

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN SUTTON,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
MICHAEL VILLANI, DISTRICT  
JUDGE,

Respondents,

and

THE STATE OF NEVADA,  
Real Party in Interest.

No. 57289

**FILED**

DEC 20 2010

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

ORDER DENYING PETITION

This original petition for a writ of mandamus or prohibition challenges the district court's denial of a pretrial petition for a writ of habeas corpus and a motion to suppress. Petitioner Steven Sutton is awaiting trial on charges of battery with intent to commit sexual assault resulting in substantial bodily harm, sexual assault resulting in substantial bodily harm, and kidnapping.

Sutton challenges the district court's denial of his pretrial habeas petition on two grounds: (1) insufficient evidence supported the grand jury's finding of probable cause and (2) the State failed to present exculpatory evidence to the grand jury.<sup>1</sup> We conclude that our intervention is not warranted for two reasons.<sup>2</sup>

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<sup>1</sup>Sutton also argues that grand jury received inadmissible evidence. Although he raised this claim below in his habeas petition, he fails to  
*continued on next page . . .*

First, we have stated that this court's review of a pretrial probable cause determination through an original writ petition is disfavored, see Kussman v. District Court, 96 Nev. 544, 612 P.2d 679 (1980), and the challenge to the probable cause determination in this case does not fit the exceptions we have made for pure legal issues, see State v. Babayan, 106 Nev. 155, 787 P.2d 805 (1990). And in any event, our review of the grand jury transcripts provided with the petition reveals slight or marginal evidence as required for a finding of probable cause. Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980) ("The finding of probable cause may be based on slight, even 'marginal' evidence." (quoting Perkins v. Sheriff, 92 Nev. 180, 181, 547 P.2d 312, 312 (1976))); see also Sheriff v. Burcham, 124 Nev. 1247, \_\_\_, 198 P.3d 326, 333 (2008) (explaining that the State need only present sufficient evidence to the grand jury "to support a reasonable inference" that the defendant committed the crime charged" (quoting Hodes, 96 Nev. at 186, 606 P.2d at 180)). Second, Sutton has not demonstrated that the State failed to present exculpatory evidence in violation of NRS 172.145(2), which requires the prosecutor to present "any evidence which will explain away the charge" if the prosecutor is aware of the evidence. In particular, the

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*... continued*

explain how the district court manifestly abused its discretion by denying this claim. Therefore, we conclude that no relief is warranted in this regard.

<sup>2</sup>We also note that Sutton has not provided this court with a transcript or order reflecting the basis for the district court's denial of the pretrial habeas petition. See NRAP 21.

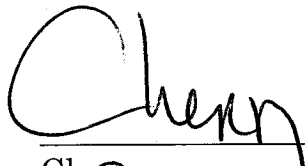
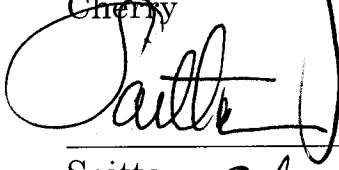

allegedly exculpatory evidence primarily concerns prior inconsistent statements by the alleged victim and another grand jury witness and impeachment evidence involving a witness' intoxication at the time of the incident. Such evidence, however, does not have a tendency to "explain away the charge" as contemplated by NRS 172.145(2). Lay v. State, 110 Nev. 1189, 1198, 886 P.2d 448, 453 (1994). And Sutton fails to explain the circumstances surrounding his alleged denial of wrongdoing or how his denial tended to explain away the charges in this case. Cf. Ostman v. District Court, 107 Nev. 563, 816 P.2d 458 (1991) (holding that where only witness to testify before grand jury was the victim, who was the defendant's girlfriend, failure to present defendant's statement to police that sexual conduct with victim was consensual violated NRS 172.145(2)). Accordingly, we conclude that Sutton has not demonstrated that the district court manifestly abused its discretion or exceeded its jurisdiction in denying his pretrial habeas petition on this ground. See NRS 34.160; NRS 34.320; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981).

Sutton also contends that the district court erred by denying his motion to suppress without conducting an evidentiary hearing. Although evidentiary hearings on such motions may be preferable and in certain instances necessary, along with written factual findings, see State v. Rincon, 122 Nev. 1170, 1177, 147 P.3d 233, 238 (2006) (advising "district courts to issue express factual findings when ruling on suppression motions so that this court would not have to speculate as to what findings were made below"); Rosky v. State, 121 Nev. 184, 191, 111 P.3d 690, 695 (2005) (noting importance of written factual findings by district court in this court's review of motions to suppress), we conclude

that our intervention is not warranted because Sutton may challenge the district court's denial of his motion to suppress on appeal should he be convicted.<sup>3</sup> See NRS 34.170; NRS 34.330; Hickey v. District Court, 105 Nev. 729, 731, 782 P.2d 1336, 1338 (1989).

Accordingly, we

ORDER the petition DENIED.<sup>4</sup>

  
\_\_\_\_\_, J.  
Cherry  
  
\_\_\_\_\_, J.  
Saitta  
  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Michael Villani, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>3</sup>Sutton has not provided a transcript or order reflecting the district court's decision, see NRAP 21, and we are not inclined to speculate at this time as to the basis for the district court's decision not to conduct an evidentiary hearing or whether one was warranted in this case.

<sup>4</sup>We deny the motion for stay filed on December 7, 2010.