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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.

VANNA SOK,

Defendant and Appellant.

B271856

(Los Angeles County  
Super. Ct. No. NA101359)

APPEAL from a judgment of the Superior Court of Los Angeles County, Daniel J. Lowenthal and Richard R. Romero, Judges. Affirmed as modified.

Susan Morrow Maxwell, 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, Scott A. Taryle and Rene Judkiewicz, Deputy Attorneys General, for Plaintiff and Respondent.

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During a warrantless search of appellant Vanna Sok's person and a backpack she carried, Long Beach Police officers recovered four bindles of methamphetamine, a digital scale, and cash. During a separate search of her residence pursuant to a warrant, officers recovered a .38 caliber revolver, an additional scale, and drug packaging materials. Based upon these searches, the district attorney charged Sok with possession of methamphetamine for sale (Health & Saf. Code, § 11378) and possession of a firearm by a convicted felon (Pen. Code, § 29800, subd. (a)).<sup>1</sup> In separate hearings, the trial court denied both Sok's section 1538.5 motion to suppress evidence from the search of her person and her motion pursuant to *People v. Hobbs* (1994) 7 Cal.4th 948 (*Hobbs*) to identify the warrant's confidential informant and to quash and traverse the warrant. Thereafter, Sok pleaded no contest to both charges and the trial court granted her probation.

Sok contends the trial court erred in denying her motion to suppress evidence from the warrantless search of her person and backpack. In addition, Sok requests that we review the in camera hearing regarding the confidentiality and sufficiency of the search warrant for the residence in accordance with the procedures established in *Hobbs, supra*. Finally, Sok contends that one of her probation conditions is unconstitutionally vague. We find that substantial evidence supports the trial court's denial of the motion to suppress evidence obtained during the search of Sok's person and backpack. We likewise find no error with the trial court's in camera review of the warrant pursuant to *Hobbs*. The People concede and we thus modify the challenged condition

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<sup>1</sup> All subsequent statutory references are to the Penal Code unless otherwise noted.

of probation to make it constitutionally precise. In all other respects, we affirm the judgment.

## **FACTS**

### **A. The Section 1538.5 Motion to Suppress Hearing**

The facts described below were presented at the hearing on Sok's section 1538.5 motion to suppress evidence obtained during the search of Sok's person and backpack on February 6, 2015.

In January 2015, Long Beach Police Department Officers Vong and Solorio received information from a confidential informant that a woman named "Vanna" was selling methamphetamine from a residence in the vicinity of 14th Street and Peterson in the city of Long Beach. Vong conducted surveillance of the area and identified the address as Sok's residence at 1446 East 14th Street.

At some point during the investigation, Long Beach Police Department patrol officers stopped Sok after she left her residence. She identified herself as Vanna Sok and gave her residence address as 1446 East 14th Street. The officers photographed Sok. The informant working with Vong and Solorio later identified Sok to them from the photograph as the person who had sold the informant narcotics.

Based upon the informant's information, Vong and Solorio conducted surveillance of Sok's residence. During a two-hour period, they observed 15 to 20 people approach the residence, enter, and then leave. Vong opined such foot traffic is consistent with illegal narcotics sales and corroborated information obtained from the informant.

On January 30, 2015, Vong obtained a search warrant for Sok's residence at 1446 East 14th Street. At the time Vong obtained the warrant, Sok's photograph had not yet been

identified by the informant, so Vong did not know Sok's true and complete name. The warrant, therefore, did not seek permission to search Sok.

On February 6, 2015, Vong and Solorio planned to execute the search warrant for Sok's residence. On that day, prior to the search, Vong travelled back and forth between police department substations, trying to assemble an entry and search team, while Solorio conducted surveillance of Sok's residence. While Vong assembled the team, Solorio advised him, by either radio or cell phone, that Sok had left the house and entered a car with a male, later identified as Sok's boyfriend, Ricky El. Solorio followed Sok and El to the area of 17th Street and Cherry Avenue, where he directed patrol officers Lacey and Garcia "to contact" them. The officers stopped Sok and El near 17th and Cherry, approximately four city blocks from Sok's residence on 14th Street.<sup>2</sup>

After the patrol officers stopped Sok and El, Vong went to the location of the stop. He arrived there within three minutes of the stop. When Vong arrived, Sok and El were standing on the sidewalk, conversing with Officers Lacey and Garcia. Vong contacted Sok and El, and then formally detained them. Vong placed El in handcuffs, while Garcia handcuffed Sok. Vong

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<sup>2</sup> Neither Lacey, Garcia, nor Solorio testified at the section 1538.5 hearing. Vong, the sole People's witness regarding the facts and circumstances surrounding the stop and subsequent search, testified that he heard Solorio order the stop of Sok and El over the cell phone or over the radio. Vong further testified that he arrived at the location of the stop within three minutes, observed the conversation between Sok, El, and the officers, and then participated in or observed what occurred thereafter.

