

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL CU,

No. 35927

Appellant,

vs.

FILED

THE STATE OF NEVADA,

MAY 22 2001

Respondent.

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY: *J. Schaefer*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of conspiracy to commit kidnapping, first degree kidnapping with the use of a deadly weapon, murder with the use of a deadly weapon, conspiracy to commit robbery, and robbery with the use of a deadly weapon.

On appeal, Cu first contends that the district court violated Cu's Sixth Amendment right of confrontation by admitting the preliminary hearing transcript testimony of an unavailable witness. Specifically, Cu argues that the State did not meet its burden of making a good faith attempt to make the witness available to testify. We disagree and conclude that the State expended reasonable efforts to secure the witness's availability.¹

Cu next contends that the district court erred by giving a "Kazalyn instruction," which we have held does "not do full justice to the phrase 'willful, deliberate, and premeditated.'"² In *Garner v. State*,³ however, we concluded

¹See *Ohio v. Roberts*, 448 U.S. 56, 74-75 (1980) (holding that a witness is not unavailable unless the State has made a good-faith effort to obtain the witness's presence at trial and that "[t]he lengths to which the prosecution must go to produce a witness is a question of reasonableness").

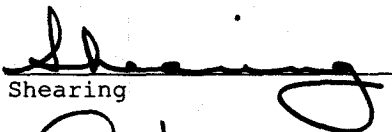
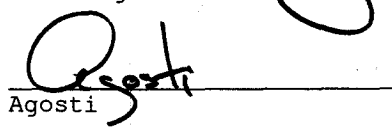
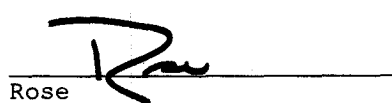
²*Byford v. State*, 116 Nev. 215, 235, 994 P.2d 700, 714 (2000) (quoting NRS 200.030(1)(a)).

that "the new instructions required by Byford [do not] have any retroactive effect on convictions which are not yet final: the instructions are a new requirement with prospective force only."

Finally, Cu argues that the State did not adduce sufficient evidence to support his conviction. We have reviewed the record and conclude that there was sufficient evidence by which a rational jury could have found the essential elements of the crimes beyond a reasonable doubt.⁴

Having concluded that Cu's challenges to the district court's order are meritless, we

ORDER the judgment of the district court AFFIRMED.


Shearing J.

Agosti J.

Rose J.

cc: Hon. Lee A. Gates, District Judge
Attorney General
Clark County District Attorney
Kirk T. Kennedy
Clark County Clerk

. . . continued

³116 Nev. ___, ___, 6 P.3d 1013, 1025 (2000).

⁴See *Guy v. State*, 108 Nev. 770, 776, 839 P.2d 578, 582 (1992) (setting forth the standard of review for a sufficiency challenge as "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt") (internal quotation marks and citation omitted).