martinez-Casillas was charged by amended information as follows: robbery in the first degree on September 20, 2012; robbery in the first degree on September 25, 2012; possessing stolen property in the first degree during a period of time intervening between June 22, 2012 through September 26, 2012; and residential burglary on August 9, 2012. CP 15-17. Trial by jury began in front of the Honorable Mary Yu on May 28, 2013. 2RP 3.¹ Martinez-Casillas was found guilty as charged of possessing stolen property and both counts of robbery. CP 129-31. The jury acquitted him of residential burglary and found him guilty of the lesser included crime of criminal trespass in the second degree. CP 132, 134.

¹ The Verbatim Report of Proceedings consists of ten volumes designated as follows: 1RP (February 11, 2013); 2RP (May 28, 2013); 3RP (May 29, 2013); 4RP (May 30, 2013); 5RP (June 3, 2013); 6RP (June 4, 2013); 7RP (June 5, 2013); 8RP (June 6, 2013); 9RP (June 7, 2013); 10RP (July 19, 2013).

2. SUBSTANTIVE FACTS²

On September 20, 2012, a man entered a business called Lover's in Issaquah and robbed female employee Victoria Cox at gunpoint of her Samsung phone and all the cash in the register. CP 3, 146-47. On September 25, 2012, a man matching the Issaquah robber's physical description robbed the Redmond Lover's store, also using a gun to take cash from a store employee. CP 3-4, 13-14, 146-47. By tracking Cox's cell phone, police were eventually able to locate it inside Martinez-Casillas' car, which was parked across the street from his residence at the Park Hill Apartments in Issaquah. CP 3-4, 14, 147-48.

During a consensual search of Martinez-Casillas' car, police found a large bundle of cash, handgun bullets, Cox's phone, and clothing identical to those worn by the suspect in both robberies, all of which Martinez-Casillas claimed belonged to him. CP 4, 14, 148-49. Based on the above information, Issaquah Police Detective Ryan Raulerson applied for warrant #12-858 that same day to further search Martinez-Casillas' car and his residence for

² Because Martinez-Casillas challenges only the convictions for criminal trespass and possession of stolen property, the following summary will be limited primarily to the facts relevant to those two charges. As conceded by Martinez-Casillas, the evidence of those two charges and the robbery convictions are mostly unrelated for purposes of this appeal, as they involve different dates of violation, different victims and different locations. App. Br. 3; CP 3-4, 13-14.

evidence of the robberies. CP 5, 14, 149. During a search under that warrant, police found more cash, documents of dominion and control, and a pellet gun similar to that used in the robberies in Martinez-Casillas' car. Id.

a. Warrant #12-859³

Issaquah Police Detective Sergeant Kevin Nash assisted in the search of Martinez-Casillas' garage on September 25, 2012 under warrant #12-858. Ex. 10 at 7. During the search, Nash noticed a Specialized brand S-works bicycle that was missing its front wheel. Id. Nash, who is knowledgeable regarding bicycles, recognized that this was an expensive racing bicycle. Id. He moved the bicycle in order to photograph it and record its serial number. Id.

The next day, Nash contacted a fellow officer and discovered that a Specialized S-works bicycle had been stolen off of a car at an Issaquah gym on June 16, 2012. Id. Nash contacted the true owner of the bicycle, Jeffrey Hoover, who provided a

³ The facts are taken solely from the modified affidavit supporting warrant #12-859. Ex. 10; see State v. Ness, 165 Wn.2d 177, 182, 196 P.3d 658 (2008) (reviewing court can only consider the information available to the magistrate at the time the warrant was issued). Martinez-Casillas' reliance on testimony at the CrR 3.6 hearing is misplaced.

detailed description of the bicycle, confirming that the front wheel was not with the bicycle at the time of the theft, and noted that the bicycle was valued at \$10,000. Id. Hoover described some damage to the seat tube that Nash was able to verify using the pictures he had taken. Id.

Det. Raulerson learned from an online database that Martinez-Casillas had recently pawned a Trek brand bicycle on August 28, 2012, and a Giant brand bicycle on August 25, 2012. Ex. 10 at 8. Based on this and the information provided by Nash, Raulerson wrote a second affidavit on September 26, 2012 to recover the bike, which was still at Martinez-Casillas' residence, under search warrant #12-859. 2RP 130; 6RP 156; Ex. 7.

