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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.

ISAAC FLORES,

Defendant and Appellant.

B284264

(Los Angeles County
Super. Ct. No. BA446668)

APPEAL from a judgment of the Superior Court of Los Angeles County, James R. Dabney, Judge. Affirmed.

Cindy Brines, 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, Paul M. Roadarmel, Jr., and John R. Prosser, Deputy Attorneys General, for Plaintiff and Respondent.

Isaac Flores appeals from a judgment of conviction following his no contest plea to possession for sale of cocaine in excess of 10 kilograms, possession of an assault weapon, and child abuse. He challenges the denial of his motions to unseal the search warrant affidavit, quash and traverse the search warrant, and suppress the evidence obtained during the search. Flores requests we independently review the sealed portion of the search warrant affidavit pursuant to *People v. Hobbs* (1994) 7 Cal.4th 948, 971 (*Hobbs*) to determine whether the affidavit was properly sealed and whether, in light of the affidavit and the testimony at the suppression hearing, the initial warrantless search was lawful. He urges us as part of our review to excise the fruits of the warrantless entry, and determine whether the remaining information in the search warrant affidavit provides probable cause for issuance of the search warrant. In addition, Flores requests we review the sealed portion of the affidavit to determine whether it contains false statements or omissions that are material to the finding of probable cause.

After conducting an independent review of the entire record, including the sealed portion of the affidavit, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Detention, Warrantless Entry, Search Warrant, and Search*¹

On May 12, 2016 Culver City Police Detective Andrew Bellante and 10 other police officers from the Los Angeles Impact

¹ Except as otherwise indicated, the facts are taken from Detective Bellante's testimony at the May 19, 2017 hearing on Flores's motion to suppress evidence.

Major Narcotics Crime Task Force conducted a multiple-hour surveillance of Flores's apartment in Hawaiian Gardens based on information from a confidential informant. Around 5:00 p.m. Detective Bellante was notified over the radio that a female (Flores's wife, Sarah Garibay) was leaving the front door carrying a purse. Detective Bellante detained Garibay. About 30 seconds later, Flores and his three children exited the front door and also were detained.

After the family's detention, Detective Bellante and five other officers conducted a protective sweep of the apartment. Detective Bellante decided to "freeze the location" because Garibay was "leaving the location with a purse that may have concealed contraband." Detective Bellante testified he entered the apartment to determine if anyone else was inside the residence and to prevent the destruction of possible evidence. The police did not find anyone inside the small two-bedroom apartment. During the three-minute sweep of the residence, Detective Bellante observed in the rear bedroom a large open duffel bag containing 10 to 15 kilograms of cocaine, an assault rifle, and a .38-caliber handgun. After the officers left the apartment, Detective Bellante prepared a search warrant affidavit. The affidavit's statement of probable cause was submitted under seal to protect the identity of the confidential informant pursuant to *Hobbs, supra*, 7 Cal.4th at page 971.

Around 6:00 p.m. Detective Bellante obtained the search warrant for the apartment and Flores's car. The police officers executed the search warrant and seized evidence from a bedroom in Flores's apartment, including 40 kilograms of cocaine that were inside three duffel bags and a large cardboard box; about one pound of cocaine inside the dresser; about 15 pounds of methamphetamine and six pounds of heroin in the closet; three

loaded .38-caliber handguns, one of which was on top of the dresser; a black assault rifle resting on a wall; numerous rounds of ammunition on the floor and inside the dresser; a large amount of money and two Rolex watches inside the dresser; and several pieces of mail addressed to Flores and Garibay.² In addition, the police officers searched Flores's car and found a black duffel bag inside the trunk containing 22 pounds of methamphetamine. The police officers arrested Flores and Garibay after the search.

B. *Flores's Motions To Unseal the Search Warrant Affidavit, Quash and Traverse the Search Warrant, and Disclose the Identity of the Confidential Informant*

On June 3 and 23, 2016, prior to the preliminary hearing, Flores filed motions to unseal the search warrant affidavit, quash and traverse the warrant, and disclose the confidential informant's identity.³ Prior to the August 24, 2016 hearing, the trial court conducted an in camera review of the sealed portion of the search warrant affidavit.⁴ The trial court denied the motions at the hearing, finding the reliable confidential informant was not a material witness; disclosure would compromise the informant's safety; the sealed portion of the affidavit was

² The evidence retrieved during the search is reflected in the task force report from the investigation included in the record.

³ Flores filed a motion for supplemental pretrial discovery of the search warrant affidavit and a separate motion for disclosure of the identity of the confidential informant. However, the trial court treated the motion for supplemental discovery as one seeking to unseal the search warrant affidavit and quash and traverse the search warrant.

⁴ Judge Ray Jurado conducted the in camera review and presided over the August 24, 2016 hearing.

necessary to protect the informant and was properly sealed under *Hobbs*; the sealed portion of the affidavit did not contain material false statements or omissions; and there was probable cause to issue the search warrant.

C. *The Information*

The information charged Flores with eight felonies: possession for sale of cocaine (Health & Saf. Code, § 11351; count 1); possession for sale of heroin (Health & Saf. Code, § 11351; count 2); possession for sale of methamphetamine (Health & Saf. Code, § 11378; count 3); possession of an assault weapon (Pen. Code, § 30605, subd. (a); count 4); possession of cocaine while armed with a loaded, operable firearm (Health & Saf. Code, § 11370.1, subd. (a); count 5); child abuse of Flores's son (Pen. Code, § 273a, subd. (a); count 6); child abuse of Flores's daughter (Pen. Code, § 273a, subd. (a); count 7); and possession of a firearm by a felon (Pen. Code, § 29800, subd. (a)(1); count 8). The information specially alleged as to counts 1 and 2 that the cocaine and heroin, respectively, exceeded 10 kilograms by weight within the meaning of Health & Safety Code section 11370.4, subdivision (a), and as to count 3 that the methamphetamine exceeded 10 kilograms by weight within the meaning of Health & Safety Code section 11370.4, subdivision (b). The information also specially alleged as to counts 1, 2, and 3 that Flores had a prior drug-related conviction within the meaning of Health & Safety Code section 11370.2, subdivision (a).

D. *The Motion To Suppress and Hearing*

On January 4, 2017 Flores filed a motion to suppress the evidence seized and the officers' observations during the May 12, 2016 search pursuant to Penal Code section 1538.5. Flores

contended all evidence obtained by law enforcement should be suppressed as the fruits of the unlawful warrantless search.

At the May 19, 2017 hearing, Flores's attorney argued there were no exigent circumstances that justified the warrantless entry into Flores's residence. He also contended information obtained from the protective sweep and warrantless entry used in the sealed search warrant affidavit should not have been sealed under *Hobbs*. The trial court noted Flores did not renew his motions to quash and traverse the search warrant. However, because the prior motions to quash and traverse the warrant were denied without prejudice, the trial court deemed Flores's contentions as renewed motions. The trial court also discussed the prior motion to unseal the affidavit. The trial court concluded Detective Bellante's testimony did not alone provide exigent circumstances or other basis for the officers entering the residence without a search warrant. The People responded that the affidavit provided the missing facts to support the initial warrantless entry. The trial court continued the hearing to obtain the sealed search warrant affidavit.

On June 9, 2017 the trial court conducted an in camera review of the sealed affidavit. The trial court concluded the affidavit was properly sealed, and denied the motions to quash and traverse the warrant and to suppress evidence.

E. *The Plea and Sentencing*

After the trial court denied his motions, Flores pleaded no contest to possession for sale of cocaine (Health & Saf. Code, § 11351; count 1); possession of an assault weapon (Pen. Code, § 30605, subd. (a); count 4); and child abuse (Pen. Code, § 273a, subd. (a); count 6). Flores also admitted as to count 1 the special

allegation that he possessed cocaine in excess of 10 kilograms (Health & Saf. Code, § 11370.4, subd. (a)(3)).

The trial court sentenced Flores to an aggregate state prison sentence of 14 years. The court selected count 1 for possession for sale of cocaine as the base term, and imposed the lower term of two years, plus a consecutive term of 10 years for the special allegation that the cocaine exceeded 10 kilograms. On count 4 for possession of an assault rifle, the court imposed a consecutive term of eight months (one-third the middle term of two years). On count 6 for child abuse, the court imposed a consecutive term of one year four months (one-third the middle term of four years). The court calculated Flores's total prejudgment custody credit as 885 days, with 443 days of actual custody plus 442 days of conduct credit pursuant to Penal Code section 4019. On the People's motion, the trial court dismissed the remaining counts and allegations.