advised Sok of her *Miranda*<sup>3</sup> rights, which she waived. Vong asked Sok if she had any contraband. Sok told Vong she had methamphetamine inside of her bra. Garcia, who is a female officer, recovered two bindles of methamphetamine from the left side of Sok's bra. When asked about the bindles, Sok told Vong that she was at the location to deliver an "8-ball" to one of her customers. Garcia also searched a backpack carried by Sok and recovered currency and a digital scale. Garcia recovered two additional bindles of methamphetamine from a wallet inside the backpack. When asked about the bindles, Sok said one was a "tiner" and one was an "8-ball." After the searches, Vong placed Sok under arrest.

While Sok and El were detained, Officer Solorio conducted the search of Sok's residence pursuant to the warrant obtained on January 30. Inside the residence's single bedroom, Solorio recovered two pieces of mail addressed to Sok at the location, plastic packaging material, another scale, and a .38 caliber revolver.

#### **B. The Warrant for Sok's Residence and the *Hobbs* Hearing**

Pursuant to *Hobbs, supra*, the issuing magistrate sealed that portion of the warrant affidavit purporting to establish probable cause to search Sok's residence. Sok moved to quash and traverse the warrant, and to disclose the sealed portion of the affidavit.<sup>4</sup>

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<sup>3</sup> *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

<sup>4</sup> A defendant moving to quash a search warrant asserts the warrant on its face is not supported by an affidavit showing probable cause. A defendant moving to traverse a search

On December 1, 2015, the trial court conducted an in camera hearing on this motion separate from the December 29 section 1538.5 hearing described above. After the in camera hearing, the trial court determined there was good cause to maintain the confidentiality of both the informant described in the affidavit, and the information relevant to probable cause that he/she provided, and denied the motion to unseal the affidavit. Based upon the in camera hearing, the trial court also denied Sok's motion to quash and to traverse the warrant issued for her residence.<sup>5</sup>

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warrant challenges the veracity of statements in the search warrant affidavit. This requires the defendant to show both that (1) the affidavit contained a false statement that was made either knowingly and intentionally, or with reckless disregard for the truth, and that (2) the false statement supported the finding of probable cause for issuance of the warrant. (*People v. Heslington* (2011) 195 Cal.App.4th 947, 957, fn. 7.)

<sup>5</sup> After the in camera *Hobbs* hearing, the trial court purported also to deny the motion to suppress the search of Sok's person on February 6, based upon information obtained during the in camera hearing. However, it appears that the trial court later determined a separate hearing was necessary, since it conducted the December 29 hearing, at which the legality of the search of Sok's person and belongings was fully litigated, and after which the court upheld the search on grounds wholly unrelated to anything contained in the warrant's sealed affidavit. In any event, our review of the trial court's ruling on the motion to suppress evidence from the search of Sok's person and backpack does not rely on anything contained in either the sealed portion of the warrant affidavit or the in camera *Hobbs* hearing.

## DISCUSSION

### **I. The Trial Court Properly Denied Sok's Motion to Suppress Evidence Obtained during the Search of her Person and Backpack**

Sok contends her conviction for possession of a controlled substance for sale must be reversed because the trial court erred in denying her motion to suppress the drugs, scale, and currency found on her person and in her backpack. We disagree. Substantial evidence supports the trial court's finding that the detention and search was reasonable.

#### **A. An Officer with Probable Cause to Arrest May Arrest and Search a Suspect in a Public Place Without a Warrant**

A peace officer may arrest a suspect without a warrant so long as he or she "has probable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed." (§ 836, subd. (a)(3).) Probable cause to arrest exists when the facts and circumstances known to the arresting officer would cause a person of reasonable caution to believe that the person to be arrested has committed or is about to commit a criminal offense. (*People v. Souza* (1994) 9 Cal.4th 224, 230.) So long as the arrest is made in a public place, an arrest warrant is not required. (*United States v. Watson* (1976) 423 U.S. 411, 413.)

In contrast, the temporary detention of a person for investigative purposes, because it is less intrusive than a formal arrest, may be based on a lesser standard of suspicion. Such a detention requires only some objective manifestation (1) that activity related to a crime has taken place, is occurring, or is about to occur, and (2) that the person to be detained is involved

in that activity. (*In re Tony C.* (1978) 21 Cal.3d 888, 893; accord *People v. Souza, supra*, 9 Cal.4th at p. 230; see also *Terry v. Ohio* (1968) 392 U.S. 1, 17, 20-21 [temporary detention and pat-down search permissible when officer is aware of facts which create a “reasonable suspicion” that detained person has committed or is about to commit criminal activity].)

In either situation, whether a law enforcement contact involves formal arrest, thus requiring probable cause, or investigative detention, requiring only reasonable suspicion or an objective manifestation of criminal activity, a reviewing court must consider the “totality of the circumstances.” (*People v. Rosales* (1987) 192 Cal.App.3d 759, 768 [probable cause to arrest]; *People v. Souza, supra*, 9 Cal.4th at p. 230 [reasonable suspicion to detain].)

An officer with probable cause may direct other officers to make an arrest. (*People v. Madden* (1970) 2 Cal.3d 1017, 1021; *People v. Ramirez* (1997) 59 Cal.App.4th 1548, 1553-1558.) In other words, so long as the officer ordering the arrest is aware of facts that establish probable cause, the arrest is valid even if the particular officer or officers making the arrest do not have probable cause. We see no reason why this principle should not also apply to investigative stops based upon reasonable suspicion or an objective manifestation of criminal activity.

Incident to a lawful arrest, officers may search a suspect for weapons or evidence at the scene of the arrest. (*Gustafson v. Florida* (1973) 414 U.S. 260, 263-266; *United States v. Robinson* (1973) 414 U.S. 218, 225-236.) The right to search extends to items on the person of the arrestee. (See, e.g., *People v. Gutierrez* (1984) 163 Cal.App.3d 332, 334; *People v. Limon* (1993) 17 Cal.App.4th 524, 538.) When an officer has probable cause to



arrest, a suspect may be searched prior to formal arrest, even if the officer has not yet decided to arrest at the time of the search. (*Rawlings v. Kentucky* (1980) 448 U.S. 98, 111.)

### **B. Analysis**

Officer Solorio gave the order to detain Sok and El after they left the 14th Street residence and drove to the area of Cherry and 17th.

Based upon their joint investigation , both Solorio and Vong were aware of facts which created, at a minimum, reasonable suspicion or an objective manifestation of criminal activity that fully justified an investigative detention of Sok: a confidential informant had advised them that a woman named “Vanna” was selling drugs from a residence near 14th Street and Petersen; Vong, based upon surveillance, identified the particular location as Sok’s residence at 1446 East 14th Street and further identified Sok (who has the somewhat unusual first name “Vanna”) as a resident of that address; the informant identified a photograph of Sok to both officers as the “Vanna” who sold him illegal drugs; and surveillance of the residence by Vong and Solorio revealed foot traffic to and from the residence that was consistent with illegal narcotics sales. These particularized facts certainly created a reasonable suspicion, if not probable cause, to believe that Sok had engaged in illegal drug sales.

Within three minutes of Sok’s detention by Officers Lacey and Garcia, Vong arrived at the scene. He observed Sok and El, who were not yet handcuffed, conversing with Officers Lacey and Garcia. He handcuffed El while Garcia handcuffed Sok. He then advised Sok of her *Miranda* rights, which she waived, and asked whether she possessed any contraband. Sok admitted that she did, an admission which, to the extent formal probable cause to

arrest did not yet exist, established such probable cause. Though Vong did not formally arrest Sok until after Garcia's search of the left side of Sok's bra, such a search, as well as the search of the backpack, were justifiable as searches incident to a lawful arrest. The trial court, therefore, did not err when it denied Sok's motion to suppress.

As an aside, we find it insignificant that Officers Solorio, Lacey, and Garcia did not testify. Construing the record below in the light most favorable to the trial court's disposition, *People v. Woods* (1999) 21 Cal.4th 668, 673, any evidentiary gaps created by the absence of testimony from those officers were filled by Vong's testimony or reasonable inferences drawn from his testimony: (1) as overheard by Vong, Solorio ordered the initial stop by Lacey and Garcia; (2) the stop, based upon Vong's observations minutes later, was arguably consensual but if not, at most an investigative detention; (3) such a detention was fully justified by the knowledge developed by Solorio during the course of the investigation; and (4) Vong's investigation and observations after his arrival fully established probable cause and a legal basis to both arrest and search Sok.

## **II. The Trial Court Properly Denied Sok's Motion to Disclose the Informant and to Quash or Traverse the Warrant Pursuant to *Hobbs***

Sok asks this court — pursuant to the procedures established in *Hobbs* — to conduct an independent review of the trial court's proceedings which addressed the validity of the search warrant that Officer Vong obtained with a sealed affidavit. The People agree that such independent review on appeal is proper under *Hobbs*. We conclude that the trial court

did not err either in the scope of its review or its decision to deny Sok's *Hobbs* motion.

