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CH. 38
PRELIMINARY HEARING

§38-1
Preliminary Hearing upon Filing of Information

United States Supreme Court

Coleman v. Alabama, 399 U.S. 1, 90 S.Ct. 1999, 26 L.Ed.2d 387 (1970) A preliminary hearing to determine whether there is probable cause to proceed by information is a critical stage of proceedings; thus, the rights to counsel and an adversarial hearing are applicable.

Illinois Supreme Court

People v. Chambliss, 2026 IL 130585 Defendant was charged by information with aggravated battery after he was observed striking two women outside a convenience store. From the outset, there were concerns about defendant's fitness, and an evaluation was ordered. As a result, arraignment and preliminary hearing were postponed, without objection. Ultimately, defendant was found fit and elected to represent himself. At that time, defendant argued that he had not been arraigned, which resulted in the court conducting arraignment and setting a jury trial. Defendant was ultimately tried and convicted. A preliminary hearing was never held.

The appellate court reversed defendant's convictions outright, finding that the failure to conduct a preliminary hearing or return a bill of indictment was structural error. The supreme court agreed that the failure to hold a preliminary hearing was error, but disagreed that it was structural in nature and thus held that it was not reviewable as second-prong plain error.

As an initial matter, the court rejected the State's waiver and invited error arguments. As to waiver, defendant's failure to file a motion to dismiss under 725 ILCS 5/114-1(a)(11) at most waived an argument that his right under Section 109-3.1 to preliminary hearing within 30 days was violated. But any such waiver did not extend to his statutory right to a preliminary hearing, generally, as provided in Section 109-3 or to his constitutional right to a probable cause determination under article I, section 7, of the Illinois Constitution. Further, under the constitution, the responsibility for providing a preliminary hearing lies with the trial court. Because defendant did not ask the court to forego its obligation to hold such a hearing, he did not invite the error.

The failure to provide a prompt preliminary hearing here was error. Because defendant did not object to proceeding without such a hearing and did not raise the issue in a post-trial motion, however, he forfeited review of the issue. And, the supreme court held that the error, while clear and obvious, did not rise to the level of second-prong plain error.

For second-prong plain error to apply, the error must be so serious that it affected the fairness of the trial and challenged the integrity of the judicial process. Second-prong plain error has been equated with structural error, which necessarily renders a criminal trial fundamentally unfair or an unreliable means of determining guilt. Second-prong plain errors are presumptively prejudicial. If a reviewing court can determine that a constitutional error was harmless beyond a reasonable doubt, it is not a second-prong plain error.

Most constitutional errors are amenable to harmless error analysis. This includes the denial of a prompt preliminary hearing. A preliminary hearing is a means of determining whether there is sufficient cause to believe the defendant has committed the offense, justifying his further detention. It is "almost entirely unrelated" to the trial itself, and thus

its denial cannot render the trial fundamentally unfair. Where a defendant is later convicted on proof beyond a reasonable doubt, a higher standard than probable cause, the error in failing to hold a preliminary hearing is necessarily harmless. Thus, while defendant was denied his constitutional right to a preliminary hearing here, that denial did not rise to the level of a structural error, and his conviction must be affirmed.

People v. Smith, 236 Ill.2d 162, 923 N.E.2d 259 (2010) 55 ILCS 5/4-2002.1(a), which provides that the State's Attorney is entitled to a $20 fee for "preliminary examinations for each defendant held to bail or recognizance," applies only to preliminary hearings at which a probable cause determination is made. The court rejected the State's argument that the fee is authorized for bail hearings. The court stressed that "preliminary examination" is a familiar legal expression with a settled meaning, and that the legislature is presumed to have intended to apply that meaning when it enacted §4-2002.1(a).**People v. Redmond**, 67 Ill.2d 242, 367 N.E.2d 703 (1977) Prosecution may proceed by information only where a preliminary hearing has been held or waived by defendant. A defendant may be prosecuted by information for all offenses arising from the same transaction, though a preliminary hearing was held on only one or some of the offenses.

People v. Horton, 65 Ill.2d 413, 358 N.E.2d 1121 (1977) A preliminary hearing is not intended to be a discovery proceeding. Whether defendant was given an adequate opportunity to cross-examine witnesses at the preliminary hearing is a question of fact to be determined by the circumstances of each case. See also, **People v. Stingley**, 65 Ill.App.3d 768, 382 N.E.2d 861 (4th Dist. 1978) (limitation on cross-examination at preliminary hearing did not deprive defendant of effective assistance of counsel; witness's direct testimony established probable cause, and the attempted cross-examination was either cumulative or bore only peripherally on the question of probable cause).

People v. Moore, 51 Ill.2d 79, 281 N.E.2d 294 (1972) Denial of indigent defendant's request for transcript of preliminary hearing violated equal protection; but, error was harmless beyond a reasonable doubt where there was no testimony at trial that could have been impeached with such a transcript. See also, **People v. Connell**, 91 Ill.App.3d 326, 414 N.E.2d 796 (5th Dist. 1980) (there is no requirement that a court reporter be present at a preliminary hearing; where defendant failed to allege or show a specific inconsistency between the witness's preliminary hearing testimony and trial testimony, the trial court did not error in not having the preliminary hearing transcribed).

People v. Kent, 54 Ill.2d 161, 295 N.E.2d 710 (1972) Order releasing accused upon finding of no probable cause does not preclude subsequent indictment or trial. See also, **People v. Overstreet**, 64 Ill.App.3d 287, 381 N.E.2d 305 (4th Dist. 1978) (absent harassment, bad faith, or fundamental unfairness, prosecutor may refile information and proceed to second preliminary hearing after first information was dismissed for lack of probable cause); **People v. Valenzuela**, 180 Ill.App.3d 671, 536 N.E.2d 160 (2d Dist. 1989).

People v. Bonner, 37 Ill.2d 553, 229 N.E.2d 527 (1967) The trial court may terminate the preliminary hearing once probable cause is found.

Illinois Appellate Court

People v. Roby, 200 Ill.App.3d 1063, 558 N.E.2d 729 (5th Dist. 1990) Dismissal for failure

to provide preliminary hearing within statutory time limits is without prejudice. See also, **People v. Clarke**, 231 Ill.App.3d 504, 596 N.E.2d 872 (5th Dist. 1992) (although defendant (in custody) did not receive a preliminary hearing within the statutory time limits, the trial court did not abuse its discretion by refusing to dismiss the information where the courthouse was closed by inclement weather and the hearing was delayed only 10 days; where information is dismissed for failure to provide prompt preliminary hearing, trial court has authority to order defendant held pending the filing of a new information); **People v. Gaiza**, 92 Ill.App.3d 723, 415 N.E.2d 1328 (3d Dist. 1981) (defendant forfeited contention that he was denied a prompt preliminary hearing where he failed to present the issue to the trial court).

People v. Austin, 195 Ill.App.3d 17, 551 N.E.2d 1074 (1st Dist. 1990) Neither constitutional nor statutory right to a prompt preliminary hearing is violated where defendant is indicted on charges that were previously nol-prossed.

People ex rel. Daley v. Moran, 94 Ill.2d 41, 445 N.E.2d 270 (1983) The trial court must hold a preliminary hearing upon the demand of the prosecutor, notwithstanding a waiver by defendant.

People v. Kline, 92 Ill.App.3d 490, 442 N.E.2d 154 (1982) A defendant who is indicted by the grand jury is not entitled to a preliminary hearing.

People v. Blackman, 91 Ill.App.3d 130, 414 N.E.2d 246 (2d Dist. 1980) "[T]he State's Attorney has full discretion in determining what evidence he will produce" at the preliminary hearing; the State is not required to disclose the substance of its evidence or to produce witnesses whose presence defendant desires. Thus, the trial court erred by entering a pre-hearing order requiring the State to produce two eyewitnesses whose competency was uncertain.

The trial court has discretion whether to admit hearsay testimony at a preliminary hearing. **People v. Anderson,** 112 Ill.App.3d 270, 445 N.E.2d 432 (4th Dist. 1983).

Although the trial court has authority to dismiss an information based solely on the testimony of an incompetent witness, whether the State's case was based on such evidence could not be determined before the preliminary hearing. If it became apparent during the preliminary hearing that the State was basing its case on hearsay, defendant could object. The trial court could then exercise its discretion to admit or exclude such evidence; if it was excluded, the State would be required to call the allegedly incompetent witnesses and allow their competency to be determined.

People v. Bolden, 59 Ill.App.3d 32, 374 N.E.2d 1307 (4th Dist. 1978) (defendant's conviction reversed and remanded where he was not represented by counsel at the preliminary hearing (though he was represented at trial), the trial court did not admonish defendant of his right to counsel, and no valid waiver was obtained).

§38-2
Preliminary Hearing upon Warrantless Arrest

United States Supreme Court

County of Riverside v. McLaughlin, 500 U.S. 44, 111 S.Ct. 1661, 114 L.E.2d 49 (1992) Judicial determinations of probable cause within 48 hours of arrest generally comply with **Gerstein**'s promptness requirement. Even if a probable cause hearing is held within 48 hours, the State may still violate **Gerstein** if defendant proves that the delay was unreasonable. If defendant does not receive a probable cause determination within 48 hours, the State bears the burden of demonstrating the existence of a bona fide emergency or other extraordinary circumstance.

Gerstein v. Pugh, 420 U.S. 139, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975) The Fourth Amendment requires a judicial probable cause determination where a warrantless arrest has occurred.

The hearing to determine probable cause for a warrantless arrest is not a critical stage in the prosecution, and does not require appointed counsel or an adversarial hearing. Instead, an informal procedure may be used as long as it provides a fair and reliable determination of probable cause.

Illinois Supreme Court

People v. Willis 215 Ill.2d 517, 831 N.E.2d 531 (2005) A delay in presenting defendant to a judge for a probable cause determination does not by itself vitiate a confession, but instead is a factor to be considered in determining the voluntariness of defendant's confession. An "extraordinarily long delay which itself raises the inference of police misconduct could, at some point, render any confession involuntary."

People v. Dees, 85 Ill.2d 233, 422 N.E.2d 616 (1981) Where defendant is unable to establish that any prejudice resulted from the failure to provide a prompt preliminary hearing, permanent dismissal of the charges is not warranted. Defendant (who was held for 14 days without a hearing and had a parole hold filed against him) could not establish any prejudice here; because the criminal charges and the alleged parole violations were not identical, he would have remained in jail on the former even if the warrantless arrest was found to be invalid. The situation might have been different had the criminal charges and parole violations involved the same matters.

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