

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,  
Appellant,  
vs.  
JAMES MCNAMARA,  
Respondent.

No. 59052

**FILED**

OCT 05 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *H. Lindeman*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

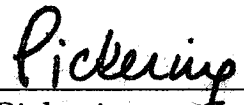
This is an appeal from a district court order granting in part respondent James McNamara's pretrial petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.


McNamara was charged with first-degree kidnapping with substantial bodily harm, felony coercion, and possession of a controlled substance. In the proceedings below, the State claimed that McNamara, who lived with the victim in Illinois, inflicted, and the victim suffered, substantial bodily harm over a 3-day period during a trip to Las Vegas. McNamara challenged, among other things, the probable cause determination regarding the substantial bodily harm allegation in a pretrial habeas petition. The State now appeals from the district court's rejection of its contention and the granting in part of McNamara's petition.

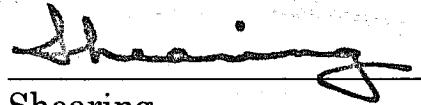
We defer to the district court's determination of factual sufficiency when reviewing pretrial orders on appeal. See Sheriff v. Provenza, 97 Nev. 346, 630 P.2d 265 (1981). Here, the district court found that the State failed to present the requisite slight or marginal evidence necessary to support the "substantial bodily harm" allegation in the first-

degree kidnapping count and ordered that language excised from the charging document. 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 granting in part McNamara’s pretrial petition for a writ of habeas corpus. Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, Sr.J.  
Rose

  
\_\_\_\_\_, Sr.J.  
Shearing

cc: Hon. Jessie Elizabeth Walsh, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Clark County Public Defender  
Eighth District Court Clerk

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<sup>1</sup>The Honorables Robert Rose and Miriam Shearing, Senior Justices, participated in the decision of this matter under general orders of assignment.