

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHERIFF, WHITE PINE COUNTY,  
Appellant,  
vs.  
NATALIE SMITH,  
Respondent.

No. 48767

FILED

APR 24 2007

ORDER OF AFFIRMANCE

JAMES M. GLOOM  
CLERK OF SUPREME COURT  
BY *J. Carrolls*  
DEPUTY CLERK

This is a sheriff's appeal from an order of the district court granting in part respondent Natalie Smith's pretrial petition for a writ of habeas corpus. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

On March 9, 2006, Smith was charged by way of a criminal complaint with possession of a controlled substance (count I), committing an unauthorized act relating to controlled substances (count II), conspiracy to commit a felony under the Uniform Controlled Substances Act (count III), furnishing a deadly weapon to a state prisoner (count IV), and aiding a state prisoner to escape (count V). Following a preliminary hearing in the justice court, Smith was bound over for trial in the district court on all five counts. A criminal information was filed in the district court on April 27, 2006.

On July 17, 2006, Smith filed a pretrial petition for a writ of habeas corpus in the district court. In her petition, Smith contended, among other things, that the State presented insufficient evidence to establish probable cause that she was in possession of a controlled substance or that the controlled substance in question was heroin, as alleged in the complaint and information. The State opposed the petition. The district court did not conduct an evidentiary hearing, and on

December 7, 2006, granted in part Smith's petition and dismissed counts I-III. The State now appeals from the portion of the district court's order dismissing count I, possession of a controlled substance.

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."<sup>1</sup> As a general rule, this court is reluctant to review factual determinations of probable cause in pretrial matters.

Although we have recognized that there is a different degree of finality between the denial and granting of habeas relief, broad review by this Court of factual issues related to probable cause would in many instances be inconsistent with sound judicial administration.

The trial court is the most appropriate forum in which to determine factually whether or not probable cause exists. Absent a showing of substantial error on the part of the district court in reaching such determinations, this court will not overturn the granting of pretrial habeas petitions for lack of probable cause.<sup>2</sup>

Probable cause to support a criminal charge "may be based on slight, even 'marginal' evidence, because it does not involve a

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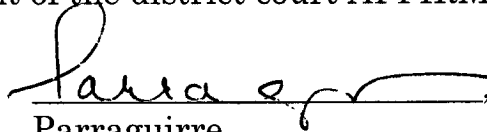
<sup>1</sup>Lamb v. Holsten, 85 Nev. 566, 568, 459 P.2d 771, 772 (1969); see NRS 171.206.

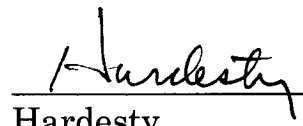
<sup>2</sup>Sheriff v. Provenza, 97 Nev. 346, 347, 630 P.2d 265, 265 (1981).

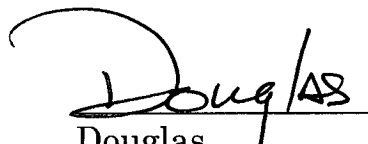
determination of the guilt or innocence of an accused.”<sup>3</sup> “Although the [S]tate's burden at the preliminary examination is slight, it remains incumbent upon the [S]tate to produce some evidence that the offense charged was committed by the accused.”<sup>4</sup> The issue on appeal in this case is whether the State presented sufficient evidence to establish probable cause to believe that Smith committed the crime of possession of a controlled substance, namely heroin.<sup>5</sup>

After reviewing the record on appeal, we conclude that the district court did not commit substantial error by dismissing count I. At the preliminary hearing, although there was evidence that the substance that Smith possessed was an opiate, the State failed to present the requisite slight or marginal evidence necessary to show that it was, in fact, heroin. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
Parraguirre, J.

  
Hardesty, J.

  
Douglas, J.

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<sup>3</sup>Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980) (citations omitted).

<sup>4</sup>Woodall v. Sheriff, 95 Nev. 218, 220, 591 P.2d 1144, 1144-45 (1979).

<sup>5</sup>See NRS 453.336(1).

cc: Hon. Steve L. Dobrescu, District Judge  
Attorney General Catherine Cortez Masto/Ely  
White Pine County District Attorney  
Thomas F. Pitaro  
White Pine County Clerk