


IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
ATORIS DAVIS,
Respondent.

No. 87371

FILED

AUG 14 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

The State appeals from a district court order granting in part respondent's pretrial petition for a writ of habeas corpus and dismissing two counts of first-degree kidnapping with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Abbi Silver, Senior Judge; Kathleen E. Delaney, Judge.¹

The charges giving rise to this appeal stem from an after-hours robbery at an Olive Garden restaurant. After a preliminary hearing in the justice court during which three of the victims testified, respondent Atoris Davis was bound over to the district court where the State filed a criminal information charging him with burglary of a business while in the possession of a deadly weapon, three counts of first-degree kidnapping with the use of a deadly weapon, robbery with the use of a deadly weapon, and two counts of assault with a deadly weapon. Davis filed a pretrial habeas petition seeking dismissal of the first-degree kidnapping charges because they were incidental to the robbery. The district court dismissed two of the first-degree kidnapping counts, agreeing that they were incidental to the

¹The Honorable Abbi Silver, Senior Judge, presided over the hearing on the pretrial habeas petition and orally ruled on the motion from the bench. The Honorable Kathleen E. Delaney, District Judge, signed the written order.

robbery, but left the third in place. The State appeals, arguing that the district court erred by dismissing the two kidnapping charges.

Standard of review

A district court's grant of a pretrial habeas petition will generally be upheld absent a showing of substantial error. *Sheriff v. Provenza*, 97 Nev. 346, 347, 630 P.2d 265, 265 (1981). But if a district court's decision involves a question of law, this court reviews that decision de novo. *Sheriff v. Witzenburg*, 122 Nev. 1056, 1059, 145 P.3d 1002, 1004 (2006).

A pretrial petition for a writ of habeas corpus filed in the district court is an independent proceeding, not an appeal from the justice court's determination of probable cause. *Sheriff v. Gleave*, 104 Nev. 496, 498, 761 P.2d 416, 418 (1988). Nor is the district court's ruling on a pretrial habeas petition a substitute for the jury's function as the trier of fact. *Ricci v. Sheriff*, 88 Nev. 662, 663-64, 503 P.2d 1222, 1223 (1972). If the State meets its burden to show probable cause that the defendant committed the charged crime, then it is substantial error for a district court to grant a pretrial habeas petition. *See Sheriff v. Steward*, 109 Nev. 831, 832, 837, 858 P.2d 48, 49, 52 (1993). Whether the district court substantially erred in granting a pretrial habeas petition is considered in the context of the State's burden to support probable cause by slight or marginal evidence. *Sheriff v. Miley*, 99 Nev. 377, 379, 663 P.2d 343, 344 (1983).

The district court erred by dismissing two first-degree kidnapping charges

"Kidnapping and robbery are separate and distinct crimes." *Wright v. State*, 94 Nev. 415, 417, 581 P.2d 442, 443 (1978). Because NRS 200.310(1), the first-degree kidnapping statute, sweeps broadly ("A person who willfully seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away a person by any means whatsoever . . . is guilty of kidnapping in the first degree . . ."), if read literally it would apply to any

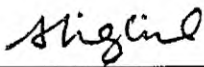
“ordinary robbery” in which the victim is moved from one room to another. *Wright*, 94 Nev. at 417, 581 P.2d at 443-44. But the Legislature did not intend such “a double punishment.” *Id.* Generally, “movement or restraint incidental to” robbery does not expose a defendant to criminal liability for first-degree kidnapping. *Mendoza v. State*, 122 Nev. 267, 274, 130 P.3d 176, 180 (2006). But dual criminal liability for both kidnapping and robbery is appropriate when, during “the same course of conduct, any movement or restraint [stands] alone with independent significance from the act of robbery itself, create[s] a risk of danger to the victim substantially exceeding that necessarily present in the crime of robbery, or involve[s] movement, seizure or restraint substantially in excess of that necessary to its completion.” *Id.* at 275, 130 P.3d at 181. Whether the movement or restraint of the victim is incidental to the robbery is a question of fact for “the jury in all but the clearest cases.” *Langford v. State*, 95 Nev. 631, 638-39, 600 P.2d 231, 236-37 (1979).

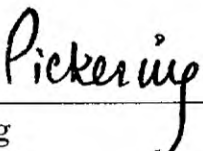
Here, the State presented evidence that Davis moved Gilberto Limon at gunpoint from just inside the front doors of the restaurant to the back office. The State also presented evidence that Davis ordered Daniel Partridge to open the office safe at gunpoint, ordered Partridge and Limon to take out their wallets, told them that he knew where they lived and worked, and directed them to remain in the back office for at least ten minutes after he left before calling for help. Whether this evidence is enough to support dual robbery and first-degree convictions is not the question before us at this early stage of the proceedings, and we do not determine that point. *Sheriff v. Hodes*, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980) (explaining that on review of a district court’s grant of a pretrial habeas petition, this court does not consider whether the evidence is sufficient to support dual convictions). Instead, the question is whether the


State has met its burden to show slight or marginal evidence sufficient to establish probable cause for the charged first-degree kidnappings and that the movement or restraint of the victims was not incidental to the charged robbery. We conclude that the State has done so. *See id.* (“The finding of probable cause may be based on slight, even marginal evidence, because it does not involve a determination of the guilt or innocence of an accused.”) (citation and internal quotation marks omitted). Therefore, the question of whether these alleged first-degree kidnappings were incidental to the alleged robbery is a question for the jury. To the extent that the district court determined that there was not slight or marginal evidence to support a finding of probable cause, the district court substantially erred. *See Sheriff v. Potter*, 99 Nev. 389, 392, 663 P.2d 350, 352 (1983) (reversing a district court’s order granting a pretrial habeas petition because sufficient probable cause existed to charge the defendant).

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.
Stiglich


_____, J.
Pickering


_____, J.
Parraguirre

cc: Hon. Kathleen E. Delaney, District Judge
Attorney General/Carson City
Clark County District Attorney
Special Public Defender
Eighth District Court Clerk