IN THE SUPREME COURT OF THE STATE OF NEVADA

SOHN REGAS, RODNEY COX, CALVIN SCHAEFER, RAYMOND FOAKES, ROGER PINNEY, DALE LEEDOM, KENNETH DYSART, ALEXANDER ALCANTAR, JAMES HANNIGAN, BENJAMIN LEYVA, VICTOR RAMIREZ AND MAURICE EUNICE,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, THE HONORABLE DONALD M. MOSLEY, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 45183

FILED

MAR 27 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER GRANTING PETITION IN PART AND DENYING PETITION IN PART

This is an original petition for a writ of mandamus or prohibition challenging a grand jury indictment. Eighth Judicial District Court, Clark County; Donald M. Mosley and Michael A. Cherry, Judges.

FACTUAL AND PROCEDURAL POSTURE

This case stems from an altercation in 2002 between members of the Hells Angels and the Mongols motorcycle clubs inside Harrah's

06-06350

Casino, in Laughlin, Nevada.[1] The ensuing melee left one member of the Mongols and two members of the Hells Angels dead. Several members of both groups were also injured. Subsequently, a grand jury indicted members of both clubs on numerous offenses. All of the offenses are accompanied with an alleged sentence enhancement for promoting activities of a criminal gang pursuant to NRS 193.168.

Over a period of several months the State presented its case to a grand jury, which initially returned a 73-count indictment. The grand jury subsequently returned a superseding indictment, which added 5 defendants to the first indictment. However, the district court later dismissed 21 counts in the superseding indictment, and thus 52 counts remain.[2] Some of the counts were dismissed against particular defendants because the counts charged the defendants with being the victims of their own crimes.[3]

---

[1]The Hells Angels petitioners are Rodney Cox, Maurice Eunice, Raymond Foakes, James Hannigan, Dale Leedom, Sohn Regas, and Calvin Schaefer. The Mongols petitioners are Alexander Alcantar, Kenneth Dysart, Benjamin Leyva, Roger Pinney, and Victor Ramirez.

[2]The 21 counts dismissed involved charges of discharging a firearm at or into a structure.

[3]The district court dismissed 2 counts against Roger Pinney, 19 counts against Benjamin Leyva, 4 counts against Alexander Alcantar, 2 counts against Calvin Schaefer, 1 count against Dale Leedom, and 5 counts against Kenneth Dysart.

On July 28, 2004, petitioner Sohn Regas filed a pretrial petition for a writ of habeas corpus in the district court. Other Hells Angels defendants joined in Regas' petition. On April 7, 2005, the district court denied the petition. On May 4, 2005, Regas filed the instant original petition for a writ of mandamus or prohibition in this court. All the defendants named in the superseding indictment, save one (Frederick Donahue), have joined in Regas' petition. Some petitioners have also raised additional claims. In general, petitioners allege that numerous defects in the indictment and the grand jury proceedings require dismissal of the indictment.

DISCUSSION

A writ of mandamus may issue to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, or to control an arbitrary or capricious exercise of discretion.[4] A writ of prohibition may issue to arrest the proceedings of a district court exercising its judicial functions in excess of its jurisdiction.[5] Generally, neither writ will issue if a petitioner has a plain, speedy, and adequate remedy in the ordinary course of law.[6] We consider whether judicial

---

[4]See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603, 637 P.2d 534, 536 (1981).

[5]See NRS 34.320; Hickey v. District Court, 105 Nev. 729, 731, 782 P.2d 1336, 1338 (1989).

[6]See NRS 34.170; NRS 34.330; Hickey, 105 Nev. at 731, 782 P.2d at 1338.

economy and sound judicial administration militate for or against issuing either writ.[7] Further, mandamus and prohibition are extraordinary remedies, and the decision to consider a petition for such relief rests within the discretion of this court.[8] "The purpose of neither writ is simply to correct errors."[9] However, even when a remedy at law arguably exists, this court may exercise discretion to entertain petitions for extraordinary relief under circumstances revealing "urgency and strong necessity"[10] or when an important issue of law requires clarification and sound judicial economy and administration favor the granting of the petition.[11] We conclude that this is such a case.

In particular, this petition raises important legal issues that if not resolved now will likely result in a considerable waste of judicial resources. The underlying case is extraordinarily complex. Multiple defendants are charged with numerous offenses. The trial will undoubtedly be prolonged and costly to the State and the defendants. Under these circumstances, judicial economy favors our intervention at

---

[7]See State v. Babayan, 106 Nev. 155, 175-76, 787 P.2d 805, 819 (1990).

[8]State v. Dist. Ct. (Riker), 121 Nev. ___, ___, 112 P.3d 1070, 1074 (2005).

[9]Id.

[10]Babayan, 106 Nev. at 176, 787 P.2d at 819.

[11]Riker, 121 Nev. at ___, 112 P.3d at 1074.

this stage of the proceedings to prevent a prolonged trial on any invalid charges, especially where a remand and retrial would likely be required on appeal from any resulting judgment of conviction. Moreover, as discussed in more detail below, this court's recent decision in Bolden v. State rejected one of the major theories of criminal liability alleged in the instant indictment.[12] Therefore, we conclude that this court's intervention with respect to several of the issues presented in this petition is warranted. Although several claims merit our intervention, we further conclude, however, that many of the issues petitioners raise do not warrant our discretionary consideration at this time.

Vicarious coconspirator liability

Petitioners argue that the indictment alleges a theory or theories of coconspirator liability in violation of this court's holding in Sharma v. State.[13] Recently, in Bolden, we considered the scope of coconspirator liability in light of our decision in Sharma.[14] In Bolden, we rejected the natural and probable consequences doctrine as applied to vicarious coconspirator liability for specific intent crimes.[15] We further concluded that "in future prosecutions, vicarious coconspirator liability

---

[12]121 Nev. ___, 124 P.3d 191 (2005).

[13]118 Nev. 648, 56 P.3d 868 (2002).

[14]121 Nev. at ___, 124 P.3d at 199-201.

[15]Id. at ___, 124 P.3d at 201.

may be properly imposed for general intent crimes only when the crime in question was a 'reasonably foreseeable consequence' of the object of the conspiracy."[16]

Here, the State advised the grand jury on coconspirator liability as follows:

> A conspiracy is an agreement between two or more persons to commit a crime. Once that agreement occurs, all members of that agreement are liable for the acts of a coconspirator, even unintended acts if they were foreseeable, reasonably foreseeable that they could occur, and if they did occur in furtherance of that conspiracy. So if a person is a member of a conspiracy, they can be held liable for acts that they maybe didn't intend when they went into the conspiracy if they are, number one, a member of that conspiracy, or in agreement basically to the terms of the conspiracy. Secondly, if the act that occurs is reasonably foreseeable based upon what they knew about what they were going to be doing or what the circumstances were. And if that action was undertaken by one of the coconspirators in furtherance of that conspiracy.

(Emphasis added.) Subsequently, the State also instructed the grand jury at the conclusion of the presentation of evidence:

> Each member of a criminal conspiracy is liable for each act and bound by each declaration of every other member of the conspiracy. The act

---

[16]Id.

> of one conspirator pursuant to or in furtherance of the common design of the conspiracy is the act of all conspirators. Every conspirator is legally responsible for an act of a coconspirator that follows as one of the probable and natural consequences of the object of the conspiracy even if it was not intended as part of the original plan and even if he was not present at the time of the commission of such act.
>
> In other words, the act, to hold somebody responsible, the act committed by a coconspirator needs to have been reasonably foreseeable to them based upon what they know about the subject of the conspiracy.

(Emphasis added.)

These instructions advised the grand jury that a defendant could be held liable for the acts of his fellow conspirators, even if the defendant did not intend to commit those acts, so long as the acts were a natural and probable consequence of the object of the conspiracy. We conclude that the theory of vicarious coconspiracy liability alleged in the indictment violates our holding in Bolden with respect to the specific intent crimes alleged, namely the counts alleging challenge to fight, murder, attempted murder, and assault. Accordingly, the indictment must be amended so as to remove any theory asserting vicarious coconspirator liability from counts 4-6, 8-12, 14-16, 18, 20, 22-30, 32-42, and 46-51.

In a closely related matter, we note that the gang enhancement allegations in the indictment contain a specific intent

component. Specifically, as all of the counts alleged in the indictment reflect, NRS 193.168(1) provides that "any person who is convicted of a felony committed knowingly for the benefit of, at the direction of, or in affiliation with, a criminal gang, with the specific intent to promote, further or assist the activities of the criminal gang shall be punished" for a term equal and in addition to the term prescribed for the underlying offense. (Emphasis added.)

