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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Appellant,

v.

JOHN PHILLIP LLOYD,

Defendant and Respondent.

G043860

(Super. Ct. No. 08HF1496)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Richard M. King and Thomas M. Goethals, Judges. Reversed.

Tony Rackauckus, District Attorney, and Elizabeth Molfetta, Deputy District Attorney, for Plaintiff and Appellant.

Dennis L. Cava, under appointment by the Court of Appeal, for Defendant and Respondent.

* * *

The People charged defendant John Phillip Lloyd with firearm offenses related to a handgun found during a search of his vehicle pursuant to a warrant. The search warrant was supported by a partially sealed affidavit. Defendant brought pretrial suppression motions and asked the court to comply with *People v. Hobbs* (1994) 7 Cal.4th 948 (*Hobbs*), which applies when an affidavit is wholly or partially sealed. The court misapplied *Hobbs* and granted defendant's suppression motions. The People were therefore unable to proceed with their action and the court dismissed it. Because the court misapplied *Hobbs*, we reverse the order dismissing the People's action against defendant.

People v. Heslington (2011) 195 Cal.App.4th 947 (*Heslington*) involved the same search warrant and affidavit at issue here. In *Heslington*, we held that when a trial court orders disclosure of a significant part of a sealed affidavit, the court must decide whether the remaining confidential information is (1) material to the defendant's suppression motion, and (2) *not* redundant to evidence known to the defendant. In *Heslington*, we did not articulate the standard for reviewing a trial court's assessment of the significance of the remaining confidential information. We do so now.

FACTS

*The Search Warrant and Affidavit*¹

On August 4, 2008, Judge Frances Munoz issued a search warrant for defendant's home and vehicle, as well as six other residences (and related vehicles),

¹ We take judicial notice of court exhibit Nos. 1, 2, 4, and 5, as well as of the testimony of Officer Kristen O'Donnell, from the record on appeal in *Heslington*. Court exhibit No. 1 is the originally unsealed warrant and affidavit. Court exhibit No. 4 is the redacted affidavit, as described in more detail below. Court exhibit Nos. 2 and 5 are identical; both designate the sealed affidavit.

including that of Brian Heslington. The persons and property to be searched or seized included defendant, blood or saliva DNA samples, clothing (including any bloodstained clothes), gang indicia, computers, and cell phones. The facts and circumstances incident to the application for and issuance of the search warrant were described in *Heslington*, *supra*, 195 Cal.App.4th 947, as follows:

“Officer Kristen O’Donnell signed the supporting affidavit, swearing under oath that the facts in the incorporated statement of probable cause were true. O’Donnell believed probable cause for a search warrant existed because the property to be searched and seized would tend to establish the felony offenses of attempted murder, street terrorism, and, as to [defendant] (who allegedly struck someone with a billiard ball), assault with a deadly weapon.

“Attached police reports stated that at 1:45 p.m. on July 27, 2008, four officers were dispatched to Blackie’s By The Sea (Blackie’s) after an anonymous caller reported a fight in the bar involving about 30 ‘biker guys.’ An officer observed about 18 males wearing leather ‘Set Free Soldiers’ jackets running through the Blackie’s parking lot and hiding behind vehicles^[2] He and another officer detained seven of these men. Recognizing one man as the head of the Soldiers gang, an officer asked for his name; the man replied, ‘Chief.’ The officers completed field investigation cards on the detainees, then released them after being unable to establish that a crime had occurred. (Attached to the affidavit were 14 field investigation cards dated July 27, 2008.) The owner of the bar stated he would provide the police with a video of the fight.

“Three officers stopped a black Mercedes with no license plates fleeing the area. The car’s three occupants wore Set Free Soldiers shirts and had folding knives. Two more knives were found in the trunk. One of the knives in the trunk had ‘wet blood

² The Set Free Soldiers are sometimes referred to in this opinion as “the Soldiers.”

streaks along the four inch blade,' as well as a strand of hair and a red thread stuck to it. The car's occupants denied any knowledge of the bloodstained knife.

"The driver of the Mercedes confirmed he had been involved in the fight at Blackie's. He said Set Free Soldiers is a church group which seeks 'to rehabilitate and save parolees and other outlaw biker types who want to find Christ.' He and about 10 of his brothers were at Blackie's with their head pastor, when around 10 to 15 'feather heads' (Hell's Angels) dressed in red T-shirts entered the bar in 'formation with their chapter leader at the front of the group.'^[3] The Hell's Angels group was 'very organized in their demeanor' and had only one member who spoke for them. The Angels spokesman told the head pastor of the Soldiers that the Soldiers were claiming to be associated with the Angels, but were not associates and should stop taking business away from the Angels. A fight ensued, during which an Angel hit a Soldier in the back of the head with a pool cue.

"The Mercedes driver explained that since blood had been drawn by both groups, Hell's Angels would now consider Set Free Soldiers to be a rival gang and 'green lighted,' a status requiring any Angel to kill any Soldier seen 'flying their colors,' i.e., wearing a group jacket.

"An officer at the scene of the crime observed a possible victim with a large laceration on the back of his head. The victim was uncooperative and refused to give any information about how he was injured. The officer photographed the victim's injuries. A police investigator found a pool of blood on the floor in the rear of the bar.

"The incorporated statement of probable cause, prepared by O'Donnell, accurately summarized the foregoing police reports. It also summarized the surveillance video of the Blackie's incident. O'Donnell had reviewed the surveillance video with the

³ The Hell's Angels are sometimes referred to in this opinion as the Angels or Hells Angels.

help of two gang/homicide experts (Detective R. LaRochelle and Sheriff Deputy Corporal Dan Ponder).

“The surveillance video showed three Soldiers, including chief pastor Phil Aguilar, entering the bar at 1:32 p.m. Two more Soldiers entered after them. Aguilar used his cell phone. Ten minutes later, two Hell’s Angels entered the bar — [defendant], the treasurer of the Orange County chapter, and David Dabbs the vice-president of the San Diego chapter. Three more Angels (including [Heslington]) followed them. Eight more Soldiers came in. [Defendant] approached Aguilar, the Soldiers’ leader. Aguilar extended his hand, but [defendant] refused to shake it. The two appeared to have a heated argument. An altercation ensued. At least 16 Soldiers were present during the altercation. A Soldier appeared to punch or stab Dabbs. Aguilar and his son restrained Dabbs against a wall. Two Soldiers punched an Angel. A Soldier, Jose Enrique Quinones, took out a knife, approached [Heslington] from behind, made a slicing motion across [Heslington’s] throat, and then made a stabbing movement to [Heslington’s] torso. Quinones then appeared to stab Dabbs. [Defendant] wrestled with a Soldier. [Defendant] pushed him onto a pool table and struck him on the back of the head with a cue ball, then pushed him onto the floor, where the two men punched each other. A Soldier punched Guinn. [¶] . . . [¶]

“O’Donnell believed, based on LaRochelle’s knowledge and experience, that (1) ‘there was communication between the Hells Angels and Set Free Soldiers during which they planned the meeting time, date, and location’; and (2) ‘the incident on [July 27, 2008] was pre-planned and an ambush set up by Phil Aguilar and Set Free Soldiers against the Hells Angels.’

“Judge Munoz ordered that pages 21 through 39 of the affidavit be sealed to protect the identity of informants and the confidentiality of official information

privileged under Evidence Code sections 1040, 1041, and 1042.^[4] (The foregoing factual recitation summarizes information in the originally *unsealed* portion of the affidavit.) Judge Munoz ordered the Newport Beach Police Department to maintain custody of the sealed affidavit.” (*Heslington, supra*, 195 Cal.App.4th at pp. 950-953.)

*The Search of Defendant’s Vehicle and the Charges Against Him*⁵

Around 5:00 a.m. on August 6, 2008, pursuant to the warrant, police searched defendant’s vehicle parked in the driveway of his home and found a loaded handgun in “the inside cavity of the center console of the vehicle.” In a September 29, 2008 information, the People charged defendant with having a concealed firearm in a vehicle (Pen. Code, former § 12025, subds. (a)(1), (b)(6), now § 25400 (a)(1), (b)(6)),⁶ being a gang member carrying a loaded firearm in public (former § 12031, subds. (a)(1), (a)(2)(C), now § 25850 (a), (c)(3)), carrying a loaded unregistered firearm in public (former § 12031, subds. (a)(1), (a)(2)(F), now § 25850 (a), (c)(6)), and street terrorism (§ 186.22, subd. (a)).

