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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

CHERYL JEAN RIEDEL,

Defendant and Appellant.

2d Crim. No. B263970  
(Super. Ct. No. YA090713)  
(Los Angeles County)

APPEAL from a judgment of the Superior Court of  
Los Angeles County, Eric C. Taylor, Judge. Affirmed.

A. William Bartz, Jr., 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,  
Senior Assistant Attorney General, Scott A. Taryle, Supervising  
Deputy Attorney General, John Yang, Deputy Attorney General,  
for Plaintiff and Respondent.

Cheryl Jean Riedel appeals from the judgment entered after a jury had convicted her of possession for sale of methamphetamine (Health & Saf. Code, § 11378) and possession of methamphetamine while armed with a loaded firearm. (*Id.*, § 11370.1, subd. (a).) The trial court sentenced appellant to prison for three years, suspended execution of the sentence, and placed her on formal probation on condition that she serve 365 days in county jail.

The police seized the methamphetamine and firearm during a search of appellant's residence pursuant to a search warrant. The magistrate who issued the warrant ordered that a portion of the supporting affidavit be sealed to protect the identity of a confidential informant. Pursuant to *People v. Hobbs* (1994) 7 Cal.4th 948 (*Hobbs*), appellant requests that we review the entire affidavit and the sealed reporter's transcript of an in camera hearing "to determine whether the trial court erred in sealing the [sealed portion of the] affidavit, and in denying [appellant's] motion to traverse and quash the search warrant." We affirm.

#### *Factual and Procedural Background*

In appellant's bedroom, the police found a loaded firearm and a locked safe. The safe contained 79.2 grams of methamphetamine and identification cards in appellant's name. A narcotics expert opined that the methamphetamine was possessed for the purpose of sale.

Appellant moved to quash the search warrant. The trial court conducted an in camera hearing attended by the prosecutor and Officer Michael Guell, the affiant on the warrant. The court read the sealed and unsealed portions of the affidavit.

It denied the motion to quash and ordered that the transcript of the in camera hearing be sealed.

*Motion to Traverse*

Appellant requests that we determine whether the trial court erroneously denied her “motion to traverse and quash the search warrant.” Appellant moved to quash the search warrant, and the trial court denied that motion. Appellant never moved to traverse the warrant. A motion to quash is different from a motion to traverse. “A defendant moving to *quash* a warrant asserts the warrant on its face lacks probable cause. [Citation.] . . . [¶] A defendant moving to *traverse* a warrant ‘mount[s] a subfacial challenge, i.e., attack[s] the underlying veracity of statements made on the face of the search warrant application.’ [Citation.] Generally, to prevail on a motion to traverse, the defendant must show: (1) the affidavit contained ‘a false statement made “knowingly and intentionally, or with reckless disregard for the truth;” and (2) “the allegedly false statement is necessary to the finding of probable cause.” [Citation.]’ (*People v. Heslington* (2011) 195 Cal.App.4th 947, 957, fn. 7.)

Because appellant did not move to traverse the warrant and the trial court did not rule on such a motion, she is precluded from requesting that we review the sealed affidavit and sealed reporter’s transcript to determine whether a motion to traverse, if made, would have been erroneously denied. (See *People v. Brewer* (2000) 81 Cal.App.4th 442, 459-462.) In any event, our review of the sealed documents reveals no grounds for believing that a motion to traverse would have been erroneously denied. “[T]here is nothing in the sealed . . . portions of the record to suggest that any misrepresentations, material or

otherwise, were made by the affiant in applying for the search warrant.” (*Hobbs, supra*, 7 Cal.4th at p. 977.)

*Sealing of Search Warrant Affidavit*

When a defendant moves to quash a warrant supported by a sealed affidavit, the trial court “must initially determine whether the affidavit is properly sealed, i.e., whether valid grounds exist for maintaining the informant’s confidentiality, and whether the extent of the sealing is justified as necessary to avoid revealing his or her identity.” (*Hobbs, supra*, 7 Cal.4th at p. 973.) The trial court did not explicitly make such an initial determination. But we presume that it implicitly determined that the affidavit was properly sealed. “A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent . . . .” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; see also *People v. Coddington* (2000) 23 Cal.4th 529, 644, overruled on another ground in *Price v. Superior Court* (2001) 25 Cal.4th 1046, 1069, fn. 13 [“As an aspect of the presumption that judicial duty is properly performed, we presume . . . that the court knows and applies the correct statutory and case law”].)

“We are satisfied that the trial court acted within its sound discretion in conducting its own in camera review of the sealed materials, [impliedly] affirming the magistrate’s determination that the sealing of the [portion of the affidavit] was necessary to implement the People’s assertion of the informant’s privilege.” (*Hobbs, supra*, 7 Cal.4th at p. 976.)

### *Motion to Quash*

Where, as here, “the affidavit is found to have been properly sealed and the defendant has moved to quash the search warrant [citation], the [trial] court should proceed to determine whether, under the ‘totality of the circumstances’ presented in the search warrant affidavit and the oral testimony, if any, presented to the magistrate, there was ‘a fair probability’ that contraband or evidence of a crime would be found in the place searched pursuant to the warrant. [Citations.] In reviewing the magistrate’s determination to issue the warrant, it is settled that ‘the warrant can be upset only if the affidavit fails as a matter of law . . . to set forth sufficient competent evidence supportive of the magistrates finding of probable cause, since it is the function of the trier of fact, not the reviewing court, to appraise and weigh evidence when presented by affidavit as well as when presented by oral testimony. [Citations.]’ [Citation.]” (*Hobbs, supra*, 7 Cal.4th at p. 975.) “[T]he duty of a reviewing court is simply to ensure that the magistrate had a ‘substantial basis for . . . [concluding]’ that probable cause existed. [Citation.]” (*Illinois v. Gates* (1983) 462 U.S. 213, 238-239 [103 S.Ct. 2317, 76 L.Ed.2d 527].)

Based on the totality of the circumstances, including the sealed documents, we are satisfied that the evidence presented to the magistrate provided a substantial basis for concluding that there was a fair probability that contraband would be found in appellant’s residence. Accordingly, the trial court did not err in denying the motion to quash.

*Disposition*

The judgment is affirmed.

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YEGAN, J.\*

We concur:

PERLUSS, P. J.

SEGAL, J.

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\* Associate Justice of the Court of Appeal, Second Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.