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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

GUILLERMO REYES IBARRA,

Defendant and Appellant.

B241230

(Los Angeles County
Super. Ct. No. GA040224)

THE COURT:*

Appellant Guillermo Reyes Ibarra appeals from the denial of the following motions, which were filed on April 18, 2012: a postjudgment motion to unseal, quash and traverse a search warrant and suppress evidence; a Penal Code section 995 motion;¹ a motion under section 1538.5, subdivision (i); a motion under section 1510, and a petition for writ of mandate or prohibition under Code of Civil Procedure section 1085, 1086, et. seq.

On March 13, 2000, a jury convicted appellant of willful, deliberate and premeditated attempted murder in violation of sections 187, subdivision (a) and 664. The

* BOREN, P. J., DOI TODD, J., CHAVEZ, J.

¹ All further references to statutes are to the Penal Code unless stated otherwise.

jury found that he personally and intentionally discharged a firearm that caused great bodily injury to the victim within the meaning of section 12022.53, subdivision (d). The trial court sentenced appellant to life in prison for the attempted murder and 25 years to life for the firearm-use enhancement. Except for a modification of appellant's parole revocation fine, the judgment was affirmed on appeal in case No. B144790.²

Appellant's motion to unseal and quash the search warrant, to traverse the warrant, and to suppress evidence was based on the grounds that the affidavit in support of the warrant did not establish probable cause to search, and material misstatements and/or omissions were included in the search warrant affidavit. The other motions (under §§ 995, 1538.5, subd. (i), 1510) were related to the motion to quash and traverse the search warrant in that appellant alleged the invalid search warrant resulted in his not being legally committed by the magistrate, since there was no rational ground to establish probable cause he committed the crime. The petition for writ of mandate was related to the denial of a transcript of a pretrial proceeding. It appears that appellant requested a "complete minute order to judicial proceedings" related to the "application for a search warrant and return" and "pretrial transcripts of court and counsel" related to "trial scheduling and discovery issues." Hence, appellant's petition and all of his motions related to his claims regarding the search warrant in his case.

On April 19, 2012, Judge Teri Schwartz denied the petition for writ of mandate, stating that appellant's prior request for transcripts (in 2002) was denied in part because his appellate counsel was in possession of the record on appeal. Judge Schwartz stated that the superior court no longer had jurisdiction to entertain "a pre-trial motion to quash and traverse the search warrant." The court noted that appellant was sentenced in 2000 and that no justification existed for the significant delay in filing the motions.

² On the court's own motion, we take judicial notice of the entirety of our nonpublished opinion in *People v. Ibarra*, case No. B144790, filed January 28, 2002. (Evid. Code, § 452, subd. (d); Cal. Rules of Court, rule 8.1115(b).)

We appointed counsel to represent appellant on this appeal. After examination of the record, counsel filed an “Opening Brief” containing an acknowledgment that he had been unable to find any arguable issues. On August 15, 2012, we advised appellant that he had 30 days within which to personally submit any contentions or issues that he wished us to consider.

On September 17, 2012, appellant filed an appeal in which he asks this court to determine: (1) whether it was an abuse of discretion for the court to deny his request for the sealed search warrant documents to be unsealed, including the affidavit, to challenge the constitutionality of the issuance and execution of the search warrant; (2) whether the court properly denied his in propria persona motion to unseal, quash and traverse the search warrant and to suppress evidence; (3) whether the court properly denied his in propria persona motion to dismiss; and (4) whether the court properly denied his motions based on the ground that no justification existed for the significant delay in requesting transcripts or filing motions.

A copy of the affidavit in the record shows that in 1999, a warrant was issued to search two residences and appellant’s person for a .25-caliber semiautomatic handgun, ammunition or handgun parts, the person of appellant, any utility bills or mail showing occupancy of the searched premises, and any gang paraphernalia from the Varrio Pasadena Rifa gang. In his April 18, 2012 motions, appellant asserted that the court was required to conduct an in camera hearing to determine whether the warrant was properly sealed under *People v. Hobbs* (1994) 7 Cal.4th 948, 976 (*Hobbs*). Thus it appears that in appellant’s case the warrant authorizing the search was obtained based on an affidavit that was partially sealed to protect the identity of one or more confidential informants. Appellant went on to outline the procedure described in *Hobbs* for deciding motions to quash and traverse a warrant when a warrant is sealed. (*Id.* at pp. 972-975.) Appellant then contended that the firearm (the murder weapon in his case) should have been suppressed because it was illegally obtained and because the informants were material witnesses on the issue of possession of the murder weapon. He asserted that the affiant’s assumption was a case of mistaken identity.

“Section 1538.5 provides a comprehensive and exclusive procedure for the final determination of search and seizure issues prior to trial.” (*People v. Brooks* (1980) 26 Cal.3d 471, 475.) “[S]ection 1538.5 requires that a defendant’s motion for the return of property or suppression of evidence obtained as a result of a search or seizure be made at an early stage. In the case of a felony offense initiated by complaint, the motion may be made at the preliminary hearing before the magistrate. (Subd. (f).) Additionally, if the defendant is held to answer at the preliminary hearing or the felony is charged by indictment, the defendant is entitled to renew or make the motion in superior court at a special de novo hearing. (Subd. (i).) Thus the defendant is entitled to two suppression hearings, both of which must take place prior to trial. The defendant is not entitled to renew his pretrial motion to suppress at trial and, subject to a narrowly circumscribed exception (subd. (h)), he is not permitted to raise search and seizure issues for the first time at trial.” (*Id.* at p. 476.)

All of the authority appellant cites presupposes that the proceedings are held prior to trial. There is no indication that prior to trial appellant filed a motion to quash and traverse the warrant and supporting affidavit, nor that he requested in camera review of the sealed portion of the affidavit and sought to suppress evidence discovered in the search. If appellant failed to raise the issue under section 1538.5 in a pretrial forum, he forfeited his right to thereafter challenge the validity of the search and seizure. (§ 1538.5, subd. (m); *People v. Enos* (1973) 34 Cal.App.3d 25, 40.) In this case, no issue regarding the search warrant was raised on direct appeal in case No. B144790. Even if we were to assume appellant made these motions before trial, his failure to raise any issues on appeal regarding them indicates he did not believe the trial court erred in denying any such motion. Therefore, appellant’s current motions to quash and traverse the search warrant in his case are untimely, and the court below neither erred nor abused its discretion.

We have examined the entire record and are satisfied that appellant’s attorney has fully complied with his responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

The order under review is affirmed.

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