IN THE SUPREME COURT OF THE STATE OF NEVADA

ASHLEY COTTEN,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE DOUGLAS SMITH, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 67330

ORDER DENYING PETITION

This original petition for a writ of mandamus challenges an order of the district court denying a pretrial petition for a writ of habeas corpus. Petitioner seeks a writ of mandamus directing the district court to grant her pretrial habeas petition and dismiss the charging document.

First, petitioner argues that the State erroneously relied on NRS 51.385 to admit hearsay statements of the victims at the preliminary hearing because the statute's plain language indicates that it may only be utilized during a jury trial. We disagree. Only legal evidence may be received at a preliminary examination but, "'[t]here cannot be one rule of evidence for the trial of cases and another rule of evidence for preliminary examinations. The rule for the admission or rejection of evidence is the same for both proceedings.'" *Goldsmith v. Sheriff*, 85 Nev. 295, 303, 454 P.2d 86, 91 (1969) (quoting *People v. Schuber*, 163 P.2d 498, 499 (Cal. App.

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1945)).[1] Therefore, we conclude that petitioner has not demonstrated that the district court manifestly abused its discretion by denying her pretrial habeas petition on this ground. *See* NRS 34.160; *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981).

Second, petitioner argues that, even if NRS 51.385 may be utilized at a preliminary hearing, the State failed to give proper notice as required by NRS 51.385(3), the State failed to establish that the victims were unable or unavailable to testify as required by NRS 51.385(1)(b), and the hearsay statements did not have guarantees of trustworthiness as required by NRS 51.385(1)(a). Petitioner fails to demonstrate that the district court manifestly abused its discretion by denying her pretrial habeas petition on these grounds.[2] *See* NRS 34.160; *Round Hill Gen. Imp. Dist.*, 97 Nev. at 603-04, 637 P.2d at 536. The district court and the justice of the peace concluded that the State complied with the rules of evidence, and the justice of the peace made findings of the children's unavailability

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[1]Additionally, we note that NRS 51.385(1) provides that "a statement made by a child under the age of 10 years describing any act of sexual conduct performed with or on the child or any act of physical abuse of the child is admissible *in a criminal proceeding* regarding that act of sexual conduct or physical abuse," (emphasis added), and that "the preliminary hearing is a critical stage in the criminal proceeding," *Patterson v. State*, 129 Nev. ___, ___, 298 P.3d 433, 438 (2013) (internal quotation marks omitted).

[2]Petitioner failed to include in her appendix a copy of any written order by the district court denying her petition for a writ of habeas corpus. *See* NRAP 21(a)(4).

and the guarantees of trustworthiness before allowing the statements under NRS 51.385.[3]

Third, petitioner argues that the charges against her are duplicitous and redundant. This argument is premature as our redundancy caselaw considers whether multiple *convictions* are allowed. *See Jackson v. State*, 128 Nev. ___, ___, 291 P.3d 1274, 1282-83 (2012). Petitioner fails to demonstrate that our intervention is warranted as she may challenge on appeal the redundancy of any convictions she may suffer. *See* NRS 34.170; *Hickey v. Eighth Judicial Dist. Court*, 105 Nev. 729, 731, 782 P.2d 1336, 1338 (1989).

Fourth, petitioner argues that the State failed to produce sufficient evidence at the preliminary hearing to establish probable cause for the charged offenses. Our review of a pretrial probable cause determination through an original writ petition is disfavored, *see Kussman v. Eighth Judicial Dist. Court*, 96 Nev. 544, 545-46, 612 P.2d 679, 680 (1980), and petitioner has not demonstrated that her challenge to the probable cause determination fits the exceptions we have made for purely legal issues, *see Ostman v. Eighth Judicial Dist. Court*, 107 Nev. 563, 565, 816 P.2d 458, 459-60 (1991); *State v. Babayan*, 106 Nev. 155, 174, 787 P.2d

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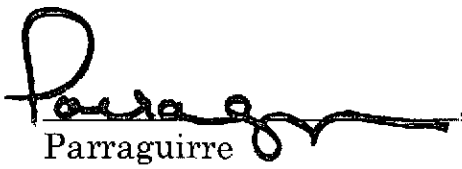
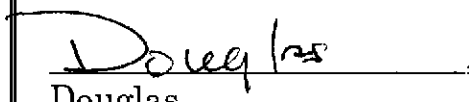
[3]We are unconvinced by petitioner's argument that, because the State could have used an alternative method for child-victim testimony as provided for in NRS 50.600 and NRS 50.610, it was error for the State to rely on NRS 51.385.

805, 819-20 (1990). Having concluded that our intervention is not warranted, we

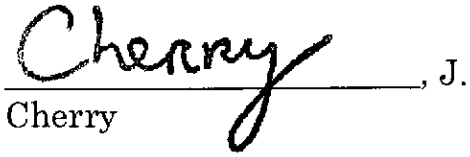
ORDER the petition DENIED.



Parraguirre, J.



Douglas, J.



Cherry, J.

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