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Summary of State v. Sargent, 122 Nev. Adv. Op. 18

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State v. Sargent, 122 Nev. Adv. Op. 18 (February 23, 2006)¹

**CRIMINAL PROCEDURE – PRELIMINARY HEARINGS &
PERSONAL APPEARANCES**

Summary

The Court decided whether justice courts have jurisdiction to order a defendant to personally appear at a preliminary hearing when the defendant has filed a waiver of personal appearance and counsel has appeared on his behalf.

Disposition/Outcome

The Court held that the justice courts do not have the jurisdictional power to order a defendant to personally appear at a preliminary hearing when the defendant has filed a waiver of personal appearance and has appeared through counsel.

Factual and Procedural History

Defendant Sargent was charged with indecent exposure² for allegedly masturbating in front of a woman at a Reno car wash. At the preliminary hearing, Sargent's counsel appeared and filed a waiver of personal appearance on the defendant's behalf. The State opposed going forward with the preliminary hearing because the defendant's absence prevented the State's witness from identifying Sargent in court as the individual who exposed himself. Sargent's counsel replied that identification was a contested issue in this case because the description the witness had given did not match the defendant. Sargent's counsel argued that under NRS 178.388 the defendant is only required appear at arraignment, trial, and sentencing. The justice of the peace sided with the state, ruling that NRS 178.388 required the defendant to appear at the preliminary hearing, and ordered Sargent to appear at a rescheduled preliminary hearing.

Sargent petitioned the district court for a writ of certiorari. The district court granted certiorari and ordered the case transferred to the district court. The district court ruled that the justice court lacked authority to order a criminal defendant to appear at the preliminary hearing. Accordingly, the district court ordered the justice court to vacate its order requiring Sargent to personally appear at the preliminary hearing. The State appealed.

Discussion

Determining whether a justice court may require a criminal defendant to personally appear at a preliminary hearing when he has waived personal appearance and counsel appears on his behalf is a matter of statutory construction. The Nevada Supreme Court applies two principles of statutory interpretation to construe the relevant Nevada

¹ By Michael Pandullo

² NEV. REV. STAT. § 201.220 (2005).

statutes. First, the Court attributes plain meaning to statutory language³ unless the legislature clearly intended some other meaning.⁴ Second, the Court assumes that no statutory language is meaningless.⁵

NRS 178.388 requires that the defendant personally appear at arraignment, trial, and sentencing, but does not refer to preliminary hearing. The statute also allows the defendant to waive personal appearance in limited circumstances. The State conceded that the language of NRS 178.388 did not require the defendant to personally appear at a preliminary hearing, but argued that a defendant's right to waive appearance is different from the defendant's independent obligation to appear under certain circumstances. The Court rejected this argument.

Nevada justice courts are courts of limited jurisdiction,⁶ and therefore have only the authority expressly granted to them by statute⁷ as well as the limited inherent authority to execute their statutory authority.⁸ NRS 171.196 grants the justice courts authority to conduct preliminary hearings. Because the legislature explicitly specified in NRS 178.388 the proceedings for which a defendant must personally appear, the Court declined to infer that the defendant must appear for any additional proceedings unless the defendant's absence would prevent the justice court from conducting those proceedings. For instance, the Court noted that if a defendant did not retain counsel, he would have to personally appear at the preliminary hearing.

The State argued that the defendant's presence was necessary because (1) the State should be able to choose to prove the alleged perpetrator's identity through in-court eyewitness identification; and (2) justice courts must have the inherent authority to compel personal appearance or else they could not hold preliminary hearings and bind defendants over for trial. The Court rejected these arguments, noting that there are other ways for the state to prove identity at a preliminary hearing, including photographic evidence or a police line-up. Additionally, the Court held that the State's chosen method of identification could not create the justice court's inherent authority to compel the defendant's personal appearance. Moreover, the Court held that when a defendant retains counsel to appear on his behalf at a preliminary hearing and waives personal appearance, as Sargent did here, the defendant's lack of personal appearance does not prevent the justice court from exercising its judicial function.

Conclusion

The Court concluded that the justice courts do not have the authority to order a defendant to personally appear at a preliminary hearing when the defendant files a waiver of personal appearance and retains counsel to appear on his behalf. As such, the Court

³ Cleghorn v. Hess, 109 Nev. 544, 548, 853 P.2d 1260, 1262 (1993).

⁴ State v. Quinn, 117 Nev. 709, 713, 30 P.3d 1117, 1120 (2001).

⁵ Harris Assocs. v. Clark County Sch. Dist., 119 Nev. 638, 642, 81 P.3d 532, 534 (2003).

⁶ State of Nevada v. Justice Court, 112 Nev. 803, 805, 919 P.2d 401, 402 (1996) (citing Parsons v. District Court, 110 Nev. 1239, 1243, 885 P.2d 1316, 1319 (1994)); NEV. REV. STAT. § 4.370(1), (3) (2004).

⁷ E.g., NEV. REV. STAT. § 4.370(3) (2004) ("Justices' courts have jurisdiction of all misdemeanors and no other criminal offenses except as otherwise provided by specific statute."); NEV. REV. STAT. § 171.196 (2005) (preliminary hearings).

⁸ State of Nevada v. Justice Court, 112 Nev. at 805-06, 919 P.2d at 402.

held that the district court did not err by ordering the justice court to vacate its order requiring Sargent to appear.