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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

LAMONT WILLIAMS,

Defendant and Appellant.

B281662

(Los Angeles County
Super. Ct. No. TA141646)

APPEAL from an order of the Superior Court of Los Angeles County. Tammy Chung Ryu, Judge. Affirmed.

Lynette Gladd Moore, 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, Assistant Attorney General, Victoria B. Wilson and Lindsay Boyd, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Lamont Williams, after a plea, was convicted of one count of felon in possession of a firearm (Pen. Code, § 29800, subd. (a)(1)).¹ He contends the trial court erred in denying his motion to quash and traverse the search warrant (a portion of which was sealed to protect the identity of confidential informants) and to suppress evidence. He requests this court to review the sealed portions of the warrant to determine whether the affidavit supports a finding of probable cause, and if not, to reverse the trial court's denial of his motion to suppress. (See *People v. Hobbs* (1994) 7 Cal.4th 948 (*Hobbs*).)

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

1. The Warrant

On October 4, 2016, the trial court issued a search warrant for 15 different properties to search for firearms, ammunition, and other items pertaining to the criminal street gang activities of the “Mob Piru” and “Lueders Park Piru” gangs. A portion of the warrant was sealed to protect the identity of confidential informants.

The unsealed portion of the warrant stated that Detective Joseph Sumner of the Los Angeles County Sheriff's Department had been involved in the ongoing investigation of two violent criminal street gangs on the east side of Compton, the Lueders Park Piru and Mob Piru gangs. These gangs were involved in criminal activities that included narcotic sales, possession of weapons, weapon sales, witness intimidation, pimping, robbery, carjacking, assault, and murder.

¹ All statutory references herein are to the Penal Code unless otherwise noted.

The two gangs, which had originally been friendly, became rivals after Mob Piru gang members shot and killed a well-known Lueders Park Piru gang member in April 2009. After a string of shootings from 2009 to 2013, the gangs attempted to end their feud, but were unsuccessful.

The warrant pertained to numerous locations where members of the Mob Piru gang were believed to reside. In particular, 1617 East McMillan Street was believed to be the residence of Mob Piru gang member “Lil Bill,” who was the cousin of Davion “Swayvee” Douglas.

The relevant unsealed portion of the warrant stated:

“This location is the residence of ‘Mob Piru’ gang member ‘Lil Bill’ who is the cousin of Davion ‘Swayvee’ Douglas. I have not been able to identify [Lil Bill] at this time. Your affiant saw Davion ‘Swayvee’ Douglas enter this residence on 06-02-2016, during a containment of a suspect with a firearm.

“On 06-29-2016, I once again saw Davion ‘Swayvee’ Douglas enter the location [as] I drove in front of the residence and contacted Simon ‘Yakk’ Daniels attempting to walk in the rear yard with several other ‘Mob Piru’ gang members.

“On 09-18-2106, ‘CRI-B’ was hanging out at the location with ‘Swayvee’ and ‘Lil Bill.’ ‘CRI-B’ stated that the location belongs to ‘Swayvee’s’ father’s family and that he just keeps his personal property at the location. I showed the ‘CR-A’ a booking photo of Davion Douglas and he/she identified him as ‘Swayvee.’ I also showed the ‘CRI-A’ a photograph of 1617 E. McMillan Street, Compton, and he/she identified it as the residence where he/she has recently been with ‘Swayvee.’

“Using department resources such as Department of Motor Vehicles (DMV), Consolidated Criminal History Reporting System (CCHRS), Los Angeles County Sheriff Department booking history, I was able to [determine] Davion ‘Swayvee’ Douglas’s current documented address is 1712 E. McMillan Street, Compton, as of 01-09-2014. Davion ‘Swayvee’ Douglas gave the above address as his residence to California Department of Correction and Rehabilitation as of 10-01-2014. I contacted the residence, [and someone] told me Davion ‘Swayvee’ Douglas did not live at 1712 E. McMillan.

“Based on the confirmation of the identity of Davion ‘Swayvee’ Douglas, I was able to see that he is a convicted felon.”

The warrant did not name defendant.

2. The Search of 1617 East McMillan Residence

On October 6, 2016, at approximately 5:00 a.m., Los Angeles County Sheriff’s Deputy Scott Lawler executed the search warrant at the residence located at 1617 East McMillan Street in Compton. Deputy Lawler encountered defendant in the residence, and found a loaded handgun in the drawer of defendant’s bedroom. Deputy Lawler found prescription bottles in the name of Lamont Trevillison in the bedroom, as well as some mail addressed to him. The name Lamont Trevillison was later determined to be an alias for defendant.

Deputy Lawler detained defendant. After receiving his *Miranda* advisements, and waiving his rights, defendant told Deputy Lawler that he was an Uber driver and he had bought the gun from one of his fares about a week earlier.

Davion “Swayvee” Douglas was not among those detained after the search of the residence.

3. *Defendant’s Motion to Quash and Traverse*

An information filed December 13, 2016, charged defendant with one count of possession of a firearm by a felon (§ 29800, subd. (a)(1).)

