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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Appellant, v. JOHN MEDLEY JOHNSON, Defendant and Respondent.	A098085 (Contra Costa County Super. Ct. No. 011050-2)

The question presented by this appeal is whether the prosecution can satisfy its burden of proof at a suppression hearing by presenting the investigating officer's affidavit in lieu of live testimony. The trial court answered in the negative, granted the defendant's motion to suppress and, when the prosecutor represented he was unable to proceed, dismissed the case. The People appeal. We reverse.

STATEMENT OF THE CASE

Respondent, John Medley Johnson, was charged by information filed on July 3, 2001, with first degree residential burglary (Pen. Code, § 459/460,[1] subd. (a)); second degree burglary (§ 459/460, subd. (b)); grand theft of a firearm (§ 487, subd. (d)) and grand theft of personal property (§ 487, subd. (a)). Respondent entered a plea of not guilty and the case was set for trial.

Respondent filed a motion to suppress evidence (§ 1538.5) on September 21, followed by a supplement to the motion and a motion to quash warrant on September 25. The People opposed the motion to suppress, based on the affidavit

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1 Statutory references will be to the Penal Code unless otherwise specified.

of Deputy Matthew Ohnemus, who had detained respondent and searched his car on April 11, 2001, after observing marijuana and a pipe in the car in which respondent was sleeping. The People also filed a memorandum of points and authorities in support of the admissibility of the affidavit. Respondent, in turn, filed opposition to the admission of the affidavit. Following a hearing on November 15, the parties filed additional briefs addressing questions of concern to the trial court. At a subsequent hearing on February 15, 2002, the court found the affidavit inadmissible. As the People offered no other evidence to demonstrate the reasonableness of the search respondent challenged, the court granted the motion to suppress. Defense counsel moved for dismissal, the district attorney indicated he was unable to proceed in light of the court's ruling on the affidavit, and the court granted the motion to dismiss.

Appellant filed a timely notice of appeal on March 6, 2002.

STATEMENT OF FACTS

Jerry Johnson, respondent's father, returned on April 8 or 9, 2001, from a weekend out of town to find the door to his house locked but the door to his bedroom kicked in. The door to a separate cottage on the property was broken and the threshold of the cottage had been ripped out. Inside, the linoleum floor of the cottage was ripped and two gun safes were missing. One of the safes was new, weighed about 2500 pounds and contained 25 to 30 guns, jewelry, about $25,000 in savings bonds, $600 to $1,000 cash, a knife collection and deeds and titles to Johnson's property. Items that were missing from the main house included CDs, a lap top computer. The total value of the property taken was between $60,000 and $80,000.

Johnson had a "fork truck" or forklift on his property that could handle the weight of the safes. When Johnson returned from his trip, the forklift was parked where he had left it, but tire tracks went from that area to the cottage and there was paint from the safes on the forks of the forklift.

Johnson found two oxygen tanks in the cottage where the safes were kept; these tanks had been outside the cottage when Johnson left for the weekend.

Respondent had lived in the cottage on and off until three and a half weeks before the burglary. Johnson and his wife had asked respondent to leave the residence when they learned of his heavy drug usage and he was no longer welcome at the house. He had worked for his father's construction company at various times and had operated the forklift. Johnson told the police investigating the burglary that he suspected respondent might have been responsible.

A clerk at the hardware store told Johnson's wife that he had seen respondent in the store on the morning of April 7, 2001, trying to purchase acetylene. Records from a storage facility in Brentwood showed that respondent had made several visits to the facility from April 7 to 10, 2001. One of these visits lasted an hour and a half.

On April 11, 2001, Contra Costa Sheriff's Deputy Ted Anderson obtained a search warrant for respondent's storage unit. He and Sergeant Eric Christensen searched the storage unit and seized firearms and jewelry identified as having been stolen from the Johnson home.

At about 10:20 p.m. on April 11, 2001, Los Angeles Sheriff's Deputy Matthew Ohnemus was dispatched to the vicinity of apartments at 14717 Pioneer Boulevard in Norwalk in response to a report of a suspicious person in a vehicle. He contacted a person later identified as respondent, asleep in a red 1982 Chevrolet Beretta parked in a private lot. Ohnemus and his partner knocked on the window of the car, woke respondent and asked to talk to him. While standing outside the car, Ohnemus saw in plain view on the center console a pipe commonly used for smoking marijuana and a plastic baggie containing a usable amount of marijuana. Ohnemus asked respondent to step out of the car and stand aside. He then searched the vehicle for more narcotics or user paraphernalia. In the car, Ohnemus found a cane sword, several firearms and several knives. Ohnemus arrested respondent for possession of an unlawful weapon (the cane

sword) and transported him to the Norwalk sheriff's station, where he booked the seized property into evidence and respondent into custody.

Believing that such a large number of weapons was probably taken in a burglary, Ohnemus contacted the police agency in the area where respondent lived. He was told that respondent's parents' house had been burglarized, a gun collection and other items had been taken, and respondent was suspected. The items found in respondent's car matched those on a list of stolen items faxed to Ohnemus by the Contra Costa sheriff's office.

Ohnemus believed respondent's car would contain additional evidence connecting respondent to the burglary and conducted a further search. He seized 14 cigars, an envelope containing several certificates of ownership and miscellaneous papers in the burglary victims' names, three photographs of the stolen firearms, a pawn receipt signed by respondent for one of the stolen firearms and a handwritten list of some of the stolen guns. Ohnemus faxed a copy of his incident report to Detective Anderson in Contra Costa County.

On April 12, after receiving the police report and speaking with Detective Smith in Los Angeles, Anderson supplemented the affidavit he had used to obtain the search warrant for the storage unit and obtained a warrant to search respondent's car. The supplemental information included the evidence seized by Ohnemus at the time of respondent's arrest and in the subsequent inventory search of the vehicle. Anderson and Sergeant Christiansen traveled to Los Angeles and interviewed respondent at 11:45 p.m. on April 12. In this interview, respondent allegedly admitted the burglary and supplied the officers with details including locations at which the police could—and subsequently did—find items of property taken in the burglary, including the safes. Anderson searched respondent's car and found additional items taken in the burglary.

DISCUSSION

Respondent moved to suppress all evidence obtained as a result of his detention by Officer Ohnemus, claiming the detention was illegal. His motion did not apply to the evidence seized pursuant to the search warrant for the storage unit, but to the evidence seized by Ohnemus at the time of the detention, during the subsequent searches of the vehicle, and as a result of Anderson's interview with appellant. Respondent additionally sought to quash the search warrant for his car on the ground that the information supplied in the affidavit upon which the warrant was issued was derived from the initial detention and its fruits.

The People opposed respondent's motions, arguing that the initial detention was justified, the seizure of the marijuana and pipe was lawful because Ohnemus observed these items in plain view from a legitimate vantage point outside respondent's car, and the ensuing search of the car was justified by respondent's lawful arrest and the probable cause established first by the marijuana and pipe and then by the stolen property in the car. The facts supporting the People's position were presented in the affidavit of Deputy Ohnemus. The People argued that the affidavit was admissible evidence under Code of Civil Procedure section 2009 (permitting use of affidavits in connection with motions), Penal Code section 1102 (making civil rules of evidence applicable to criminal actions), Penal Code section 1204.5, subdivision (a) (permitting use of affidavits in connection with law and motions matters), and Penal Code section 686 (making hearsay evidence admissible in criminal actions to the extent it is otherwise admissible). The People acknowledged that respondent had a statutory right to cross-examine Ohnemus and stated that respondent would have to subpoena Ohnemus for this purpose. Respondent argued the affidavit was not admissible and did not subpoena Ohnemus.

The trial court ultimately concluded that the affidavit was not admissible because a suppression hearing is not a criminal action but a special proceeding of a criminal nature, so that section 1102 did not make Code of Civil Procedure section

2009 applicable in this situation. Because the People relied entirely on Ohnemus's affidavit to establish the reasonableness of the detention and searches, after the trial court found the affidavit inadmissible, the motion to suppress was granted and the case dismissed.

I.

We are not aware of any cases discussing the admissibility of affidavits to meet the prosecution's burden of proof in suppression hearings, and the parties have not directed us to any. Indeed, we are not aware of any cases (other than the present one) in which the entire prosecution case was presented by affidavit. The result of this procedure, of course, would be to impose upon a defendant seeking suppression of evidence the burden of producing the prosecution's witness for cross-examination. Despite the importance of the constitutional rights at issue on a motion to suppress, we are compelled to conclude the current statutory scheme does permit this procedure.

An affidavit is "a written declaration under oath, made without notice to the adverse party." (Code Civ. Proc., § 2003.) "'Ordinarily, affidavits may not be used in evidence unless permitted by statute.'" (*People v. Dickinson* (1976) 59 Cal.App.3d 314, 319, quoting *Estate v. Fraysher* (1956) 47 Cal.2d 131, 135.)

Although various statutes expressly permit the use of affidavits in certain circumstances (e.g., § 1181, subd. (8) [witnesses' affidavits on motion for new trial on grounds of newly discovered evidence]; § 1050, subd. (b) [affidavits supporting motion to continue criminal hearing]; § 861 [affidavit demonstrating good cause for postponement of preliminary hearing]; § 851.8 [hearing on petition for finding of factual innocence based on declarations, affidavits, police reports]; § 1240.1, subd. (b) [affidavit re: financial condition on motion for appointment of counsel on appeal]; § 1424, subd. (a)(1) [affidavits on motion to disqualify prosecutor]; § 2620 [affidavits on motion to produce state prisoner as witness]), no statute expressly authorizes the use of affidavits to prove the reasonableness of a search in a suppression hearing. The People, however, point to two statutes which

they view as hearsay exceptions permitting the use of affidavits in this context. These are Code of Civil Procedure section 2009 and section 1204.5, subdivision (a).

Code of Civil Procedure section 2009 provides: "*An affidavit may be used* to verify a pleading or a paper in a special proceeding, to prove the service of a summons, notice, or other paper in an action or special proceeding, to obtain a provisional remedy, the examination of a witness, or a stay of proceedings, and in uncontested proceedings to establish a record of birth, or *upon a motion, and in any other case expressly permitted by statute*." (Emphasis added.) Section 2009 has been applied repeatedly in criminal cases. (*People v. Laws* (1981) 120 Cal.App.3d 1022, 1033 [affidavit on motion regarding payment of restitution]; *People v. Sahagun* (1979) 89 Cal.App.3d 1, 24 [in hearing on issue of prosecutorial delay, affidavit would be admissible, but unsworn statements not]; *In re Krieger* (1969) 272 Cal.App.2d 886, 889, fn. 2 [affidavits in habeas proceedings]; *People v. Albin* (1952) 111 Cal.App.2d 800, 806 [no "inalienable right" to present testimony at hearing regarding commitment in light of the "practice of presenting affidavits or depositions in support of such a motion"]; *People v. Kirk* (1952) 109 Cal.App.2d 203, 209 [affidavits on motion regarding mailing of notice of appeal]; *People v. Eastman* (1944) 67 Cal.App.2d 357, 359 [defendant failed to take advantage of right to support motion by affidavit]; *People v. Sullivan* (1900) 129 Cal. 557, 562 [affidavits to demonstrate juror misconduct.]

As the parties here recognize, Code of Civil Procedure section 2009 can only be viewed as applicable to criminal cases by virtue of section 1102. Penal Code section 1102 provides: "The rules of evidence in civil actions are applicable also to criminal *actions*, except where otherwise provided in this Code." (Emphasis added.) The trial court found that a suppression hearing is not a criminal "action" but rather a special proceeding of a criminal nature, so that section 1102 did not make Code of Civil Procedure section 2009 applicable to suppression hearings.

The Code of Civil Procedure specifies two classes of judicial remedies, "actions" and "special proceedings." (Code Civ. Proc., §§ 20, 21.) An "action" is defined as "an ordinary proceeding in a court of justice by which one party prosecutes another for the declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense." (Code Civ. Proc., § 22.) "Every other remedy is a special proceeding." (Code Civ. Proc., § 23.)

There are two kinds of actions: Civil and criminal. (Code Civ. Proc., § 24.) A civil action is specifically defined as one "prosecuted by one party against another for the declaration, enforcement or protection of a right, or the redress or prevention of a wrong." (Code Civ. Proc., § 30.) Based on the general definition of "action" above, this means that a criminal action is necessarily one "by which one party prosecutes another for the . . . punishment of a public offense. (Code Civ. Proc., § 22.) Penal Code section 683 specifically defines "criminal action" as "[t]he proceeding by which a party charged with a public offense is accused and brought to trial and punishment . . . ."

Special proceedings "generally are 'confined to the type of case which was not, under the common law or equity practice, either an action at law or a suit in equity. [Citations.]' [Citation.] Special proceedings instead are established by statute. [Citations.] The term 'special proceeding' applies only to a proceeding that is distinct from, and not a mere part of, any underlying litigation. (*Avelar v. Superior Court* (1992) 7 Cal.App.4th 1270, 1275 (*Avelar*).) The term 'has reference only to such proceedings as may be commenced independently of a pending action by petition or motion upon notice in order to obtain special relief. [Citations.]' (*In re Sutter-Butte By-Pass Assessment* (1923) 190 Cal. 532, 537 . . . .)" (*People v. Superior Court* (*Laff*) (2001) 25 Cal.4th 703, 725.) "By describing a 'special proceeding' as any remedy not available in an 'action,' the Legislature must have meant to create and recognize two roughly equivalent levels

of independent procedures to be directed towards the attainment of different, but similarly final remedies." (*Avelar, supra,* 7 Cal.App.4th at p. 1276.) [2]

Avelar involved a discovery hearing on a motion to disclose a peace officer's personal or otherwise confidential records. The court held that the motion, brought in the context of pending criminal action, was not a special proceeding because it was an "integral part of a pending action." (7 Cal.App.4th at p. 1277.) By contrast, *Laff* held that a hearing to determine whether documents seized from criminal suspects were privileged constituted a special proceeding, where the suspects had not been charged with any crime and no related criminal action was pending. (25 Cal.4th at p. 725.) Both of these cases based their reasoning, in part, on analogy to motions for return of property under section 1538.5. *Avelar* explained that several of the procedures set forth in title 12 of Part II of the Penal Code ("Special Proceedings of a Criminal Nature") "can clearly be mere component parts of a primary action. For example, if no criminal action is pending, an owner's motion under Penal Code sections 1539-1540 for the return of property seized under a warrant would be properly classed as a 'special proceeding.' (See *People v. Superior Court (Aquino)* (1988) 201 Cal.App.3d 1346, 1349-1350 . . . .) However, if a criminal prosecution is pending, a defendant could not exercise two separate peremptory challenges, one at a motion to suppress under Penal Code section 1538.5, and another at the trial itself. (See *Le Louis v. Superior Court* (1989) 209 Cal.App.3d 669, 676-679 . . . , in which the court, using an analysis similar to that which we employed above, concluded that a preliminary hearing is a part of the criminal action, and not a

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2 Code of Civil Procedure section 363 provides that the "word 'action' as used in this title is to be construed, whenever it is necessary so to do, as including a special proceeding of a civil nature." We are unaware of any statute similarly equating the term "action," as used in the Penal Code, with "special proceeding of a criminal nature." For purposes of the Evidence Code, however, "'[c]riminal action' includes criminal proceedings." (Evid. Code, § 130.)

'special proceeding' giving rise to a separate right under section 170.6.)" (7 Cal.App.4th at pp. 1276-1277.) *Laff* stated: "When no criminal action has been filed, . . . a motion for the return of seized property is deemed to be a special proceeding, even though it may be considered part of a criminal action if such an action is pending. (*Ensoniq Corp. v. Superior Court* [(1998)] 65 Cal.App.4th 1537, 1547.)" (25 Cal.4th at p. 724.)

Motions to suppress evidence and for the return of seized property are governed by section 1538.5, which appears in Title XII of Part II of the Penal Code, entitled "Special Proceedings of a Criminal Nature." The title heading, however, is not dispositive, as the Penal Code provides that "[d]ivision, chapter, article, and section headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any division, chapter, article or section hereof." (*People v. Tufunga* (1999) 21 Cal.4th 935, 948; § 10004[3]) And, as stated in *Avelar*, a number of the procedures set forth in this title can be component parts of a primary action. A motion to suppress evidence necessarily occurs within the context of an underlying criminal prosecution, else there would be no proceeding at which to suppress the evidence in question. Under the authorities above, therefore, a motion to suppress is not a separate and independent "special proceeding" but rather a proceeding which is "an ancillary or component part of" (*Avelar*, *supra*, 7 Cal.App.4th at p. 1276) the criminal action in which it is litigated.

Respondent argues that motions to suppress under section 1538.5 should be treated as subject to the rules governing special proceedings because such motions are subject to section 1539.

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3 Although section 10004 appears to refer only to Part III of the Penal Code, it has been interpreted as applying to the entire code. (*People v. Tufunga, supra,* 21 Cal.4th at p. 948.)

Section 1539 is concerned with evidence at hearings on motions to suppress and motions for return of property. Respondent assumes that section 1539 would require presentation of oral testimony at a hearing on a motion for return of property and that, therefore, the same requirement must apply on a motion to suppress. We do not accept the assumption underlying this argument.

Section 1539 provides in subdivision (a): "If a special hearing be held in the superior court pursuant to Section 1538.5, . . . the judge or magistrate *shall proceed to take testimony in relation thereto, and the testimony of each witness shall be reduced to writing and authenticated by a shorthand reported in the manner prescribed in Section 869.*"[4] (Emphasis added.) Section 869 requires that testimony of each witness in homicide cases, and of witnesses in other cases upon demand of either of the parties, "be reduced to writing, as a deposition" or taken down by shorthand by a shorthand reporter. The statute then sets forth requirements for authentication of the deposition or testimony of the witness, including that the deposition or testimony state the witness's name, residence and business or profession; "contain the questions put to the witness and his or her answers thereto, each answer being distinctly read to him or her as it is taken down, and being corrected or added to until it conforms to what he or she declares is the truth, except in cases where the testimony is taken down in shorthand, the answer or answers of the witness need not be read to him or her"; state the fact if a question was objected to and overruled or the witness declined to answer it; and bear the witness's signature or state his or her reason for refusing to sign it, unless the deposition was taken down in shorthand. (§ 869, subds. (a)–(d).)

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4 Section 1539, subdivision (a), also applies "if the grounds on which the warrant was issued be controverted and a motion to return property be made (i) by a defendant on grounds not covered by Section 1538.5; (ii) by a defendant whose property has not been offered or will not be offered as evidence against him; or (iii) by a person who is not a defendant in a criminal action at the time the hearing is held[.]"

