

CALIFORNIA COURT OF APPEAL, FIFTH DISTRICT

Cuevas v. Superior Court

58 Cal. App. 3d 406, 130 Cal. Rptr. 238 (Cal. Ct. App. 1976) · No. 2893 · Decided February 27, 1976

SUMMARY

The California Court of Appeal held that Penal Code section 1538.5, subdivision (b), uses permissive rather than mandatory language and did not prevent defendants from moving to suppress evidence at a preliminary hearing under subdivision (f). Because the magistrate refused to hear the suppression motion and all prosecution evidence stemmed from the challenged search warrant, the defendants were illegally committed. The court ordered a peremptory writ of prohibition restraining further proceedings other than dismissal.

CASE DETAILS

COURT	California Court of Appeal, Fifth District
WRITING FOR THE COURT	The Court; Brown (G.A.), P.J.; Gargano, J.; Franson, J.
JURISDICTION	California
DECIDED	February 27, 1976
DOCKET	2893
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Petition for a writ of prohibition challenging the denial of a Penal Code section 995 motion to set aside an information after a municipal court magistrate refused to hear petitioners' Penal Code section 1538.5 motion to suppress at the preliminary hearing.
STANDARD OF REVIEW	The court reviewed whether the preliminary-hearing magistrate's refusal to hear the statutory suppression motion resulted in an illegal commitment and whether prohibition was an appropriate remedy.
PRECEDENTIAL VALUE	published opinion; precedential California Court of Appeal decision
PARTIES	Arthur Cuevas et al., Petitioners v. The Superior Court of Stanislaus County, Respondent

TOPICS

- suppression of evidence
- criminal procedure
- preliminary hearing
- statutory interpretation
- appellate procedure

PRACTICE AREAS

California criminal procedure

search and seizure

extraordinary writs

QUESTIONS PRESENTED

1. Whether Penal Code section 1538.5, subdivision (b)'s direction that a suppression motion should first be heard by the warrant-issuing magistrate is mandatory or permissive.
2. Whether a defendant charged with a felony initiated by complaint has a statutory right under Penal Code section 1538.5, subdivision (f), to move to suppress evidence at the preliminary hearing in the municipal or justice court, even when the search warrant was issued by a superior court judge.
3. Whether refusal to hear that suppression motion resulted in an illegal commitment requiring the information to be set aside under Penal Code section 995.
4. Whether a peremptory writ of prohibition was the proper remedy.

HOLDINGS

1. The word "should" in section 1538.5, subdivision (b), is permissive and recommendatory, not mandatory; the provision does not bar a defendant from making the suppression motion at the preliminary hearing under subdivision (f).
2. Petitioners had a statutory right to move at the preliminary hearing to suppress evidence obtained under the allegedly invalid search warrant, and the magistrate's refusal to hear the motion denied that right.
3. Because petitioners were prevented from exercising their statutory right to present the suppression motion and all of the People's evidence stemmed from the warrant, they were illegally committed and the denial of their section 995 motion was erroneous.
4. A peremptory writ of prohibition was proper because the record fully presented the determinative issues and petitioners were entitled to relief from further proceedings based on the illegal commitment.

KEY QUOTATIONS

"The word 'should' is used in a regular, persuasive sense, as a recommendation, not as a mandate." (409)

"The Supreme Court refused to 'reduce the preliminary hearing to an ex parte proceeding at which the defendant's presence would be a meaningless gesture.'" (410)

"Petitioners seek the opportunity provided by the statute to move at the preliminary hearing for suppression of evidence obtained under an allegedly invalid search warrant; this is their right, and, because they were prevented from exercising their statutory prerogative, petitioners were illegally committed and the motion to dismiss the information was denied erroneously." (411)

FACTUAL BACKGROUND

All evidence presented at the preliminary hearing derived from execution of a search warrant. Petitioners alleged that the warrant affidavit was factually insufficient and contained material inaccuracies and falsehoods, and they sought to challenge the warrant and suppress the evidence under Penal Code section 1538.5, subdivision (f). The

municipal court refused to hear the motion because the warrant had been issued by a superior court judge, and petitioners were held to answer on all charges.

PROCEDURAL HISTORY

Petitioners were charged by information with possession of stolen property and controlled-substance offenses. At the preliminary hearing, the municipal court refused to entertain their motion to suppress evidence obtained under a search warrant, reasoning that the motion should have been made before the superior court judge who issued the warrant; petitioners were held to answer. The superior court denied their section 995 motion to set aside the information, concluding that the error did not deprive them of a substantial right and could be cured by a later superior court suppression hearing. Petitioners declined that proposed cure and sought prohibition. The Court of Appeal issued a peremptory writ restraining further proceedings other than dismissal.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

A peremptory writ of prohibition shall issue restraining the Stanislaus County Superior Court from taking any further proceedings other than dismissals against petitioners.

CASES CITED

- Jaffe v. Stone, 18 Cal. 2d 146, 150, 114 P.2d 335, 135 A.L.R. 775 (1941)
- People v. Elliot, 54 Cal. 2d 498, 503-505, 354 P.2d 225, 6 Cal. Rptr. 753 (1960)
- Jennings v. Superior Court, 66 Cal. 2d 867, 875-880, 428 P.2d 304, 59 Cal. Rptr. 440 (1967)
- People v. Mardian, 47 Cal. App. 3d 16, 37, 121 Cal. Rptr. 269 (1975)
- People v. Sanchez, 24 Cal. App. 3d 664, 691, 101 Cal. Rptr. 193 (1972)
- San Diego Wholesale Credit Men's Assn. v. Superior Court, 35 Cal. App. 3d 458, 465, 110 Cal. Rptr. 657 (1973)
- Goodenough v. Superior Court, 18 Cal. App. 3d 692, 697, 96 Cal. Rptr. 165 (1971)
- Bolles v. Superior Court, 15 Cal. App. 3d 962, 963, 93 Cal. Rptr. 719 (1971)

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