IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCISCO VAZQUEZ-ROSAS,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE JAMES M. BIXLER, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 60856

FILED

SEP 13 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER DENYING PETITION

This original petition for a writ of mandamus or prohibition challenges an order of the district court denying a motion to dismiss the indictment. Vazquez-Rosas stands accused of killing his missing wife and has been charged by indictment with open murder. Vazquez-Rosas seeks a writ of mandamus or prohibition directing the district court to grant his motion to dismiss the indictment. 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).

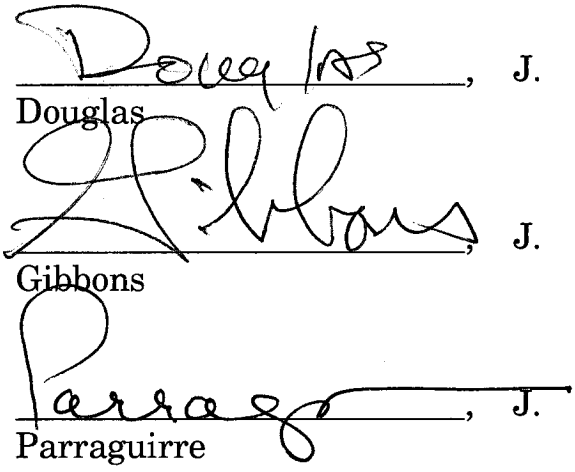
Vazquez-Rosas argues that the district court abused its discretion in denying his motion to dismiss. He contends that the amended indictment impermissibly charged two alternative murder offenses in the same count, and thus when this court struck one count on a prior writ, it is not certain that at least 12 grand jurors agreed that probable cause existed for the remaining offense. He asserts that this court's order granting his prior petition for extraordinary relief recognizes

that the State impermissibly charged two separate offenses in a single count.

We conclude that Vazquez-Rosas has not demonstrated that our intervention is warranted. Contrary to Vazquez-Rosas's argument, our prior order, which struck the second-degree felony-murder charge from the prior indictment because it provided insufficient notice of the crime charged, did not address whether the language alleging that crime constituted a separate offense. We now conclude that the language alleging second-degree felony murder did not charge a separate offense and thus violate NRS 173.115. See Howard v. Sheriff, 83 Nev. 150, 153, 425 P.2d 596, 597 (1967) ("Statutes which provide different punishments for first and second degree murder do not create two separate and distinct crimes—murder in the first degree and murder in the second degree—which must be pleaded accordingly."). As two offenses were not charged in a single count, there is no risk that any of the grand jurors based their probable cause determination on an impermissibly charged offense. Cf. State v. Hancock, 114 Nev. 161, 168, 955 P.2d 183, 187 (1998) (holding that State could not "amend the indictment so as to add previously alternately pleaded offenses as separate counts . . . because it cannot be said that the grand jury found probable cause on each and every amended count"). And in any event, our review of the grand jury transcript reveals slight or marginal evidence required for a finding of probable cause for open murder. 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))); Sheriff v. Burcham, 124 Nev. 1247, 1258, 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)).[1] Accordingly, we

ORDER the petition DENIED.



_____, J.
Douglas

_____, J.
Gibbons

_____, J.
Parraguirre

cc: Hon. James M. Bixler, District Judge
Oronoz & Ericsson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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[1]Vazquez-Rosas also asserts that the district court erred in evaluating whether evidence supported the indictment and concluding that Vazquez-Rosas should have raised the instant argument in his previous writ petition to this court. Because the district court did not manifestly abuse its discretion in concluding that the indictment should not have been dismissed for the reasons set forth above, we need not address whether the district court was correct to rely on these grounds for further support. See generally Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding that a correct result will not be reversed simply because it is based on the wrong reason).