

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD DAVID RENNER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40516

FILED

AUG 13 2003

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of attempted murder with the use of a deadly weapon. The district court sentenced appellant Richard David Renner to serve two consecutive prison terms of 24-60 months. Renner was given credit for 207 days time served.

First, Renner contends that his rights pursuant to the Sixth Amendment's Confrontation Clause were violated by the State. The State was unable to present the victim, Renner's wife, at the preliminary hearing because, at the time of the hearing approximately one month after the attack, she was still in the hospital recovering from her injuries. Prior to the start of the trial, defense counsel objected to the State's willingness to proceed without calling the victim to testify. The State informed the district court that it had difficulty locating the victim, but that with their several other witnesses, they were prepared to proceed without her. Renner argues that his constitutional right to confront the witnesses against him was therefore violated. We disagree.

“In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.”<sup>1</sup> The prosecution of a criminal case, however, “is within the entire control of the district attorney.”<sup>2</sup> In this case, the victim never testified on behalf of the State or served as a witness against Renner during any of the criminal proceedings. Renner argues that the State was required to exercise due diligence in locating the victim, however, the State had no such obligation. The State did in fact make several attempts to locate the victim without success, and then chose to proceed to trial without her. Renner, on the other hand, had several opportunities to serve a subpoena and compel the testimony of the victim, if the defense had so desired. His own defense investigator had several conversations with the victim, with the last meeting only two weeks before trial. Additionally, a correctional officer testified that the victim often visited Renner where he was incarcerated, and she once was even arrested for trespassing at the jail. Therefore, we conclude that Renner has failed to demonstrate that his Sixth Amendment right to confrontation attached in this situation, let alone was violated.

Second, Renner contends that the admission at trial of the preliminary hearing testimony of an unavailable witness was improper. Renner has not offered any argument in support of his contention. This court has stated that “[i]t is appellant’s responsibility to present relevant

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<sup>1</sup>U.S. Const. amend. VI; Pointer v. Texas, 380 U.S. 400, 403 (1965) (holding that the Confrontation Clause provides “a fundamental right and is made obligatory on the States by the Fourteenth Amendment”); Ramirez v. State, 114 Nev. 550, 557, 958 P.2d 724, 728 (1998) (holding the same).

<sup>2</sup>Cairns v. Sheriff, 89 Nev. 113, 115, 508 P.2d 1015, 1017 (1973).

authority and cogent argument; issues not so presented need not be addressed by this court.”<sup>3</sup> Nevertheless, our review of the record reveals that his unsubstantiated allegation is without merit.

Pursuant to NRS 171.198(6), either the State or the defendant may use the prior recorded preliminary hearing testimony of an unavailable witness at trial. Pursuant to NRS 174.125, “the State must file a motion requesting the admission of prior testimony [not less than] fifteen days before trial unless the State was unaware of the witness or the need for the testimony did not exist before that time period.”<sup>4</sup> In order for the State to utilize the prior testimony, the defendant must have been represented by counsel, counsel must have cross-examined the witness at the prior proceeding, and the witness must actually be unavailable.<sup>5</sup> This court has held that when these requirements are met, admission of the prior testimony does not violate the defendant’s Sixth Amendment right to confront the witnesses against him.<sup>6</sup> “The decision to admit preliminary hearing testimony after balancing the prejudicial effect against its probative value is one addressed to the sound discretion of the trial court.”<sup>7</sup>

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<sup>3</sup>Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

<sup>4</sup>Grant v. State, 117 Nev. 427, 432, 24 P.3d 761, 764 (2001).

<sup>5</sup>Funches v. State, 113 Nev. 916, 920, 944 P.2d 775, 777-78 (1997).

<sup>6</sup>Aesoph v. State, 102 Nev. 316, 319-320, 721 P.2d 379, 381-82 (1986); Drummond v. State, 86 Nev. 4, 7, 462 P.2d 1012, 1013-14 (1970); see also California v. Green, 399 U.S. 149, 165-168 (1970).

<sup>7</sup>Dawson v. State, 108 Nev. 112, 120, 825 P.2d 593, 598 (1992).

In this case, Renner was represented by Deputy Public Defender Elizabeth Quillin during the preliminary hearing, and Quillin cross-examined the witness in question. During the cross-examination, the witness was asked about the relationship between Renner and the victim, and the events of the day leading up to Renner's offense. Quillin also had the opportunity for recross-examination, but declined. Prior to trial, the district court conducted a due diligence hearing on the State's timely motion to admit the prior testimony of the allegedly unavailable witness.<sup>8</sup> After hearing the testimony of the State's investigator regarding his numerous attempts to locate the witness, and the arguments of counsel, the district court found that the State's efforts were reasonable and made in good faith; the district court subsequently held that the unavailable witness' preliminary hearing testimony would be admissible at trial. Based on all of the above, we conclude that the district court did not abuse its discretion and the admission of the prior testimony was not improper.

Finally, Renner implies that the State committed prosecutorial misconduct. In his fast track statement, Renner asks, "Should the government . . . be allowed to keep out [the victim's] own bizarre criminal and psychological history leading up to the events in question." Renner has not offered any facts, articulated any argument, or presented any authority in support of this implied allegation of prosecutorial misconduct. Moreover, the medical records of the victim offered into evidence by Renner were in fact admitted in their entirety despite the State's objection on the grounds that not all of the medical

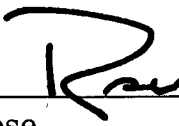
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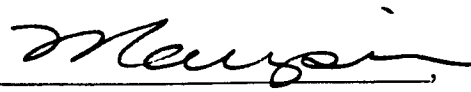
<sup>8</sup>See Drummond, 86 Nev. at 6-8, 462 P.2d at 1013-14.

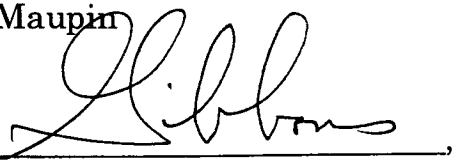
records were relevant. Therefore, to the extent that Renner is raising a claim of prosecutorial misconduct, we conclude that it is repelled by the record and without merit.

Having considered Renner's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. John S. McGroarty, District Judge  
Clark County Public Defender  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk