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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Tehama)

THE PEOPLE,

Plaintiff and Respondent,

v.

BRYON KEITH AMES,

Defendant and Appellant.

C066749

(Super. Ct. Nos.
NCR77421, NCR78783)

Based primarily on information provided by confidential informants, a "Search Warrant and Affidavit" (hereafter search warrant or search warrant affidavit)¹ was issued on August 6, 2009, and March 8, 2010, to search the vehicle and residence, respectively, of defendant Bryon Keith Ames.² As a result of these searches, defendant was charged with 10 felonies, which

¹ The search warrant affidavits include sealed and unsealed attachments and declarations.

² The warrant to search defendant's residence was issued only on the March 8, 2010 search warrant.

included enhancements. After various motions to suppress the evidence were denied, defendant proceeded to a jury trial. The jury found defendant guilty of seven felony charges and he was sentenced, with enhancements, to a state prison term of 22 years four months.

On appeal, defendant contends the trial court erred by denying his motions to unseal the sealed portions of the search warrant affidavits, to disclose the identities of the confidential informants (who allegedly supplied probable cause for the search warrants), and to traverse and quash the search warrants. Defendant also contends the procedure set forth in *People v. Hobbs* (1994) 7 Cal.4th 948 (*Hobbs*), utilized in denying defendant's motions, deprived him of his Sixth Amendment constitutional rights to counsel, to a public trial, and to present an effective defense. We shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On August 6, 2009, defendant was arrested following the discovery of contraband seized during the execution of search warrant No. SWN080709. In the unsealed portion of this search warrant affidavit, affiant Officer Raymond Martinez reported he had received information sealed in attachment C. Based upon Martinez's training, experience, and the information contained in the sealed and unsealed portions of the search warrant affidavit, he believed that defendant possessed and was involved in the sale of methamphetamine.

In the unsealed portion of this search warrant affidavit, Officer Martinez stated he had spoken with a confidential reliable informant (CRI No. 1) between July 31 and August 6, 2009. CRI No. 1 had provided information on at least six prior occasions that had proven to be true, resulting in multiple arrests and seizures of methamphetamine, marijuana, and firearms. In this unsealed portion, Martinez stated that CRI No. 1 told him that defendant was a multiple-ounce methamphetamine dealer.

According to this affidavit, Officer Martinez had also spoken to Agent Eric Clay about the information provided by CRI No. 1. Clay reported that he had also received information that defendant was selling drugs.

On March 11, 2010, defendant was again arrested, following the execution of search warrant No. 1SWN030810.³ In the unsealed portion of this search warrant affidavit, affiant Officer Martinez reported he had received information sealed in attachments C and D. Based upon Martinez's training, experience, and the information contained in the sealed and unsealed portions of this search warrant affidavit, he believed that defendant possessed and was involved in the sale of methamphetamine.

In the unsealed portion of the second search warrant affidavit, Officer Martinez stated he had spoken to two citizen

³ Defendant was out on bail during this second arrest.

informants who informed him that defendant had been supplying methamphetamine. Martinez was also informed by another confidential reliable informant (CRI No. 2), on February 18, 2010, and March 3, 2010, that defendant had been selling methamphetamine (more information was provided in the sealed portions, attachments C and D). CRI No. 2 had given information, which had been proven to be true, on at least five previous occasions resulting in arrests and seizures of methamphetamine, cocaine, and marijuana.

After an amended information was filed, which included charges stemming from both search warrants and a third search warrant,⁴ defendant filed a motion to unseal the sealed portions of the search warrant affidavits. Defendant also filed motions to traverse and quash the search warrants, and filed a motion for an in camera hearing pursuant to *Hobbs, supra*, 7 Cal.4th 948. After the in camera *Hobbs* hearing, the trial court denied the motion to unseal the sealed portions of the search warrant affidavits, and denied the motions to traverse and quash the search warrants.

The case proceeded to a jury trial, and defendant was found guilty of the following offenses: two counts of possession for sale of a controlled substance (Health & Saf. Code, § 11378); two counts of transportation of a controlled substance (*id.*, § 11379, subd. (a)); two counts of possession of marijuana for

⁴ The third search warrant is not a subject of this appeal.

sale (*id.*, § 11359); and one count of transportation of marijuana (*id.*, § 11360, subd. (a)). Defendant was also charged with enhancements for having two prior drug convictions (*id.*, § 11370.2, subd. (c)), and for having four prior prison sentences (Pen. Code, § 667.5, subd. (b)). Defendant admitted these enhancements. In addition, defendant had a prior strike conviction (Pen. Code, § 667, subds. (b)-(i)), and was found to have committed one of the counts for possession for sale of a controlled substance, one of the counts of transportation of a controlled substance, and one of the counts of possession of marijuana for sale, while out on bail (Pen. Code, § 12022.1).⁵ Defendant appeals.