In Bolden, this court held that a theory of vicarious coconspirator liability could not be used as a basis for convicting a defendant of a specific intent crime. Our holding was premised upon the conclusion that the theory of vicarious coconspirator liability permitted a jury to convict a defendant without finding the statutory intent required for the offense. Although the gang enhancement does not constitute a separate offense, NRS 193.168(1) requires that the enhancement may not be imposed without a finding of the requisite specific intent. Consistent with our holding in Bolden, therefore, we conclude that the gang enhancement under NRS 193.168 must be premised upon a finding of specific intent and vicarious coconspirator liability may not be used as a basis for establishing that finding. In those counts of the indictment charging general intent offenses, where vicarious coconspirator liability may remain as a valid theory of liability, the jury must be specifically instructed that the gang enhancement may not be imposed without a finding that the defendant possessed the requisite statutory intent.

Wharton's rule

Petitioners argue that the charge of conspiracy to commit a challenge to fight alleged in count 2 violates Wharton's Rule. We agree. Generally, a conspiracy and its attendant substantive offense are discrete offenses for which separate punishments may be imposed.[17] Under Wharton's Rule, however, an agreement by two or more persons to commit a particular crime cannot be prosecuted as a conspiracy when the crime is of such a nature as to necessarily require the participation of two persons for its commission.[18]

The challenge to fight statute, NRS 200.450(1), provides in part:

> If a person, upon previous concert and agreement, fights with any other person or gives, sends or authorizes any other person to give or send a challenge verbally or in writing to fight any other person, the person giving, sending or accepting the challenge to fight any other person shall be punished . . . .

The plain language of the statute provides that a person may commit this offense by engaging in a fight with another "upon previous concert and

---

[17]See Iannelli v. United States, 420 U.S. 770 (1975).

[18]Id. at 773; see also Pinkerton v. United States, 328 U.S. 640, 643 (1946) ("There are, of course, instances where a conspiracy charge may not be added to the substantive charge. One is where the agreement of two persons is necessary for the completion of the substantive crime and there is no ingredient in the conspiracy that is not in the completed crime").

agreement." Here, the facts underlying the charge of conspiracy to commit a challenge to fight are consistent with this means of committing the offense. Although we have not previously addressed Wharton's Rule, we find it persuasive in this circumstance. Therefore, we conclude that count 2 must be dismissed.

Insufficient evidence

Count 1 of the indictment specifically charges all of the defendants as follows:

> Defendants did then and there meet with each other and between themselves, and each of them with the other, wilfully, unlawfully, and feloniously conspire and agree to commit the crimes of Battery and/or Provoking Commission of Breach of the Peace, and in furtherance of said conspiracy, Defendants did commit the acts as set forth in Counts 3 through 73 said acts being incorporated by this reference as though fully set forth herein, said acts being committed knowingly for the benefit of, at the direction of, or in affiliation with, a criminal gang, to wit: Hells Angels or Mongols, with the specific intent to promote, further or assist the activities of the criminal gang.

(Emphasis added.) Using nearly identical language, count 2 charges the defendants with conspiracy to commit a challenge to fight with the intent to promote the activities of a criminal gang.

The record also contains insufficient evidence supporting a finding of probable cause of a single conspiracy between all of the members of the two groups. It is true that "[a] grand jury indictment will

be sustained where the State submits sufficient legal evidence to establish probable cause,"[19] and that the grand jury's probable cause determination may be based on slight or marginal evidence.[20] Although the State is only required to present minimal evidence to the grand jury to secure an indictment, here we conclude that the State failed to present slight or marginal evidence establishing probable cause to believe that any agreement existed between all of the Hells Angels defendants and all of the Mongols defendants. Accordingly, we conclude that to the extent that count 1 may be read to charge that all the defendants conspired with all of the members of both groups, it is invalid and must be amended.[21]

For the foregoing reasons, we direct the district court to order the State to amend count 1 of the indictment in a manner consistent with this order. As noted above, count 2 of the indictment violates Wharton's rule and must be dismissed.

