IN THE COURT OF APPEALS OF IOWA

No. 0-025 / 08-1842
Filed February 24, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

FELIPE RODRIGUEZ-SANTIAGO,
Defendant-Appellant.

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

Felipe Rodriguez-Santiago appeals following his conviction and sentence for forgery. **AFFIRMED.**

Jeffery A. Wright of Carr & Wright, P.L.C., Des Moines, 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 Sackett, C.J., and Doyle and Danilson, JJ.

DOYLE, J.

Rodriguez-Santiago appeals following his conviction and sentence for forgery. He contends (1) the evidence was insufficient to support his conviction because the State did not prove he intended to defraud or injure and (2) the district court erred in overruling his motion to suppress. 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, [and] basements" of the residence. The application and its attachments did not indicate 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 the information contained in the application and its attachments established probable cause to believe the items listed were located in the places indicated and 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, the defendant, and the defendant's wife Maria Barbosa-Quinones. The individuals found in the residence were brought to the living room area, and the residence was searched. An officer searched the basement and found a series of documents on a nightstand in the basement bedroom. These documents included a permanent resident card in the name of "Filipe Rodriguez," a Mexican identification card in the name of "Felipe Rodriguez Santiago," and three Social Security cards. One of the social security cards was in the name of "Felipe Rodriguez" and was signed.

On August 14, 2008, the defendant 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 his 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 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 denied the defendant's motion to suppress, finding 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 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 she was able to tell right away it was counterfeit because the "Social Security Administration had never issued a Social Security number with a double digit zero in the middle." Additionally, the agent testified that the columns on the document were not embossed. 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 his conviction because the State did not prove he intended to defraud or injure and the district court erred in overruling his motion to suppress. We address his 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. 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, 115 (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 and making all reasonable inferences that may fairly be drawn, we find sufficient evidence supports the defendant's conviction. Here, the false document contained the defendant's name and signature. As a matter of logical probability, intent to defraud could be inferred from such facts and circumstances. The jury, based on this circumstantial evidence, could reasonably conclude the defendant intended to defraud or injure. We accordingly affirm on this issue.

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

The defendant next argues the district court erred in overruling his motion to suppress. He contends the search warrant must fail because it was obtained by false statements which illegally resulted in the search of the defendant's personal property which was in a discreet area of the home which the defendant lived in.

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).

The defendant argues the warrant omitted material facts and recklessly disregarded the truth and the district court therefore erred in denying his 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." *State v. Gogg*, 561 N.W.2d 360, 364 (Iowa 1997). 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.
>
> 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 his wife 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.

***III. Conclusion*.**

Because we conclude intent to defraud could be inferred from the counterfeited document containing the defendant's name and signature, we find the evidence was sufficient to support his conviction for forgery. Because we find the search warrant did not omit material facts or recklessly disregarded the truth, we conclude the district court did not err in overruling his motion to suppress. We therefore affirm his conviction and sentence.

AFFIRMED.