IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
ED DAVE MUKWELLE AIYUK,
Respondent.

No. 88721

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting respondent Ed Dave Mukwelle Aiyuk's pretrial petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Christy L. Craig, Judge.

The State alleged that Aiyuk kidnapped and robbed two victims. At the preliminary hearing, the State presented testimony from several witnesses. The victims described the perpetrator accosting them with a firearm, demanding their valuables, and fleeing with their cell phones. The cell phones were discovered nearby, and subsequent forensic testing identified Aiyuk as a contributor to a DNA mixture found on one of the cell phones. The justice court found probable cause. Aiyuk then filed a pretrial petition for a writ of habeas corpus challenging the probable cause determination. The district court ruled that the State failed to present corroborating evidence that Aiyuk committed the charged offenses. The State appealed.

"In reviewing a district court's order granting a pretrial petition for writ of habeas corpus for lack of probable cause, . . . [t]his court will not overturn the district court's order unless the district court committed substantial error." *Sheriff, Clark Cnty. v. Burcham*, 124 Nev. 1247, 1257, 198 P.3d 326, 332 (2008). This court must "determine whether all of the

evidence received . . . establishes probable cause to believe that an offense has been committed and that the accused committed it." *Kinsey v. Sheriff, Washoe Cnty.*, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971).

Relying on *Barber v. State*, Aiyuk argued that the evidence was insufficient to establish probable cause because his DNA could have ended up on the victim's phone innocently and that the DNA mixture contained another unknown contributor. 131 Nev. 1065, 1072, 363 P.3d 459, 464 (2015) (observing that "[t]he only direct evidence that the State presented to support its theory that Barber was guilty of both burglary and grand larceny was Barber's palm print on the outside of the window, that the occupants did not know Barber, and that there was no reason for his print to be there"). Although Aiyuk's observations about the DNA evidence are fair, the presence of his DNA on the victim's cell phone supports a reasonable inference that Aiyuk was the perpetrator. And at the preliminary hearing stage, "the State is not required to negate all inferences which might explain his conduct, but only to present enough evidence to support a reasonable inference that the accused committed the offense." *Kinsey*, 87 Nev. at 363, 487 P.2d at 341.

Furthermore, *Barber* considered the sufficiency of the evidence presented at trial and whether "any rational juror could have found Barber guilty *beyond a reasonable doubt*," 131 Nev. at 1072, 363 P.3d at 465 (emphasis added), not the probable-cause standard applied at the preliminary hearing stage. We conclude that the State met its burden. *See Sheriff, Washoe Cnty. v. Hodes*, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980) (explaining that the probable cause determination "may be based on slight, even 'marginal' evidence"). The victims' testimony established probable cause that a crime occurred, and the DNA evidence links Aiyuk to the

commission of the offenses. Therefore, the district court erred in granting the pretrial petition. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

Stiglich, J.
Stiglich

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

cc: Hon. Christy L. Craig, District Judge
Attorney General/Carson City
Clark County District Attorney
Clark County Public Defender
Eighth District Court Clerk