---

[19]Dettloff v. State, 120 Nev. 588, 595, 97 P.3d 586, 590 (2004).

[20]Id. at 595, 97 P.3d at 590-91.

[21]Our review of the grand jury proceedings does reflect sufficient evidence supporting a finding of probable cause to believe that members of each group conspired with other members of their own groups. Moreover, although the language in the indictment is not a model of clarity, it appears from our review of the record and from the language of the indictment that the grand jury in fact found probable cause for such separate conspiracies. Thus, we conclude that the State may amend the language in count 1 to more clearly reflect that finding.

Inadequate notice under NRS 173.075(1)

Petitioners argue that the indictment reflects an egregious lack of specificity and fails to provide adequate notice of the charges against them. An indictment "must be a plain, concise and definite written statement of the essential facts constituting the offense charged."[22] The indictment must provide "a definite statement of facts constituting the offense in order to adequately notify the accused of the charges and to prevent the prosecution from circumventing the notice requirement by changing theories of the case."[23] An indictment may contain alternate theories of liability as long as there is evidence supporting those theories.[24] Where one offense may be committed by one or more specified means, an accused must be prepared to defend against all means alleged.[25] Applying these general principles, we conclude that the indictment fails to provide adequate notice to the defendants in the following respects and must be amended to correct these defects.

Counts 1 and 2

We conclude that counts 1 and 2 fail to provide adequate notice to the defendants as to the specific acts each defendant is alleged to

---

[22]NRS 173.075(1).

[23]Levinson, 95 Nev. at 437, 596 P.2d at 233.

[24]See Walker v. State, 116 Nev. 670, 673, 6 P.3d 477, 479 (2000).

[25]See State v. Kirkpatrick, 94 Nev. 628, 630, 584 P.2d 670, 672 (1978).

have committed with respect to the charged conspiracy. The charging language does not adequately inform the defendants of whether they must be prepared to defend against charges that every member of the two groups conspired with all the other members of both groups, or with some members of the other group, or with all or some of the members of their own group.

This confusion is illustrated by the following exchange contained in the transcript of the grand jury proceedings between a grand juror and the prosecutor:

> GRAND JUROR: . . . I want to give you an example, see if I am interpreting what you're saying correctly, if Percy over there has a conspiracy to rob the 7-Eleven store on the corner down here and I have a conspiracy with these guys, know nothing about each other but each of us independently plan to rob it exactly at noon, we both show up at exactly noon to rob it, then our conspiracies become one?
>
> PROSECUTOR: I don't know if the conspiracies become one, but they could be charged in the same count if the object is the same.
>
> GRAND JUROR: That's all I needed to know. Thank you very much.

The prosecutor advised the grand jury that regardless of whether it believed that there was a conspiracy between the members of the two groups or multiple conspiracies within each group, the grand jury could charge whatever conspiracies it determined existed in a single count as long as the object of the conspiracies was the same and occurred within

the same time frame. The prosecutor's explanation essentially advised the grand jury that even if it did not find probable cause to believe that there was an agreement sufficient to support a charge that members of the Hells Angels conspired with members of the Mongols, the grand jury could nonetheless charge such a conspiracy if it found sufficient evidence to support a finding of probable cause to believe that members of each group conspired only with other members of their respective groups. Thus, we conclude that count 1 must be amended to provide the defendants with adequate notice as to the specific facts supporting the conspiracy charge against which they must be prepared to defend.[26]

Count 9

Count 9 charges all of the defendants with open murder as follows:

> Defendants did then and there willfully, feloniously, without authority of law, and with premeditation and deliberation, and with malice aforethought, kill SALVADOR BARRERA, a human being, by stabbing into the body of said SALVADOR BARRERA, with a deadly weapon, to wit: a knife or other sharp object, said act being committed knowingly for the benefit of, at the direction of, or in affiliation with, a criminal gang, to wit: Hells Angels or Mongols, with the specific intent to promote, further or assist the activities of the criminal gang; said crime being committed

---

[26]As noted in the discussion above respecting Wharton's rule, count 2 must be dismissed.

