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FILED IN THE
SUPREME COURT
OF THE STATE OF COLORADO

APR 14 1977

NO. 27295

IN THE

SUPREME COURT

OF THE

STATE OF COLORADO

Flourence Hatch

DAMON CHRISTOPHER,)	Appeal from the
)	District Court of the
Petitioner-Appellant,)	City and County of Denver
)	
v.)	
)	
DAN CRONIN, Manager of Safety)	
and Excise, WAYNE K. PATTERSON,)	
Warden of the Jail, City and)	
County of Denver, State of)	
Colorado,)	
)	Honorable
Respondents-Appellees.))	JOSEPH R. QUINN,
)	Judge

ANSWER BRIEF

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April 1977

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ANSWER BRIEF

STATEMENT OF THE CASE

The People accept the appellant's statement of the case in the opening brief.

SUPPLEMENTAL STATEMENT OF THE FACTS

The appellant's statement of the facts is essentially correct, however, for proper presentation of our case, the People reserve the right to differ in pertinent detail or make additional references thereto during argument.

SUMMARY OF THE ARGUMENT

The trial court was correct in denying the petitioner-appellant's petition for writ of habeas corpus since probable cause was established by the extradition documents.

ARGUMENT

THE TRIAL COURT WAS CORRECT IN DENYING THE PETITIONER-APPELLANT'S PETITION FOR WRIT OF HABEAS CORPUS SINCE PROBABLE CAUSE WAS ESTABLISHED BY THE EXTRADITION DOCUMENTS.

Petitioner contends that the requisition documents to support his extradition are fatally deficient in that they do not establish probable cause to believe that he committed the crime. Specifically, petitioner argues that even though the requisition papers superficially establish that a preliminary hearing did take place, there is nothing in the record to substantiate the fact that probable cause was determined at the preliminary hearing, and for this reason the requisition papers are insufficient. The People contend however that if there is a preliminary hearing and the petitioner is "bound over" for trial then that procedure is tantamount to an indictment, and the responding state need inquire no further into the probable cause requirement.

Colorado Revised Statute 16-19-104 provides, in pertinent part:

The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the laws of that state.

This section has been construed in Pippin v. Leach, 434 P.2d 1193 (1975). The clear import of Pippin was to make the preliminary

hearing, coupled with the fact that defendant is "bound over" pursuant thereto, tantamount to an indictment. The effect of an indictment rendered by the demanding state is to relieve the asylum state of searching the requisition papers of the demanding state to find probable cause. Eathrone v. Nelson, 180 Colo. 288, 505 P.2d 1 (1973). The Colorado Supreme Court in Pippin, supra states:

If a preliminary hearing was held in the demanding state and probable cause was established, then the hearing would be equivalent to an indictment and would relieve the courts of this state of the burden of assessing the requisite documents to determine if probable cause is established. Id. at 1196.

The facts show, and petitioner concedes, that a preliminary hearing was held. We have in the record an affidavit to the effect that petitioner was "bound over" for trial following the preliminary hearing, and a certification from the California deputy attorney general that a finding of probable cause is a legal prerequisite to the petitioner's being "bound over" for trial. If a preliminary hearing is held in California, the magistrate authority is limited to a determination of whether sufficient probable cause exists to bind defendant over for trial. See People v. Uhlemann, 9 Cal.3d 662, 511 P.2d 609 (1973). We submit that this procedure in California satisfies the dictates of Pippin and the extradition laws of Colorado.

The issue that requires clarification is whether the Pippin court meant that we should scrutinize every preliminary hearing to determine if probable cause is present or should we, the responding state, either accept by way of an affidavit or evidence of procedure, as in the instant case, that

probable cause does in fact exist. If the court in Pippin by its statement, "if a preliminary was held in the demanding state and probable cause established," sought to require the demanding state to make a separate, independent determination of probable cause notwithstanding the existence of a preliminary hearing in the demanding state, the Court's further statement that a "preliminary hearing would be equivalent to an indictment" would be mere surplusage and of no affect. The only reasonable interpretation of the passage is that if a preliminary hearing is held and defendant was "bound over" for trial, that the total effect of the procedure is equivalent to an indictment and we as the responding state are relieved of the burden of further assessing the documents to determine probable cause. This interpretation is buttressed when the Pippin court later in the opinion stated that "a preliminary hearing satisfies the probable cause requirement." In accord with the comity that exists between the states, we must assume that the demanding state followed its own procedural requisites. In the words of Justice Erickson:

. . . were it otherwise, the courts of this state would be forced to embark upon an exegesis into the merits of each case and to the substantive and pleading practices of the state of California. In addition to violating precepts of comity between the states, such an obligation would unduly burden an already strained court system. White v. Leach, 532 P.2d 740 (1973).

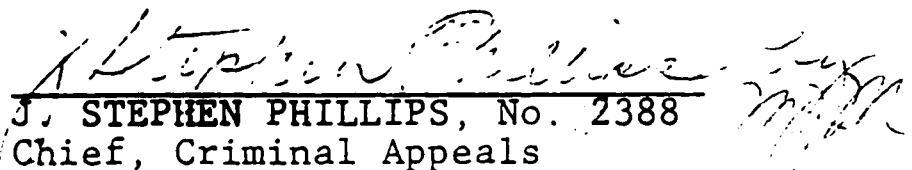
Petitioner asserts that the affidavit from the California attorney general was uncertain and imprecise as to when he was bound over to trial in the superior court. A determination of the precise time petitioner was bound over for trial is legally irrelevant. In the context of the instant extradition

proceeding the result would be the same. We need only establish that he was, in fact, "bound over" for trial. The fact that charges were not dismissed following the preliminary hearing as required by California Penal Code 738 and the fact that petitioner was "bound over" is sufficient to satisfy our probable cause requirements.

CONCLUSION

For the foregoing reasons, the People respectfully request that the decision of the trial court be affirmed.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was deposited with the United States Postal Service on the 14th day of April, 1977, addressed as follows:

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