

IN THE SUPREME COURT OF THE STATE OF NEVADA

NICKOLAS MARK ANDREWS,  
Petitioner,  
vs.  
THE SIXTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
HUMBOLDT, AND THE HONORABLE  
MICHAEL R. MONTERO, DISTRICT  
JUDGE,  
Respondents,  
and  
THE STATE OF NEVADA,  
Real Party in Interest.

No. 56190

**FILED**

**JUL 15 2010**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER DENYING PETITION

This original petition for a writ of prohibition challenges a district court order permitting the real party in interest to amend an information by affidavit. Petitioner was charged in the alternative with two counts of attempted murder with the use of a deadly weapon and discharging a firearm at or into a structure, vehicle, aircraft, or watercraft. After the preliminary hearing, the justice court bound petitioner over on only one alternative in each count. The district court permitted the real party in interest to amend the information by affidavit pursuant to NRS 173.035(2), concluding that the justice court committed egregious error by not binding petitioner over on the alternative charges as they were supported by probable cause.

NRS 173.035(2) "contemplates a safeguard against egregious error by a magistrate in determining probable cause, not a device to be used by a prosecutor to satisfy deficiencies in evidence at a preliminary

examination, through affidavit.” Cranford v. Smart, 92 Nev. 89, 91, 545 P.2d 1162, 1163 (1976); see Parsons v. State, 115 Nev. 91, 93, 978 P.2d 963, 964 (1999), on reconsideration en banc, 116 Nev. 928, 10 P.3d 836 (2000); State of Nevada v. District Court, 114 Nev. 739, 741-42, 964 P.2d 48, 49 (1998). Here, petitioner failed to provide an adequate record, most notably a complete preliminary hearing transcript, thereby precluding a full review of this matter. Considering the documents before us, including the pleadings below and the district court’s detailed order, we conclude that petitioner failed to demonstrate that the district court exceeded its jurisdiction, see NRS 34.320, in determining that the justice court committed egregious error by refusing to bind petitioner over on the challenged alternative charges. Accordingly, we

ORDER the petition DENIED.<sup>1</sup>

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Pickering, J.  
Pickering

cc: Hon. Michael Montero, District Judge  
Marc Picker  
Attorney General/Carson City  
Pershing County District Attorney  
Humboldt County Clerk

<sup>1</sup>Although petitioner argues that the preliminary hearing evidence was insufficient to establish probable cause, the real party in interest’s pleadings below and the district court’s order indicate that the evidence was more robust than petitioner represents here.