

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUSTIN BURNS,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
VALORIE J. VEGA, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 62175

FILED

JAN 16 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angela*
DEPUTY CLERK

ORDER DENYING PETITION

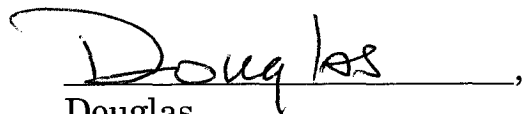
This original petition for a writ of mandamus or, in the alternative, writ of prohibition, challenges the district court's decision denying a motion to strike language from the indictment. Petitioner Justin Burns claims that the State failed to present sufficient evidence to prove its alleged theory of first-degree murder by torture as the evidence showed that the acts alleged to constitute torture occurred after the victim had died. Burns seeks a writ of mandamus or prohibition directing the district court to grant his motion to strike. 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. We have stated that this court's review of a pretrial probable cause determination through an original writ petition is disfavored. See Kussman v. District Court, 96 Nev. 544, 545-46, 612 P.2d 679, 680 (1980). Further, the challenge to the probable cause determination in this case does not fit the

exceptions we have made for pure legal issues. See State v. Babayan, 106 Nev. 155, 174, 787 P.2d 805, 819-20 (1990) (granting writ of mandamus dismissing an indictment to prevent “gross miscarriage of justice”). Regardless, our review of the grand jury proceedings provided with the petition reveals slight or marginal evidence as required for a finding of probable cause. 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))); see also 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)). Accordingly, we

ORDER the petition DENIED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Saitta

cc: Hon. Valorie J. Vega, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk