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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

SAVANAH M. ST. CLAIR,

Defendant and Appellant.

F072446

(Super. Ct. No. BF150907B)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Kern County. John S. Somers, Judge.

Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Lewis A. Martinez and Gregory B. Wagner, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Kane, Acting P.J., Detjen, J. and Smith, J.

Savanah M. St. Clair pled no contest to one count of misdemeanor possession of marijuana (Health & Saf. Code, § 11357, subd. (a).) She appeals from the denial of her motion to suppress evidence but challenges the trial court's denial of her *Pitchess*¹ motion for discovery. She contends the trial court abused its discretion in denying the *Pitchess* motion without conducting an in camera hearing. We conclude the issue is not cognizable on appeal and affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

On the morning of September 24, 2013, Kern County Sheriff's Deputy Donald Marvin and Child Protective Services social worker Fernando Rocha arrived at the Tehachapi home of appellant and her husband, Andy St. Clair, to investigate a report of child neglect concerning their two-year-old twin sons. When Marvin knocked on the door, Andy came around the side of the house. Marvin told Andy they were there to check on the children and asked if he and Rocha could see the children and the house. Andy led them to a different door which he opened and held for them to enter. As they entered the house, appellant met them at the door and Marvin was struck by a strong smell of fresh marijuana. Looking around from the entryway, he saw a pile of cut marijuana plants laying on a table.

Marvin asked where the children were and Andy opened the door to a bedroom near the front door. The twins were in the room, naked from the waist down and sitting on the floor. There was a small pile of feces and two discarded diapers in the middle of the floor. One of the boys stated, "Johnny pooped."

Andy led Marvin through various rooms in the house. Marvin saw another pile of marijuana on a dining table and noted that the kitchen was "very dirty" and cluttered. The master bathroom floor was covered with cut and drying marijuana. Andy explained he grew marijuana on the property and in the garage.

¹ *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

Andy told Marvin he grew the marijuana for his and appellant's personal use and sold and traded it at a marijuana shop. Andy showed Marvin a medical marijuana card and appellant showed him a certificate that had expired.

Appellant told Marvin Andy handled the growing of the marijuana and she did not know anything about sales. She used marijuana in the past but stopped about three weeks before because of her employment. She said she sometimes locked the children in the room for up to two hours at a time. She explained that the house was dirty because of her job and the boys required a lot of attention.

Marvin contacted Sergeant Doug Wilson who arrived along with a code compliance officer and narcotics officers. The code compliance officer counted 102 marijuana plants and one of the narcotics officers found a firearm. Appellant and Andy were arrested.

At a preliminary hearing, Marvin testified he counted "90-something" marijuana plants. On cross-examination, he said he could not remember the exact number he counted but that it was about 100 plants. He said he took pictures of all the marijuana that was seized. He seized the drying marijuana which weighed approximately 10 pounds and Wilson seized the growing marijuana.

Marvin also testified that he saw the feces in the room where the twins were located but did not take a picture when he first saw it. He took a picture of the room later after it had been cleaned. Rocha smelled feces in the room but did not see any. He also took pictures of the room.

The Kern County District Attorney charged appellant² with possession of marijuana for sale (count 1; Health & Saf. Code, § 11359), cultivation of marijuana

² Andy was also charged in the information but is not a party to this appeal.

(count 2; Health & Saf. Code, § 11358), and misdemeanor child endangerment (count 3; Pen. Code, § 273a, subd. (b)).³ Appellant pled not guilty to the charges.

In January 2015, appellant filed a motion to suppress evidence, arguing law enforcement searched her home without consent and, alternatively, they exceeded the scope of the consent which was limited to a welfare check of the children. Appellant also filed a *Pitchess* motion for discovery of Deputy Marvin's enforcement records. The trial court concluded defense counsel failed to establish good cause for an in camera hearing and denied the *Pitchess* motion. The court denied the motion to suppress, stating it was the "very definition of consensual contact and consensual search."

On August 20, 2015, the district attorney amended the information and charged appellant with misdemeanor possession of marijuana (count 4; Health & Saf., § 11357, subd. (a)). Appellant pled no contest to the charge. Counts 1 through 3 were dismissed in the furtherance of justice and appellant was sentenced to three years of probation, 30 hours of community service and six days in jail, while receiving credit for time served.

DISCUSSION

Appellant contends the trial court abused its discretion in denying her *Pitchess* motion without conducting an in camera hearing and requests this court remand for such a hearing. Respondent counters that appellant is barred from raising the issue because appellant failed to secure a certificate of probable cause under section 1237.5. We concur.

A defendant must obtain a certificate of probable cause to appeal when he or she pleads guilty or no contest. (Pen. Code, § 1237.5.) This is because a guilty or no contest plea admits every element of the crime charged and issues concerning the defendant's guilt or innocence are not cognizable on appeal. (*People v. Voit* (2011) 200 Cal.App.4th 1353, 1364.) As a challenge to the legality of the discovery process, appellate review of

³ All further statutory references are to the Penal Code.

a *Pitchess* motion is included in this rule and generally cannot be challenged after a guilty or no contest plea. (*People v. Hunter* (2002) 100 Cal.App.4th 37, 42-43.) The certificate is not required, however, when the defendant appeals a postplea ruling or the denial of a motion to suppress under section 1538.5. (Cal. Rules of Court, rule 8.304(b)(4).)

Appellant relies on *People v. Collins* (2004) 115 Cal.App.4th 137 (*Collins*) to argue we may consider the issue pursuant to section 1538.5, subdivision (m), which provides “[a] defendant may seek further review of the validity of a search or seizure on appeal from a conviction in a criminal case notwithstanding the fact that the judgment of conviction is predicated upon a plea of guilty.” (§ 1538.5, subd. (m).) Relying on section 1538.5, subdivision (m), the *Collins* court held that a trial court’s ruling on a *Pitchess* motion may be considered on appeal if the *Pitchess* motion is intertwined with the suppression motion and directed to the legality of the search and seizure. (*Collins, supra*, at pp. 150-151.)

In *Collins*, the defendant’s *Pitchess* motion sought information concerning the officers’ “ ‘illegal activities, improper tactics, dishonesty, planting evidence, improper search and seizure, and harassment’ ” because the defendant contended the officers “ ‘failed to follow search procedures[,]’ ” “ ‘tamper[ed] with evidence[,] acting without probable cause on an unreliable and bogus confidential letter that was destroyed by design.’ ” (*Id.* at pp. 149-150.)

Here, appellant’s *Pitchess* motion merely sought evidence to impeach Deputy Marvin’s credibility at trial as to whether there was fecal matter present in the children’s room and how many marijuana plants were seized. To that end, appellant sought evidence of any “acts indicating or constituting dishonesty, false arrest, illegal search and seizure, the fabrication of charges, fabrication of evidence, fabrication of reasonable suspicion and/or probable cause, or the planting of evidence.” Defense counsel declared that Deputy Marvin’s record was material to appellant’s defense and to establishing her innocence of the charges because “the child endangerment charge rests upon Marvin’s

report of observing fecal matter in the children's bedroom. Further, Marvin's report of the removal of the marijuana plants from the buckets goes directly to establishing the possession for sale and cultivation charges."

Appellant's *Pitchess* motion did not seek any evidence of illegal searches and, unlike in *Collins*, did not contend the search was illegal. Thus, we conclude that the *Pitchess* motion was not intertwined with the suppression motion and cannot be reviewed on appeal under section 1538.5, subdivision (m).

DISPOSITION

The order is affirmed.