

GENERAL OFFICE MEMORANDUM 20-088

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM:  JOSEPH P. ESPOSITO  
Chief Deputy District Attorney

SUBJECT: *BULLOCK V. SUPERIOR COURT* AND TIMING ISSUES WITH  
PRELIMINARY HEARINGS DURING COVID-19

DATE: JUNE 26, 2020

On June 24, 2020, the First Appellate District of the California Court of Appeal published *Bullock v. Superior Court* (A160153) 2020 Cal. App. LEXIS 575. *Bullock* addresses the determination of good cause for continuation of a preliminary hearing beyond the initial period provided by Penal Code § 859b, in the context of the COVID-19 pandemic.

In *Bullock*, the initial period in which to conduct the defendant's preliminary hearing had been extended to 15 court days by emergency orders of the presiding judge and the Chief Justice. For a two-week period early in the onset of COVID-19, the Superior Court of Contra Costa County shut down all operations except for one courtroom. That courtroom was used only for in-custody arraignments and sentencings. No preliminary hearings were heard during that period, and in calculating the timing of such hearings, the court disregarded those days and treated them as court holidays. This was a misreading of the orders issued by the Chief Justice. The last day of defendant Bullock's preliminary hearing period fell during the time when the court was not hearing preliminary hearings. The matter was not called, and good cause was not established. The preliminary hearing was ultimately conducted, and the defendant was held to answer. The Court of Appeal found that the information should have thereafter been dismissed because there had been no good cause to continue the preliminary hearing beyond the 15<sup>th</sup> court day.

*Bullock* holds that the mere fact that the COVID-19 pandemic is occurring is *not* sufficient good cause to continue a preliminary hearing beyond the initial period. If deputies seek a continuance because of the limitations in place in response to COVID-19, deputies must establish particular facts regarding the inability of the court to hold the hearing during the period for which the continuance is requested, such as why the defendant could not be transported to court, why a courtroom was not available to conduct the hearing, which specific health orders prevented the necessary people from gathering in the courtroom, etc. It is insufficient to merely argue that the pandemic is a very unusual event that is affecting court operations in a negative way.

This case will affect how deputies litigate motions to continue preliminary hearings during the pandemic, as well as motions to set aside an information pursuant to Penal Code § 995(a) in cases where the defense contends that the preliminary hearing was continued without sufficient cause.

If a continuance is ordered over the defendant's objection, Penal Code § 871.6 allows the defendant to seek immediate relief by filing a petition for writ of mandate. Should a deputy learn that a defendant filed such a petition, please advise the Writs and Appeals Division immediately.

jfp