

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHERIFF, WHITE PINE COUNTY,
BERNIE ROMERO,
Appellant,
vs.
SHANE D. HARRIS,
Respondent.

No. 43964

FILED

APR 21 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

This is a sheriff's appeal from an order of the district court granting a pretrial petition for a writ of habeas corpus. Seventh Judicial District Court, White Pine County; Dan L. Papez, Judge.

On April 21, 2004, respondent Shane Harris was charged by way of a criminal complaint with four counts of burglary. Following a preliminary hearing in the justice's court, Harris was bound over for trial in the district court on all four counts. On July 19, 2004, Harris filed a pretrial petition for a writ of habeas corpus in the district court. The Sheriff opposed the petition. On August 9, 2004, the district court held a hearing on Harris's petition and subsequently granted habeas relief. This appeal follows.

The Sheriff contends that he presented sufficient evidence from which the justice's court could infer there was probable cause to believe that Harris committed the burglaries alleged in the first three counts of the criminal complaint. He claims that "[t]he facts of this case are so unique as to be analogous to a 'signature crime.'" And he argues

that the gasoline was taken on consecutive weekends; over 100 gallons of premium grade gasoline were taken on each occasion; the gasoline was taken without going through the pump; on the fourth occasion, Harris was observed with a truck configured to hold more than 100 gallons of gasoline and equipped with hoses and a vacuum system for siphoning fuel; and because Harris knew how to use this siphoning equipment, he must have taken the gasoline on the previous three occasions. We disagree.

In this appeal, our "sole function . . . 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."¹ 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.²

The probable cause determination has two components: (1) that an offense has been committed; and (2) that the accused committed the offense.³ Probable cause to support a criminal charge "may be based on slight, even 'marginal' evidence, because it does not involve a determination of the guilt or innocence of an accused."⁴ "To commit an

¹Lamb v. Holsten, 85 Nev. 566, 568, 459 P.2d 771, 772 (1969).

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

³NRS 171.206.

⁴Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980) (citations omitted).

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."⁵ "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."⁶

We conclude that the Sheriff provided insufficient evidence to support a reasonable inference that Harris committed the crimes alleged in the first three counts of the criminal complaint. The Sheriff did not present any evidence regarding Harris's whereabouts on the dates that these three crimes were alleged to have occurred, nor did he link Harris in any way to the crimes. Harris did not own the specially configured truck that he used when siphoning gas from the gas station on February 28, 2004. No evidence was presented to indicate that the truck was used to commit the crimes alleged in the first three counts, and no evidence was presented to indicate that Harris had control of the truck at the time of these crimes. Regarding the evidence that Harris stated "they're sure padding the account" when he learned that the station owner claimed a loss of 600 gallons of gasoline, we agree with the district court that this statement could as easily be attributable to gas Harris took on one occasion as it was to taking gas on several occasions.

⁵Kinsey v. Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971).

⁶Woodall v. Sheriff, 95 Nev. 218, 220, 591 P.2d 1144, 1144-45 (1979).

The Sheriff also contends that the district court erred in finding that he did not allege facts that constitute burglary. He specifically claims that the district court erred when it concluded that NRS 205.060 is ambiguous as to whether an underground storage tank is included within the meaning of the terms "shop," "store," or "other building," and construed the ambiguity in favor of Harris by finding that underground storage tanks are not so included. And he argues that an entry into an underground storage tank is an entry into an "other building" or "store" as defined by Nevada law. We disagree.

The interpretation of a statute presents a question of law and is subject to de novo review.⁷ We will attribute the plain meaning to a statute that is not ambiguous.⁸ A statute is ambiguous when its language "lends itself to two or more reasonable interpretations."⁹ Ambiguous criminal statutes are strictly construed and resolved in favor of the accused.¹⁰

We conclude that NRS 205.060 is not ambiguous as to whether an underground storage tank is a structure capable of being burglarized. NRS 205.060 provides, in relevant part:

⁷Firestone v. State, 120 Nev. 13, 16, 83 P.3d 279, 281 (2004).

⁸Id.

⁹State v. Catanio, 120 Nev. ___, ___, 102 P.3d 588, 590 (2004).

¹⁰Firestone, 120 Nev. at 16, 83 P.3d at 281.

A person who, by day or night, enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, vessel, vehicle, vehicle trailer, semitrailer or house trailer, airplane, glider, boat or railroad car, with the intent to commit grand larceny, assault or battery on any person or any felony, is guilty of burglary.

(Emphasis added.) It is plain from the wording of the statute that houses, rooms, apartments, tenements, shops, warehouses, stores, mills, barns, stables, and outhouses are buildings because they appear in a list that concludes with the phrase "or other building."¹¹ This list is consistent with the plain meaning of building: a "roofed and walled structure built for permanent use."¹² NRS 193.0125 defines the term "building" to include "every house, shed, boat, watercraft, railway car, tent or booth, whether completed or not, suitable for affording shelter for any human being, or as


¹¹Cf. In re Amber S., 33 Cal. App. 4th 185, 187, 39 Cal. Rptr. 2d 672, 673 (1995) (concluding that California's burglary statute treats a barn as a type of building because "the list of structures in which 'barn' appears ends with the phrase 'or other building.'"); see also Bedard v. State, 118 Nev. 410, 413, 48 P.3d 46, 48 (2002) (providing that "California Penal Code § 459, the California burglary statute, is very similar to NRS 205.060.").

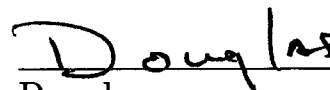
¹²Merriam-Webster's Collegiate Dictionary 150 (10th ed. 1997); cf. Amber, 33 Cal. App. 4th at 187, 39 Cal. Rptr. 2d at 672 (providing that "[i]t has long been the rule that a 'building' within the meaning of California's burglary statute 'is any structure which has walls on all sides and is covered by a roof.'").

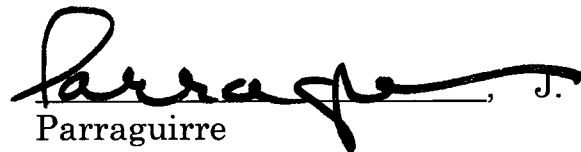
a place where property is or will be kept for use, sale, or deposit." Because an underground storage tank is not a building within the plain meaning of the word or the statutory definition of the term, we conclude that it is not within the scope of the burglary statute.

Having concluded that the district court properly granted Harris's pretrial petition for a writ of habeas corpus, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. Dan L. Papez, District Judge
Attorney General Brian Sandoval/Carson City
White Pine County District Attorney
State Public Defender/Carson City
State Public Defender/Ely
White Pine County Clerk