

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

No. 36456

Appellant,

vs.

BARUCH ARMIEN WASHINGTON,

Respondent.

FILED

MAR 15 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF REMAND

This is an appeal from an order of the district court granting respondent's motion to dismiss an amended information. Respondent was originally charged by criminal complaint with one count of robbery with the use of a deadly weapon, and one count of battery with intent to commit a crime. Following a preliminary hearing where the victim testified, respondent was bound over for trial on both counts, and an information was filed in district court on November 25, 1998.

On February 18, 2000, the State filed a motion to continue the trial because the State had been unable to locate the victim. The district court granted the motion, and trial was ultimately set for June 5, 2000. On May 23, 2000, the State filed a motion to use the victim's testimony from the preliminary hearing in lieu of live testimony, due to the State's continued inability to locate the victim. The district court denied the State's motion and denied the State's motion for reconsideration. Respondent then moved to dismiss the information, and the district court granted respondent's motion.

The State contends that the district court erred by denying the State's motion to use the victim's testimony from the preliminary hearing. We agree. NRS 171.198(6)(b) provides that preliminary hearing testimony may be used at trial if the defendant was represented by counsel and if the witness' "personal attendance cannot be had in court."

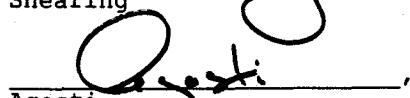
In the instant case, we note that respondent was represented by counsel at the preliminary hearing, that the victim was cross-examined by respondent's counsel, and that the

State was unable to locate the victim despite a good faith effort. We therefore conclude that the district court abused its discretion by denying the State's motion to use the victim's preliminary hearing testimony at trial.¹ Accordingly, we

ORDER the district court's order granting respondent's motion to dismiss VACATED AND REMAND this matter to the district court for proceedings consistent with this order.



Shearing J.



Agosti J.



Rose J.

cc: Hon. Donald M. Mosley, District Judge
Attorney General
Clark County District Attorney
Clark County Public Defender
Clark County Clerk

¹See Drummond v. State, 86 Nev. 4, 7, 462 P.2d 1012, 1014 (1970).