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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

TACOREY BENSON,

Defendant and Appellant.

B286559

(Los Angeles County
Super. Ct. No. GA099679)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robin Miller Sloan, Judge. Affirmed.

Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General of California, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Jonathan M. Krauss, and Timothy L. O'Hair, Deputy Attorneys General for Plaintiff and Respondent.

INTRODUCTION

Defendant appeals the trial court's denial of his motion to quash and traverse the sealed search warrant of his home which resulted in his arrest and charges for drug dealing. We affirm.

FACTS AND PROCEDURAL BACKGROUND

1. Sealed Warrant, and Subsequent Search and Arrest

In July 2016, a citizen informant contacted the sheriff to report narcotics sales regularly taking place at defendant's house. On August 25, 2016, the police obtained a sealed search warrant pursuant to *People v. Hobbs* (1994) 7 Cal.4th 948 (*Hobbs*) and Evidence Code section 1040 through 1042 to search the property, persons, and vehicles located at defendant's address. The warrant and the affidavit supporting it were sealed. On August 31, 2016, police searched the home, seized weapons and drugs from the residence, and arrested defendant.

2. Legal Proceedings

The People filed a felony complaint, charging defendant with possession for sale of a controlled substance with a firearm, and possession of marijuana for sale. The People subsequently acknowledged that the marijuana sale violation was reduced to a misdemeanor following the passage of Proposition 64.

Defense counsel filed a motion to quash and traverse the search warrant. A small portion of the affidavit supporting the warrant was unsealed prior to bringing the motion. Counsel asserted that because the search warrant and its accompanying affidavit were largely sealed, the superior court had to comply with the procedures set forth in *Hobbs, supra*, 7 Cal.4th 948. Counsel also argued that there were material omissions from the affidavit which, had the issuing judge known, would have

resulted in the denial of the warrant request for lack of probable cause.

On February 3, 2017, the trial court conducted an in-camera hearing regarding the sealed search warrant and accompanying affidavit. At its conclusion, the court denied the motion to quash and/or traverse the search warrant. In the unredacted portion of the affidavit, the officer attested he saw transactions taking place at defendant's home that were consistent with sale of drugs and heard a buyer say "I've got my blunt, now I need some weed." The court found "sufficient probable cause in the warrant affidavit attached to the warrant." Later in the same proceeding, the trial court conducted a second in camera hearing.

On November 16, 2017, the People amended the felony complaint by interlineation to add a third count for maintaining a place for narcotics activity in violation of Health and Safety Code section 11366. Defendant then waived his constitutional rights and pleaded no contest to the newly added third count. The court suspended imposition of sentence and placed defendant on formal probation for three years. The court assessed fines and dismissed the remaining two counts. The People stated that they would not object to reducing the charge to a misdemeanor when defendant successfully completed probation.

Defendant filed a timely notice of appeal from the denial of his motion to suppress.

DISCUSSION

Defendant's sole contention on appeal is that the trial court may have improperly adjudicated his motion to quash and traverse the sealed search warrant. Defendant requests this court to conduct an independent review of the sealed affidavit

and search warrant and the in-camera hearing to determine that the trial court complied with the Supreme Court's decision in *Hobbs*. The People do not object.

In *Hobbs*, the court described the procedure to be followed when a defendant cannot reasonably be expected to determine whether the circumstances would support a motion to traverse or quash the warrant. Upon the defendant's properly noticed motion, the trial 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. [¶] . . . [Citation.] Defense counsel should be afforded the opportunity to submit written questions, reasonable in length, which shall be asked by the trial judge or any witness called to testify at the proceeding. [¶] . . . The court . . . must take it upon itself both to examine the affidavit for possible inconsistencies or insufficiencies regarding the showing of probable cause, and inform the prosecution of the materials or witnesses it requires. The materials will invariably include such items as relevant police reports and other information regarding the informant and the informant's reliability. [¶] . . . [T]he lower court may, in its discretion, find it necessary and appropriate to call and question the affiant, the informant, or any other witness whose testimony it deems necessary to rule upon the issues." (*Hobbs, supra*, 7 Cal.4th at pp. 972–973, fn. omitted.) "[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.” (*Id.* at p. 975.)

We have reviewed the sealed reporter’s transcript of the *Hobbs* hearing and the materials reviewed by the trial court at that hearing, including the sealed portion of the search warrant. We conclude that the trial court fulfilled its obligations under *Hobbs*. The court correctly found that the informant’s identity and the sealed portions of the warrant and supporting affidavit were not discoverable, and that probable cause was adequately established.

DISPOSITION

We affirm the judgment.

RUBIN, Acting P. J.

WE CONCUR:

STRATTON, J.

DUNNING, J.*

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