DISCUSSION

I. Determinations Regarding Unsealing, Traversing, Quashing and Suppressing

Defendant contends the trial court erred in its determination not to suppress the evidence seized as a result of search warrant Nos. SWN080709 and 1SWN030810. Specifically, defendant contends the trial court erred by denying his motions to unseal the sealed portions of the search warrant affidavits, to disclose the identities of the confidential informants, and to traverse and quash the search warrants. After reviewing the entirety of each search warrant, including the sealed portions of the search warrant affidavits, we conclude the trial court

⁵ The charges stemmed from the searches conducted on August 6, 2009, and on March 11, 2010.

fulfilled its obligations under *Hobbs, supra*, 7 Cal.4th 948, and committed no error in its determinations.

"[A]ll or any part of a search warrant affidavit may be sealed if necessary to . . . protect the identity of a confidential informant." (*Hobbs, supra*, 7 Cal.4th at p. 971.) If a defendant challenges the issuance of a search warrant, where all or any portion of the search warrant affidavit is sealed, "certain procedures should be followed in order to strike a fair balance between the People's right to assert the informant's privilege and the defendant's discovery rights." (*Id.*, at p. 972.) The trial court should conduct an in camera hearing⁶ and first determine whether "sufficient grounds exist for maintaining the confidentiality of the informant's identity. It should then be determined . . . whether the extent of the sealing is necessary to avoid revealing the informant's identity." (*Hobbs*, at p. 972.)

Here, the trial court reviewed the search warrants and supporting affidavits, including the sealed portions, and concluded good cause existed to keep the informants' identities confidential. Consequently, the trial court concluded that the sealed portions of the search warrant affidavits should remain sealed to protect these identities. After examining the record

⁶ During this hearing, the prosecutor may be present, but the defendant and his counsel are excluded. (*Hobbs, supra*, 7 Cal.4th at p. 973.) However, defense counsel may submit written questions that shall be asked by the trial judge if any witness is called to testify at the proceeding. (*Ibid.*)

and the search warrant affidavits, we conclude the trial court committed no error.

Since we conclude there was no error in sealing portions of the search warrant affidavits, the next step, as articulated in *Hobbs*, is to determine "whether the defendant's general allegations of material misrepresentations or omissions [in the search warrant affidavit if the defendant, as here, has moved to traverse the search warrant] are supported by the public and sealed portions of the search warrant affidavit"

(*Hobbs, supra*, 7 Cal.4th at p. 974.) In order to prevail on such a motion, "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.'" (*Ibid.*)

After the in camera hearing here, the trial court concluded the search warrant affidavits did not contain any material misrepresentations or omissions. Thus, the trial court denied defendant's motion to traverse. We uphold the trial court's determination that it is not reasonably probable that "the affidavit[s] include[d] . . . false . . . statements made knowingly and intentionally, or with reckless disregard for the truth, which [are] material to the finding of probable cause." (*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 (Pen.

Code, § 1538.5), the [trial] 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." (*Hobbs, supra*, 7 Cal.4th at p. 975.)

After reviewing all portions of the search warrant affidavits, we conclude the trial court did not err in finding under the totality of the circumstances there was a fair probability that contraband or evidence of a crime would be found.

II. Sixth Amendment Rights

Defendant claims that by following the procedures set forth in *Hobbs*, the trial court deprived him of his Sixth Amendment constitutional rights to counsel, to a public trial, and to present an effective defense. Even assuming arguendo that defendant has preserved these issues for appeal, we would not reverse.

In *Hobbs, supra*, 7 Cal.4th 948, our Supreme Court set forth the procedures to be followed in cases such as this; therefore, we are bound by that decision. (See *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455 [stating that decisions of the California Supreme Court are binding upon all the state courts of California].)

DISPOSITION

The judgment is affirmed.⁷

_____ BUTZ _____, Acting P. J.

We concur:

_____ DUARTE _____, J.

_____ HOCH _____, J.

⁷ Defendant was sentenced pursuant to Penal Code section 4019. The recent amendments to that section do not provide him with additional presentence custody credit, as his conduct credits were calculated without dispute based on Penal Code section 1170.12, subdivision (a)(5) (prior serious or violent felony conviction).