Defendant’s Suppression Motions

On October 23, 2009, defendant filed a motion to traverse and quash the search warrant and to unseal the affidavit. He argued that, absent the prosecution’s agreement to release the affidavit, the court was required to follow the procedures set forth in *Hobbs, supra*, 7 Cal.4th 948, which applies when a defendant lacks access to confidential information supporting a challenged search warrant. Inter alia, defendant

⁴ References to the “sealed affidavit” refer to the part of the affidavit sealed by Judge Munoz, i.e., pages 21 through 39.

⁵ Some facts are taken from the preliminary hearing.

⁶ All statutory references are to the Penal Code unless otherwise stated.

noted that Judge Richard M. King had already unsealed “a significant portion” of the affidavit in Brian Heslington’s case.

The Court’s Ruling

Judge King stated that the first step under *Hobbs* is for the court to order the release of information which need not remain sealed to preserve confidentiality under Evidence Code section 1040. Judge King then asked the prosecutor whether the People had disclosed to defendant the same information which had been released to Brian Heslington. In *Heslington*, we described the disclosed information as “substantial, significant parts of the sealed affidavit” which Judge King ordered to be unsealed pursuant to *Hobbs* and provided by the People to the defense, resulting in a redacted affidavit. (*Heslington, supra*, 195 Cal.App.4th at p. 954.) The prosecutor confirmed that the same information — i.e., the redacted affidavit — had been disclosed to defendant.

In a lengthy ruling, Judge King noted: “The first procedure mandated by [*Hobbs*] is for the Court to review in camera this sealed affidavit and order[] disclosure of information that is not required to be sealed to protect official information. This has been done.” Judge King then applied the *Hobbs* standard and found a reasonable “possibility” that defendant would prevail on both his motion to quash the warrant and his motion to traverse it.⁷ Judge King therefore ordered the People to disclose the entire sealed

⁷ As to defendant’s motion to traverse the warrant, Judge King concluded there was “a reasonable possibility that either a false statement material to probable cause or one made with reckless disregard for the truth was presented by Detective O[’]Donnell to the magistrate who issued the search warrant.” Judge King based his conclusion on certain actions of O’Donnell described in *Heslington, supra*, 195 Cal.App.4th at pages 953-954. Essentially, when Judge King agreed in *Heslington* to review the sealed affidavit and ordered the People to file the original sealed affidavit with the court, O’Donnell testified she had already filed the original document with the superior court. Subsequently, “O’Donnell brought to court and gave the prosecutor (1) a *copy* of the sealed affidavit, and (2) a “*certified copy*” of Judge Munoz’s sealing order, which included a color copy of the court clerk’s certification. The *prosecutor* submitted the

affidavit to the defense. Judge King noted the People refused to consent to such disclosure, and as a result, Hobbs “requires that the Court grant the defendant[’]s motions to quash and traverse.” Accordingly, Judge King granted defendant’s suppression motions.

The People then petitioned this court for a writ of mandate directing the trial court to vacate its order. We summarily denied the People’s writ petition.

That same day, Judge Thomas M. Goethals dismissed the case after the People announced that (1) their writ petition had been summarily denied, and (2) the People were unable to proceed due to Judge King’s “adverse ruling” on a section 1538.5 suppression motion.

The People appealed Judge Goethals’s order under section 1238, subdivision (a)(7), which allows the People to appeal from a pretrial dismissal order made on the court’s own motion under section 1385, based upon an order granting the defendant’s suppression motion under the Penal Code.⁸

pages as a certified copy of the sealed affidavit. The original sealed affidavit was eventually located in a property locker at the police department by O’Donnell’s partner.” (*Id.* at p. 954.)

⁸ The minute order states the case was dismissed on the *People’s* motion. But the reporter’s transcript records the following colloquy between Judge Goethals and the prosecutor:

“Mr. Petersen: At this time, Your Honor, the People will announce unable to proceed due to an adverse ruling by Judge King.”

“The Court: And with that statement having been made, Mr. Petersen, you expect me to dismiss the case, don’t you?”

“Mr. Petersen: That’s what I expect the court to do.”

The court later ordered: “This case is dismissed in that the D.A. is unable to proceed in light of Judge King’s ruling which suppressed a significant amount of the evidence.”

On appeal defendant does not challenge the appealability of the dismissal order under section 1238, subdivision (a)(7). And, in any case, “[w]here there is a conflict between the . . . court’s statements in the reporter’s transcript and the recitals in

DISCUSSION

Our Summary Denial of the People’s Petition for a Writ of Mandate Does Not Preclude This Appeal

Defendant contends the People are bound by our summary denial of their writ petition and may not relitigate the matter by appeal. For this contention, he relies on section 1538.5, subdivision (j), and *People v. Carrington* (1974) 40 Cal.App.3d 647, 650 (*Carrington*).