DISCUSSION

The People may exercise their privilege not to disclose the identity of a confidential informant if “the necessity for preserving the confidentiality of his or her identity outweighs the necessity for disclosure in the interest of justice.” (Evid. Code, § 1041, subd. (a)(2).) “[A]ll or any part of a search warrant affidavit may be sealed if necessary to implement the privilege and protect the identity of a confidential informant.” (*Hobbs*, *supra*, 7 Cal.4th at p. 971; see Evid. Code, § 1042, subd. (b) [Where a search is made pursuant to a valid warrant, the People are “not required to reveal to the defendant . . . the identity of an informer in order to establish the legality of the search or the admissibility of any evidence obtained as a result of it.”].)

“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.” (*People v. Galland* (2008) 45 Cal.4th 354, 364 (*Galland*); accord, *Hobbs, supra*, 7 Cal.4th at p. 963; see Evid. Code, § 915, subd. (b) [providing for in camera review of confidential information]). “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.’” (*Galland*, at p. 364; accord, *Hobbs*, at p. 972.)

Once the trial court determines the affidavit was properly sealed, it “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’ (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).” (*Galland, supra*, 45 Cal.4th at p. 364, quoting *Hobbs, supra*, 7 Cal.4th at pp. 975, 974; accord, *People v. Heslington* (2011) 195 Cal.App.4th 947, 957.) We independently review the record and sealed portion of the affidavit to determine whether there was a “reasonable probability” Flores could prevail on his motion to traverse or quash the search warrant. (*Hobbs*, at p. 975; accord, *People v. Martinez* (2005) 132 Cal.App.4th 233, 241 (*Martinez*) [concluding

there was “no reasonable possibility defendant could prevail on his motion”].)

At Flores’s request, we have reviewed the entire record, including the sealed portion of the search warrant affidavit presented to the trial court in camera. We conclude the trial court did not err in refusing to unseal the sealed portion of the affidavit providing probable cause for issuance of the search warrant because disclosure of its contents would reveal the identity of the confidential informant.⁵ (*Hobbs, supra*, 7 Cal.4th at p. 971; *People v. Camel* (2017) 8 Cal.App.5th 989, 1009 [trial court did not err in refusing to unseal entire search warrant affidavit or in determining which portions had to remain under seal to protect confidentiality of confidential informants]; *Martinez, supra*, 132 Cal.App.4th at pp. 241-242 [trial court did

⁵ We do not address whether the search warrant affidavit should have been unsealed as to the section describing the initial warrantless search because we do not reach whether the warrantless entry into Flores’s residence was justified by the exceptions to the search warrant requirement for exigent circumstances or a protective sweep. (See *People v. Seaton* (2001) 26 Cal.4th 598, 632 [“[A] police officer who has probable cause to believe a dwelling contains evidence of a crime and has reason to fear imminent destruction of the evidence may enter the dwelling to ‘secure’ it without first getting a warrant.”]; *People v. Celis* (2004) 33 Cal.4th 667, 676, 678 [“A protective sweep can be justified merely by a *reasonable suspicion* that the area to be swept harbors a dangerous person.”].) Even if Detective Bellante’s initial observations were the tainted fruit of an illegal warrantless entry, under the independent source doctrine, the affidavit—excised of any information obtained during the warrantless entry—was sufficient to establish probable cause. (*People v. Weiss* (1999) 20 Cal.4th 1073, 1078, 1082; *People v. Robinson* (2012) 208 Cal.App.4th 232, 241.)

not err in concluding disclosure of confidential affidavit would tend to reveal the identity of the confidential informants].)

Moreover, there was no reasonable probability Flores could prevail on his motion to traverse and quash the search warrant. (*Hobbs, supra*, 7 Cal.4th at p. 977; *Martinez, supra*, 132 Cal.App.4th at p. 241.) There is nothing in the sealed or public portions of the search warrant affidavit and record to suggest the affiant made any misrepresentations or omissions in applying for the search warrant. (*Hobbs*, at p. 977; *Martinez*, at p. 241.) Further, the sealed portion of the affidavit provided an adequate basis to establish the informant's reliability, and the information provided by the confidential informant supported the magistrate's finding of probable cause for issuance of the search warrant. (*Hobbs*, at p. 975; *Martinez*, at p. 242.) The trial court properly denied the motions to unseal the search warrant affidavit, quash and traverse the warrant, and suppress the evidence.

DISPOSITION

The judgment is affirmed.

FEUER, J.

WE CONCUR:

PERLUSS, P. J.

ZELON, J.