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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. DONNA NAVARRO, Defendant and Appellant.	B173591 (Los Angeles County Super. Ct. No. GA049685)
EDWARD CORELLA NAVARRO, Petitioner, v. SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES, Respondent; THE PEOPLE, Real Party in Interest.	B175513 (Los Angeles County Super. Ct. No. GA049685)

APPEAL from a judgment of the Superior Court of Los Angeles County, and ORIGINAL PROCEEDING. Candace J. Beason and Clifford L. Klein, Judges. Appeal affirmed; petition for writ of prohibition or mandate is denied.

Angelyn Gates for Defendant and Appellant and Petitioner.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Michael R. Johnsen and Jonathan J. Kline, Deputy Attorneys General, for Plaintiff and Respondent.

Steve Cooley, District Attorney, Patrick Moran and Matthew G. Monforton, Deputy District Attorneys, for Real Party in Interest.

No appearance by respondent superior court.

ISSUE PRESENTED

A lawyer goes to the police, tells them her clients are committing a string of crimes, and also tells them where to look for evidence of those crimes. Based on that information—which the lawyer learned through her representation of the clients—the police obtain a search warrant and find the evidence, leading to criminal charges against the clients. Should the search warrant be quashed and all evidence found through the warrant suppressed as a remedy for the lawyer's alleged breach of the attorney-client privilege? Because the government did not procure or induce the breach, we conclude the answer is no.[1]

FACTS AND PROCEDURAL HISTORY

Acting on a tip from a confidential informant, Los Angeles County sheriff's deputies obtained a warrant in April 2002 to search an auto body repair shop and the homes of several members of the Navarro family, including those of brothers Alejandro and Edward Navarro. Based on evidence seized from those locations, Alejandro,

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[1] Although the factual scenario described above is presented generally by this case, as discussed below, we express no opinion as to whether the attorney was the informant or whether privileged material was conveyed to the police.

Edward, and Edward's wife, Donna Navarro (the Navarro defendants), were charged with various counts related to their alleged operation of a car theft ring.[2]

After reviewing the sheriff's affidavit submitted in support of the search warrant, the three Navarro defendants became convinced that their sister, Elizabeth, had been the sheriff's unnamed confidential informant. Elizabeth is a lawyer and had previously represented some of the Navarro defendants in both civil and criminal matters. Donna and Alejandro brought motions to: (1) order disclosure of the identity of the informant (Evid. Code, §§ 1041, 1042); and (2) quash the search warrant, which they contended would thereby lead to a failure of the search "as a fruit of the poisonous tree . . . ." According to Alejandro's declaration, he, Edward, and Donna met with Elizabeth in early 2002 to get legal advice regarding the circumstances surrounding the charges that were later brought against them. Donna, Edward, and Alejandro "asked Elizabeth about the law and our rights and we discussed strategy and how to deal with the situation from a legal stand point." Donna and Alejandro argued that disclosure of the informant's identity was important in order to prove that Elizabeth had been the informer and had therefore breached the attorney-client privilege by going to the sheriff. Once that was established, quashing the search warrant would be the proper remedy for such a breach, they contended. That motion was heard by Judge Candace J. Beason and was denied without prejudice on November 4, 2002, on two grounds: First, because there was no

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[2] Donna Navarro was charged with three counts of grand theft (Pen. Code, § 487a), two counts of receiving stolen property (Pen. Code, § 496d, subd. (a)), and one count of conspiracy. (Pen. Code, § 182, subd. (a)(1).) Edward Navarro was originally charged with most of the same counts, but ultimately faced only one count of conspiracy. Alejandro Navarro was charged with one count of receiving stolen property and one count of unlawfully taking a vehicle. (Veh. Code, § 10851, subd. (a).)

Although we will continue to refer to Edward, Alejandro, and Donna Navarro collectively as the Navarro defendants, for ease of reference, when we refer to any Navarro family member individually, we will do so by their first names. When we refer to "the Navarro appellants," however, we refer to only Edward and Donna, who are the challenging parties in these appellate proceedings.

evidence to show "complicity" by the sheriff under *U.S. v. White* (7th Cir. 1992) 970 F.2d 328 (*White*); and second, because there was insufficient proof of an attorney-client relationship.

One month later, Donna and Alejandro filed a supplemental motion to disclose the identity of the confidential informant, which included a more detailed declaration from Alejandro concerning the existence of an attorney-client relationship with Elizabeth in connection with the charges against the Navarro defendants. Judge Beason then agreed to hold an in-camera hearing concerning the sheriff's complicity, if any, in Elizabeth's supposed breach of the attorney-client privilege. On March 21, 2003, the sheriff's officer who initiated the search warrant testified in camera to the identity of the informant and the circumstances under which the informant contacted the sheriff. After hearing that testimony, the court found no complicity by the sheriff and denied Donna and Alejandro's motion. Six months later, Donna entered a negotiated plea of guilty to the three grand theft counts, but did so on the condition that she would be able to appeal the issues relating to the supposed breach of her attorney-client privilege. Donna then filed a notice of appeal.

Edward was not arrested until December 2003. Based on his suspicion that Elizabeth had been the sheriff's informant, he filed a motion in early January 2004 to disclose the identity of the informant, quash the search warrant, and suppress evidence. That motion was denied without prejudice by Judge Carlos A. Uranga. Edward brought a similar motion a few weeks later, which was to be heard before Judge Clifford L. Klein. Judge Klein was unsure about the proper procedural vehicle for such a motion, and decided to hear it under Evidence Code section 402, which governs foundational challenges to the admissibility of evidence. At the March 22, 2004, hearing, the Navarro defendants and friends and family members testified that Elizabeth admitted to having supplied the sheriff with information about the Navarro defendants' alleged car theft ring.

The hearing was continued to March 26, 2004, where the sheriff's officer who initially dealt with the informant was called to testify. The deputy first testified in open court about his contacts with the informant. According to the deputy, the informant

initiated contact with him. They had from 10 to 40 phone conversations, and, of those, the informant placed perhaps as many as 90 percent of the calls. Under cross-examination by Edward's lawyer, the deputy said he never asked the informant to act as his agent, never asked the informant to get any information for him, and never indicated that it would be helpful to have certain specific information. The court then decided to continue the deputy's testimony in camera. After the in-camera testimony was over, the court scheduled argument for April 5, 2004.

At the April 5 hearing, the court confirmed that it had earlier held an in-camera hearing where the informant testified about the informant's contacts with the sheriff. The court also confirmed that the issue it would decide was whether there had been any complicity by the sheriff in violation of *White, supra,* 970 F.2d 328. The court specifically declined to reach the issue of whether any attorney-client relationship existed, noting that defense counsel had not been given an opportunity to cross-examine the informant. The court found that the sheriff had not engaged in a "knowing procurement" of privileged information, had not intentionally or knowingly violated that privilege, and therefore had not been complicit in the breach of any privilege that might have existed. It denied Edward's motion.

Edward petitioned this court for a writ of mandate or prohibition, declaring that he could not be prosecuted based on any evidence found through the search warrant. We stayed proceedings, issued an order to show cause, and directed the parties to brief the issues. We later issued an order stating that we would hear both Edward's writ petition and Donna's appeal at the same time. Because the factual issues are nearly identical, and because the legal issues are identical, we issue this one decision to resolve both matters.[3]

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[3] As a preliminary matter, respondent contends that Donna's guilty plea precludes her appeal. We disagree. First, she obtained a certificate of probable cause from the trial court. (Pen. Code, § 1237.5.) Second, an appeal contesting the validity of a search or seizure is allowed following a guilty plea. (Pen. Code, § 1538.5, subd. (m).) Donna's motion to quash the search warrant argued that the evidence should be suppressed, thereby satisfying that section. (*People v. Lilienthal* (1978) 22 Cal.3d 891, 896-897.) Finally, Donna's right to appeal that issue was an express term of her plea bargain,

DISCUSSION

1. Quashing the Search Warrant

A. No Sixth Amendment Right to Counsel Violation Occurred

The Navarro appellants contend that the sheriff violated their Sixth Amendment right to counsel by using privileged information from their lawyer to obtain the search warrant.[4] For purposes of our discussion, we assume that Elizabeth acted as the Navarro appellants' lawyer in connection with this case and that Elizabeth breached the lawyer-client privilege when she provided the sheriff with information obtained through her representation. Although we assume that state of facts, we do not decide the issue and express no opinion as to whether Elizabeth had in fact been the informant. We start our substantive analysis with a short primer on the attorney-client privilege.

The attorney-client privilege, which authorizes a client to refuse to disclose, and prevent others from disclosing, confidential communications between lawyer and client, is considered a hallmark of our jurisprudence. (Evid. Code, §§ 950 et seq.; *Solin v. O'Melveny & Myers* (2001) 89 Cal.App.4th 451, 456-457.) The privilege is fundamental to our legal system and furthers the public policy of ensuring every person's right freely and fully to confer with and confide in his or her lawyer in order to receive adequate advice and a proper defense. (*People ex rel. Dept. of Corporations v. Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1146.) Safeguarding a client's confidences is one of a lawyer's most basic obligations. (*Ibid.*, citing Bus. & Prof. Code, § 6068,

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meaning she would be able to withdraw her plea if the appeal could not be heard. (*People v. Burns* (1993) 20 Cal.App.4th 1266, 1274.) Respondent also contends, without analysis or citation to authority, that Donna's appeal is somehow moot. Because her appeal is expressly allowed by Penal Code section 1538.5, subdivision (m), it is clearly not moot.

[4] Actually, Donna's brief does not specify on which constitutional or statutory rights she is relying. Edward's petition does, however, and we will consider his arguments as applicable to Donna's appeal as well.

subd. (e)(1) [it is an attorney's duty to "maintain inviolate, and at every peril to himself or herself to preserve the secrets, of his or her client."].) The privilege applies even where the attorney has not actually been retained. When a person seeks legal assistance from an attorney in anticipation of hiring the lawyer to represent him, any information acquired by the lawyer is privileged even if actual employment does not result. (*People v. Gionis* (1995) 9 Cal.4th 1196, 1208.)

The Navarro appellants contend that because the Sheriff utilized privileged information in obtaining the warrant, the warrant should have been quashed and all evidence obtained through it should have been suppressed as the "fruit of the poisonous tree."[5] The attorney-client privilege is a testimonial *privilege*. (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 819 (conc. opn. of Mosk, J.).) By itself, this privilege is merely a rule of evidence and does not supply a constitutional right. (*Clutchette v. Rushen* (9th Cir. 1985) 770 F.2d 1469, 1471.) However, where the government intrudes into the attorney-client relationship to obtain privileged information, the Sixth Amendment right to counsel may be violated. This usually involves some type of government misconduct, such as infiltrating the defense by planting informants or intercepting confidential communications. (*Id.* at pp. 1471-1472.) However, the constitutional right to counsel does not attach until charges are actually brought. (*Moran v. Burbine* (1986) 475 U.S. 412, 430-431 [initiation of judicial proceedings "fundamental to implication of Sixth Amendment"]; *U.S. v. Kennedy* (10th Cir. 2000) 225 F.3d 1187, 1194 (*Kennedy*) [considering privileged attorney-client information given to prosecutors during investigatory stage]; see *People v. Slayton* (2001) 26 Cal.4th 1076, 1079 [right to

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5 The fruit of the poisonous tree doctrine is an exclusionary rule that prohibits the introduction of evidence that is causally connected to an unlawful search. (*People v. Neely* (1999) 70 Cal.App.4th 767, 785.) In the area of constitutional law, the fruit of the poisonous tree doctrine supplies an exclusionary rule that is designed to deter police misconduct. Application of the rule calls for a balancing of interests, including the public's interest in the effective prosecution of criminals. Because the rule exacts a toll on society, its application must be guided by its deterrent purposes and its use must bear some relation to its purposes. (*Id.* at pp. 786-787.)

counsel attaches when charges are brought].) Because Elizabeth's alleged misconduct prompted the search warrant which thereafter led to charges being brought against the Navarro defendants, it is clear that her supposed breach of the attorney-client privilege came before charges were filed, and before the Sixth Amendment right to counsel attached. If the Navarro appellants were entitled to quash the search warrant and suppress the evidence, their right to such relief must come from some other source.

B. Absent Government Misconduct, No Fifth Amendment Violation Occurred

Although the right to counsel protections of the Sixth Amendment are limited to governmental misconduct occurring after charges have been brought, the due process protections of the Fifth Amendment may provide a remedy for misconduct by the government that occurs during the pre-indictment stage. (*Kennedy*, *supra*, 225 F.3d at p. 1194; *U.S. v. Marshank* (N.D. Cal. 1991) 777 F.Supp. 1507, 1518 (*Marshank*).) The Navarro appellants have never specified the Fifth Amendment as a basis for their challenges to the search warrant. However, the decision primarily relied upon below by the prosecutor and the trial court—*White, supra,* 970 F.2d 328—appears to have been based in part on the due process clause. We will therefore address that issue.

The defendants in *White* were convicted of bankruptcy fraud. They appealed their conviction, in part based on the claim that the government violated their Fifth and Sixth Amendment rights by inducing their former lawyer to supply incriminating information against them in breach of the attorney-client privilege. The Seventh Circuit remanded the matter to the United States district court to make certain factual findings, including whether the government had been complicit in any breach of the lawyer-client privilege and, if so, whether the government made use of any privileged documents. The latter inquiry was aimed at avoiding on appeal the constitutional issues raised by the Whites. As a result of the evidentiary hearing held on remand, it appeared that the Whites' former bankruptcy lawyer, Center, had been convicted of bankruptcy fraud in a case that was unrelated to the Whites' convictions. Center did, however, represent the Whites in connection with the matter which led to the charges against the Whites. Before Center

was sentenced on his conviction, a federal prosecutor asked Center if he wanted to provide information about the Whites. Center turned over documents obtained through his former representation of the Whites and testified before the federal grand jury which eventually indicted the Whites.

The Seventh Circuit began by stating that because the alleged breach of the lawyer-client privilege occurred before charges were brought against the Whites, the Sixth Amendment's right to counsel was not at issue. Citing to an earlier, related decision which discussed violations of the Fifth Amendment—*U.S. v. White* (7th Cir. 1989) 879 F.2d 1505, 1513—the court said that the question instead concerned whether Center violated his ethical obligations, whether the government had been "complicit" in that violation, and, if so, whether the Whites had been prejudiced as a result. (*White, supra,* 970 F.2d at pp. 333-334.)[6] The court first held that the lawyer-client privilege had not been breached because the documents Center gave to prosecutors were not confidential. (*Id.* at pp. 334-335.) The court alternatively held that even if a breach of the privilege did occur, the district court found that the government had not explicitly or implicitly promised Center leniency for his cooperation, adding that the Whites merely speculated that the government "procured" a breach of the privilege. Combined with the fact that the government did not ask Center to obtain copies of any privileged documents, the Seventh Circuit concluded the government had not been complicit in any breach by Center of the lawyer-client privilege. (*Id.* at p. 336.)

Thus, according to *White,* a due process violation for breach of the lawyer-client privilege turns on whether the government helped instigate or orchestrate a breach of the privilege. That is consistent with decisions from other courts which have considered this issue. (*Kennedy, supra,* 225 F.3d at pp. 1194-1995 [outrageous government conduct is needed to make out a due process violation for breach of the lawyer-client privilege; this requires proof that the government objectively knew a lawyer-client relationship existed

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6 This is the source of our earlier assumption that *White* involved the Fifth Amendment's due process clause as it related to breaches of the attorney-client privilege.

between the defendant and its informant, deliberately intruded into that relationship, and defendant was prejudiced as a result]; *U.S. v. Voigt* (3d Cir. 1996) 89 F.3d 1050, 1069 [no outrageous conduct found in part because there was no proof the lawyer-informant acted at the behest of government agents]; *Marshank, supra,* 777 F.Supp. at p. 1524 [outrageous government conduct found, and indictment properly suppressed, where government agents actively collaborated with a lawyer to build a case against the lawyer's client, the lawyer participated in the government's investigation, the government knowingly assisted the lawyer in violating the attorney-client privilege, then hid the violation from the court].) It also appears consistent with the standards for determining whether there has been improper government intrusion into the attorney-client privilege for purposes of a Sixth Amendment right to counsel violation. (See *Clutchette v. Rushen, supra,* 770 F.2d at p. 1472 [where the police were "entirely passive," did not initiate contact with the informant, did not encourage her to turn over privileged documents, and the informant acted voluntarily, no Sixth Amendment violation occurred].)

The Navarro appellants contend that *White* cannot be construed to require evidence of government misconduct because the Seventh Circuit held that no breach of the lawyer-client privilege occurred. As noted, while that was the court's initial holding, it also held that no due process violation occurred because there had been no government complicity in Center's breach of the privilege. The Navarro appellants do not address that portion of the *White* decision.

The Navarro appellants also contend that *White's* original directions on remand—which led to the district court's evidentiary hearing—somehow indicate that any use of privileged information by the government is enough to make out a constitutional violation. In its remand order, the Seventh Circuit said it could avoid reaching any constitutional issues if the government did not use any privileged information and directed the lower court to make findings on that issue. The Seventh Circuit also directed the district court to look into the issues of government complicity and prejudice to the defendants from any breach of the attorney-client privilege. (*White, supra,* 970 F.2d at p. 329.) The Navarro appellants have somehow cobbled these statements together to

contend that, under *White*, any use of privileged documents by the government would amount to a constitutional violation. Their contention ignores not just *White's* language to the contrary—focusing on whether the government procured the breach or directed the lawyer to find certain documents—but the other decisions cited above holding the defendant must show affirmative government misconduct before a due process violation will be found.

Synthesizing the federal decisions cited above, we conclude that in order to make out a Fifth Amendment due process violation against the government for obtaining a search warrant based on privileged lawyer-client information, a criminal defendant must show that: (1) the government objectively knew a lawyer-client relationship existed between the defendant and its informant; (2) the government deliberately intruded into that relationship; and (3) the defendant was prejudiced as a result. (*Kennedy, supra,* 225 F.3d at pp. 1194-1995.) That the police are mere passive recipients of privileged information, then act on that information, is not enough to satisfy the second element of deliberate intrusion.[7] Instead, some level of outrageous conduct, such as actively instigating or orchestrating a lawyer's breach of the attorney-client privilege, must occur. (*Ibid.; U.S. v. Voigt, supra,* 89 F.3d at p. 1069; *White, supra,* 970 F.2d at pp. 333-334, 336.)

Our review of the evidence given both in camera and in open court shows no government misconduct here. The sheriff's affidavit of probable cause submitted in support of the search warrant states that the informant contacted the deputies, and that, based on information provided by the informant, they were independently led to other evidence and witnesses. During the March 21, 2003, in-camera hearing held in connection with Donna's motions, a deputy testified that the informant contacted him and provided information. The deputy never directed the informant about how to provide information. During the March 26, 2004, open court hearing on Edward's motions, the deputy testified that the informant initiated contact with him. They had from 10 to 40

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[7] The first and third elements are not at issue here and we need not discuss them.

phone conversations, and, of those, the informant placed perhaps as many as 90 percent of the calls. Under cross-examination by Edward's lawyer, the deputy said he never asked the informant to act as his agent, never asked the informant to get any information for him, and never indicated to the informant that it would be helpful to have certain specific information. When that hearing continued in camera, the deputy testified that the informant had contacted him, and that he had never spoken with the informant before then. The informant provided him information, which the deputy investigated and corroborated. If that informant were Elizabeth, nothing in the record even remotely suggests government misconduct in procuring information from her. (See *U.S. v. Voigt, supra,* 89 F.3d at p. 1069 [no due process violation in part because the lawyer-informant did not act "at the behest of government agents"].) Instead, the deputies were no more than passive recipients of information that was voluntarily supplied. As a result, no Fifth Amendment due process violation occurred in obtaining the search warrant or the evidence derived from that warrant.

C. The Statutory Privilege, Standing Alone, Does Not Permit the Search Warrant to Be Quashed

Finally, the Navarro appellants contend that the statutory privilege by itself (Evid. Code, § 952) provides a proper basis for quashing the warrant and suppressing its derivative evidence. We disagree.

As discussed earlier, the attorney-client privilege is testimonial and evidentiary in nature. Such privileges frustrate the fundamental principle that the public has a right to all available evidence and must be strictly construed to the limited extent that excluding relevant evidence serves a greater public good. (*People v. Thompson* (1982) 133 Cal.App.3d 419, 427-428.) As a testimonial or evidentiary privilege has no direct bearing on the process by which the police obtain information to support the determination of probable cause, evidence properly considered at the probable cause stage may still be excluded at trial. Conversely, it is inappropriate to apply the rules of

evidence as a criterion to determine probable cause. (*Brinegar v. United States* (1949) 338 U.S. 160, 173-174, fn. 12.)

In *People v. Morgan* (1989) 207 Cal.App.3d 1384 (*Morgan*), the court affirmed the denial of a pre-trial motion to suppress an arrest warrant for lack of probable cause based on a claimed violation of the marital communications privilege. (Evid. Code, § 980.) Relying on *Brinegar v. United States, supra,* 338 U.S. 160, the court held that "[t]he rules of evidence applicable at trial do not apply in determining probable cause for arrest." (*Morgan, supra,* at p. 1389.) The court in *Nickel v. Hannigan* (10th Cir. 1996) 97 F.3d 403, 409, applied Kansas law to conclude that a violation of that state's lawyer-client privilege did not provide grounds to suppress evidence obtained from the violation. A Florida state court reached the same result on similar facts in *State v. Sandini* (Fla. App. 1981) 395 So.2d 1178 (*Sandini*). In that case, the police obtained a search warrant based on information voluntarily provided by a lawyer in breach of the attorney-client privilege. The prosecution appealed from a trial court order suppressing the evidence. Although the privileged information could be excluded at trial, the *Sandini* court recognized that the privilege should be narrowly construed to prevent obstruction of the truth. Therefore, information derived from a breach of the lawyer-client privilege could be used to establish probable cause for a search warrant. The client's remedy for that breach was to sue for damages or initiate state bar disciplinary proceedings. "If both of those possibilities are insufficient to deter violations of the privilege, certainly a rule of exclusion would have little additional deterrent effect. As a matter of practicality in most cases the attorney will have little interest in whether or not the evidence is excluded." (*Id.* at p. 1181.)[8]