According to respondent, section 1539 allows only oral testimony, not affidavits, at a hearing under section 1538.5. A literal reading of section 1539 might be seen as supporting this view. Section 1539 directs the judge or magistrate to "take testimony," then requires that "the testimony of each witness" be "reduced to writing and authenticated by a shorthand reporter in the manner prescribed in Section 869." The authentication requirements of section 869 contemplate a live witness, subject to questioning. Unlike oral testimony, written affidavits need not be "reduced to writing" and cannot be authenticated in the manner prescribed by section 869.

The term "testimony," however, includes more than oral testimony from the witness stand. Code of Civil Procedure section 2002 provides: "The testimony of witnesses is taken in three modes: [¶] 1. By affidavit; [¶] 2. By deposition; [¶] 3. By oral examination." Similarly, "[a] witness is a person whose declaration under oath is received as evidence for any purpose, whether such declaration be made on oral examination, or by deposition or affidavit." (Code Civ. Proc., § 1878.) While the Legislature has specified in some circumstances that a court "hear" testimony (e.g., Evid. Code, § 1563, subd. (b)(4) [witness fees]; § 597.1, subd. (k) [testimony regarding ownership of animal in case of animal kept without proper care]), section 1539 does not employ this language but more generally directs the court to "take" testimony.

Section 1539, as originally enacted in 1872, applied only to motions for return of property where the grounds for issuance of a warrant were challenged. Section 1539 was later amended to state its applicability to hearings under section 1538.5 when the latter statute was enacted. (Stats. 1967, ch. 1537, p. 3656, § 2 [§ 1539 amend.]; Stats. 1967, ch. 1537, p. 3652, § 1 [§ 1538.5 enactment].) Section 1538.5, the statute which specifically and comprehensively governs motions to suppress, does not purport to limit the form of evidence admissible at a hearing on a motion to suppress. To the contrary, it affords a defendant the right

to "fully litigate the validity of a search or seizure on the basis of the *evidence* presented at a special hearing." (§ 1538.5, subd. (i), emphasis added.)

As indicated above, abundant case law demonstrates that courts have assumed Code of Civil Procedure section 2009 to apply in criminal cases. In *People v. Sullivan, supra,* 129 Cal. 557, 562, which upheld a trial court's decision to accept only affidavits and not oral testimony in support of a motion for new trial, the court stated that "the law recognizes no difference between affidavits or depositions and oral testimony when offered in support of motions." Penal Code section 5, since 1872, has directed that "[t]he provisions of this Code, so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments." Thus, where the terms of a statute remain substantially the same, absent an express provision requiring a different construction, the new statute carries the same judicial interpretation as the original one. (*People v. Ellis* (1928) 204 Cal. 39, 44; see, *People v. Mendoza* (2000) 23 Cal.4th 896, 917, fn. 9; *id.* at p. 937 [Kennard, J., dissenting].) The terms of section 1539 have remained the same since 1872, with the addition of language applicable to section 1538.5.

Additionally, the fact that section 1539 was enacted at the same time as Code of Civil Procedure sections 1878, 2002 and 2009, and Penal Code section 1102, is significant. The provisions of the four codes enacted at the 1972 session of the Legislature "shall be construed as though all such codes had been passed at the same moment of time and were parts of the same statute." (Civ. Code, § 23.2.) An interpretation of section 1539 as limiting evidence at a suppression hearing to oral testimony would be inconsistent with the provisions of section 1102 and Code of Civil Procedure section 2209. This inconsistency can be avoided, and the statutes harmonized, by interpreting section 1539 as setting forth the requirements for presentation of oral testimony at a hearing under section 1538.5 but not precluding presentation of other forms of evidence as well. In other words,

section 1539 simply sets forth the requirements that must be followed when oral testimony is presented at a hearing under section 1538.5.

It follows that a motion to suppress is governed by the rules of evidence applicable to civil actions, in accordance with Penal Code section 1102. This conclusion is reinforced by section 690, which provides: "The provisions of Part 2 (commencing with Section 681) shall apply to all criminal actions and proceedings in all courts, except where jurisdictional limitations or the nature of specific provisions prevent, or special provision is made for particular courts or proceedings." The statutes included in part 2 of the Penal Code—which is entitled "Criminal Procedure"—are sections 681 through 1620. Since section 1102 is within Part 2, section 690 makes section 1102 applicable to criminal proceedings as well as actions unless the exception stated in section 690 applies. The only arguable "exception" of which we are aware would be section 1539—if it is interpreted as requiring oral testimony. As discussed above, we reject this interpretation.

Turning to the language of section 1102 making civil "rules of evidence" applicable to criminal actions, respondent argues that Code of Civil Procedure section 2009 is not a rule of evidence because it does not appear in the Evidence Code. Prior to the enactment of the Evidence Code in 1965, Part Four of the Code of Civil Procedure was entitled "Of Evidence." When the Evidence Code was enacted, various provisions in Part Four of the Code of Civil Procedure were repealed and the part was renamed "Miscellaneous Provisions." According to the California Law Revision Commission comment on Code of Civil Procedure section 1, "[t]he title of Part IV has been changed to reflect the fact that the evidence provisions in Part IV have been placed in the Evidence Code." (Cal. Law Rev. Comm., 7 *Reports, Recommendations, and Studies* (1965) p. 297; see also, Cal. Law Rev. Comm., *supra*, Comment to Title of Part IV of Code of Civ. Proc.) Respondent argues that the Legislature thus made clear that the evidence provisions of the Code of Civil Procedure were moved to the Evidence Code and

the remaining provisions of Part Four of the Code of Civil Procedure were not "rules of evidence."

We are not convinced. In determining whether Code of Civil Procedure section 2009 is a "rule of evidence" subject to section 1102, we apply familiar rules of statutory construction. According to these rules, a court """"should ascertain the intent of the Legislature so as to effectuate the purpose of the law."""" ([Citations]) To determine such intent, the court must turn first to the language of the statute itself. ([Citation.]) 'Excepting when clearly otherwise intended or indicated, words in a statute should be given their ordinary meaning and receive a sensible construction in accord with the commonly understood meaning thereof. [Citation.]' ([Citation.]) 'Legislative enactments are to be construed in accordance with the ordinary meaning of the language used, if the words are not ambiguous and do not lead to an absurdity. [Citations.]' ([Citation.])" (*Valley Circle Estates v. VTN Consolidated, Inc.* (1983) 33 Cal.3d 604, 608-609.) "The terms used in a statute are to be given their commonly accepted meaning as understood by people of ordinary intelligence." (*People v. Medina* (1988) 206 Cal.App.3d 986, 991.)

