

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
BINH MINH CHUNG,
Respondent.

No. 69572

FILED

MAR 16 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting in part respondent Binh Chung's pretrial petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

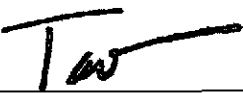
Chung was charged by criminal indictment with one count of use of a minor in producing pornography, ten counts of possession of a visual presentation depicting the sexual conduct of a child, four counts of sexual assault, fourteen counts of administration of a drug to aid in the commission of a felony, one count of battery with the intent to commit a sexual assault, one count of attempted sexual assault, two counts of open or gross lewdness, and one count of first-degree kidnapping.

Chung challenged ten of the fourteen counts of administration of a drug to aid in the commission of a felony in the court below. The State responded that Chung did not challenge four counts of this offense and argued that reasonable inferences may be drawn from these four counts as to Chung's intent regarding the remaining ten counts. The State now appeals from the district court order granting Chung's pretrial habeas petition in part and dismissing ten of the administration-of-a-drug-to-aid-in-the-commission-of-a-felony counts.

We defer to the district court's determination of factual sufficiency when reviewing pretrial orders on appeal. *See Sheriff, Clark Ctny. v. Provenza*, 97 Nev. 346, 347, 630 P.2d 265, 265 (1981). Here, the district court found the State failed to present the requisite slight or marginal evidence necessary to support ten of the fourteen counts of administration of a drug to aid in the commission of a felony. *See Sheriff, Washoe Ctny. 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" (internal citations omitted)); *see also* NRS 172.155(1). We agree and conclude the district court did not err in dismissing these counts and granting in part Chung's pretrial habeas petition. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

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