> under one or more of the following principles of liability: by deliberation and premeditation, and or in the perpetration or attempted perpetration of a Burglary, and or said death ensuing in the perpetration of a Challenge to Fight, the Defendants causing or having agency in causing the death, either by fighting or by giving or sending for themselves or for any other person, or in receiving for themselves or for any other person, the challenge to fight, or said act of killing occurring in the commission of an unlawful act, which in its consequences, naturally tends to destroy the life of a human being, or being committed in the prosecution of a felonious intent, to wit: Battery with a Deadly Weapon, the Defendants directly committing the act constituting this offense, or aiding and abetting each other in its commission, whether present or absent, by directly or indirectly, counseling, encouraging, hiring, commanding, inducing or otherwise procuring another to commit said crime, by meeting together, congregating in a provocative manner, issuing challenges, displaying gang colors, possessing, displaying and using weapons, holding, tackling or striking other persons, and/or hiding evidence of said actions, each Defendant acting pursuant to a Conspiracy to Commit Battery, Provoking Commission of Breach of Peace or a Challenge to Fight.

Thus, the count alleges that the defendants murdered Barrera, a member of the Mongols by means of: (1) first-degree deliberate

and premeditated murder;[27] (2) first-degree felony murder;[28] (3) first-degree murder in the perpetration of a challenge to fight;[29] or (4) second-degree felony murder.[30] The charging language further alleges that the defendants under these four theories either directly committed the offense by stabbing Barrera, aided and abetted in the commission of the offense,[31] or are liable under a theory of vicarious coconspirator liability.[32] The count is unique among the three murder counts because it does not identify any specific defendant as having directly committed the offense.

It is permissible for an indictment to charge a defendant as both a principal and as an aider and abettor provided that it contains "additional information as to the specific acts constituting the means of aiding and abetting so as to afford the defendant adequate notice to prepare his defense."[33] Here, in addition to setting forth the statutory

---

[27]See NRS 200.030(1)(a).

[28]See NRS 200.030(1)(b).

[29]See NRS 200.450(3).

[30]See NRS 200.070; Sheriff v. Morris, 99 Nev. 109, 659 P.2d 852 (1983).

[31]See NRS 195.020.

[32]As discussed above, however, vicarious coconspirator is an invalid theory respecting this count under Bolden.

[33]Barren v. State, 99 Nev. 661, 668, 669 P.2d 725, 729 (1983).

language of NRS 195.020, defining an aider an abettor as a principal, count 9 lists 11 different alternative specific acts by which the defendants may have aided and abetted in the offense, i.e., "by meeting together, congregating in a provocative manner, issuing challenges, displaying gang colors, possessing, displaying and using weapons, holding, tackling, or striking other persons, and/or hiding evidence of said actions." Thus, each of the fourteen defendants is faced with defending against a charge alleging that they committed the murder under four alternative theories of murder, by either directly committing the offense or by aiding and abetting one or more of the other thirteen defendants in eleven specified alternative ways.

Count 9 of the indictment, therefore, requires each of the fourteen defendants to defend against multiple permutations of prosecution theories. In our view, count 9 is insufficiently precise as to "who is alleged to have done what."[34] The count "lumps" all of the defendants together and does not allege any facts differentiating the conduct of any of the defendants who were members of the respective groups.[35] Without more specific facts constituting a more focused prosecution theory of the offense as to which defendants are alleged to

---

[34]State v. Hancock, 114 Nev. 161, 165, 955 P.2d 183, 185 (1998).

[35]Id.; see also Sheriff v. Aesoph, 100 Nev. 477, 479 n. 3, 686 P.2d 237, 239 n. 3 (1984) (suggesting that a charging document may fail to provide adequate notice where it alleges numerous alternative theories of prosecution or means by which a crime has been committed).

have done what, we are the view that the count as alleged is not sufficiently clear, definite, and concise as to enable the defendants to properly defend against the accusation. We further conclude that it permits the State far too much latitude under the circumstances of this crime to change its theory of the crime at trial at will. Accordingly, we conclude that the district court shall strike count 9 from the indictment.

Counts 5, 6, 8, 14, and 15

Next, counts 5, 6, 8, 14, and 15 charge the defendants with certain crimes, naming a particular defendant and an unknown person as having directly committed the specified offense against a named or unidentified victim. For example, count 14 alleges:

> Defendants did wilfully, unlawfully, feloniously and intentionally place another person, to wit: JOHN TULLY or other unidentified human being, in reasonable apprehension of immediate bodily harm with use of a deadly weapon, to-wit: a firearm, by shooting at the body of said JOHN TULLY or other unidentified human being, said act being committed knowingly for the benefit of, at the direction of, or in affiliation with, a criminal gang, to wit: Hells Angels or Mongols, with the specific intent to promote, further or assist the activities of the criminal gang, Defendant MAURICE EUNICE or unknown person directly committing the act constituting this offense, being aided and abetted by the other Defendants, whether present or absent, directly or indirectly, counseling, encouraging, hiring, commanding, inducing or otherwise procuring another to commit said crime, by meeting together, congregating in a provocative manner, issuing challenges, displaying

> gang colors, possessing, displaying and using weapons, holding, tackling or striking other persons, and/or hiding evidence of said actions, each Defendant acting pursuant to a Conspiracy to Commit Battery, Provoking Commission of Breach of Peace or a Challenge to Fight.

(Emphasis added.) These counts of the indictment can be read to charge an unknown person with committing a crime against an unknown victim. We conclude that to the extent that they may charge such an offense, they are not sufficiently plain, concise, and definite. Again, although these counts list numerous acts constituting aiding and abetting, the charging language fails to provide sufficient information enabling the defendants to prepare a defense. We further conclude, however, that to the extent these counts may be read to charge a named defendant as having directly committed the alleged offense against a named victim, and with the other defendants as having aided and abetted the named defendant, they do provide sufficient notice to enable the defendants to defend against the charge. Accordingly, the district court shall direct the State to amend these counts in a manner consistent with this order.

Count 7

Count 7 alleges that all of the defendants committed a battery on Tom Collins. It names Pedro Martinez or an "unknown person" as having directly committed the offense "being aided and abetted by the other Defendants." This count suffers from the same defect as that explained above, i.e., the indictment can be read as charging the defendants with aiding and abetting an unknown person in committing

the battery. Thus, to the extent count 7 charges the defendants with aiding and abetting an unknown person in committing a battery against Tom Collins, it fails to provide adequate notice to prepare a defense and cannot stand. We conclude, however, that to the extent that this count charges Pedro Martinez as having directly committed a battery on Tom Collins with the defendants having aided and abetted Martinez, it may stand. Consequently, the district court shall direct the State to amend count 7 in a manner consistent with this order.

Counts 24, 25, 27, 29, 33, and 46-50

Counts 24, 25, 27, 29, 33, and 46-50 allege that the defendants assaulted named victims and "other unidentified human beings." The counts name a specific defendant as having directly committed the offense "being aided and abetted by other Defendants." Although we conclude that the language of these counts alleging the commission of assaults against an unidentified victims may be sufficient under the circumstances of this case to satisfy the notice requirement, we nonetheless direct the district court to review the evidence presented to the grand jury to ascertain if sufficient evidence was presented to support findings of probable cause with respect to these counts.

NRS 200.471(1)(a) defines assault as "intentionally placing another person in reasonable apprehension of immediate bodily harm." Thus, a critical element of the offense of assault focuses on the victim's state of mind. To secure a finding of probable cause, the State was required to produce slight or marginal evidence that the defendants

directly committed or aided and abetted in the commission of some act that intentionally placed unknown persons in reasonable apprehension of immediate bodily harm. Here, however, because no unknown victim testified respecting what acts the defendants committed that placed him or her in reasonable apprehension of immediate bodily harm, we are concerned about what evidence, if any, the State presented to support these counts. We decline to engage in this fact intensive review of the grand jury proceedings. Therefore, we remand this matter to the district court to determine whether sufficient evidence supports the grand jury's probable cause determination that the defendants directly committed or aided and abetted in assaulting the unidentified persons referenced in these counts.

Self-defense instruction

Petitioners argue that because NRS 172.145(2) requires the State to submit known exculpatory evidence to the grand jury, the State was obligated to instruct the grand jury on self-defense. They contend that to require the grand jury to be presented with exculpatory evidence without instructing it on the legal effect of such evidence is an absurdity. Exculpatory evidence is defined as evidence that will explain away the charge."[36] NRS 172.145(2) provides that "[i]f the district attorney is aware of any evidence which will explain away the charge, he shall submit it to

---

[36]King v. State, 116 Nev. 349, 359, 998 P.2d 1172, 1178 (2000).

the grand jury." However, this statute is silent as to whether the State must instruct the grand jury on potential defenses.