"Rule" is defined in Webster's Third New International Dictionary, Unabridged (2002) p. 1986, as "a prescribed, suggested, or self-imposed guide for conduct or action: a regulation or principle" and "a legal precept applied to a given set of facts as stating the law applicable to a case." Black's Law Dictionary (7th Ed. 1999, p. 1330) defines "rule" as "[a]n established and authoritative standard or principle; a general norm mandating or guiding conduct or action in a given type of situation." "Evidence" is defined by Webster's as "something that furnishes or tends to furnish proof: means of making proof: medium of proof . . . something legally submitted to a competent tribunal as a means of ascertaining the truth of any alleged matter of fact under investigation before it." (Webster's, *supra*, at p. 788.) Black's Law Dictionary defines "evidence" as "[s]omething (including testimony, documents and tangible objects) that tends to prove or disprove the

existence of an alleged fact" and "[t]he body of law regulating the burden of proof, admissibility, relevance, and the weight and sufficiency of what should be admitted into the record of a legal proceeding [-] under the rules of evidence, the witness's statement is inadmissible hearsay that is not subject to any exception." (*Supra*, at p. 576.)

Under these definitions, the phrase "rules of evidence" would commonly be understood to refer to the standards established by constitution, statute or court to govern the admissibility and use of testimony, documents and tangible objects offered to prove or disprove alleged facts in a legal proceeding. Admissibility of an affidavit clearly falls within this definition. The fact that the provision authorizing admission of affidavits on a motion is not located in the Evidence Code is not dispositive. "'[E]xceptions to the hearsay rule are not limited to those enumerated in the Evidence Code; they may also be found in other codes and decisional law.'" (*People v. Otto* (2001) 26 Cal.4th 200, 207, quoting *In re Malinda S.* (1990) 51 Cal.3d 368, 376.) Code of Civil Procedure section 2009 deals with the admissibility of affidavits in the context of motions and, therefore, constitutes a rule of evidence. (See, Evid. Code, § 310, subd. (a) [referring to admissibility of evidence as a rule of evidence: "All questions of law (including but not limited to questions concerning the construction of statutes and other writings, the admissibility of evidence, and other rules of evidence) are to be decided by the court."].) We conclude that section 2009 makes affidavits admissible on a motion to suppress evidence under section 1538.5.

The People point to an additional statute they claim creates an exception to the hearsay rule for affidavits on motions. Section 1204.5, subdivision (a), provides: "In any criminal action, after the filing of any complaint or other accusatory pleading and before a plea, finding, or verdict of guilty, no judge shall read or consider any written report of any law enforcement officer or witness to any offense, any information reflecting the arrest or conviction record of a defendant, or any affidavit or representation of any kind, verbal or written, without

the defendant's consent given in open court, except as provided in the rules of evidence applicable at the trial, or as provided in affidavits in connection with the issuance of a warrant or the hearing of any law and motion matter, or in any application for an order fixing or changing bail, or a petition for a writ." The People view section 1204.5, subdivision (a), as creating a hearsay exception by authorizing a judge to "read or consider . . . affidavits in connection with . . . the hearing of any law and motion matter."

As demonstrated by its legislative history, "[s]ection 1204.5 was enacted in 1968 (Stats.1968, ch. 1362, § 1, p. 2599) in response to the concerns of some that many courts were then requiring prosecutors to file police reports and criminal records information together with criminal complaints, and that this information could improperly influence judges in their rulings prior to or during trial to the prejudice of a defendant. (*O'Neal v. Superior Court* (1986) 185 Cal.App.3d 1086, 1091 . . . .) The bill was eventually sponsored by the State Bar, and when passed included well-defined exceptions to the prohibition on use of the specified information." (*Breedlove v. Municipal Court* (1994) 27 Cal.App.4th 60, 63-64.) The purpose of the statute was to prevent pre-conviction consideration of irrelevant information such as a defendant's arrest report or "rap" sheet. (*O'Neal v. Superior Court, supra,* 185 Cal.App.3d 1086, 1091-1095.) The provision in the statute for consideration of affidavits in connection with law and motion matters was obviously one of the exceptions to the prohibited use of information. Because section 1204.5 was enacted to address a specific concern, we would not view it as authorizing use of affidavits on a motion to suppress if such affidavits were otherwise inadmissible. The language of section 1204.5, however, is consistent with our conclusion that other statutes make affidavits admissible in this context.

In arguing against the admissibility of affidavits to satisfy the prosecution's burden of proof on a motion to suppress, respondent relies heavily upon *People v. Hewitt* (1970) 5 Cal.App.3d 923 (*Hewitt*). In *Hewitt*, the prosecution sought to meet its burden at a suppression hearing by offering into evidence the transcript of

an earlier hearing on the defendants' motion to set aside the information (§ 995); that transcript included the transcript of one of the defendant's preliminary hearing, at which an officer testified to the circumstances of the arrest and search at issue. It was conceded that if suppression motions are governed by the rules of evidence applicable at trial, the former testimony would have been inadmissible because the officer was available at the hearing. (Evid. Code, § 1291.) *Hewitt* rejected the argument that the Evidence Code did not apply to suppression hearings because section 1538.5 was enacted after the Evidence Code and therefore could not have been within the contemplation of the Legislature in enacting the Evidence Code. (5 Cal.App.3d at p. 927.)

