

SUPREME COURT OF NEVADA

State v. Eighth Judicial Dist. Court of Nev.

412 P.3d 18 (Nev. 2018) · Decided March 1, 2018

SUMMARY

The Nevada Supreme Court held that a defendant had an adequate opportunity to cross-examine a witness at a preliminary hearing when the defendant voluntarily waived the remainder of the hearing immediately after the witness's direct examination. The court concluded that admitting the unavailable witness's prior testimony at trial did not violate the Sixth Amendment and granted the State's petition for a writ of mandamus.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Stiglich, J.; Douglas, C.J.; Cherry, J.; Gibbons, J.; Pickering, J.; Hardesty, J.; Parraguirre, J.
JURISDICTION	Nevada
DECIDED	March 1, 2018
DISPOSITION	writ_granted
PROCEDURAL POSTURE	The State petitioned for a writ of mandamus challenging the district court's denial of its motion to admit the transcript of an unavailable witness's preliminary-hearing testimony at Baker's criminal trial.
STANDARD OF REVIEW	Mandamus relief is discretionary and may be used to compel performance of a legally required act or control a manifest abuse or arbitrary or capricious exercise of discretion. The court reviewed the district court's Confrontation Clause ruling for manifest abuse of discretion in the context of the mandamus petition.
PRECEDENTIAL VALUE	Published Nevada Supreme Court opinion; precedential
PARTIES	State of Nevada v. Eighth Judicial District Court of Nevada, Jeffrey Baker, real party in interest

TOPICS

[sixth amendment](#)[criminal procedure](#)[evidence](#)[appellate procedure](#)[standard of review](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a defendant has an adequate prior opportunity for cross-examination under the Sixth Amendment when the defendant was represented by counsel, had relevant discovery, was offered the opportunity to cross-examine a preliminary-hearing witness, but voluntarily waived the remainder of the hearing without conducting cross-examination.
2. Whether the district court manifestly abused its discretion by refusing to admit the unavailable witness's preliminary-hearing testimony at trial.
3. Whether the State could obtain mandamus relief because it lacked an adequate ordinary appellate remedy from the evidentiary ruling.

HOLDINGS

1. A defendant who is offered an opportunity to cross-examine a preliminary-hearing witness, possesses discovery sufficient to conduct cross-examination, and voluntarily declines to cross-examine the witness has nevertheless received an adequate prior opportunity for cross-examination. Admission of the witness's prior testimony at trial therefore does not violate the Sixth Amendment merely because the defendant chose not to exercise the opportunity.
2. Mandamus was an appropriate remedy because the State could not appeal the district court's evidentiary ruling after a final criminal judgment and therefore lacked a plain, speedy, and adequate remedy in the ordinary course of law.
3. The district court manifestly abused its discretion by denying admission of C.J.'s preliminary-hearing testimony on the ground that Baker lacked an adequate opportunity to cross-examine her.

KEY QUOTATIONS

“The Confrontation Clause guarantees an opportunity to cross-examine; it does not bestow upon defendants a sword to strike adverse testimony that the defendant declined to contest.” (412 P.3d at 18)

“The Confrontation Clause guarantees defendants an opportunity to cross-examine witnesses who testify against them. It does not give defendants a sword to strike adverse testimony that the defendant chose not to contest.” (412 P.3d at 23)

FACTUAL BACKGROUND

Jeffrey Baker was charged with sexually motivated coercion and eight counts of lewdness with a child under fourteen. At the preliminary hearing, C.J., Baker's cousin, gave detailed testimony concerning two alleged attempts by Baker to engage her in sexual activity; Baker had relevant discovery, including police reports and statements. When the justice court invited cross-examination, Baker's attorney instead announced that Baker would unconditionally waive the remainder of the preliminary hearing. C.J. later committed suicide, and the State sought to use her preliminary-hearing testimony at trial.

PROCEDURAL HISTORY

Baker was charged in district court with sexually motivated coercion and eight counts of lewdness with a child under fourteen. At his preliminary hearing, the alleged victim testified, but Baker waived the remainder of the hearing immediately after the State's direct examination and did not cross-examine her. After the witness later committed suicide, the district court denied the State's motion to admit her preliminary-hearing testimony, concluding that Baker lacked an adequate opportunity to cross-examine her. The State sought mandamus relief, which the Nevada Supreme Court granted.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The clerk was directed to issue a writ of mandamus instructing the district court to vacate its order denying the State's motion to admit C.J.'s testimony and enter an order consistent with the opinion. The stay entered on December 1, 2016, was lifted.

CASES CITED

- Chavez v. State, 125 Nev. 328, 337-42, 213 P.3d 476, 482-86 (2009)
- Gonzalez v. Eighth Judicial Dist. Court, 129 Nev. 215, 217, 298 P.3d 448, 449-50 (2013)
- State v. Eighth Judicial Dist. Court (Armstrong), 127 Nev. 927, 931-32, 267 P.3d 777, 779-80 (2011)
- Crawford v. Washington, 541 U.S. 36, 68, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004)
- Estes v. State, 122 Nev. 1123, 1140, 146 P.3d 1114, 1126 (2006)
- Hinojos-Mendoza v. People, 169 P.3d 662, 668 (Colo. 2007)
- Clark v. State, 808 N.E.2d 1183, 1189-90 (Ind. 2004)
- State v. Nelson, 725 P.2d 1353, 1357 (Utah 1986)
- Hernandez v. State, 124 Nev. 639, 645, 188 P.3d 1126, 1130 (2008)
- Drummond v. State, 86 Nev. 4, 7, 462 P.2d 1012, 1014 (1969)
- Grant v. State, 117 Nev. 427, 432 & n.5, 24 P.3d 761, 764 & n.5 (2001)
- Funches v. State, 113 Nev. 916, 920, 944 P.2d 775, 777-78 (1997)
- Aesoph v. State, 102 Nev. 316, 320, 721 P.2d 379, 381-82 (1986)
- Armenta-Carpio v. State, 129 Nev. 531, 535, 306 P.3d 395, 398 (2013)