#### **A. Applicable Law**

When a defendant moves to quash or traverse a search warrant, the trial court's task is to determine whether the affidavit for the search warrant established probable cause for the issuance of the warrant. (*Hobbs, supra*, 7 Cal.4th at p. 975, discussing *Illinois v. Gates* (1983) 462 U.S. 213, 238.)

Under Evidence Code sections 1041 and 1042, all or part of an affidavit in support of a search warrant may be sealed when necessary to protect the identity of a confidential informant. (*Hobbs, supra*, 7 Cal.4th at pp. 963, 970-971.) When an affidavit in support of a search warrant has been sealed, a defendant who seeks to quash or traverse the search warrant runs into the impediment posed by the sealed affidavit. In this situation, a defendant may file a so-called *Hobbs* motion to have the trial court either unseal the affidavit and/or to have the trial court review the affidavit in camera to determine whether it provides probable cause for the issuance of the search warrant. A *Hobbs* motion and proceedings are conducted in accord with the following procedures.

“On a properly noticed motion by the defense seeking to quash or traverse the search warrant, the lower court should conduct an in camera hearing . . . [to determine first] 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.

“[¶] . . . [¶]

“If the affidavit is found to have been properly sealed, . . . the court should 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. . . .

“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. . . . Such a procedure ‘will assure the defendant of a judicial check on possible police misrepresentations, while preventing both unfounded fishing expeditions and inadvertent revelations of the identity of confidential police informants.’ [Citations.]

“If . . . the court determines there is a reasonable probability that defendant would prevail on the motion to traverse — i.e., a reasonable probability, based on the court’s in camera examination of all the relevant materials, that the affidavit includes a false statement or statements made knowingly and intentionally, or with reckless disregard for the truth, which is material to the finding of probable cause [citation] — the district attorney must be afforded the option of consenting to disclosure of the sealed materials, in which case the motion to traverse can then proceed to decision with the benefit of this additional evidence, and a further evidentiary hearing if necessary . . . , or alternatively, suffer the entry of an adverse order on the motion to traverse. (§ 1042, subd. (a).)

“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. (*Illinois v. Gates* (1983) 462 U.S. 213, 238 . . . ; see also *People v. Camarella* (1991) 54 Cal.3d 592, 600-601 . . . .) 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.]

“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 under *Illinois v. Gates, supra*, 462 U.S. 213, the court should simply report this conclusion to the defendant and enter an order denying the motion to quash. [Citations.] If, on the other hand, the court determines, based on its review of all relevant materials and any testimony taken at the in camera hearing, that there is a reasonable probability the defendant would prevail on his motion to quash the warrant — i.e., a reasonable probability that the search warrant affidavit, including the sealed portions thereof, fails to establish sufficient probable cause for issuance of the warrant — then the district attorney must be afforded the opportunity to consent to disclose the sealed materials to the defense, after which the motion to quash can proceed to decision,

or alternatively, suffer the entry of an order adverse to the People on the motion to quash the warrant. (§ 1042, subd. (a).)” (*Hobbs*, *supra*, 7 Cal.4th at pp. 972-975, fn. omitted.)

### **B. Analysis**

We have read and considered the sealed reporter’s transcript of the trial court’s in camera hearing on December 1, 2015, conducted in response to Sok’s *Hobbs* motion. We have also reviewed the sealed affidavit in support of the warrant, which we obtained after this court ordered the trial court to augment the record, as well as the in camera hearing conducted by the trial court to authenticate the sealed affidavit.

The record below shows that the court properly examined Vong regarding the necessity of a sealed affidavit in support of the search warrant for Sok’s residence at 1446 East 14th Street, and that confidentiality of the informant’s identity was, and remains, appropriate.

The record below also demonstrates that the trial court complied with the requirements of *Hobbs* in its determination that “probable cause existed for the search of the home,” and that the motions to quash or to traverse lacked merit. Again, the trial court did not err.

### **III. One of Sok’s Conditions of Probation is Modified**

Sok contends that the probation condition which orders to “[s]tay away from places where [drug] users, buyers[,] or sellers congregate ,” is unconstitutionally vague since it is not qualified by a knowledge requirement; that is, that Sok knows or reasonably should know that the location in question is one where such persons congregate. The People concede this position is correct.

Accordingly, we will order this condition of probation modified so that it avoids this constitutional issue. (*People v. Turner* (2007) 155 Cal.App.4th 1432, 1436 [Court of Appeal has authority to modify unconstitutional conditions of probation].)

**DISPOSITION**

Sok's condition of probation which orders her to "[s]tay away from places where [drug] users, buyers[,] or sellers congregate" is modified to state that she must "stay away from places where she knows or reasonably should know drug users, buyers, or sellers congregate."

In all other respects, the judgment is affirmed.

BIGELOW, P.J.

We concur:

FLIER, J.

GRIMES, J.