On January 17, 2017, defendant moved to quash and traverse the search warrant and suppress the gun seized. Defendant asserted that the warrant was based on stale information (sightings of Davion “Swayvee” Douglas dated from June 2016, three months before the warrant was issued) and that Detective Sumner failed to confirm that Swayvee lived at the McMillan residence. Further, the affidavit was unclear how many informants there were (the warrant identified CR-A, CRI-A, and CRI-B), and the informants’ information was hearsay and not credible. Finally, Detective Sumner did not establish the connection between Lil Bill and Swayvee or Lil Bill and the McMillan residence because he only made the unsubstantiated assertion that Lil Bill was Douglas’s cousin.

On March 16, 2016, the court held an in-camera hearing. In open court, the court stated that it was necessary the sealed portion of the warrant remain sealed to protect the identity of the informants. The court next addressed the motion to traverse, pointing out that in camera the court learned that both Informant A and B were shown the picture of Swayvee, but it was Informant B who should have been listed in the affidavit.

The court stated that the sealed portion of the warrant substantiated Sumner's affidavit in the unsealed portion. The court found no deliberately false statements or statements made with reckless disregard for the truth.

The court rejected the argument the factual basis was stale, pointing out that CRI-B saw Swayvee at the house as recently as September 18, 2016. The court denied the motion to traverse.

4. *Defendant's Plea*

On March 22, 2017, defendant entered a plea of no contest, and the trial court sentenced defendant to the upper term of three years, suspended execution of sentence, and placed defendant on formal probation for three years.

DISCUSSION

Independent Review of Search Warrant Affidavit

Courts have long recognized an informant privilege and the policy reasons underlying the privilege. (*Hobbs, supra*, 7 Cal.4th 948; *McCray v. State of Illinois* (1967) 386 U.S. 300, 308–309 (*McCray*).) The common law privilege to refuse disclosure of the identity of a confidential informant is codified in Evidence Code section 1041, which provides that a public entity has a privilege to refuse to disclose the identity of an informant. The primary policies served by this privilege are twofold: to encourage citizens to report crimes regardless of their motives for doing so and to avoid inhibiting law enforcement's necessary use of professional informants. (*McCray*, at pp. 308–309.)

Under *Hobbs, supra*, 7 Cal.4th 948, “[o]n a properly noticed motion by the defense seeking to quash or traverse [a] search warrant” where any portion or all of the search warrant affidavit has been sealed, “the lower court should conduct an in camera hearing. . . . It must first be determined whether sufficient grounds exist for maintaining the confidentiality of the informant’s identity. It should then be determined whether the entirety of the affidavit or any major portion thereof is properly sealed, i.e., whether the extent of the sealing is necessary to avoid revealing the informant’s identity.” (*Hobbs, supra*, 7 Cal.4th at p. 972.)

“If the affidavit is found to have been properly sealed, and the defendant has moved to traverse the warrant, the court should then proceed to determine whether the defendant’s general allegations of material misrepresentations or omissions are supported by the public and sealed portions of the search warrant affidavit. . . . Generally, in order to prevail on such a challenge, the defendant must demonstrate that (1) the affidavit included 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.]” (*Hobbs, supra*, 7 Cal.4th at p. 974.)

“If the trial court determines that the materials . . . before it do not support defendant’s charges of material misrepresentation, the court should simply report this conclusion to the defendant and enter an order denying the motion to traverse. [Citations.]” (*Hobbs, supra*, 7 Cal.4th at p. 974.)

“[I]f the affidavit is found to have been properly sealed and the defendant has moved to quash the search warrant [citation], the court should proceed to determine whether, under the ‘totality of the circumstances’ presented in the search warrant affidavit . . . , 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 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.]” (*Hobbs, supra*, 7 Cal.4th at p. 975.)

“If the court determines, based on its review of all the relevant materials, that the affidavit . . . furnished probable cause for issuance of the warrant . . . [citation], the court should simply report this conclusion to the defendant and enter an order denying the motion to quash. [Citations.]” (*Hobbs, supra*, 7 Cal.4th at p. 975.) “In all instances, a sealed transcript of the in camera proceedings, and any other sealed or excised materials, should be retained in the record along with the public portions of the search warrant application for possible appellate review. [Citations.]” (*Ibid.*) On appeal, we review for abuse of discretion. (See *Hobbs, supra*, at p. 976.)

Pursuant to defendant’s request, which the People do not oppose, we have reviewed the entire record, including the search warrant, the sealed and unsealed portions of the affidavit, and the transcript of the

in-camera hearing conducted by the trial court. Based on our independent review of those materials, we conclude it is not reasonably probable defendant would have prevailed on any aspect of his motion to unseal, quash or traverse the warrant. The trial court acted well within its discretion in determining valid grounds existed for maintaining the informant's confidentiality, and sealing a portion of the affidavit was necessary to avoid revealing the informant's identity.

We have also examined the entire affidavit for possible misleading statements or omissions and have found nothing that leads us to suspect any material misrepresentations or omissions were made. Under the totality of the circumstances, there was a fair probability that execution of the warrant would lead to contraband or evidence of a crime at the location to be searched. Accordingly, the trial court properly denied defendant's motion to quash and traverse the warrant.

DISPOSITION

The order is affirmed.

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WILLHITE, Acting P. J.

We concur:

MANELLA, J.

COLLINS, J.