

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES STANLEY BUBACK,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
KATHLEEN E. DELANEY, DISTRICT
JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 61020

FILED

JUL 25 2012

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

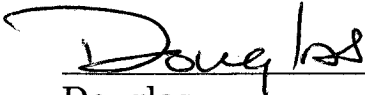
ORDER DENYING PETITION


This original petition for a writ of mandamus or, in the alternative, writ of prohibition, challenges the district court's decision denying a pretrial petition for a writ of habeas corpus. Petitioner Charles Stanley Buback claims that (1) this court must identify what evidence is sufficient to establish possession of an electronic file as the Ninth Circuit Court of Appeals did in U.S. v. Romm, 455 F.3d 990, 999-1000 (9th Cir. 2006) and U.S. v. Flyer, 633 F.3d 911 (9th Cir. 2011) and (2) the State failed to present sufficient evidence to the district court to bind him over for trial. Buback seeks a writ of mandamus or prohibition directing the district court to grant his pretrial petition for a writ of habeas corpus. 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).

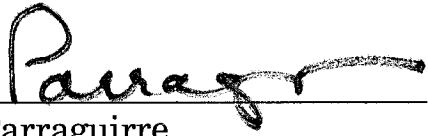
We conclude that our intervention is not warranted. In Romm and Flyer, the court of appeals merely applied the principle of constructive possession to the facts adduced at trial concerning the defendant's exercise

of control over certain digital files. Flyer, 633 F.3d at 918-20; Romm, 455 F.3d at 998-1001. As the Ninth Circuit's definition of constructive possession is nearly identical to Nevada's definition, see Flyer, 633 F.3d at 918-20 (applying traditional concepts of possession, defendant could not be shown to have possessed files located in unallocated space on his computer hard drive); Romm, 455 F.3d at 998-1001 (applying traditional concepts of possession, defendant possessed cached images when he exercised control over the files and displayed them on computer screen); Glispey v. Sheriff, 89 Nev. 221, 223-24, 510 P.2d 623, 624 (1973) (holding that constructive possession shown where accused had control or right to control over contraband or location where contraband is found), we need not exercise our discretion to clarify this area of law. See State v. Dist. Ct. (Epperson), 120 Nev. 254, 258, 89 P.3d 663, 665-66 (2004) (providing court may exercise discretion when important issue of law requires clarification). The remainder of his arguments concern whether the State produced sufficient evidence to support the bind over and are therefore not appropriate grounds for extraordinary relief. See Kussman v. District Court, 96 Nev. 544, 546, 612 P.2d 679, 680 (1980). Accordingly, we

ORDER the petition DENIED.¹


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

¹We deny the emergency motion for a stay filed on June 11, 2012, as moot.

cc: Hon. Kathleen E. Delaney, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk