

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHERIFF, CLARK COUNTY,
Appellant,
vs.
ROBERT STEVENSON,
Respondent.

No. 42737

FILED

MAR 24 2004

JANE L. BLOOM
CLERK OF SUPREME COURT
BY *J. Ruback*

ORDER OF REVERSAL AND REMAND

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

On August 1, 2003, Stevenson was charged, by way of a criminal indictment, with six counts of lewdness with a minor under the age of 14 years, and two counts each of attempted sexual assault of a minor under the age of 14 years and sexual assault of a minor under the age of 14 years. The charges against Stevenson stem from conduct allegedly directed towards his 12-year-old son and the 7-year-old friend of another son.

On September 26, 2003, Stevenson filed a pretrial petition for a writ of habeas corpus and a motion to dismiss in the district court. The State opposed the petition. After conducting a brief hearing on November 5, 2003, the district court granted Stevenson's petition in part and dismissed the two counts of sexual assault of a minor under the age of 14 years. The State now appeals from the portion of the district court's order granting Stevenson's petition. The State contends that it presented sufficient evidence at the preliminary hearing to establish probable cause to believe that Stevenson committed the two sexual assaults. We agree

with the State and reverse the district court's order granting in part Stevenson's petition.

In his pretrial petition filed below, Stevenson contended, among other things, that at the grand jury proceedings, the State failed to present evidence of sexual penetration.¹ Stevenson argued that the victim "clearly testified that his pants were up when the alleged penetration took place," and noted the following exchange:

Q. Okay. And when he [Stevenson] laid down did he do something with your pajamas or your clothes?

A. He tried to pull them down, but I pulled them back up.

With regard to the other count of sexual assault, the following exchange took place:

Q. Now when you say his [Stevenson's] front private touched your butt, were you wearing your clothes at the time or –

A. Yes.

Q. Were they up or were they down?

A. He tried to pull them down but I pulled them back up.

Thereafter, the grand jury returned a true bill and a criminal indictment was filed.

¹See NRS 200.366(1) ("[a] person who subjects another person to sexual penetration . . . against the will of the victim or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his conduct, is guilty of sexual assault"); NRS 200.364(2) (defining sexual penetration as "any intrusion, however slight, of any part of a person's body . . . into the . . . anal openings of the body of another").

On November 10, 2003, the district court entered a summary order, without findings of fact and conclusions of law, granting Stevenson's petition in part, thereby dismissing the two counts of sexual assault of a minor under the age of 14 years. In its ruling, the district court stated: "I don't think that we should make the quantum leap between some child's buttocks, cheeks and then all of a sudden decide that that equals penetration of the anus when the child wasn't specifically asked that. And a child in the same deal says his pants were always up." The State now appeals from the district court's order. We conclude that the district court erred in dismissing the two counts.

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."² 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.³

The probable cause determination has two components: (1) that an offense has been committed; and (2) that the accused committed the offense.⁴ Probable cause to support a criminal charge "may be based on slight, even 'marginal' evidence, because it does not involve a

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

³Sheriff v. Provenza, 97 Nev. 346, 347, 630 P.2d 265, 265 (1981).

⁴NRS 171.206.

determination of the guilt or innocence of an accused.”⁵ “To commit an accused for trial, the State is not required to negate all inferences which might explain his conduct, but only to present enough evidence to support a reasonable inference that the accused committed the offense.”⁶ “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.”⁷

Based on our review of the record, we conclude that the State presented enough evidence to support a reasonable inference that Stevenson committed, on two occasions, sexual assault of a minor under the age of 14 years. Although the victim testified that on both occasions he pulled his pants back up after Stevenson pulled them down, the victim also testified as follows:

Q. And when his [Stevenson's] front private was touching your butt, was it doing anything? Was it moving? Did it rub your butt?

A. No.

Q. Did it go inside your butt?

A. Yes.

Q. How did that feel? Did it hurt?

...

A. Yes.

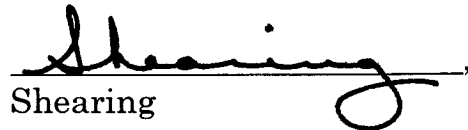
⁵Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980) (citations omitted).

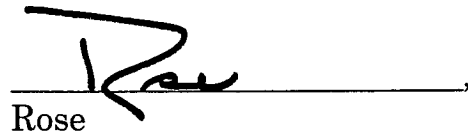
⁶Kinsey v. Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971).

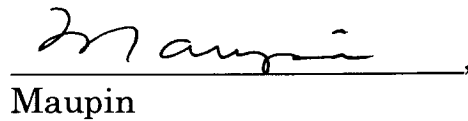
⁷Woodall v. Sheriff, 95 Nev. 218, 220, 591 P.2d 1144, 1144-45 (1979).

The victim testified similarly with regard to the second alleged sexual assault, stating in his own words that Stevenson put his penis “[i]n my butt.” Additionally, Detective Robert Conboy of the Las Vegas Metropolitan Police Department, assigned to the sexual assault detail, testified at the grand jury proceedings that: (1) Stevenson admitted to him during an interview that he touched the 7-year-old victim’s posterior with his penis; and (2) the victim told him that Stevenson “put his penis in his butt.” Therefore, based on all of the above, we conclude that the district court erred by granting in part Stevenson’s pretrial habeas petition thereby dismissing the two counts of sexual assault of a minor under the age of 14 years. 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.
Shearing

 _____, J.
Rose

 _____, J.
Maupin

cc: Hon. Sally L. Loehrer, District Judge
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
David Lee Phillips
Clark County Clerk