

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAN WATTS, SHERIFF OF WHITE
PINE COUNTY,
Appellant,
vs.
TABITHA LUNA,
Respondent.

No. 55680

FILED

JUN 09 2010

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

ORDER OF AFFIRMANCE

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

Luna was charged by way of a criminal complaint with two counts of unlawful use and/or being under the influence 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 order.

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 (1) that the State presented the requisite slight or marginal evidence necessary to bind over Luna on the two counts of unlawful use of a controlled substance, and (2) "[n]o evidence was presented at the preliminary hearing to even suggest that Luna was under the influence of

[a] controlled substance.” 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 guilt or innocence of an accused” (citations omitted)); see also NRS 171.206. The district court did not dismiss the two criminal counts, but its factual findings have the effect of limiting the State’s prosecution of these counts to a theory that Luna unlawfully used controlled substances and prohibiting the State from pursuing a theory that Luna was under the influence of controlled substances. We conclude that the district court did not err by granting in part and denying in part Luna’s petition, and 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
Michael L. Shurtz
White Pine County Clerk