

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
LARRY ANTHONY CRESPO,
Respondent.

No. 66788

FILED

NOV 19 2015

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting a pretrial petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Lidia Stiglich, Judge.

Respondent Larry Crespo was charged with burglary and grand larceny—the State claimed he entered a department store with the intent to commit larceny and removed a portable generator worth more than \$650. After a preliminary hearing and an arraignment, Crespo filed a pretrial petition for a writ of habeas corpus. In his petition, Crespo argued the justice court lacked probable cause to believe he committed the crime of grand larceny because the State failed to establish the value of the generator with legal, competent evidence. The district court granted the petition.

The State claims the district court erred by granting the petition and dismissing the grand larceny count.¹ The State argues the

¹We note in the order directing briefing, we directed the parties to address whether a pretrial petition for a writ of habeas corpus was the proper procedure for raising a hearsay claim to challenge the admissibility of the evidence of value. Neither party specifically addressed this issue, but both parties cited to *Hamm v. Sheriff*, 90 Nev. 252, 523 P.2d 1301

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court erred in ruling the evidence of the value of the generator was insufficient because the totality of the evidence established the value. And the State asserts the loss prevention manager's testimony that he knew the value of the generator was not inadmissible hearsay, especially when there was no objection.

We will not overturn a district court order granting a pretrial habeas petition for lack of probable cause absent substantial error. *Sheriff v. Provenza*, 97 Nev. 346, 347, 630 P.2d 265, 265 (1981). "Probable cause to bind a defendant over for trial may be based on slight, even marginal evidence because it does not involve a determination of guilt or innocence of an accused." *Sheriff v. Dhadda*, 115 Nev. 175, 180, 980 P.2d 1062, 1065 (1999) (citations omitted). However, evidence supporting such a finding must be legal, competent evidence. *Goldsmith v. Sheriff*, 85 Nev. 295, 303, 454 P.2d 86, 91-92 (1969).

Here, the district court found the loss prevention manager testified he knew the price for the generator is \$929.99 "based on the item's price tag," and it concluded his testimony constituted hearsay and was improperly admitted. However, the district court's factual finding is not supported by the record. Instead, the record demonstrates the value of the generator was discussed four different times during the loss prevention manager's testimony, at no time did the loss prevention manager identify the basis for his knowledge of the generator's value, and at no time did defense counsel object to his testimony or ask about its basis. Because the record does not affirmatively show that the loss prevention manager's testimony constituted hearsay and was improperly

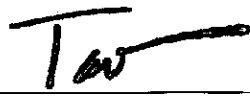
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(1974), which appears to be dispositive of the issue and indicates the procedure was proper.

admitted into evidence, we conclude his testimony was sufficient legal evidence as to the value of the generator and the district court erred by finding otherwise. Accordingly, we

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


_____, C.J.
Gibbons


_____, J.
Tao

I dissent.


_____, J.
Silver

cc: Hon. Lidia Stiglich, District Judge
Attorney General/Carson City
Washoe County Public Defender
Washoe County District Attorney
Washoe District Court Clerk