

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Appellant,

vs.

MARY ELIZABETH BRINSFIELD,

Respondent.

No. 37026

**FILED**

MAR 27 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Bloom*  
CHIEF DEPUTY CLERK

ORDER VACATING AND REMANDING

This is an appeal from a district court order granting respondent's pretrial petition for a writ of habeas corpus.

Respondent Mary Elizabeth Brinsfield worked as an area manager operating a slot route for United Coin Machine Company. United Coin provided Brinsfield with \$70,000.00 as a "bank" to use in making change for slot customers, paying jackpots to slot customers, and refilling slot machines. Brinsfield signed a promissory note, agreeing to return the money to United Coin upon demand. The promissory note also addressed the limits on Brinsfield's use of the money in the "bank." Brinsfield, however, did not use the money for those limited purposes. When United Coin discovered that money was missing from the "bank" for Brinsfield's slot route, Brinsfield admitted to taking the money and using it to pay

off personal debts. After an investigation by Gaming Control Agents, the State charged Brinsfield with one count of theft in violation of NRS 205.0832.

The district court granted Brinsfield's pretrial petition for a writ of habeas corpus or, in the alternative, motion to dismiss. The district court determined that the State adduced insufficient evidence that a criminal offense occurred pursuant to NRS 205.0832. The district court further concluded that "whatever rights or liabilities which exist between the parties to [the promissory note] are civil in nature and the appropriate forum to protect said rights is in a properly brought civil action." The State filed this timely appeal.

On appeal from an order granting a pretrial petition for a writ of habeas corpus based on lack of probable cause, "[t]he sole function of the supreme court is to determine whether all of the evidence received at the preliminary hearing establishes probable cause to believe that an offense has been committed and that defendant committed it."<sup>1</sup> As a general rule, this court will not overturn an order granting a pretrial petition for a writ of habeas corpus for lack of

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<sup>1</sup>Lamb v. Holsten, 85 Nev. 566, 568, 459 P.2d 771, 772 (1969).

probable cause absent a showing of substantial error by the district court.<sup>2</sup>

The probable cause determination has two components: (1) that an offense has been committed; and (2) that the accused committed the offense.<sup>3</sup> The second component is not implicated by the district court's order in this case. The issue is whether sufficient evidence was presented to establish that there was probable cause to believe the defendant's actions constituted the crime charged. 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."<sup>4</sup>

Here, the State charged Brinsfield with theft in violation of NRS 205.0832(1). Pursuant to that provision, the State had to present sufficient evidence to establish that there was probable cause to believe that Brinsfield (1) "knowingly" and "without lawful authority" (2) "control[led]

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<sup>2</sup>Sheriff v. Provenza, 97 Nev. 346, 347, 630 P.2d 265, 265 (1981).

<sup>3</sup>NRS 171.206.

<sup>4</sup>Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980) (citations omitted).

any property of another person" (3) "with the intent to deprive that person of the property."<sup>5</sup>

The district court apparently granted the petition on the ground that the promissory note transformed Brinsfield's actions into a civil matter and, therefore, the State produced insufficient evidence that the charged offense occurred. We conclude that the district court committed substantial error.

The district court's order cites no authority for the proposition that the mere availability of a civil cause of action to remedy a defendant's conduct vitiates any criminal liability for that conduct. We are aware of no such authority that would apply in this case.<sup>6</sup>

Moreover, it does not appear that the promissory note rendered the money in the "bank" the sole property of Brinsfield such that she could not be charged with theft. In fact, NRS 205.0828 states that the phrase "property of another person" as used in the theft statute includes "property in which any person other than the defendant has an interest which the defendant is not privileged to infringe." The

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<sup>5</sup>NRS 205.0832(1).

<sup>6</sup>We note that the statutory provisions for compromise of a public offense for which the injured party has a civil action do not apply in this case. See NRS 178.564-568.

promissory note and the relationship between United Coin and Brinsfield indicate that United Coin had an interest in the money in the "bank" that Brinsfield was not privileged to infringe.

Furthermore, we conclude that the limiting language in NRS 205.0828 does not apply in this case. That provision states that property in which another person has a security interest is not "property of another person" for purposes of the theft statute:

Property in the possession of the defendant in which another person has only a security interest shall be deemed not to be the property of that other person, even if that person holds legal title to the property pursuant to a security agreement.

The promissory note at issue in this case is not a security agreement and does not create a security interest.<sup>7</sup> We therefore conclude that NRS 205.0828 does not preclude the State from charging Brinsfield with theft.

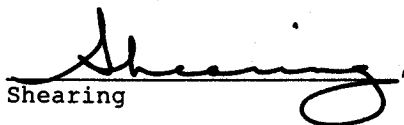
Finally, we conclude that the State presented sufficient evidence to establish probable cause to believe that Brinsfield committed the charged offense.


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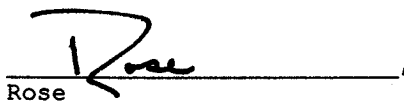
<sup>7</sup>Cf. NRS 104.1201(36) (defining "security interest"); Black's Law Dictionary 944-45 (6th ed. 1991) (defining "security agreement" and "security interest").

For the foregoing reasons, we conclude that the district court committed substantial error by granting the petition. Accordingly, we

ORDER the judgment of the district court VACATED AND REMAND this matter to the district court for proceedings consistent with this order.<sup>8</sup>

  
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Shearing J.

  
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Agosti J.

  
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Rose J.

cc: Hon. Jerry V. Sullivan, District Judge  
Attorney General  
Humboldt County District Attorney  
State Public Defender  
Humboldt County Clerk

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<sup>8</sup>We note that at the hearing on the petition, the district court judge indicated that he had not read the preliminary hearing transcript and that he believed he had to obtain a stipulation from the parties before doing so. When a pretrial habeas petition is based on lack of probable cause, the issue is whether the evidence received at the preliminary hearing establishes probable cause. See Holsten, 85 Nev. at 568, 459 P.2d at 772. It is therefore necessary that the district court review the preliminary hearing transcript when considering a pretrial habeas petition based on lack of probable cause.