The trial court found that the initial affidavit for warrant #12-859 had omitted the fact that Nash had picked up the bike and turned it over, which elevated the contact into a warrantless seizure. 3RP 5-7; CP 150; Ex. 7. Although the trial court initially suppressed evidence of the bicycle as a result, it later reversed its ruling and held that the proper analysis required inserting the omitted fact into the affidavit, excising any improperly obtained material that flowed from the seizure of the bike (in this case, the photographs and serial number of the bike), and then determining

whether the modified affidavit would support a finding of probable cause. 3RP 7-8, 83-84; CP 150-51; Ex. 10. After performing this analysis, the trial court held that the affidavit still supported probable cause and the bicycle was therefore admissible. 3RP 83; CP 150.

b. Residential Burglary

Prior to writing the affidavit for warrant #12-859, Raulerson had also learned that fingerprints found at a residential burglary on August 9, 2012 matched those of Martinez-Casillas; he therefore included a request to search for evidence of that crime under warrant #12-859 as well. 2RP 131; 6RP 46-47; Ex. 7.

In the burglary case, homeowner Lynn Christiansen had left for work sometime before 10:00 a.m. on August 9th and received a call mid-afternoon from her daughter saying that they had been burglarized. 6RP 47-49. When Christiansen came home at 3:30 p.m. to speak to police, she noticed that she was missing two Mac laptops, a backpack and a jar of money that had all been there when she had left that morning. 6RP 47-49.

A screen from one of Christiansen's windows that had been in place prior to the burglary had also been removed. 6RP 49-53.

The screen belonged to a three-pane window in front of the unit that was completely surrounded by a planter with vegetation. 5RP 160-64; 6RP 50-51; Ex. 53. The window was not near the main entry to the house, which was on the side of the unit with its own walkway. 5RP 161; 6RP 49-50; Ex.54. Christiansen neither knew nor gave permission to Martinez-Casillas to be in her home, and had not hired anyone in the time preceding the burglary to wash her windows or do any work inside or outside her house. 6RP 53-54.

Issaquah Police Officer Todd Johnson had found the screen discarded underneath Christiansen's nearby covered patio area. 5RP 160. He noted that the area in front of the window was not the type of place someone would walk if they were visiting the occupants, as the vegetation showed no signs of being used regularly or tamped down into a dirt path. 5RP 163. Johnson also noticed that the window itself, covered by the film of dirt typical of unwashed windows, had a handprint across it and a smear mark ending with a fingerprint on top of the smear. 5RP 160, 164. Johnson lifted several fingerprints off the screen's rails and attempted to lift the one from the window but was unsuccessful. 5RP 166. He removed the screening material for ease in packaging and submitted the rails for fingerprint analysis to the

King County Automated Fingerprint Identification System (AFIS)

lab. 5RP 167; 6RP 129; Ex. 14.

AFIS latent print examiner Wade Anderson identified four prints of comparison value on the rails, which he marked as A, B, C and D. 7RP 25; Ex. 14. All four prints were identified as belonging to Martinez-Casillas. 7RP 33. Prints A and B were located on one rail, which had been damaged and was in two pieces.⁴ Ex. 14. Print A came from Martinez-Casillas' left palm and was located on the outside edge of the screen, to be distinguished from the inner edge where the screening material would be located. 7RP 25-26, 32; Ex. 14. Print B came from Martinez-Casillas' right ring finger and was located on the part of the rail facing inside the house. 7RP 29-30, 32; Ex. 14.

Prints C and D were located on the other rail, which was still in one piece. Ex. 14. Print C also came from Martinez-Casillas' left palm and was on the outside edge of the second rail. 7RP 30, 32; Ex. 14. Print D was from Martinez-Casillas' left index finger and was on the side facing the house. 7RP 33; Ex. 14. Based on the

⁴ Although Officer Johnson testified that Christiansen had told him that the screen had been damaged previously, Christiansen testified that it had not been damaged before the burglary. 5RP 160; 6RP 55.

placement and direction of the prints, Anderson demonstrated in court how Martinez-Casillas had held the rails. 7RP 29-33.

C. ARGUMENT

1. SUFFICIENT EVIDENCE SUPPORTED THE CONVICTION FOR SECOND DEGREE CRIMINAL TRESPASS.

Martinez-Casillas challenges the sufficiency of the evidence of his conviction for second degree criminal trespass, claiming that the State failed to prove beyond a reasonable doubt that he entered the Christiansen property. This argument fails because the State produced sufficient evidence for a rational trier of fact to find that Martinez-Casillas unlawfully entered the premises.

The Due Process clause of the Fourteenth Amendment to the Constitution requires the State to prove every element of a charged crime beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); State v. Alvarez, 128 Wn.2d 1, 13, 904 P.2d 754 (1995). Evidence is sufficient to support a conviction if, viewed in a light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Goodman, 150 Wn.2d 774, 781, 83 P.3d 410 (2004).

A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences that can be drawn therefrom in the light most favorable to the State. Id. Circumstantial and direct evidence carry equal weight when reviewed by an appellate court. Id. A reviewing court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Fiser, 99 Wn. App. 714, 719, 995 P.2d 107, review denied, 141 Wn.2d 1023 (2000). The reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, only that substantial evidence exists in the record to support the conviction. Id. at 718.

RCW 9A.52.080 states that a person commits criminal trespass in the second degree "if he or she knowingly enters or remains unlawfully in or upon premises of another under circumstances not constituting criminal trespass in the first degree." Criminal trespass in the first degree is defined as unlawful entry into a building. RCW 9A.52.070.

The evidence presented at trial was sufficient to permit a rational trier of fact to find that Martinez-Casillas knowingly entered or remained unlawfully on Christiansen's premises. When Christiansen left her home shortly before 10:00 a.m., her property

and the window screen on the front of her house were intact and unbroken. 6RP 47-53, 55. When she arrived home at 3:30 p.m. that same day, her laptops, backpack and money were missing, her window screen had been damaged and thrown onto her patio, and the screen's rails were covered with Martinez-Casillas' fingerprints. 5RP 160; 6RP 47-53; 7RP 25; Ex. 14. There was also a smeared handprint across the window, further supporting that it was the point of entry. 5RP 160, 164.

Moreover, the area in front of the window was not a normal path of ingress/egress for passersby or visitors, as it was completely surrounded by a planter bed filled with vegetation and rocks and showed no signs of being tamped down by regular use. 5RP 160-64; 6RP 50-51. The main entry to the house was on a separate side of the house with its own dedicated pathway, making the planter in front of the window an even less legitimate area for someone to be. 5RP 161; 6RP 49-50. There was no lawful reason for Martinez-Casillas' prints to be on the rails, since Christiansen neither knew him nor had she given permission to anyone to do work on the inside or outside of her home prior to the burglary. 6RP 53-54.

Finally, the placement of Martinez-Casillas' fingerprints on the rails indicates that he was not simply touching the surface of the rail while standing on Christiansen's planter bed outside. His left palm print (C) was on the outer edge of one of the rails and his left index finger (D) on the inner surface facing the house, supporting a finding that he had his hands *wrapped around* the rail to take it off. 7RP 30, 32, 33; Ex. 14. His left palm print (A) and right ring finger (B) located on the outer edge and inward-facing surface of the other rail also support a two handed grip all the way around the rail.⁵ 7RP 25-26, 29-30, 32; Ex. 14.

The evidence was sufficient to establish that Martinez-Casillas unlawfully entered the premises, and this Court should affirm his conviction for second degree criminal trespass.

2. PROBABLE CAUSE SUPPORTED THE ISSUANCE OF SEARCH WARRANT #12-859.

Martinez-Casillas claims on appeal that there were insufficient facts to support probable cause for warrant #12-859,

⁵ Although there is no video of latent print examiner Anderson's in-court demonstration of how Martinez-Casillas gripped the rails, based on the direction and placement of the prints, the placement of the prints on Exhibit 14 itself supports the above interpretation. 7RP 29-33.

which authorized seizure of the stolen bicycle.⁶ His claim fails. Detective Nash's observation of an expensive racing bicycle with a missing wheel in Martinez-Casillas' garage, coupled with Nash's knowledge of bicycles, the true owner's confirmation that the bike in the garage had been stolen from him, and Martinez-Casillas' frequent activity pawning bikes in recent weeks, all supported probable cause to seize the bicycle.

A search warrant may be issued only upon a judicial determination of probable cause. CrR 2.3(c); State v. Cole, 128 Wn.2d 262, 286, 906 P.2d 925 (1995). Probable cause exists where there are facts and circumstances sufficient to establish a reasonable inference that the defendant is probably involved in criminal activity and that evidence of the crime can be found at the place to be searched. State v. Fry, 168 Wn.2d 1, 6, 228 P.3d 1 (2010). Consequently, probable cause requires a nexus between the alleged criminal activity and the place to be searched. State v. Thein, 138 Wn.2d 133, 140, 977 P.2d 582 (1999). Probable cause requires only a *probability* of criminal activity, not a *prima facie*

⁶ Because of the re-insertion of the omitted fact of initial seizure and excision of unlawfully gained material, supra, it is the modified version of the affidavit for warrant #12-859 that is at issue in this case (Exhibit 10).

showing of criminal activity. State v. Maddox, 152 Wn.2d 499, 98 P.3d 1199 (2004).

On appeal, a magistrate's decision to issue a search warrant is afforded "great deference" and reviewed for an abuse of discretion. State v. Vickers, 148 Wn.2d 91, 108, 59 P.3d 58 (2002). When determining whether probable cause existed to issue search warrant, the reviewing court examines only the information available to the magistrate at the time the warrant was issued. State v. Murray, 110 Wn.2d 706, 709-10, 757 P.2d 487 (1988). The affidavit supporting the search warrant is viewed in light of common sense, taking into account all the circumstances in the affidavit and drawing commonsense inferences. Maddox, 152 Wn.2d at 509. All doubts concerning the existence of probable cause are resolved in favor of the validity of the warrant. Id.

Here, the affidavit contained more than sufficient evidence from which a magistrate could reasonably infer that the bicycle was stolen. Martinez-Casillas claims that "the sole basis for the search warrant was the officer's opinion that Mr. Martinez-Casillas would not own a bicycle such as the one he observed." App. Br. 10. This

is incorrect. There were multiple facts supporting probable cause: an officer with knowledge of bicycles who was able to recognize that the bike was an expensive racing bicycle; the fact that this expensive bicycle was missing its front wheel (inferring it was stolen); a detailed description of the stolen bicycle from its true owner, who confirmed that the bicycle had been taken from his car; and Detective Raulerson's discovery that Martinez-Casillas had been actively pawning bicycles in recent weeks.⁷ Ex. 10 at 7-8.

Martinez-Casillas asserts that *on its own*, an officer's mere suspicion or personal belief that evidence of a crime will be found in a certain place is insufficient to support a finding of probable cause. App. Br. 9-10. See State v. Seagull, 95 Wn.2d 898, 907, 632 P.2d 44 (1981). The State does not argue otherwise. But as shown above in the multiple fact-based statements within the affidavit, that is not the case here. Like Seagull, this affidavit "stated more than a mere personal belief . . . but also the factual, underlying circumstances upon which that belief was premised." Id. at 907.

⁷ The trial court noted that even if it were to strike an additional paragraph from the modified affidavit (Ex. 10 at 7) regarding Nash's contact with Hoover, the affidavit would still support a finding of probable cause. 3RP 83.

The cases to which Martinez-Casillas cites do not contain comparable facts. For example, in State v. Spencer, the affidavit merely stated that “[i]t is therefore the writer’s opinion that [defendant] does possess amphetamines” along with a single sentence that someone had sold the defendant drugs three months earlier. 9 Wn. App. 95, 96, 510 P.2d 833 (1973). The affidavit here contained facts far in excess of that bare statement of belief.

Furthermore, the affidavit does not, in fact, make a statement anywhere of Detective Nash’s *personal* belief that Martinez-Casillas would not own an expensive racing bicycle. It states that Nash is knowledgeable about bicycles and, after seeing the bike in plain view, he knew it was an expensive racing model and was missing a wheel.⁸ Ex. 10 at 7. Nash then followed up on recent thefts of such bicycles, which led him to the bike’s true owner and confirmation of its high value and stolen status.⁹ None of this runs afoul of the requirements of probable cause; it actually

⁸ Owner Jeffrey Hoover confirmed its comparatively high value, describing it as “the best bike you can buy.” 5RP 116.

⁹ It should be noted that the bike’s serial number played no role in confirming ownership, since Hoover did not even know it at the time Nash spoke to him. 2RP 153. Furthermore, even without the photographs showing the small nick in the seat tube, Nash was able to get a detailed description of the bike from Hoover sufficient to verify ownership under the probable cause standard, including its missing wheel. 5RP 119-20, 122-23.

adheres to the requirement for fact-based suspicions and ultimately heightens probable cause in this case.

Finally, Martinez-Casillas argues that it is impermissible for a court to infer that he could not legally own or afford such a bicycle. This overlooks the fact that the reason a magistrate issued a warrant for his home in the first place was to investigate his commission of two recent armed robberies. Martinez-Casillas implies that he could have simply been a financially secure cycling enthusiast and protests that the officer “knew nothing about his hobbies, his income level, his interests or his willingness to spend a substantial sum for a bicycle.” App. Br. 10. Given that his financial situation had apparently led him to rob two people at gunpoint that week, it is difficult to imagine that Martinez-Casillas had the income level or willingness to spend \$10,000 on a bicycle, or that he was simply nurturing a hobby involving high-end racing equipment.

The court did not abuse its discretion in issuing the warrant to seize the stolen bicycle. This Court should affirm the conviction for Possession of Stolen Property.

D. **CONCLUSION**

For the reasons stated above, the Court should affirm
Martinez-Casillas' convictions.

DATED this 30 day of June, 2014.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to THOMAS KUMMEROW, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. JUAN MARTINEZ-CASILLAS, Cause No. 70652-7-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Name
Done in Seattle, Washington

06/30/14
Date