

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHERIFF, WASHOE COUNTY,
Appellant,
vs.
ALFREDO SANTA CRUZ MARTINEZ,
Respondent.

No. 49190

FILED

APR 14 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is a sheriff's appeal from a district court order granting respondent Alfredo Santa Cruz Martinez's pretrial petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Jerome Polaha, Judge.

On October 30, 2006, Martinez was arrested and charged by criminal complaint with one felony count of willfully endangering a child, as the result of child abuse and/or neglect, a violation of NRS 200.508. On November 21, 2006, Martinez signed a waiver of preliminary examination and, on the same day, a criminal information was filed in the district court charging him with the same offense. The information alleged that Martinez –

did willfully and unlawfully, being an adult person, cause and/or permit [the victim], a child of the age of 7 years, to be placed in an endangered situation where the said child may have suffered physical pain and/or mental suffering as the result of such child abuse and/or neglect, by allowing [the victim] to operate a 1993 Ford Bronco on Neil Road and/or the northbound US395 on-ramp at Moana Lane.

(Emphasis added.)

On December 13, 2006, with the assistance of counsel, Martinez filed a pretrial petition for a writ of habeas corpus in the district court. The State opposed the petition. The district court conducted a hearing and, on March 1, 2007, entered an order granting Martinez's petition. In its order, the district court found that the criminal information was defective "in that while it charges a felony offense, it uses the gross misdemeanor language to support that offense." As a result, the district court concluded, "The writ will be made permanent against the felony accusation. . . . The writ will not issue against the gross misdemeanor accusation as there was sufficient evidence presented at the preliminary examination to sustain that charge." As noted above, however, Martinez waived his right to a preliminary examination in the justice court. We further note that the State did not charge Martinez with a gross misdemeanor offense. The State now appeals from the district court's order.

The State contends that the district court erred by (1) not allowing the State to amend the criminal information; (2) dismissing the felony charge and finding that the State could only pursue a gross misdemeanor charge; and (3) interpreting NRS 200.508 to preclude a felony charge under the facts of the instant case. We agree.

This court will defer to the district court's determination of factual sufficiency when reviewing pretrial orders on appeal.¹ In respondent's case, however, the district court's findings involved a matter of law and statutory interpretation which requires no deference and allows

¹See Sheriff v. Provenza, 97 Nev. 346, 630 P.2d 265 (1981).

for de novo review on appeal.² Additionally, this court has stated that the prosecutor retains the discretion to file the appropriate charges against an offender, and the prosecution of a “criminal case is within the entire control of the district attorney.”³

Our de novo review of the record on appeal reveals that the district court erred by granting Martinez’s pretrial habeas petition, thereby dismissing the felony charge of child endangerment, while allowing the State to pursue the charge as a gross misdemeanor. Again, as noted above, there was never a probable cause determination for the district court to review because Martinez waived his right to a preliminary examination; therefore, the district court’s finding regarding the sufficiency of the evidence was erroneous. At the hearing on Martinez’s petition, the district court heard only the arguments of counsel and no live testimony was presented. At no point in the proceedings below did the State express an interest in pursuing the matter against Martinez as a gross misdemeanor,⁴ but instead clearly sought to prove that Martinez committed a felony by “causing” his 7-year-old son to be placed in a dangerous situation with the potential for physical and/or mental harm.⁵ Specifically, the State alleged that Martinez, too drunk to drive, affirmatively directed his son to operate the Ford Bronco; the vehicle was

²See Sheriff v. Marcus, 116 Nev. 188, 192, 995 P.2d 1016, 1018 (2000).

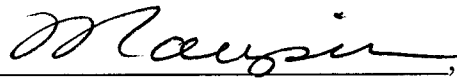
³Cairns v. Sheriff, 89 Nev. 113, 115, 508 P.2d 1015, 1017 (1973).

⁴See NRS 200.508(2)(b)(1).


⁵See NRS 200.508(1)(b)(1).

stopped by a police officer on the on-ramp to US 395. The State even proposed to amend the criminal information in order excise any confusing language, but the district court did not address the State's offer. Based on all of the above, we conclude that the district court misinterpreted NRS 200.508 and, as a result, erred by refusing to allow the State to proceed with the felony charge. On remand, we direct the district court to allow the State to amend the criminal information.⁶ Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

 J.

Maupin

 J.

Cherry

 J.

Saitta

cc: Hon. Jerome Polaha, District Judge
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe County Public Defender
Washoe District Court Clerk

⁶See State v. Dist. Ct., 116 Nev. 374, 997 P.2d 126 (2000); see also Viray v. State, 121 Nev. 159, 111 P.3d 1079 (2005).