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Supreme Court rules that judges in preliminary hearings cannot exclude illegally obtained evidence

SANTA FE – District court judges have no authority during a pretrial preliminary hearing in a criminal case to decide whether evidence was obtained illegally by law enforcement, the state Supreme Court ruled today.

At a preliminary hearing, a judge determines whether there are sufficient grounds for the case to move forward to possible trial. Prosecutors present evidence to a judge to show there is “probable cause” to believe a crime occurred and the charged person committed it. A determination of guilt occurs at a later trial — not the preliminary hearing, which generally takes place soon after a person is arrested on a felony.

In a divided decision, New Mexico’s highest court concluded that the New Mexico Constitution “does not provide the right to exclude evidence obtained from an unconstitutional search and seizure at a preliminary hearing.”

Existing rules of criminal procedure provide for a separate proceeding – conducted at some point after a preliminary hearing but before a trial – at which judges decide whether evidence will be excluded or allowed at trial, the Court’s majority pointed out. A “suppression hearing” is conducted if prosecutors or attorneys for the defendant file motions to exclude certain evidence.

“Defendants have an existing pretrial mechanism to vindicate their right to be free from unconstitutional searches and seizures: a motion to suppress,” the Court’s majority wrote in an opinion by Justice David K. Thomson. “Today’s ruling does nothing to diminish this remedy or change the majority’s commitment to protecting the right to be free from constitutional searches and seizures.”

Justices Thomson and Julie J. Vargas and Second Judicial District Court Judge Brett R. Loveless formed the Court’s majority. Chief Justice C. Shannon Bacon and Justice Michael E. Vigil

dissented. Judge Loveless was designated to participate in the case because of the recusal of Justice Briana H. Zamora.

The Court's majority affirmed a decision by the state Court of Appeals that a Bernalillo County district judge exceeded its authority in ruling during a preliminary hearing on whether evidence was illegally obtained. The justices ordered the case back to the district court for further proceedings. The district court dismissed a felony drug possession case against Ricky Ayon in 2020, ruling that a sheriff's deputy had no reasonable suspicion to stop the defendant and that made it illegal for the deputy to search the defendant. A bag of heroin was found in his pocket.

Ayon was walking with a bicycle and groceries when he was stopped, and the deputy testified at the preliminary hearing that Ayon was doing nothing illegal at the time. The deputy knew Ayon had an outstanding warrant based on a previous check of records, but was uncertain it remained valid at the time of the stop. He confirmed the warrant was active after handcuffing Ayon.

The dissenting justices, in an opinion by Justice Vigil, wrote, "Our position is that district judges have both the power and the obligation to evaluate the constitutionality of evidence at a preliminary examination."

Justices Bacon and Vigil reasoned that the constitutional protections against unlawful searches and seizures – Article II, Section 10 of the New Mexico Constitution – apply throughout a criminal case and that the only way to enforce that right is for judges to deny the government the use of illegally obtained evidence.

"It is incumbent upon judges to safeguard constitutional rights and ensure that justice is served. Failing to consider the constitutionality of evidence undermines the very fabric of our legal principles and compromises the integrity of our justice system," the dissenting justices wrote.

The Court's majority disagreed with the dissent that its ruling ignored a judge's obligation to safeguard the constitutional rights of defendants.

"It does nothing of the sort," the Court's majority wrote. "The majority opinion simply reserves any question regarding the legality by which the evidence was obtained for a later date than the preliminary hearing when the matter can be carefully considered."

The Court's majority explained that preliminary hearings "take place on a brisk timeline" when the exchange of evidence among the parties is in an early stage and there is no provision for submitting written arguments on legal issues in preliminary hearing. Because of that, the majority wrote, "both the facts and the arguments about whether evidence was illegally obtained are likely to be underdeveloped. The result can be insufficiently informed rulings."

In New Mexico, felony charges can be brought through a preliminary hearing process or by presenting evidence to a grand jury for possible indictment of a person. The state Supreme Court previously has held that district courts have no authority to decide whether evidence considered by a grand jury was illegally obtained.

In today's decision, the Court's majority wrote that the "fundamental similarities between grand jury proceedings and preliminary hearings favor our conclusion that their rules on the exclusion of illegally obtained evidence should be congruent."

The dissenting opinion noted that there are more procedural safeguards in preliminary hearings and defendants have more rights in those than during a grand jury proceeding. That, the dissenting justices wrote, "counsels in favor of adopting a rule that district court judges have authority to take into account the constitutionality of the evidence's procurement during a preliminary examination."

The Court's majority explained that Ayon's "case illustrates the severe limitations of the preliminary hearing relative to our procedure for motions to suppress; no law whatsoever was cited by either party in the two-minute suppression argument at the preliminary hearing, and no law was cited by the district court to explain its ruling."

The majority wrote that "the majority of judges across the country, including all of our federal judges, conduct preliminary hearings without addressing the exclusion of illegally obtained evidence. The dissent provides no substantive support for its position that the rule announced today, which conforms with the federal practice and the majority of jurisdictions, would result in the judiciary ignoring their duty as judges, undermine the very fabric of our legal principles, and compromise the integrity of our justice system."

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To read the decision in *State v. Ayon*, No. S-1-SC-38973, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/521989/index.do>