Hewitt also rejected the argument that a trial judge should be able to consider former testimony in the interest of efficiency and avoidance of unnecessary repetition of testimony. In this connection, the *Hewitt* court looked to language in section 1538.5, subdivision (i), stating, "'The defendant shall have the right to litigate the validity of a search or seizure de novo on the basis of the evidence presented at a special hearing.'" (5 Cal.App.3d at p. 927.) *Hewitt* explained, "The term 'evidence' means in this context admissible evidence. If the Legislature had intended that the superior court merely review the preliminary hearing transcript in determining the reasonableness of a search, there was no need for section 1538.5; review upon the transcript was already authorized by Penal Code section 995. The difference between a motion to set aside information under section 995 and a hearing under section 1538.5 was described in *People v. Heard* (1968) 266 Cal.App.2d 747, 749 . . . : 'A proceeding under section 1538.5 to suppress evidence is one in which a full hearing is held on the issues before the superior court sitting as a finder of fact. [I]n considering a motion to dismiss under Penal Code section 995, the superior court is sitting as a reviewing court. . . .' One legislative purpose in enacting section 1538.5 was to enable a defendant to raise a search and seizure issue at the earliest stage so as to save the inconvenience and expense of determining the issue at trial. (*Moran v. St John*

(1968) 267 Cal.App.2d 474, 477. . . .) This purpose would be defeated if a search could be justified, at the special hearing, on testimony which later would be inadmissible to support the search if the evidence seized is challenged at trial." (*Hewitt*, *supra*, at p. 928.)

Hewitt additionally refused to find the error in admitting the former testimony harmless. The prosecution's argument that any such error was not prejudicial because the officer was available at the hearing for questioning, according to *Hewitt,* "fail[ed] to recognize that the burden was on the prosecution, not the defense, to show that the search was lawful; that showing must be based on competent evidence. Evidence that is inadmissible does not become admissible because the objecting party has an opportunity to rebut it. Moreover, one of the reasons for requiring a witness to testify in person is to enable the trier of fact to consider the demeanor of the witness in weighing his testimony and judging his credibility." (5 Cal.App.3d at p. 928.)

At first glance, *Hewitt's* conclusion that the prosecution may not meet its burden of proof at a suppression hearing by reliance on prior sworn testimony appears significant because such testimony might be viewed as even more reliable than an affidavit, having at least been subject to cross-examination in the prior proceeding. The situation presented in *Hewitt*, however, differs from that in the case before us. In *Hewitt*, the evidence sought to be admitted was expressly permitted by the Evidence Code only if certain conditions were met; these conditions were not met in that case. Here, we have concluded that the use of affidavits on motions is authorized by statute. Accordingly, the present case does not involve the issue of reliance upon inadmissible evidence.

The People urge that *Hewitt* improperly interpreted section 1538.5, subdivision (i), as requiring *admissible* evidence, when the statute only referred to "evidence." According to the People, *Hewitt* was abrogated by the Legislature's subsequent amendment of subdivision (i) to provide that the superior court "base its ruling on *all* evidence presented at the special hearing." (Emphasis added.)

The People's assumption regarding the legislative intent behind this amendment is not supported. Prior to amendment, section 1538.5, subdivision (i), provided that a defendant had to "litigate the validity of a search or seizure de novo on the basis of the evidence presented at a special hearing" in superior court, regardless of whether the defendant had moved to suppress the evidence at a preliminary hearing. The 1986 amendment to subdivision (i) of the statute provided that a defendant who did not bring a motion to suppress at the preliminary hearing (or who was charged by indictment) has "the right to fully litigate the validity of a search or seizure on the basis of the evidence presented at a special hearing" in superior court. Where a motion to suppress was brought at the preliminary hearing, however, "unless otherwise agreed to by all parties, evidence at the special hearing shall be limited to the transcript of the preliminary hearing and to evidence which could not reasonably have been presented at the preliminary hearing . . . . The superior court shall base its ruling on all evidence presented at the special hearing and on the transcript of the preliminary hearing . . . ." (Stats. 1986, ch. 52 (Assem. Bill No. 2328).)

The legislative history of this amendment demonstrates that its purpose was to prevent duplicative hearings on motions to suppress. For example, the Third Reading Floor Statement on Assembly Bill No. 2328 states: ". . . AB 2328 would end duplicate hearings on motions to suppress evidence. It allows the motion to be made with live testimony only one time . . . in one place . . . either at the preliminary hearing or in superior court. . . . The only thing it eliminates is the chance to take all of the same testimony over again. Because the nature of these motions requires testimony from officers, the time spent giving the same testimony a second time could be spent back on patrol. We usually give people only one trial, and there is no reason to think that a motion to suppress evidence is more sacred and deserves a re-run." "All evidence" upon which the court is required to base its ruling thus refers to evidence presented at the special hearing (which could not reasonably have been presented at the preliminary hearing). We

find nothing in the language or legislative history of the statute to indicate that the 1986 amendment was intended to make admissible affidavits that were not otherwise admissible in evidence.

The People additionally urge that affidavits have historically been admissible on motions to suppress. Interestingly, although the People assert that affidavits have been admissible on motions to suppress since such motions were authorized in California in 1955 (*People v. Cahan* (1955) 44 Cal.2d 434, 445), we are cited to no case upholding the use of affidavits to meet the prosecution's burden of proof on a suppression motion, nor even a case in which such a practice was utilized. Rather, the People's historical argument simply sets forth their interpretation of Code of Civil Procedure section 2009 and its applicability to suppression motions by virtue of sections 690 and 1102; it does not independently support that interpretation. As has been discussed, however, it is clear that cases have historically assumed Code of Civil Procedure section 2009 to be applicable to motions in criminal cases, and a determination that affidavits are admissible at suppression hearings is consistent with that assumption.

II.

Respondent urges that our interpretation of the statutes creates constitutional problems. If the prosecution is permitted to meet its burden by presentation of affidavits, it falls to the defense to produce the affiants as witnesses if the defense wishes to cross-examine them. Respondent maintains that requiring a defendant to produce a prosecution witness violates due process and, potentially, speedy trial rights, and that use of affidavits raises reliability issues of constitutional magnitude.

Respondent's due process argument is based on *Mills v. Superior Court* (1986) 42 Cal.3d 951, 954-955. In *Mills*, the California Supreme Court found unconstitutional a statute that permitted the prosecution, at a preliminary hearing, to present affidavits instead of testimony of witnesses other than an eyewitness or a victim of a crime against his or her person. The statute allowed a finding of

probable cause based in whole or in part on such hearsay evidence unless the defendant made "'reasonable efforts'" to secure the attendance of the witness. *Mills* held that the "reasonable efforts" requirement "unduly strains defendant's rights under article I, section 15, of the California Constitution [confrontation of witnesses]" and "contravenes the due process rights of the defendant at a preliminary hearing. The statute improperly lightens the prosecution's task of establishing probable cause: it allows sometimes critical hearsay testimony to be admitted without affording the defendant his constitutional right to cross-examine the declarant unless he initiates diligent actions to produce his own accuser. In no other instance is the prosecution permitted to introduce the testimony by affidavit of an alleged victim if the victim is alive and available to appear for cross-examination." (42 Cal.3d at p. 959.)

The specific holding of *Mills* was subsequently overridden by the passage of Proposition 115, which, among other things, added a provision to the California Constitution permitting hearsay evidence at preliminary hearings (art. 1, § 30, subd. (b)) and a statute allowing a finding of probable cause to be based on sworn testimony of law enforcement officers relating hearsay statements, if the testifying officer had specified experience for training in investigating cases and testifying at preliminary hearings. (§ 872, subd. (b).) . In *Whitman v. Superior Court* (1991) 54 Cal.3d 1063, the court construed section 872, subdivision (b), as permitting an investigating officer "to relate at the preliminary hearing any relevant statements of victims or witnesses, if the testifying officer has sufficient knowledge of the crime or the circumstances under which the out-of-court statement was made so as to meaningfully assist the magistrate in assessing the reliability of the statement." (54 Cal.3d at p. 1075.) The court rejected an interpretation of the statute as allowing a non-investigating officer possessed of the specified experience or training to relate the contents of other officers' reports. (*Id.* at pp. 1072-1075.) So construed, *Whitman* found section 872, subdivision (b), constitutional, explaining

that "[b]y virtue of the passage of Proposition 115, *Mills v. Superior Court, supra,* 42 Cal.3d 951, is no longer controlling authority."

Respondent argues that *Whitman* found *Mills* no longer binding to only a limited extent: *Whitman* viewed Proposition 115 as having created a constitutional "specific exception to the broad confrontation right set forth in article I, section 15 of the California Constitution." (54 Cal.3d at p. 1076.) In other words, according to appellant, while *Mills'* holding regarding hearsay at preliminary hearings is no longer viable, its principles remain valid in other contexts.

Whitman did expressly state that the California Constitution "continues to afford an independent source of relief from infringement of the right to confront one's accusers." (54 Cal.3d at p. 1076.) This point, however, is of limited utility to respondent. The only basis in California constitutional law cited in respondent's due process argument is *Mills*. The *Mills* decision was grounded in the specific nature and functions of the preliminary hearing as it was then viewed: "We have long recognized the critical importance of the preliminary hearing as a mechanism to weed out groundless claims and thereby avoid for both defendants and the People the imposition and expense of an unnecessary criminal trial . . . . To effectuate this purpose, we have repeatedly held that the defendant must be permitted to cross-examine prosecution witnesses at the preliminary hearing in order to overcome the evidence offered to establish probable cause." (42 Cal.3d at pp. 956-957.) The court's finding of unconstitutionality was based in part on the fact that affidavits allowed under the challenged statute would not be admissible at trial unless they fell under some recognized hearsay exception: "If the preliminary hearing is to discharge its function as a careful screening mechanism for trial, it follows that such a hearsay affidavit must be inadmissible at the preliminary hearing as well." (*Id.* at p. 960.)

Nothing in either *Mills* or *Whitman* addressed the issue of hearsay at a suppression hearing. The purposes of the proceedings differ considerably. While

a preliminary hearing is intended to determine whether there is probable cause to believe the defendant committed the charged offense, a suppression hearing is intended to determine whether law enforcement officers violated the defendant's Fourth Amendment rights so as to require exclusion of seized evidence from trial. (See, *United States v. Foster* (D.C.Cir. 1993) 986 F.2d 541, 543 [suppression hearings and trials "have different functions. Suppression hearings determine whether the police engaged in unlawful conduct, and seek to deter such conduct by excluding evidence. Trials decide whether the accused committed the offense charged."] A suppression hearing is not directly focused on the matter of the defendant's guilt or innocence.

It is clear that use of hearsay at suppression hearings is permissible under the federal constitution. "[T]he rules of evidence normally applicable in criminal trials do not operate with full force at hearings before the judge to determine the admissibility of evidence. In *Brinegar v. United States*, 338 U.S. 160, . . . (1949), it was objected that hearsay had been used at the hearing on a challenge to the admissibility of evidence seized when a car was searched and that other evidence used at the hearing was held inadmissible at the trial itself. The Court sustained the trial court's rulings. It distinguished between the rules applicable to proceedings to determine probable cause for arrest and search and those governing the criminal trial itself—'There is a large difference between the two things to be proved, as well as between the tribunals which determine them, and therefore a like difference in the quanta and modes of proof required to establish them.' (*Id*. at p. 173, . . .) That certain evidence was admitted in preliminary proceedings but excluded at the trial--and the Court thought both rulings proper--was thought merely to 'illustrate the difference in standards and latitude allowed in passing upon the distinct issues of probable cause and guilt.' (*Id*. at p. 174, . . .)" (*United States v. Matlock* (1974) 415 U.S. 164, 172-173, . . .)

"[T]he interests at stake in a suppression hearing are of a lesser magnitude than those in the criminal trial itself. At a suppression hearing, the court may rely on hearsay and other evidence, even though that evidence would not be admissible at trial. (*United States v. Matlock*, *supra*, 415 U.S. 164, 172-174, . . . (1974); *Brinegar v. United States*, *supra*, 338 U.S. 160, 172-174, . . . (1949); Fed. Rules Evid. 104(a), 1101(d)(1).) Furthermore, although the Due Process Clause has been held to require the Government to disclose the identity of an informant at trial, provided the identity is shown to be relevant and helpful to the defense (*Roviaro v. United States*, 353 U.S. 53, 60-61, . . . (1957)) it has never been held to require the disclosure of an informant's identity at a suppression hearing. *McCray v. Illinois*, 386 U.S. 300, . . . (1967).) We conclude that the process due at a suppression hearing may be less demanding and elaborate than the protections accorded the defendant at the trial itself." (*United States v. Raddatz* (1980) 447 U.S. 667, 679, . . .)