Resolution of this issue requires an interpretation of NRS 172.145(2). "In construing a statute, our primary goal is to ascertain the legislature's intent in enacting it, and [this court] presume[s] that the statute's language reflects the legislature's intent."[37] Therefore, this court first examines the plain language of a statute to decipher its meaning.[38] Here, the plain language of the statute does not expressly impose a duty on the State to instruct the grand jury respecting exculpatory defenses. However, the inquiry does not stop here. "[W]here the language of the statute cannot directly resolve the issue standing alone, we consider 'the context and spirit of the statute in question, together with the subject matter and policy involved.'"[39] Furthermore, a statute should be interpreted to avoid absurd results.[40] It is this rule of statutory construction upon which petitioners rely.

This court has previously recognized that "[t]he grand jury's 'mission is to clear the innocent, no less than to bring to trial those who

---

[37]Moore v. State, 117 Nev. 659, 661, 27 P.3d 447, 449 (2001).

[38]See id.

[39]Id. at 661-62, 27 P.3d at 449 (quoting Gallagher v. City of Las Vegas, 114 Nev. 595, 599, 959 P.2d 519, 521 (1998)).

[40]See Wilson v. State, 121 Nev. ___, ___, 114 P.3d 285, 293 (2005); Hunt v. Warden, 111 Nev. 1284, 1285, 903 P.2d 826, 827 (1995).

may be guilty.'"[41] Inherent in this mission is a concern with judicial economy, i.e., the elimination of unfounded prosecutions. Requiring the State to instruct the jury on exculpatory defenses under certain conditions is consistent with the State's statutory obligation to present to the grand jury known evidence that will explain away the charge[42] and with the aim of judicial economy. Although we recognize that there may exist circumstances where the State would be obligated to instruct the grand jury on exculpatory defenses, we conclude that petitioners have not demonstrated such circumstances in this case.

Remaining claims

We conclude that petitioners have a plain, speedy, and adequate remedy in the ordinary course of law respecting their remaining claims; therefore, we decline to consider them at this time.

---

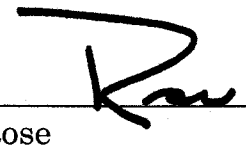
[41]Sheriff v. Frank, 103 Nev. 160, 165, 734 P.2d 1241, 1244 (1987) (quoting United States v. Dionisio, 410 U.S. 1, 16-17 (1973)); see Gordon v. Ponticello, 110 Nev. 1015, 1018, 879 P.2d 741, 743 (1994).

[42]See NRS 172.145(2).

CONCLUSION

Based on the foregoing discussion, we

ORDER the petition GRANTED IN PART AND DENIED IN PART AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS ordering the district court to strike count 2 and count 9, to direct the State to amend the remaining counts discussed above in a manner consistent with this order, and to conduct further proceedings to determine whether the evidence before the grand jury is sufficient to support a finding of probable cause with respect to counts 24, 25, 27, 29, 33, and 46-50.



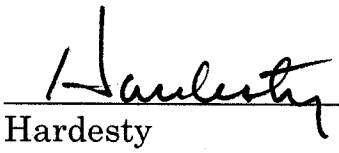
_____, C.J.
Rose

_____, J.
Becker

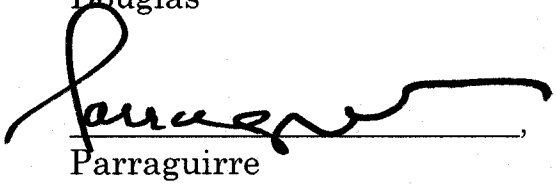
_____, J.
Maupin

_____, J.
Gibbons

_____, J.
Douglas



_____, J.
Hardesty



_____, J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Hon. Michael A. Cherry, District Judge
Christiansen Law Offices
Dixon, Truman & Fisher
Patricia Erickson
Federal Public Defender/Las Vegas
Federal Public Defender/Reno
Gentile DePalma, Ltd.
Goodman & Chesnoff
Goodman Law Firm
Michael C. Harkness
Eugene G. Iredale
Law Offices of Amy Chelini
Christopher R. Oram
Palazzo Law Firm
Thomas F. Pitaro
Robert L. Langford & Associates
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk