IN THE COURT OF APPEALS OF IOWA

No. 9-836 / 08-1830
Filed November 25, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MARIA ROSAURA BARBOSA-QUINONES,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble (motion to suppress) and Don C. Nickerson (trial), Judges.

Maria Barbosa-Quinones appeals following her conviction and sentence for forgery. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Stephan J. Japuntich, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney General, John P. Sarcone, County Attorney, and Stephanie Cox, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

DOYLE, J.

Maria Barbosa-Quinones appeals following her conviction and sentence for forgery. She contends: (1) the evidence was insufficient to support her conviction because the State did not prove she intended to defraud or injure, and (2) the district court erred in overruling her motion to suppress. She alternatively argues her trial counsel was ineffective should we find she failed to preserve error on either of her claims. Upon our review, we affirm.

***I. Background Facts and Proceedings*.**

In May 2008, officers of the Mid-Iowa Narcotics Enforcement Task Force began a drug investigation following a report from a confidential informant stating that a person named "Juan" was selling cocaine in Des Moines. After arranging a controlled buy with "Juan" using the informant, officers observed a Hispanic male arrive at the predetermined location in a white minivan. The man sold cocaine to the informant and left the location in the minivan. The officers followed the vehicle to a residence in Des Moines.

The officers checked the Polk County Assessor's website for the name of the owners of the residence. The website showed the residence was owned by Juan Roman and Anna C. Barboza. The officers also determined the residence's utilities were in the name of Juan M. Roman, and the minivan was registered to Anna Christiana Barboza Quinones at the address of the residence.

The officers set up two more controlled buys, with the informant arranging to meet "Juan" to purchase cocaine. A Hispanic male showed up both times at the arranged locations, once in the white minivan and once in a truck registered to Anna Christiana Barboza Quinones at the address of the residence. The man

sold the informant cocaine and left the scene. Officers followed the man's vehicle after each buy back to the same residence.

On July 3, 2008, officers surveilled the residence for the purpose of identifying "Juan." The officers watched a Hispanic male that one detective had previously identified as "Juan" leave the residence in a red van, and the officers followed him. Thereafter, the man was stopped for speeding by a West Des Moines police officer. The man was asked for identification, and he provided the officer a Mexican driver's license in the name of Felipe Rodriguez Santiago. The insurance for the red van was in the name of his wife, Maria Barboza, as was the vehicle's registration. The man stated to the officer that he lived at the residence with his wife's sister, Anna Barboza.

Later in July, a fourth controlled drug buy was set after the informant arranged to meet "Juan" to purchase cocaine. A Hispanic male arrived at the predetermined location in the white minivan and sold cocaine to the informant.

Based upon the drug buys and their investigation, Detective Chris Scanlan filed an application for a search warrant. The application sought to search the residence, "the person of Felipe Rodriguez-Santiago," and various vehicles for items of evidence relevant to the possession and distribution of controlled substances, including drugs and "[b]ooks, records, . . . and other items evidencing the obtaining, secreting, transfer and/or concealment of assets and the obtaining, secreting, transfer, concealment, and/or expenditure of money." An attachment to the application described the residence as a "single family dwelling," and the application sought to search "any and all rooms, attics, basements" of the residence. The application and its attachments did not

indicate that more than one family lived at the residence. The attachment also stated that it was known "through past case investigation that 'Juan' [was] the person named Felipe Rodriguez-Santiago, . . . who resides at [the residence]."

The district court found that the information contained in the application and its attachments established probable cause to believe the items listed were located in the places indicated and that the information justified the issuance of a search warrant. The court issued the search warrant for the items, person, and locations as described in the application.

On the morning of July 23, 2008, the search warrant was executed at the residence. At that time, the officers executing the search made contact with several different people at the residence, including Juan Roman, Anna Barboza, Felipe Rodriguez Santiago, and the defendant. The individuals found in the residence were brought to the living room area, and the residence was searched. An officer searched the basement, including the defendant's purse, which was sitting on a nightstand. The purse contained several forms of identification for the defendant, including a document appearing to be a U.S. Social Security card issued to "Maria R Barboza." The document was signed.

On August 14, 2008, Maria Barbosa-Quinones was charged by trial information with forgery in violation of Iowa Code sections 715A.2(1)(d) and 715A.2(2)(4) (2007) relating to the document appearing to be a Social Security card. The defendant filed a motion to suppress, asserting the search warrants obtained and executed prior to her arrest were secured using knowingly false information and allowed a broader search that would have otherwise been

executed, violating the Fourth and Fourteenth Amendments of the United States Constitution.

A hearing was held on the motion to suppress. There, the defendant's husband, Santiago, testified. When asked if he and his family lived within a separate place in the residence, he testified "[w]e were in the basement, but not really exactly because we were all together."

Following the hearing, Chief Judge Arthur Gamble entered his order denying the defendant's motion to suppress. The court found the defendant failed to show the officer knowingly provided a mistaken statement to the magistrate approving the warrant, the scope of the warrant allowing the basement of the residence to be searched was reasonable, and the officers had probable cause to seize the items of identification found in the basement. The court found that the officers had no reason to believe the residence was divided into discrete areas where one separate family resided to the exclusion of another family, and found Juan had access to the basement as well as the rest of the house.

A jury trial commenced October 20, 2009, before Judge Don Nickerson. Testimony from a special agent with the Inspector General for Social Security established the document appearing to be a Social Security card was counterfeited. Specifically, the agent testified that although the Social Security number on the document was correct, the columns on the document were not embossed, the card should have read "MariaRosasura Barbosa Quinones," and the document should have had a stamp on it indicating it was not valid for

employment unless authorized by immigration officials. No evidence was offered showing the defendant intended to use the document.

The jury convicted the defendant as charged. The defendant was sentenced to an indeterminate term of incarceration not to exceed five years. The court suspended the sentence and placed the defendant on probation for two years.

The defendant appeals.

***II. Discussion*.**

On appeal, the defendant contends the evidence was insufficient to support her conviction because the State did not prove she intended to defraud or injure and the district court erred in overruling her motion to suppress. The defendant alternatively argues her trial counsel was ineffective should we find she failed to preserve error on either of her claims. We address her arguments in turn.

***A. Sufficiency of the Evidence*.**

A person is guilty of forgery when, *inter alia*, he or she knowingly possesses a forged document with the intent to defraud or injure. *See* Iowa Code § 715A.2(1)(d). The defendant argues the State failed to prove the defendant intended to defraud or injure. The State claims error was not preserved on this issue because trial counsel's judgment of acquittal only alleged the State had not met its burden of establishing "fraud."

***1. Error Preservation*.**

To preserve error for appellate review on a claim of insufficient evidence, "the defendant must make a motion for judgment of acquittal at trial that identifies

the specific grounds raised on appeal." *State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004). However, "we recognize an exception to the general error-preservation rule when the record indicates that the grounds for a motion were obvious and understood by the trial court and counsel." *State v. Williams*, 695 N.W.2d 23, 27 (Iowa 2005). We have reviewed the record relevant to the motion for judgment of acquittal and conclude the defendant adequately preserved error.

***2. Merits*.**

We review challenges to the sufficiency of the evidence for correction of errors at law. *State v. Jorgensen*, 758 N.W.2d 830, 834 (Iowa 2008). "The district court's findings of guilt are binding on appeal if supported by substantial evidence. Evidence is substantial if it would convince a rational trier of fact the defendant is guilty beyond a reasonable doubt." *Id*. (citations omitted). In conducting our review, we consider all the evidence, not just the evidence that supports the verdict. *State v. Henderson*, 696 N.W.2d 5, 7 (Iowa 2005) (citation omitted). "We review the evidence in the light most favorable to the State, including legitimate inferences and presumptions that may fairly and reasonably be deduced from the evidence in the record." *State v. Webb*, 648 N.W.2d 72, 76 (Iowa 2002).

At trial, the State must prove every element of the crime charged beyond a reasonable doubt. *See id*. The State's evidence "must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture." *State v. Hamilton*, 309 N.W.2d 471, 479 (Iowa 1981). In weighing the evidence, direct and circumstantial evidence are equally probative. Iowa R. App. P. 6.14(6)(*p*).

At issue here is the element "intent to defraud or injure" of forgery. Because specific intent is seldom capable of direct proof, it may be shown by circumstantial evidence and the reasonable inferences drawn from that evidence. *State v. Casady*, 491 N.W.2d 782, 787 (Iowa 1992) (citations omitted); *see also State v. Acevedo*, 705 N.W.2d 1, 5 (Iowa 2005). Intent to defraud may properly be inferred from circumstances, words, and actions shown in evidence. *State v. Mathias*, 216 N.W.2d 319, 321 (Iowa 1974); *see also People v. Castellanos*, 2 Cal. Rptr. 3d 544, 547 (Cal. Ct. App. 2003) (defendant's possession of a false legal permanent resident card sufficient to evidence an intent to defraud); *People v. Miralda*, 981 P.2d 676, 679-80 (Colo. Ct. App. 1999) (defendant's possession of a forged INS card not sufficient to evidence an intent to defraud where the prosecution presented no proof that the defendant was not a legal resident and where the card contained accurate information respecting the defendant's identity); *State v. Escobedo*, 404 So.2d 760, 764-65 (Fla. Dist. Ct. App. 1981) (holding intent to defraud could be inferred from creating false birth certificates); *State v. Hogshooter*, 640 S.W.2d 202, 204 (Mo. Ct. App. 1982) (holding an intent to defraud could be inferred from the act of forgery or transferring the forged instrument); *State v. Esquivel*, 863 P.2d 113 (Wash. Ct. App. 1993) (holding intent to defraud could be inferred from false instruments containing the defendants' names, photographs, and signatures); *c.f. State v. Lores*, 512 N.W.2d 618, 621 (Minn. Ct. App. 1994) (where statute requires an intent to utter, possession alone is insufficient).

Viewing the evidence in the light most favorable to the State, we find sufficient evidence supports the defendant's conviction. Here, the false

document contained the defendant's name and signature, and the document did not represent the defendant's proper employment status. As a matter of logical probability, intent to defraud could be inferred from such facts and circumstances. Indeed, the instrument's only value would be to falsely represent the defendant's legal employment status. We therefore find sufficient evidence supports the defendant's conviction.

***B. Motion to Suppress*.**

The defendant next argues the district court erred in overruling her motion to suppress. She contends the search warrant must fail because it was overbroad, lacked particularity, and omitted material facts and recklessly disregarded the truth. The State argues the defendant failed to preserve her particularity argument, but acknowledges the other search warrant issues were preserved for our review. We will bypass the State's error preservation concerns and proceed to the merits. *State v. Taylor*, 596 N.W.2d 55, 56 (Iowa 1999).

We review de novo constitutional claims arising from a motion to suppress. *State v. Feregrino*, 756 N.W.2d 700, 703 (Iowa 2008). "[O]ur review 'is de novo in light of the totality of the circumstances.'" *State v. McConnelee*, 690 N.W.2d 27, 30 (Iowa 2004) (citation omitted). "[W]e assess the entire record, including evidence presented during the suppression hearing . . . ." *State v. Lovig*, 675 N.W.2d 557, 562 (Iowa 2004). We are not bound by the district court's factual determinations, but give deference to the court's credibility findings. *Id*.

The Fourth Amendment to the Constitution of the United States provides that no warrants shall be issued unless "supported by Oath or affirmation, and

particularly describing the place to be searched and the persons or things to be seized." U.S. Const. Amend IV. "A major objective of this amendment is to prohibit the use of a 'general' warrant and avoid 'a general, exploratory rummaging in a person's belongings.'" *State v. Malloy*, 409 N.W.2d 707, 709 (Iowa Ct. App. 1987) (quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 467, 91 S. Ct. 2022, 2038-39, 20 L. Ed. 2d 564, 583 (1971)). "[E]vidence obtained in violation of the fourth amendment may not be used in criminal proceedings against the victim of an illegal search and seizure." *State v. Mehner*, 480 N.W.2d 872, 875 (Iowa 1992).

***1. Breadth and Particularity*.**

The defendant argues the warrant did not satisfy the Fourth Amendment's requirement of "particularly describing the . . . things to be seized," and that "[b]ecause of the overly broad, non-specific nature of the [warrant] application, the affiant was unable to demonstrate a nexus between the things to be seized and the commission of a crime." We reject both contentions.

Probable cause to issue a search warrant exists when "a reasonable person would believe a crime was committed on the premises or that evidence of a crime could be located there." *State v. Simpson*, 528 N.W.2d 627, 634 (Iowa 1995). The issuing judge must make "a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him [or her], . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332, 76 L. Ed. 2d 527, 548 (1983). The warrant application must demonstrate an adequate nexus between the criminal activity, the place to be searched, and the

items to be seized. *See State v. Gogg*, 561 N.W.2d 360, 365 (Iowa 1997) (considering "'the type of crime, the nature of the items involved, the extent of the defendant's opportunity for concealment, and the normal inferences as to where the defendant would be likely to conceal the items'" (citation omitted)).

In addition, a search warrant must be reasonably specific. *See State v. Todd*, 468 N.W.2d 462, 467 (Iowa 1991). A warrant will not be upheld if the description of items to be seized is "so broad and vague it necessarily clothed the warrant-executing officers with interdicted discretion regarding items to be seized." *Munz v. State*, 382 N.W.2d 693, 699 (Iowa Ct. App. 1985). However, a description is "sufficiently particular" if it allows law enforcement

> reasonably to ascertain and identify the things to be seized. When a warrant affiant has probable cause but cannot give an exact description of the materials to be seized, a warrant will generally be upheld if the description is as specific as the circumstances and the nature of the activity under investigation permit.

Todd, 468 N.W.2d at 467 (citations omitted).

The warrant application in this case set forth Detective Scanlan's personal knowledge of the investigation, including that "Juan" returned to the residence to be searched after four controlled drug buys. It also contained information that the residence was owned by Juan Roman. Finally, the application set forth Detective Scanlan's knowledge, based on his training and experience as a police officer, regarding the type of items relating to drug trafficking often found in the residence, including drugs, and paper and electronic records and information.

When this information is viewed in a common-sense manner, including all reasonable inferences that support a finding of probable cause, *Gogg*, 561 N.W.2d at 364, it provides an adequate nexus between the alleged criminal

activity of drug trafficking, the residence and vehicles, and the description of items to be seized. Moreover, the descriptions of items were as specific as circumstances permitted and allowed officers to reasonably ascertain and identify the things to be seized.

Probable cause is not lacking, as the defendant suggests, merely because many of the items described in the warrant, including "[b]ooks, records, . . . and other items," items related to drug trafficking, and various forms of paper and electronic information, are commonly found in personal residences. The common and unremarkable nature of the items to be seized can defeat probable cause under certain circumstances, such as when a warrant application attempts to establish a causal nexus through information a defendant's home contains property similar to that involved in a crime. *See Gogg*, 561 N.W.2d at 365. In such cases, where the items are of the kind commonly found in personal residences, and there is no evidence the items in the defendant's possession are unusual or unique, there is no reason to believe those items are the same as those involved in the particular crime. *Id*. at 366. Thus, the nexus between the criminal activity, the place to be searched, and items to be seized is lacking. Here, in contrast, evidence of Juan's drug trafficking, combined with the detective's knowledge that the items sought could provide evidence regarding Juan's drug trafficking, provides an adequate causal nexus.

Additionally, we conclude particularity is not lacking, as the defendant suggests, because the defendant's purse was not enumerated as an item to be searched and because the defendant did not consent to the search. "[I]f a warrant sufficiently describes the premises to be searched, this will justify a

search of those personal effects found therein and belonging to the person occupying the premises if those effects might contain the described items." *See Munz*, 382 N.W.2d at 699 (quoting 2 W. LaFave, *Search and Seizure* § 4.10(b) at 154 (1978)); *see also U.S. v. Ross*, 456 U.S. 798, 821-22, 102 S. Ct. 2157, 2170-71, 72 L. Ed. 2d 572 (1982) (holding a warrant authorizing the police to search specified premises ordinarily encompasses the opening and inspection of any containers on the premises where the object of the warrant may be hidden). This general rule is limited by a second rule, which prohibits the police from searching visitors who merely happen to be at the searched premises during the execution of the warrant. *See Ybarra v. Illinois*, 444 U.S. 85, 91, 100 S. Ct. 338, 342, 62 L. Ed. 2d 238 (1979). However, as noted by LaFave, "[the] limitation on the police authority to execute the warrant by searching into personal effects [of visitors] comes into play only if the police 'knew or should have known' that the effects belonged to a '*mere visitor*.'" 2 W. LaFave, *Search and Seizure* § 4.10(b) at 746 (2004) (emphasis added).

Here, there was no evidence that the defendant was a mere visitor, or even that the officers knew the purse belonged to the defendant. Additionally, the district court found that that the officers had no reason to believe that the residence was divided into discrete areas where one separate family resided to the exclusion of another family, and it found that Juan had access to the basement as well as the rest of the house. Viewing the entire record, including evidence presented during the suppression hearing, the district court's findings are supported by substantial evidence. Thus, the defendant's purse was an item that could be searched, as it was in the residence to be searched where the

defendant lived and could have reasonably concealed items of the kind portrayed in the warrant. For all of these reasons, we therefore conclude the warrant was not overbroad or lacking particularity.

***2. Omissions and Reckless Disregard*.**

The defendant next argues the warrant omitted material facts and recklessly disregarded the truth and the district court therefore erred in denying her motion to suppress. Specifically, the defendant asserts the officers were on notice that more than one family occupied the residence and the officers' misidentification of Santiago as "Juan," the subject of the investigation, the officers acted with reckless disregard for the truth. We disagree.

"To impeach a search warrant, . . . [t]here must be allegations of deliberate falsehood or of reckless disregard for the truth . . . . " *State v. Ripperger*, 514 N.W.2d 740, 745 (Iowa Ct. App. 1994). The defendant "bear[s] the burden of establishing an intentional or reckless misrepresentation." *Gogg*, 561 N.W.2d at 364. The affiant's conduct "must be more than mere negligence or mistake." *State v. McPhillips*, 580 N.W.2d 748, 751 (Iowa 1998). If an affiant made a false statement in a search warrant "with reckless disregard for the truth, the Fourth Amendment requires the statement be deleted from the affidavit and the remaining contents be scrutinized to determine whether probable cause appears." *State v. Groff*, 323 N.W.2d 204, 206-07 (Iowa 1982) (citing *Franks v. Delaware*, 438 U.S. 154, 155-56, 98 S. Ct. 2674, 2676, 57 L. Ed. 2d 667, 672 (1978)). "A 'false' affidavit statement is one which misleads the magistrate into believing the existence of certain facts which enter into his thought process in evaluating probable cause." *Id*. at 210. Reckless disregard can be proven either

(1) "by showing directly that the affiant had serious doubts as to the veracity of an informant's statement" or (2) "from circumstances evincing 'obvious reasons to doubt the veracity' of the allegations." *State v. Niehaus*, 452 N.W.2d 184, 187 (Iowa 1990) (citations omitted). An omission of a material fact constitutes a misrepresentation only when the omitted facts cast doubt on the existence of probable cause. *See id*.

Here, the defendant failed to establish an intentional or reckless misrepresentation or the omission of a material fact by the officers. We agree with the district court's conclusion that this was a case of mistaken identity. After Santiago was seen leaving the residence, the officers reasonably believed he was "Juan." We further agree with the assessment of district court:

> After the execution of the . . . warrant both [Juan and Santiago] were taken into custody. Juan . . . is married to Ann Barbosa. [Santiago] is married to Ann's sister, Maria. . . . The court is sensitive to the need to avoid stereotypes in cases like this, but the booking photos of both men reveal at least some resemblance. Juan is 35 years old. [Santiago] is 37. Both gentlemen are Hispanic. Nevertheless, . . . the booking information shows that [Santiago] is 5'10" tall and 220 lbs. with light brown skin and Juan is 5'5" and 140-150 lbs. with medium brown skin.
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> The officers did not have access to this booking information at the time of the search warrant application. They were acting on the information obtained through surveillance. They made an error in identification. Perhaps their error was the product of negligence or mistake but the police did not knowingly, intentionally or recklessly mislead the magistrate.

(Internal citations omitted.) Furthermore, we conclude the alleged omitted facts would not have cast doubt on the existence of probable cause, given there was no evidence that the defendant and her husband lived in a separate living area and the first three controlled drug buys where "Juan" returned to the residence gave rise to sufficient probable cause to believe a crime was being committed at

the residence. Consequently, we conclude the district court did not err in overruling the defendant's motion to suppress.

***C. Ineffective Assistance of Counsel*.**

The defendant alternatively argues her trial counsel was ineffective should we find she failed to preserve error on either of her claims. Based on our resolution of the issues on the merits, we need not and do not address her ineffective assistance of counsel claims.

***III. Conclusion*.**

Because we conclude intent to defraud could be inferred from the counterfeited document containing the defendant's name, signature, and improper employment status, we find the evidence was sufficient to support her conviction for forgery. Because we further conclude the search warrant was not overbroad, did not lack particularity, and did not omit material facts and recklessly disregarded the truth, we conclude the district court did not err in overruling her motion to suppress. Based on our resolution of the issues on the merits, we need not and do not address her ineffective assistance of counsel claims.

AFFIRMED.