

PRELIMINARY
HEARING:

Transcript of testimony at preliminary hearing need not be delivered to defendant when defendant is released on bond. Transcript of testimony is to be delivered to clerk of the court in which the offense is cognizable.

March 9, 1950

FILE NO. 24

Honorable William Lee Dodd
Prosecuting Attorney
Ripley County
Doniphan, Missouri



Dear Sir:

This office is in receipt of your recent request for an official opinion. You thus state your request:

"The defendant is charged with first degree murder and is given a preliminary hearing and bound over for Circuit Court but is given bail by the Magistrate. Does the law require that the defendant be given a copy of the evidence at the preliminary hearing? What must be done with the transcript of the evidence?"

Section 3870, Mo. R. S. A., 1939, states:

"In all cases of homicide, but in no other, the evidence given by the several witnesses shall be reduced to writing by the magistrate, or under his direction, and shall be signed by the witnesses respectively."

Section 3879, Mo. R. S. A., 1939, states:

"All examinations and recognizances taken in pursuance of the provisions of this article shall be certified by the magistrate taking the same, and delivered to the clerk of the court in which the offense is cognizable, on or before the first day of the next term thereof, except that where the prisoner is committed to jail, the examination of himself and of the witnesses for or against him, duly certified, shall accompany the warrant of commitment, and be delivered therewith to the jailer."

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Since the defendant was given bail in this case the requirements of the statutes are satisfied if the transcript of the testimony taken at the preliminary hearing is delivered to the clerk of the court in which the defendant will be tried, because since he is out on bond it will be available to him and to his attorney.

Section 3879 also answered the remainder of your question by stating, as quoted above, that "All examinations and recognizances taken in pursuance of the provisions of this article shall be certified by the magistrate taking the same, and delivered to the clerk of the court in which the offense is cognizable, * * *"

CONCLUSION

It is the conclusion of this office that where a defendant is released on bond he need not be given a transcript of the testimony taken at his preliminary hearing.

It is the further conclusion of this office that a transcript of the evidence taken at the preliminary hearing must be delivered to the clerk of the court in which the defendant will be tried.

Respectfully submitted,

HUGH P. WILLIAMSON
Assistant Attorney General

APPROVED:

Attorney General