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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

CLINTON RAY WINDOM, SR.,

Defendant and Appellant.

C070397

(Super. Ct. No.
11F03839)

After the trial court denied his motion to suppress evidence, defendant Clinton Ray Windom, Sr. pled no contest to possession of cocaine base for sale (Health & Saf. Code, § 11351.5; count one), possession of cocaine base while armed with a firearm (Health & Saf. Code, § 11370.1, subd. (a); count two), possession of a firearm by a convicted felon (Pen. Code,¹ § 12021, subd. (a)(1); count four), and possession of ammunition

¹ Further undesignated statutory references are to the Penal Code.

by a convicted felon (§ 12316, subd. (b)(1); count six).² Defendant admitted he was personally armed with a firearm (§ 12022, subd. (c)) in the commission of count one. He also admitted a prior strike conviction (§§ 667, subds. (b)-(i), 1170.12) and three prior convictions for narcotics-related offenses (Health & Saf. Code, § 11370.2, subd. (a)). The trial court sentenced defendant to six years in state prison. He obtained a certificate of probable cause.

On appeal, defendant asks us to review the sealed portion of the affidavit in support of the search warrant and thereby determine whether it is reasonably probable that he will prevail on a motion to quash the search warrant brought in the trial court.³ We have reviewed the materials as requested, and shall affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant's Conduct and the Searches

According to the public portion of the affidavit supporting the search warrant at issue, on May 13, 2011, Sacramento Police Department (SPD) officers saw codefendant Michael Windom, later identified as defendant's son, engage in a hand-to-hand

² Counts three, five, and seven pertained to codefendant Michael Windom. He is not a party to this appeal.

³ We granted defendant's motion to augment the record on appeal with the sealed portion of the affidavit in support of the search warrant. The heading of defendant's opening brief refers to a sealed *transcript* of the in camera proceedings on the suppression motion. As we were not provided with a transcript of these proceedings, we will disregard the reference.

narcotics transaction with an unknown male. Immediately before the transaction, Windom drove from his house to defendant's house, where he stayed for about three minutes.

Based on this information, as well as information regarding the affiant's expertise and information from a "confidential attachment," the magistrate authorized a search warrant for both defendant's and Windom's houses and cars on May 19, 2011. When executing the warrant, SPD detectives seized 51.17 grams of cocaine base in a paper bag located on a shelf; 73.03 grams of cocaine base in 10 individually-wrapped bindles, in a tin located on a shelf; and 3.56 grams of cocaine base in a baggie located on a shelf. Inside the house, detectives found a digital scale, sandwich baggies, \$850 cash in a purple bag, and \$1,875 cash in a suitcase. Detectives also found a loaded nine-millimeter handgun, an additional loaded magazine, and a handgun holster. The SPD found additional narcotics, paraphernalia, and a loaded firearm at Windom's residence.

Motion to Suppress and Hearing

Defense counsel filed a motion to suppress evidence, claiming the search was neither authorized by consent, nor incident to lawful detention or arrest, nor pursuant to a valid warrant supported by probable cause.

In September 2011, the trial court held a hearing on the motion. The trial court clarified that the hearing was "not a hearing on a motion to reveal the identity of the informant under [Evidence Code section] 1042," but would be directed

"towards the evidence in the suppression issue" and would be based "solely on the warrant and the sealed affidavits."

The trial court reviewed the sealed portion of the search warrant in camera and ruled: "The motion to suppress is essentially a motion to quash the warrant based on an alleged or asserted lack of probable cause. [¶] I reviewed the . . . affidavit of probable cause in support of the warrant by [affiant]. Pages 5 through 8 . . . detail his training and experience [¶] [P]age 9, I believe, is the order by [the magistrate] sealing the *Hobbs* portion of the warrant. Pages 10 through 14 detail the information in support of the warrant that was sealed. [¶] And I find both that the order sealing the warrant, based on concern that the disclosure of the identity of a confidential informant would jeopardize the safety of that informant, the determination by [the magistrate], was appropriate and supported by the showing made by the detectives. [¶] Also, the details within the sealed portion of the . . . affidavit of probable cause, do supply ample probable cause for issuance of the warrant."

In response to a question from defense counsel, the trial court clarified that "[the sealed portion of the warrant] in combination with the portion of the affidavit that was not sealed" "[t]ogether . . . supply probable cause for the issuance of the warrant. . . ."

DISCUSSION

Relying on *People v. Hobbs* (1994) 7 Cal.4th 948, 971-972 (*Hobbs*), defendant requests that this court review the sealed

material evaluated by the trial court to determine whether it is reasonably probable defendant could prevail on a motion to quash the search warrant. The People acknowledge that *Hobbs* review is appropriate.

I

The Law

"[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.) "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 pursuant to the guidelines set forth in section 915, subdivision (b), and [our supreme] court's opinion in [*People v. Luttenberger* (1990) 50 Cal.3d 1, 20-24]. 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." (*Hobbs, supra*, at p. 972; fn. omitted.)

"[I]f the affidavit is found to have been properly sealed and the defendant has moved to quash the search warrant ([] § 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. [Citations.] 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 [under the applicable standard announced in *Illinois v. Gates* (1983) 462 U.S. 213, 238 (76 L.Ed.2d 527, 548)] to set forth sufficient competent evidence supportive of the magistrates 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.]" (*Hobbs, supra*, 7 Cal.4th at p. 975.)

If the trial court finds that the search warrant furnished probable cause for the issuance of the warrant, the court reports this conclusion to the defendant and enters an order denying his motion to quash the warrant. (*Hobbs, supra*, 7 Cal.4th at p. 975.)

II

Analysis

We have reviewed the sealed and unsealed materials and have determined that, first, the confidential portion of the affidavit was properly sealed to protect the identity of the informant; and, second, the trial court properly denied defendant's motion to quash the search warrant because ample probable cause supported the issuance of the warrant and the resulting searches. (See *People v. Martinez* (2005) 132 Cal.App.4th 233, 241-242.) Thus it is not reasonably probable

that defendant would prevail, were he to bring a motion to quash the warrant in the trial court.

DISPOSITION

The judgment is affirmed.

DUARTE, J.

We concur:

BLEASE, Acting P. J.

ROBIE, J.