

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
GARY VERN STOVER AND
FRANCISCO ROBLES,
Respondents.

No. 55026

FILED

APR 07 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Anderson*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a sheriff's appeal from a district court order granting respondents' pretrial petitions for writs of habeas corpus. Eighth Judicial District Court, Clark County; Doug Smith, Judge.

Respondent Gary Vern Stover was charged by criminal indictment with one count each of arson with the intent to defraud insurer, third-degree arson, insurance fraud, and two counts of theft. Respondent Francisco Robles was charged with one count each of arson with the intent to defraud insurer and third-degree arson. In the proceedings below, the State argued that the grand jury was presented with sufficient evidence to support the probable cause determination. The State now appeals from the district court's dismissal of all of the counts.

We defer to the district court's determination of factual sufficiency when reviewing pretrial orders on appeal. See Sheriff v. Provenza, 97 Nev. 346, 630 P.2d 265 (1981). Here, the district court found that the State failed to present the requisite slight or marginal evidence necessary to support the counts as charged. See Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980) (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" (citations omitted); see also NRS 172.155(1). We agree and conclude that the district court did not err by dismissing the charges against Stover and Robles and granting their pretrial petitions for writs of habeas corpus. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Doug Smith, District Judge
Attorney General/Las Vegas
Law Office of John J. Momot
Thomas F. Pitaro
Eighth District Court Clerk