The California Supreme Court, of course, recognizes this interpretation of the federal constitution: "[T]he procedures at a suppression hearing before a judge need not be the same as those available to a defendant at trial. (See *United States v. Matlock, supra*, 415 U.S. 164, 173-175 . . . [the same rules of evidence governing jury trials need not govern evidentiary hearings before a judge]; *McCray v. Illinois, supra*, 386 U.S. 300, 312-314 . . . [the use of informers' out-of-court statements during a suppression hearing without disclosing informers' identity does not violate defendants' right to confrontation under the Sixth Amendment and due process clause].)" (*People v. Hansel* (1992) 1 Cal.4th 1211, 1219.) "'[T]he right to confrontation is *basically a trial right*.'" (*People v. Miranda* (2000) 23 Cal.4th 340, 350, quoting *People v. Whitman, supra,* 54 Cal.3d at p. 1064, original emphasis.)

Respondent cites no case holding that the confrontation right applies at a pretrial suppression hearing to bar presentation of the prosecution's case by affidavit. He argues, however, that *Whitman's* interpretation of the state

confrontation clause precludes the affidavit procedure because the reliability of the affidavit is not assured. Respondent notes that *Whitman* construed Proposition 115 to permit hearsay only when related by an officer with personal knowledge of the investigation and circumstances, and with experience and training to ensure the reliability of the officer who conveyed the hearsay in court.

Ohnemus's affidavit in the present case does not present the problems of the "reader" officer in *Whitman*. The constitutional problems the court sought to avoid in *Whitman* would have been presented by an interpretation of the statute that allowed a "reader" officer to testify based on another officer's report, leaving the defendant unable to cross-examine either the declarant or the officer with knowledge of the circumstances under which the hearsay statement was made. (54 Cal.3d at p. 1074.) Here, Ohnemus's affidavit presented facts within his personal experience regarding his encounter with respondent, as well as facts demonstrating the officer's training and experience.

In *People v. Miranda, supra*, 23 Cal.4th 340, the defendant, at a preliminary hearing, objected to the testimony of an investigating officer relating a codefendant's confession which incriminated the defendant. The defendant argued that such testimony violated his state and federal constitutional rights because it did not relate ordinary hearsay, as in *Whitman*, but "presumptively unreliable" hearsay statements of an accomplice. *Miranda* rejected this argument, holding that Proposition 115 "provides the defendant with opportunities at the preliminary examination to cross-examine and evaluate the testimony of a qualified law enforcement officer relating single-level hearsay, and to call specified defense witnesses to rebut the prosecution's case. . . . 'These procedures adequately ensure fact-finding reliability, and provide the defendant with all the process that is due." (23 Cal.4th at p. 354.)

The ability of a defendant to confront and cross-examine a hearsay declarant is better protected at a suppression hearing than at a preliminary hearing. Under Evidence Code section 1203, subdivision (a), "[t]he declarant of a

statement that is admitted as hearsay evidence may be called and examined by any adverse party as if under cross-examination concerning the statement." Evidence Code section 1203.1, however, makes Evidence Code section 1203 inapplicable to hearsay statements offered at preliminary hearings. The defendant at a suppression hearing thus has a statutory right to cross-examine the hearsay declarant while the defendant at a preliminary hearing may be precluded from calling a witness unless an offer of proof demonstrates the testimony, if believed, would be "reasonably likely to establish an affirmative defense, negate an element of a crime charged, or impeach the testimony of a prosecution witness or the statement of a declarant testified to by a prosecution witness." (§ 866, subd. (a).) It follows that the sworn affidavit of the investigating officer, relating facts of personal knowledge and setting forth his or her relevant training and experience, combined with the defendant's right to call the affiant for cross-examination at the suppression hearing, sufficiently protects the defendant's rights under the California Constitution.

Finally, respondent argues that the affidavit procedure, by shifting the burden of producing prosecution witnesses to the defense, raises concerns when the defendant invokes his right to a speedy trial. Respondent notes that a delay in hearing a motion to suppress can compel a delay in beginning trial, and asks whether a motion to suppress based on a prosecution witness's affidavit would be stricken if the witness was unavailable, or whether the prosecution would seek a continuance in this situation. Good cause for failing to bring a defendant to trial within the required period (see, § 1382), when due to the need to secure a prosecution witness's attendance, depends (among other things) on a showing of diligence in attempting to secure the witness's attendance. (*Owens v. Superior Court* (1980) 28 Cal.3d 238, 250-251.) Accordingly, respondent suggests the prosecution would not be entitled to seek a continuance without a showing of diligence in attempting to produce the witness.

Respondent's speedy trial argument constitutes a facial challenge to the statutes authorizing use of affidavits on motions. "A facial challenge to the constitutional validity of a statute or ordinance considers only the text of the measure itself, not its application to the particular circumstances of an individual. (*Dillon v. Municipal Court* (1971) 4 Cal.3d 860, 865 . . . .) '"To support a determination of facial unconstitutionality, voiding the statute as a whole, petitioners cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular application of the statute . . . . Rather, petitioners must demonstrate that the act's provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions.'" (*Arcadia Unified School Dist. v. State Dept. of Education* (1992) 2 Cal.4th 251, 267 . . . , quoting *Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 180-181 . . . .)" (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069,1084.)

The fact situation respondent postulates—presentation of the prosecution's case by affidavit, in a case in which the defendant has asserted his or her right to a speedy trial and the affiant proves unavailable for cross-examination—is at this point hypothetical. To be sure, scenarios can be imagined that could potentially raise troubling constitutional questions. Evidence Code section 1203, which affords a defendant the right to cross-examine the declarant when hearsay evidence is admitted, also provides that the evidence is not rendered inadmissible by the unavailability of the declarant. (Evid. Code, § 1203, subd. (d).) If the declarant is permanently unavailable, or the delay occasioned by continuances to secure the declarant's presence as a witness is sufficient to compromise the defendant's speedy trial rights, the defendant could face complete deprivation of any opportunity to cross-examine the witness. Such a situation would be particularly problematic where, unlike many of the federal cases permitting hearsay at suppression hearings, the prosecution's *entire* case is presented by affidavit. These scenarios, however, are not presented here: Respondent did not

subpoena Ohnemus and there is no evidence the officer would have been unavailable. Respondent has certainly not shown that the affidavit procedure would necessarily be unconstitutional in all applications.

The judgment is reversed.

_____
Kline, P.J.

We concur:

_____
Haerle, J.

_____
Lambden, J.

People v. Johnson -- A098085

Trial Court:	Contra Costa Superior Court
Trial Judge:	Honorable Peter Spinetta

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