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IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

RUBEN SCOTT,

Defendant and Appellant.

B279104

(Los Angeles County
Super. Ct. No. VA141109)

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

Tara Mulay, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Scott A. Taryle, Supervising

Deputy Attorney General, Timothy L. O'Hair, Deputy Attorney General, for Plaintiff and Respondent.

Defendant Ruben Scott pleaded no contest to possession of methamphetamine for the purpose of sale in violation of Health and Safety Code section 11378, and admitted a prior conviction under the Three Strikes Law. He was sentenced to 32 months in state prison.

Defendant contends the trial court committed prejudicial error by denying his joint motion to unseal, quash, and traverse a search warrant of his home, and by failing to suppress evidence seized pursuant to the warrant. We affirm.

PROCEDURAL AND FACTUAL BACKGROUND

On January 12, 2015, Detective James Moore of the Los Angeles County Sheriff's Department executed a search warrant on defendant's home. The warrant had been issued based on Detective Moore's affidavit. A portion of the affidavit was sealed by the issuing magistrate. The unsealed portion of the affidavit revealed that an informant purchased an amount of methamphetamine from an individual named "Casper." The alias "Casper" was formerly associated with defendant. "Casper's" birthday and description matched the description given by the informant. The informant identified "Casper" from booking and Department of Motor Vehicles

photographs of defendant shown to him by Detective Moore. The informant stated that defendant continued to sell methamphetamine out of his home. The unsealed portion of the affidavit also referenced defendant's history of selling methamphetamine out of the home.

Detective Moore sought to keep the informant's identity confidential out of fear for the informant's life and usefulness in later investigations. The issuing magistrate sealed two pages of the affidavit.

Based on the information contained in the affidavit, Detective Moore believed defendant was maintaining methamphetamine in his home. The magistrate found probable cause to believe that drugs, proceeds, and contraband existed and issued a search warrant. Defendant was arrested and prosecuted after a search of a safe in his bedroom revealed a plastic bag and pill container filled with methamphetamine, a digital scale, empty bags, money, and a pay-owe notebook.

Defendant filed a joint motion to unseal, quash, and traverse the search warrant, and to suppress evidence pursuant to Penal Code section 1538.5. Defendant sought to disclose the identity of the informant used in support of the search warrant pursuant to *People v. Hobbs* (1994) 7 Cal.4th 948 (*Hobbs*). The motion did not set forth factual allegations calling into question the affidavit or search warrant. The trial court reviewed the entire affidavit and took testimony during an in camera hearing. The court found sufficient grounds existed for maintaining the informant's

confidentiality. In open court, defense counsel agreed that “the identity [of the informant] went to the 1538.5 aspect of traverse and quash and 1538.5 issues.” Defense counsel offered no additional evidence to support the motion except for stating that “some witnesses [might testify] on other aspects as to where the money came from, if it was from a job.” The trial court denied defendant’s motions. Defendant filed a timely appeal.

DISCUSSION

Defendant repeats on appeal the arguments made in the trial court. He contends the trial court should have unsealed the sealed portion of the affidavit in support of the search warrant, disclosed the identity of the informant, and traversed and quashed the search warrant. Understandably hindered by the sealed portion of the affidavit, defendant requests our independent review of the sealed records.

We first address the motion to disclose the identity of the informant and unseal the balance of Detective Moore’s affidavit. We review the trial court’s ruling concerning the disclosure of a confidential informant’s identity for an abuse of discretion. (*Davis v. Superior Court* (2010) 186 Cal.App.4th 1272, 1277.)

“It has long been the rule in California that the identity of an informant who has supplied probable cause *for the issuance of a search warrant* need not be disclosed where such disclosure is sought merely to aid in attacking probable

cause.” (*Hobbs, supra*, 7 Cal.4th at p. 959; see Evid. Code, §§ 1042, 1041 [codifying common law privilege against revealing identity of confidential informant who discloses a violation of law or provides information to establish the legality of a search warrant].) A corollary rule prohibits the disclosure of an informant’s statements if they “‘would tend to disclose the identity of the informer’ [Citations.]” (*Hobbs, supra*, at p. 962; see *People v. Galland* (2008) 45 Cal.4th 354, 364 (*Galland*) [courts may order identifying details redacted or sealed]; *People v. Navarro* (2006) 138 Cal.App.4th 146, 165 (*Navarro*).)

“When a defendant seeks to quash or traverse a warrant where a portion of the supporting affidavit has been sealed, the relevant materials are to be made available for in camera review by the trial court. [Citations.] The court should determine first whether there are sufficient grounds for maintaining the confidentiality of the informant’s identity. If so, the court should then determine whether the sealing of the affidavit (or any portion thereof) ‘is necessary to avoid revealing the informant’s identity.’ [Citation.] Once the affidavit is found to have been properly sealed, the court should proceed to determine ‘whether, under the “totality of the circumstances” presented . . . there was “a fair probability” that contraband or evidence of a crime would be found in the place searched pursuant to the warrant’ (if the defendant has moved to quash the warrant) or ‘whether the defendant’s general allegations of material misrepresentations or omissions are supported by the public

and sealed portions of the search warrant affidavit, including any testimony offered at the in camera hearing’ (if the defendant has moved to traverse the warrant). [Citation.]” (*Galland, supra*, 45 Cal.4th at p. 364.)

We have fully reviewed the sealed and unsealed portions of the affidavit in support of the search warrant, along with the transcript of the in camera hearing.¹ We hold that the trial court “acted within its sound discretion” in affirming the magistrate’s determination that the partial sealing of the affidavit was necessary to maintain the informant’s confidentiality, secure his safety, and make him available for future use as an informant. (See *Hobbs, supra*, 7 Cal.4th at p. 976.)

We next determine if it is “reasonably probable defendant could prevail on [his] motion[] to traverse or quash the search warrant.” (*Hobbs, supra*, 7 Cal.4th at p. 977.) Because defendant moved to traverse the warrant, we must determine whether defendant’s allegations of material misrepresentations or omissions are supported by the search warrant affidavit, including any testimony offered at the in camera hearing. (*Id.* at p. 974.) To prevail on such motion, “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.”’

¹ The sealed portion of the affidavit was not included in the record on appeal. This court obtained the sealed document through the clerk of the trial court.

[Citation.]” (*People v. Heslington* (2011) 195 Cal.App.4th 947, 957, fn. 7.)

Here, defendant’s motion to traverse in this case rested solely upon his motion to identify the confidential informant. Defendant offered no allegations supporting an argument that Detective Moore materially misrepresented or omitted statements in the affidavit or at the hearing. Having reviewed the entire record, we see no basis for an arguable motion to traverse the warrant. (See *People v. Luera* (2001) 86 Cal.App.4th 513, 523–525 [proper denial of motion to traverse when defendant’s allegations were not contrary to warrant affidavit, and officer’s testimony was internally consistent].)

Finally, we must determine if the warrant is supported by probable cause. Probable cause exists if, “under the ‘totality of the circumstances’ presented in the search warrant affidavit and the oral testimony . . . there was ‘a fair probability’ that contraband or evidence of a crime would be found in the place searched pursuant to the warrant. (*Illinois v. Gates* (1983) 462 U.S. 213, 238; see also *People v. Camarella* (1991) 54 Cal.3d 592, 600–601.)” (*Hobbs, supra*, 7 Cal.4th at p. 975.) “[T]he warrant can be upset only if the affidavit fails as a matter of law [under the applicable standard announced in *Illinois v. Gates, supra*, 462 U.S. at page 238] to set forth sufficient competent evidence supportive of the magistrate’s 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.] This standard of review is deferential to the magistrate’s determination. [Citation.]” (*People v. Thuss* (2003) 107 Cal.App.4th 221, 235.)

The affidavit in this case left the trial court with “the relatively uncomplicated task” of determining if sufficiently reliable and competent evidence supported the magistrate’s finding of probable cause to issue the warrant. (*Hobbs, supra*, 7 Cal.4th 948 at p. 977.) The only argument offered to undercut the validity of the affidavit was defense counsel’s statement there were “some witnesses on other aspects as to where the money came from, if it was from a job.” Counsel’s vague assertion does not undermine the strong showing of probable cause contained in the affidavit.

DISPOSITION

The judgment is affirmed.

KRIEGLER, Acting P.J.

We concur:

BAKER, J.

DUNNING, J.*

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