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[8] The *Sandini* court also held that no violation of the Fourth Amendment's protections against unreasonable search and seizure occurred because the police had been mere passive recipients of the information and acted upon it, precluding a finding of police misconduct. (*Sandini, supra,* 395 So.2d at p. 1180.) No Sixth Amendment violation occurred because charges had not yet been filed at the time of the lawyer's breach. (*Id.* at p. 1181.)

We find persuasive the reasoning of *Sandini*, *Morgan*, and the various federal decisions mentioned above. Where a search warrant is obtained based on information provided to the police in breach of the lawyer-client privilege, the privilege by itself does not provide a "fruit of the poisonous tree" type remedy absent the sort of governmental misconduct needed to establish a constitutional violation. (See *U.S. v. Marashi* (9th Cir. 1990) 913 F.2d 724, 731 [no court has ever applied the fruit of the poisonous tree doctrine to violations of evidentiary privileges].) While the Navarro appellants contend that tort damages and state bar discipline would provide them with at best a pyrrhic victory from behind bars, that does not justify punishing the public or law enforcement when no constitutional violation has occurred.[9]

2. Claimed Procedural Errors at the Informant Disclosure Hearings

The Navarro appellants contend that the trial court erred by denying their motion to disclose the identity of the sheriff's confidential informant. The police are allowed to keep confidential the name of an informant who provided information used in obtaining a search warrant. (Evid. Code, §§ 1041, subd. (a); 1042, subds. (b), (c).) The defendant may bring a motion to disclose the identity of the confidential informant if that informant "is a material witness on the issue of guilt." (Evid. Code, § 1042, subd. (d).) Assuming for discussion's sake only that the trial court erred by refusing to disclose the identity of the confidential informant, we hold that the error was harmless. The whole purpose of the Navarro appellants' disclosure motions was to confirm that Elizabeth had been the informant, thus requiring suppression of the warrant and its derivative evidence for her breach of the lawyer-client privilege. By focusing on the complicity issue, the trial court's decision was necessarily predicated on the assumption that Elizabeth had been the

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9 Although we recognize that appellants may choose to file a civil suit for malpractice, breach of fiduciary duty, and other torts, the validity of such claims is not before us, and we express no opinion on them. Likewise, we do not comment on the propriety of any State Bar proceedings which appellants might elect to initiate.

informant. Because the trial court did so, and because its findings on lack of complicity were correct, it does not matter that the informant's identity was not disclosed. In short, if the informant's identity had been disclosed, and if Elizabeth had been the informant, the results would have been the same both below and on appeal.[10]

The Navarro appellants also contend that the trial court erred by holding in camera hearings for the testimony of the informant and the deputy. Such hearings are expressly allowed, however. (Evid. Code, § 1042, subd. (d).) Because the Navarro appellants relied on Evidence Code section 1042, they also invoked its provisions for in-camera hearings. They have cited no contrary authority and we therefore deem the issue waived. (*People v. Thorbourn* (2004) 121 Cal.App.4th 1083, 1089.)

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10 The Navarro appellants do not contend that Elizabeth is a material witness on the issue of guilt. Instead, they contend that knowledge of her identity as the confidential informant is material to their defense because it provides a basis for quashing the search warrant and suppressing the evidence found by the deputies. Respondent contends that because the informant's identity was not sought in order to learn about a material witness, then disclosure of the informant's identity was properly rejected under Evidence Code section 1042, subdivision (d). Because we hold that any error from denying the motions to reveal the informant's identity was harmless, we need not reach that issue. Even so, we make the following points. To the extent Elizabeth might be a material witness, Edward does not need Evidence Code section 1042 to obtain her identity and is certainly free to call her as a witness at his trial.

DISPOSITION

For the reasons set forth above, the judgment as to Donna Navarro is affirmed. Edward Navarro's petition for a writ of prohibition or mandate is denied, our order to show cause is discharged, and the stay of proceedings in his case is lifted.

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RUBIN, J.

We concur:

COOPER, P.J.

BOLAND, J.