

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
JOHN DAVID TREA,
Respondent.

No. 61148

FILED

SEP 12 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingerson*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting respondent John David Trea's pretrial petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Abbi Silver, Judge.


In the proceedings below, the State charged Trea with assault with a deadly weapon, alleging that he threatened to kill the victim and chased him with a 20-inch machete in one hand and a 10-inch butcher's knife in the other. Trea challenged the justice court's probable cause determination and bindover to the district court, specifically claiming that he (1) "did not unlawfully attempt to use physical force against" the victim, and (2) "did not intentionally place [the victim] in reasonable apprehension of immediate bodily harm." The State now appeals from the district court's granting of Trea's petition and dismissal of the case.

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 Trea's actions did "not amount to an attempt" and he "did not intentionally place [the victim] in a reasonable apprehension of immediate bodily harm," and, therefore, the State failed to present the requisite slight or marginal evidence necessary to support the charge. See Sheriff v.

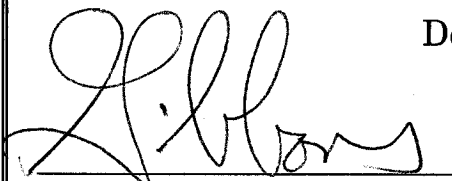
Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980) (probable cause to support a criminal charge “may be based on slight, even ‘marginal’ evidence, because it does not involve a determination of the guilt or innocence of an accused” (citations omitted)); see also NRS 171.206. We disagree.

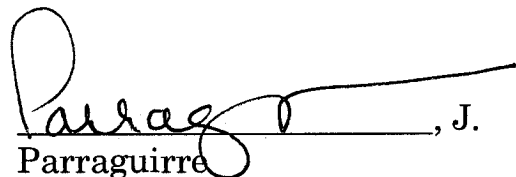
At the preliminary hearing, the victim was the sole testifying witness. The victim testified that Trea, holding both the machete and butcher’s knife, threatened him, stating, “I’m going to kill you, mother fucker.” The victim ran, believing that Trea meant to harm him and fearing for his life. The victim testified that he took his shirt off and wrapped it around his hand in order to defend himself and prevent being cut. Trea chased the victim until officers patrolling the area, flagged down by the victim, stopped him at gunpoint. Based on the victim’s testimony, we conclude that the State presented the requisite slight or marginal evidence necessary to support the charge of assault with a deadly weapon and the district court erred by granting Trea’s pretrial petition for a writ of habeas corpus. See NRS 200.471(1)(a) (defining “assault” as “[u]nlawfully attempting to use physical force against another person; or . . . [i]ntentionally placing another person in reasonable apprehension of immediate bodily harm”). Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

 _____, J.

Douglas

 _____, J.
Gibbons

 _____, J.
Parraguirre

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