

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGARDO HUERTA-ZAPATA,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
LINDA MARIE BELL, DISTRICT
JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 57958

FILED

APR 06 2011

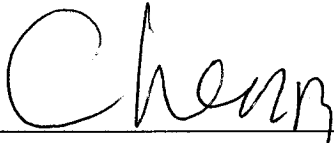
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK


ORDER DENYING PETITION


This original petition for a writ of mandamus or prohibition challenges a district court order denying a petition for a writ of habeas corpus in which petitioner argued that the justice court erred by finding that probable cause supported an allegation of open murder. We have considered the petition on file, and we are not satisfied that this court's intervention by way of extraordinary writ is warranted. See Sheriff v. Willoughby, 97 Nev. 90, 624 P.2d 498 (1981) (stating that first- and second-degree murder are not distinct crimes that must be pleaded accordingly and therefore no evidence of first-degree murder is necessary to support open murder charge); Wrenn v. Sheriff, 87 Nev. 85, 482 P.2d 289 (1971) (rejecting claim that accused cannot be held on open murder charge unless some direct and substantial proof of malice aforethought is adduced at preliminary hearing); Thedford v. Sheriff, 86 Nev. 741, 476 P.2d 25 (1970) (stating that "presence of malice is a question of fact which

bears directly on the guilt or innocence of a defendant and upon the degree of the crime charged” and “is not a question to be determined by the magistrate at a preliminary hearing” but by trier of fact at trial); see also Howard v. Sheriff, 83 Nev. 150, 425 P.2d 596 (1967).¹ Accordingly, we deny the petition. See NRAP 21(b).

It is so ORDERED.


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. Linda Marie Bell, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹We conclude that this court’s decision in Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000), does not alter our prior case law on this issue.