

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHERIFF, CLARK COUNTY,
Appellant,
vs.
STEPHEN JAMES MICCICHE,
Respondent.

No. 39748

FILED

AUG 22 2002

ORDER OF REVERSAL AND REMAND

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

This is an appeal from an order of the district court granting in part respondent Stephen James Micciche's pretrial petition for a writ of habeas corpus.

On April 1, 2002, Micciche was charged by way of a criminal information with one count of lewdness with a child under the age of 14 years, one count of open or gross lewdness, one count of child abuse and neglect, and two counts each of sexual assault on a child under the age of 14 years, first-degree kidnapping, and annoyance of a minor.

On April 24, 2002, Micciche filed a pretrial petition for a writ of habeas corpus in the district court. The State opposed the petition. After conducting a hearing on May 28, 2002, the district court granted in part Micciche's petition for a writ of habeas corpus. The State now appeals from the portion of the district court's order granting Micciche's petition.

In his pretrial petition below, Micciche contended, among other things, that insufficient evidence was presented by the State to sustain the two counts of first-degree kidnapping. Micciche's argument, in

essence, was that he should not have been bound over to the district court for trial on the kidnapping charges because there was a lack of probable cause. The district court granted the petition on this issue after “looking at the totality of [the] circumstances.” We conclude that the district court erred and that Micciche’s contention is without merit.

On appeal from an order granting a pretrial petition for a writ of habeas corpus based on lack of probable cause, “[t]he sole function of the supreme court is to determine whether all of the evidence received at the preliminary hearing establishes probable cause to believe that an offense has been committed and that defendant committed it.”¹ As a general rule, this court will not overturn an order granting a pretrial petition for a writ of habeas corpus for lack of probable cause absent a showing of substantial error by the district court.²

The probable cause determination has two components: (1) that an offense has been committed; and (2) that the accused committed the offense.³ Probable cause to support a criminal charge “may be based on slight, even ‘marginal’ evidence, because it does not involve a determination of the guilt or innocence of an accused.”⁴ “To commit an accused for trial, the State is not required to negate all inferences which

¹Lamb v. Holsten, 85 Nev. 566, 568, 459 P.2d 771, 772 (1969).

²Sheriff v. Provenza, 97 Nev. 346, 347, 630 P.2d 265, 265 (1981).

³NRS 171.206.

⁴Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980) (citations omitted).

might explain his conduct, but only to present enough evidence to support a reasonable inference that the accused committed the offense.”⁵ “Although the [S]tate's burden at the preliminary examination is slight, it remains incumbent upon the [S]tate to produce some evidence that the offense charged was committed by the accused.”⁶ The issue on appeal in this case is whether the State presented sufficient evidence to establish probable cause to believe that Micciche committed the crime of first-degree kidnapping.

Based on our review of the record, we conclude that the State presented enough evidence to support a reasonable inference that Micciche violated NRS 200.310(1) in both of the charged counts.⁷ In particular, we note that the testimony presented during the preliminary hearing in the justice court demonstrated that Micciche lead or enticed the two victims into traveling with him without their parents' permission, intending to keep them from their parents. We also note that the alleged consent of the victims is not a defense to these charges.⁸ Therefore, we

⁵Kinsey v. Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971).

⁶Woodall v. Sheriff, 95 Nev. 218, 220, 591 P.2d 1144, 1144-45 (1979).

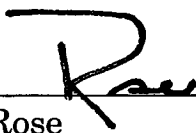
⁷NRS 200.310(1) states in relevant part: “[A] person who leads, takes, entices, or carries away or detains any minor with the intent to keep, imprison, or confine him from his parents, guardians, or any other person having lawful custody of the minor, or with the intent to hold the minor to unlawful service, or perpetrate upon the person of the minor any unlawful act is guilty of kidnapping in the first degree which is a category A felony.”

⁸See NRS 200.350(2).

conclude that the district court erred in granting Micciche's petition in part by dismissing the first-degree kidnapping charges. Accordingly, we

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


_____, J.
Shearing


_____, J.
Rose


_____, J.
Becker

cc: Hon. Michael A. Cherry, District Judge
Attorney General/Carson City
Clark County District Attorney
Scott B. Olifant
Clark County Clerk