

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAN WATTS, SHERIFF OF WHITE  
PINE COUNTY,  
Appellant,  
vs.  
CORY SHAWN COCA,  
Respondent.

No. 55665

**FILED**

JUN 09 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY A. Ingrassia  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a sheriff's appeal from a district court order granting respondent Cory Shawn Coca's pretrial petition for a writ of habeas corpus. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

Coca was charged by way of a criminal complaint with one count of unlawful use and/or being under the influence of a controlled substance and one count of possession of a controlled substance. In the pleading filed below, the State argued that the evidence that it presented at the preliminary hearing was sufficient to support the probable cause determination. The State now appeals from the district court's dismissal 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 171.206. We agree and conclude that the district court did not err by dismissing the charges against Coca and granting his pretrial petition for a writ of habeas corpus. Accordingly, we  
ORDER the judgment of the district court AFFIRMED.

Cherry, J.  
Cherry

Saitta, J.  
Saitta

Gibbons, J.  
Gibbons

cc: Hon. Steve L. Dobrescu, District Judge  
White Pine County District Attorney  
Law Offices of Gary D. Fairman  
White Pine County Clerk