Section 1538.5, subdivision (j) (governing when a trial court’s granting of a defendant’s suppression motion at a special hearing is binding on the People) provides in relevant part: “If the people prosecute review by appeal or writ *to decision*, or any review thereof, in a felony or misdemeanor case, it shall be binding upon them.” (Italics added.)

Carrington, supra, 40 Cal.App.3d 647 held that “a denial by minute order of a petition by the People constitutes review by ‘writ to decision’ within the meaning of section 1538.5, subdivision (j).” (*Id.* at p. 650.) *Carrington* reasoned that “[a] denial of a writ petition, without an opinion, is a decision for other purposes specified in the Rules on Appeal” and entails a considered “resolution of the issue based on a full record of the evidence presented at the hearing on the motion.” (*Id.* at p. 650).

More recently, in *People v. Jahansson* (2010) 189 Cal.App.4th 202 (*Jahansson*), the defendant contended the People’s appeal was procedurally barred because the appellate court had summarily denied the People’s writ petition challenging the trial court’s order granting the defendant’s suppression motion. (*Id.* at pp. 209-210.) The defendant contended “the plain language of section 1538.5, subdivision (j) . . . , authorizes the People to seek appellate review of an order granting a suppression motion, but requires the People to elect review either by writ or by appeal and does not

the clerk’s transcript, we presume the reporter’s transcript is the more accurate.” (*In re A.C.* (2011) 197 Cal.App.4th 796, 799-800.)

allow ‘two bites of the appellate apple.’” (*Id.* at p. 210.) In rejecting the defendant’s contention, *Jahansson* observed “there is a split of authority as to the meaning of the word ‘decision’ in section 1538.5, [subdivision] (j)”: (*ibid.*) “*Carrington* represents the minority view in light of subsequent appellate court decisions that have rejected the *Carrington* court’s reasoning. The majority view is set forth in *People v. Allison* (1988) 202 Cal.App.3d 1084 . . . , where the court determined that denial of a writ petition without opinion does not constitute a decision on the merits unless there is an affirmative indication that the denial was on the merits.” (*Jahansson*, at p. 211.) *Jahansson* also relied on *Kowis v. Howard* (1992) 3 Cal.4th 888, where our Supreme Court addressed the related issue of “when, if ever, summary denial of a pretrial petition for extraordinary relief establishes law of the case precluding reconsideration of the issue on appeal following final judgment.” (*Id.* at p. 891.) *Kowis* explained: “If a writ petition is given full review by issuance of an alternative writ, the opportunity for oral argument, and a written opinion, the parties have received all of the rights and consideration accorded a normal appeal. Granting the resulting opinion law of the case status as if it had been an appellate decision is [then] appropriate. But if the denial followed a less rigorous procedure, it should not establish law of the case.” (*Id.* at p. 899.)

We agree with *Jahansson* and “the majority view that summary denial of the People’s writ petition challenging a suppression order does not preclude a subsequent appeal from a dismissal order based on that suppression order.” (*Jahansson, supra*, 189 Cal.App.4th at p. 211.) Our denial of the People’s writ petition in this case was a discretionary denial which did reach the merits. We therefore proceed to consider the merits of defendant’s appeal.

Because No Material Information Remains Undisclosed to Defendant, the Court Should Not Have Ordered Disclosure of the Sealed Affidavit Under Hobbs

In *Hobbs*, our Supreme Court set forth certain procedures which a trial court must follow “in order to strike a fair balance between the People’s right to assert the informant’s privilege and the defendant’s discovery rights,” when, due to a sealed search warrant affidavit, the defendant is unreasonably hampered in pursuing a suppression motion. (*Hobbs, supra*, 7 Cal.4th at p. 972.) Those procedures begin with the trial court’s holding an in camera hearing from which the defendant and defense counsel are excluded and where the court, acting on the defendant’s behalf, reviews the sealed and unsealed parts of the affidavit. (*Id.* at pp. 972-973.) Initially, the court must determine whether the affidavit is properly sealed or whether further disclosure is justified. (*Id.* at p. 973.) The *Hobbs* procedures may also include a latter stage where the court decides, based on its review of *all* the relevant materials, whether there is a “reasonable probability” the defendant would prevail on the suppression motion. (*Id.* at pp. 974-975.) If such reasonable probability exists, the court must give the prosecution the choice to (1) disclose the sealed materials to the defense, or (2) suffer the entry of an order granting the defendant’s motion. (*Id.* at pp. 973-975.)

In *Heslington, supra*, 195 Cal.App.4th 947, we explained that, “implicit in *Hobbs* is the requirement that a court, upon ordering further redaction of sealed materials, determine whether the remaining confidential material contains information which is significant to the defendant’s ability to challenge the search warrant *and* which is not disclosed elsewhere.” (*Id.* at p. 958.) “When the critical parts of the sealed affidavit have been disclosed to the defense, there is no need for further unsealing of confidential material or for the court to act on the defendant’s behalf. At that point, a court should *not* proceed to the second stage of the *Hobbs* procedure. Instead, the suppression motion should proceed to decision with a further evidentiary hearing if necessary.” (*Id.* at pp. 958-959.)

Defendant contends that, “[a]s to whether any of the remaining confidential information in the sealed affidavit was significant to [his] cause was a factual issue for the trial court to decide.” He argues that, absent an abuse of discretion by the trial court, we must defer to the court’s implied conclusion here that the remaining sealed information was material to his suppression motions.⁹ He relies on *Hobbs*, *supra*, 7 Cal.4th at page 976, where our Supreme Court stated: “We are satisfied that the trial court acted within its sound discretion in conducting its own in camera review of the sealed materials, affirming the magistrate’s determination that the sealing of the entirety of Exhibit C was necessary to implement the People’s assertion of the informant’s privilege, and in thereafter denying defendant’s motions to traverse and quash the search warrant.” But we read that passage, in context, to refer to the trial court’s discretionary decision in *Hobbs* not to require the confidential informant to testify at the in camera hearing. (*Id.* at pp. 973 [“lower court may, in its discretion, find it necessary and appropriate to call and question the affiant, the informant, or any other witness”], 976.)¹⁰

While the court may enjoy some discretion as to details of the scope or handling of the in camera hearing, *Hobbs*’s basic procedural steps are *mandatory*. (*Hobbs*, *supra*, 7 Cal.4th at pp. 971-975.) For example, a trial court has no discretion to

⁹ The record does not reflect Judge King actually considered the question of whether the remaining sealed information was significant to defendant’s challenge to the search warrant. Judge King advanced to *Hobbs*’s final stage, believing it to be mandated by *Hobbs*, prior to our articulation in *Heslington* of the need for the trial court to consider whether any remaining confidential information is material to the defendant’s cause.

¹⁰ In *Hobbs*, “the magistrate, at the time the search warrant application was presented to him, personally examined the informant to establish that person’s reliability.” (*Hobbs*, *supra*, 7 Cal.4th at pp. 954, 976.) Subsequently, when the trial court conducted an “in camera review of the search warrant application materials,” the court did not require the informant to testify “anew” but “did review the transcript of the magistrate’s and deputy district attorney’s examination of the informant at the time the search warrant was issued.” (*Id.* at p. 976.) *Hobbs* stated, “It was not necessary for the trial court to develop a further factual record of the basis for the search.” (*Id.* at p. 977.)

skip the initial determination of whether the affidavit was properly sealed. Consequently, the proper standard of review for most rulings under *Hobbs* is not abuse of discretion. Rather, the appropriate standard is the same one that applies to a trial court's ruling on a section 1538.5 suppression motion: "When reviewing the grant or denial of a motion to suppress, an appellate court must uphold the trial court's express or implied findings of fact if the facts are supported by substantial evidence. However, we use our independent judgment to determine whether those facts establish probable cause." (*People v. Mikesell* (1996) 46 Cal.App.4th 1711, 1716; see also *People v. Leyba* (1981) 29 Cal.3d 591, 597.) Thus, factual findings are reviewed for substantial evidentiary support, but the *significance* of those facts is subject to de novo review.

No factual finding made by the trial court in this case impacts the decision whether the remaining confidential information here is significant to defendant's challenge to the search warrant. Therefore, we independently review the court's implied conclusion the remaining sealed information was material to defendant's suppression motions.

Having compared the redacted affidavit (of which defendant has a copy) with the sealed affidavit, we conclude the remaining confidential material contains no new information significant to defendant's challenge to the search warrant. The issue is whether the sealed (blacked out) passages contain information that is (1) material to defendant's cause, *and* (2) not redundant to evidence already available to him. Material information includes significant evidence potentially (1) helpful to his challenge, or (2) so damaging to his cause he should have the opportunity to rebut it.

The court stated the facts in the affidavit "that were used to support the opinions by the experts that the fight at Blackie's was a preplanned attack on the part of the Hells Angels" "may be insufficient to support this opinion and may be nothing more

than pure speculation.”¹¹ But evidence that Hell’s Angels did *not* preplan the assault had already been disclosed to defendant. The redacted affidavit disclosed that *Set Free Soldiers* planned to attack and stab Hell’s Angels in order to raise the Soldiers’ status by attacking the top gang.¹² Even the unsealed affidavit disclosed that the Soldiers preplanned and set up an ambush against the Angels. Any remaining confidential material is at best redundant to the information suggesting the Soldiers preplanned the attack on the Angels, not vice versa. Nor does the court’s factual finding that O’Donnell lacked credibility support a different conclusion. The remaining confidential information provided by O’Donnell supports (but is redundant to) other disclosed evidence that the Soldiers preplanned the attack on the Angels. O’Donnell provided no sealed information suggesting the Angels preplanned to attack the Soldiers.

“In sum, after the court ordered the People to divulge the final redacted affidavit to defendant, no further need existed for the court to continue with the *Hobbs* procedure. Instead, the court should have allowed defendant to amend or renew his suppression motions in light of the further disclosures. The court should then have conducted an evidentiary hearing, if necessary. [¶] Because the court erred by applying

¹¹ The court also stated: “The defendant was mentioned in the affidavit as hitting someone with a cue ball as well as sustaining significant trauma about his face. This would be insufficient for probable cause to search the defendant’s home for the evidence described in the search warrant.”

¹² The disclosures ordered by the court “included the following information: LaRochelle believed that (1) Aguilar and the other Soldiers at Blackie’s conspired to further the gang’s reputation as an outlaw motorcycle gang by fighting and stabbing members of the Hell’s Angels; (2) the Soldiers preplanned an attack on the Angels in order to raise the status of Set Free Soldiers from a Christian motorcycle club to an outlaw motorcycle gang by attacking Hell’s Angels, which is the motorcycle gang at the top of the pyramid; and (3) the Soldiers completed the transformation into an outlaw motorcycle gang by challenging, fighting, and causing bodily injuries to Hell’s Angels.” (*Heslington, supra*, 195 Cal.App.4th at p. 959.)

the *Hobbs* reasonable probability analysis to defendant's suppression motions, we reverse the order dismissing the action." (*Heslington, supra*, 195 Cal.App.4th at p. 960.)¹³

Defendant's Constitutional Rights Are Not Violated by His Counsel's Lack of Access to the Sealed Affidavit

Defendant contends his appellate counsel cannot effectively represent him without access to the sealed affidavit and therefore this court will violate his constitutional rights to counsel, equal protection, and due process if it withholds the confidential document from his attorney.¹⁴

In *Hobbs, supra*, 7 Cal.4th at page 970, our Supreme Court stated that trial judges are capable of enforcing a defendant's Fourth Amendment rights without the aid of defense counsel. "An appellate court is equally capable of reviewing confidential documents with an eye toward protecting a defendant's interests and rights." (*Heslington, supra*, 195 Cal.App.4th at p. 956, fn. 6.) The procedures established in *Hobbs*, whereby the court reviews confidential materials on the defendant's behalf, strike "a fair balance between the People's privilege to refuse disclosure of a confidential informant's identity and the defendant's limited discovery rights in connection with any challenge to the search warrant's validity." (*Hobbs*, at p. 964.) Defendant's constitutional rights have not been violated.

¹³ Because we reverse the dismissal order, we do not address the court's use of a reasonable "possibility" standard (in contravention of the reasonable probability standard mandated by *Hobbs*).

¹⁴ In actuality, defendant's counsel (at both the trial and appellate levels) have been inadvertently given access to the confidential material. This court inadvertently released the sealed affidavit to defendant's appellate counsel, but counsel has subsequently returned the document pursuant to court order.

DISPOSITION

The dismissal order is reversed with directions that the trial court conduct a hearing to determine the merits of defendant's suppression motions with the benefit of the additionally disclosed evidence and such other evidence as may be presented at the hearing.

IKOLA, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

MOORE, J.