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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ALEXANDER HERNANDEZ,

Defendant and Appellant.

B287105

(Los Angeles County
Super. Ct. No. VA142241)

APPEAL from a judgment of the Superior Court of
Los Angeles County. Olivia Rosales, Judge. Affirmed.

Richard L. Fitzer, 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, Susan Sullivan Pithey and Idan Ivri, Deputy
Attorneys General, for Plaintiff and Respondent.

After unsuccessfully challenging the search warrant used to obtain evidence against him, Alexander Hernandez entered a plea of no contest to one count of possession of methadone for sale. (Health & Saf. Code, § 11351.) The trial court sentenced appellant to four years in state prison.¹ Appellant appeals the denial of his motion to quash and traverse the search warrant and to suppress evidence from the search. (Pen. Code,² § 1538.5, subd. (m).) Appellant requests, and respondent does not oppose, appellate review of the sealed search warrant affidavit and the in camera proceedings on the motion to quash and traverse the search warrant to independently determine whether the trial court properly ordered portions of the affidavit to remain sealed, and whether the affidavit supported the issuance of the search warrant. (*People v. Hobbs* (1994) 7 Cal.4th 948, 972–975 (*Hobbs*)). Having conducted our review, we conclude that the proceedings below were in accordance with the procedure mandated by *Hobbs*, the trial court did not abuse its discretion in refusing to unseal portions of the search warrant affidavit, and the sealed affidavit established probable cause to support the search. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Search

On May 27, 2016, at 9:28 a.m., Los Angeles County Sheriff's deputies executed a search warrant on appellant's home at 9018

¹ Appellant's sentence consisted of the low term of two years doubled for a prior strike pursuant to the Three Strikes law. (Pen. Code, §§ 667, subds. (b)–(i), 1170.12, subds. (a)–(d).)

² Undesignated statutory references are to the Penal Code.

Bermudez Street in Pico Rivera. Police had obtained the address of the property from appellant's booking records from an April 26, 2016 arrest wherein he gave 9018 Bermudez Street as his residence address. The warrant specified the location to be searched at that address as a single family residence, including "the surrounding grounds, any garages, storage rooms, containers and out-buildings of any kind located therein . . . and any vehicles directly on the property." The warrant further identified appellant as a target of the search, and specified the property subject to search.

When the deputies arrived at the address, police encountered appellant's father, who informed them that appellant lived in the back residence on the property. Deputies soon discovered there were two separate detached single family residences, a detached garage with living quarters, and multiple vehicles including cargo trucks on the parcel. However, there was only one mailbox for the entire property, and the only address listed was 9018 Bermudez Street.

After searching the front house, police searched appellant's residence. In a bedroom, police found a toiletry bag containing numerous syringes (some used) and two clear plastic containers with a tar-like substance resembling heroin. In the same room police recovered 86 vials of a pink liquid labeled "methadone" and bearing appellant's name.

Trial Court Proceedings

The search warrant justifying the search of appellant's residence was supported by a sealed affidavit prepared by Deputy Christopher Lopez. Appellant filed a motion to unseal, quash, and traverse the search warrant and to suppress evidence pursuant to *Hobbs, supra*, 7 Cal.4th 948 and section 1538.5. In accordance with Evidence Code section 915, subdivision (b) and

Hobbs, the trial court held an in camera hearing. Deputy Lopez testified at the hearing, and the trial court reviewed the sealed search warrant affidavit. The court determined that those portions of the affidavit relating to the identity of the confidential informant should remain sealed, and found probable cause for the search based on the sealed portions of the affidavit. The court ruled that the rest of the affidavit should be unsealed, and ordered that a version of the affidavit with the sealed passages redacted be provided to the defense.

The trial court then conducted a hearing on the motion to quash, traverse, and suppress based on the redacted affidavit. Citing *People v. Nguyen* (2017) 12 Cal.App.5th 574, appellant argued that the search exceeded the scope of the warrant, because appellant's home was an entirely separate residence that was not specifically identified in the warrant. Distinguishing *Nguyen*, the trial court found the warrant contained no omission of material fact, the police acted in good faith in searching appellant's residence based on the terms of the warrant, and the warrant established probable cause to search appellant's residence at the 9018 Bermudez Street address, where appellant's home was in fact located.

DISCUSSION

Appellant requests an independent review of the sealed affidavit and the in camera proceedings to determine whether the trial court abused its discretion in failing to unseal any portion of the affidavit, and whether any remaining sealed portions established probable cause to support the issuance of the search warrant. Respondent does not object to our independent review.

I. Legal Principles

A court may order all or any portion of a search warrant affidavit sealed if necessary to protect the identity of a confidential informant. (Evid. Code, § 1041; *Hobbs, supra*, 7 Cal.4th at p. 971.) But because the sealing of all or a portion of the affidavit may prevent a defendant from making the required showing for a motion to traverse the warrant (*People v. Luttenberger* (1990) 50 Cal.3d 1, 21 (*Luttenberger*)), or, for a motion to quash, from determining whether sufficient probable cause existed for the search, courts must follow certain procedures “in order to strike a fair balance between the People’s right to assert the informant’s privilege and the defendant’s discovery rights.” (*Hobbs, supra*, at pp. 971–972.)

Thus, on a properly noticed motion to quash or traverse the search warrant where the supporting affidavit is sealed, the lower court must conduct an in camera hearing pursuant to the following guidelines: The court must first determine “whether sufficient grounds exist for maintaining the confidentiality of the informant’s identity.” (*Hobbs, supra*, 7 Cal.4th at p. 972.) If so, the court decides to what extent the affidavit should be sealed “to avoid revealing the informant’s identity.” (*Ibid.*; *People v. Galland* (2008) 45 Cal.4th 354, 364 (*Galland*).)

Next, “[i]f 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, including any testimony offered at the in camera hearing. 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.’” (*Hobbs, supra*, 7 Cal.4th at p. 974; *Galland, supra*, 45 Cal.4th at p. 364.)

“If the trial court determines that the materials and testimony 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.” (*Hobbs, supra*, 7 Cal.4th at p. 974.) “Similarly, if the affidavit is found to have been properly sealed and the defendant has moved to quash the search warrant (Pen. Code, § 1538.5), the 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.” (*Id.* at p. 975.)

“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.’” (*Hobbs, supra*, 7 Cal.4th at p. 975.) “If the court determines, based on its review of all the relevant materials, that the affidavit and related materials furnished probable cause for issuance of the warrant . . . the court should simply report this conclusion to the defendant and enter an order denying the motion to quash.” (*Ibid.*)

On appeal, this Court reviews the sealed transcript of the in camera proceedings, the sealed or excised materials, and the

public portions of the search warrant application to assess whether the trial court abused its discretion in making the determinations on the issues set forth above. (*Luttenberger, supra*, 50 Cal.3d at p. 21 [“ [The] court retains wide discretion to protect against the disclosure of information which might unduly hamper the prosecution or violate some other legitimate governmental interest’ ”]; see also *Hobbs, supra*, 7 Cal.4th at p. 976.)

**II. The Procedure Employed by the Trial Court
Conformed with *Hobbs*, There Was No Abuse of
Discretion in the Court’s Decision Not to Unseal
Portions of the Search Warrant Affidavit, and
the Sealed Affidavit Established Probable
Cause for the Search**

Appellant acknowledges the trial court held an in camera hearing in accordance with *Hobbs*. But appellant claims that “the trial court only unsealed a small portion of the affidavit and/or the search warrant,” and further asserts that “it is likely that the trial court erred in finding that most of the sealed material must remain sealed to avoid revealing the confidential informant’s identity.” To the contrary, based on our review of the sealed transcript of the in camera proceedings, the sealed affidavit and redacted passages, and the redacted version of the search warrant affidavit provided to the defense, we find appellant’s speculation to be unfounded.

After reviewing the search warrant affidavit in full and considering the testimony before it, the trial court found that those portions of the affidavit pertaining to the identity of the confidential informant had been properly sealed and should remain so. The court further found that the sealed portions of the affidavit provided probable cause for the search. The court then

properly held a hearing on the motion to quash and traverse the warrant based on the unsealed portions of the search warrant affidavit.

The proceedings below comported with the procedure mandated by *Hobbs*. We find no abuse of discretion in the trial court's refusal to unseal portions of the search warrant affidavit, and we agree with the court's conclusion that the affidavit established probable cause for the warrant and did not disclose any basis to traverse the warrant.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

HOFFSTADT, J.