IN THE SUPREME COURT OF THE STATE OF NEVADA

BRANDON YOUNG,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE MICHAEL VILLANI, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 58770

ORDER DENYING PETITION

This original petition for a writ of mandamus or prohibition challenges a district court order denying a pretrial petition for a writ of habeas corpus. Petitioner Brandon Young argues that several deficiencies in the grand jury proceedings warranted dismissal of an indictment against him.

First, Young challenges the sufficiency of the evidence to support the grand jury's probable cause finding as to: (1) two counts of attempted murder; (2) the deadly weapon enhancement allegations attendant to counts 2, 3, 6, 7, 9, 11, and 13; (3) the gang enhancement allegations attendant to counts 2 through 11; and (4) the element in counts 3 (battery with deadly weapon with substantial bodily harm with intent to promote the activities of a criminal gang) and 4 and 5 (battery with substantial bodily harm with intent to promote the activities of a

criminal gang) that the victims suffered substantial bodily harm.[1] We generally will not review pretrial challenges to the factual sufficiency of an indictment in original proceedings. Kussman v. District Court, 96 Nev. 544, 546, 612 P.2d 679, 680 (1980) (judicial economy and sound judicial administration generally militate against use of mandamus to review pretrial probable cause determinations); see Hardin v. Griffin, 98 Nev. 302, 304, 646 P.2d 1216, 1217 (1982). Young's challenges do not warrant a departure from that general rule. Cf. Ostman v. District Court, 107 Nev. 563, 565, 816 P.2d 458, 459-60 (1991) (petition for writ of mandamus directing district court to dismiss indictment granted where issue was purely legal—prosecutor violated statutory duty to present exculpatory evidence); State v. Babayan, 106 Nev. 155, 174, 787 P.2d 805, 820 (1990) (petition for writ of mandamus directing district court to dismiss indictment granted where unusual and urgent circumstances revealed strong necessity).

Second, Young contends that the indictment must be dismissed because the State misled the grand jury by instructing it on an

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[1]Young contends that the State failed to present properly certified medical records of the victims pursuant to NRS 52.235, which requires an original writing to prove the contents of the writing. See NRS 52.260(1) (providing that the contents of records kept in the ordinary course of business "may be proved by the original or a copy of the record which is authenticated by a custodian of the record or another qualified person in a signed affidavit"). Because the State failed to present an authenticating affidavit, Young argues that the medical records were inadmissible. We conclude that our intervention is not warranted on this matter as the testimonial evidence presented described the injuries the victims sustained during the event.

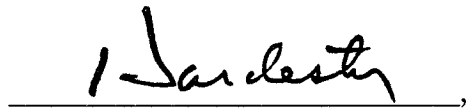
improper conspiracy-liability theory. We have reviewed the instruction challenged and conclude that it was not misleading.

Third, Young argues that the attempted murder and coercion counts must be dismissed because the State failed to properly instruct the grand jury respecting coconspirator liability and aiding and abetting. As to coconspirator liability, the State did not instruct the grand jury on that matter. While the State must instruct the grand jury on the elements of the offenses alleged, see NRS 172.095(2), we have never required the State to instruct the grand jury on the law concerning theories of liability, see Schuster v. Dist. Ct., 123 Nev. 187, 192, 160 P.3d 873, 876 (2007) (observing that the prosecuting attorney is not required to instruct grand jury on law); Hyler v. Sheriff, 93 Nev. 561, 564, 571 P.2d 114, 116 (1977) (stating that "it is not mandatory for the prosecuting attorney to instruct the grand jury on the law"); Phillips v. Sheriff, 93 Nev. 309, 311-12, 565 P.2d 330, 331-32 (1977). Consequently, the State had no obligation to instruct the jury on coconspirator liability and we do not perceive the conspiracy instruction as misleading on that theory of liability; rather, it merely instructed the grand jury on the elements of the conspiracy charge. As to aiding and abetting, the grand jury was instructed on that theory of liability, although the State had no obligation to do so. The instruction was an accurate statement of the law under NRS 195.020 and did not "obliterate" the intent required for aider and abettor liability. Because the instruction was not confusing or misleading, we conclude that extraordinary relief is not warranted on this ground.

Having concluded that our intervention in this matter is unwarranted, we

ORDER the petition DENIED.[2]

_____, J.
Saitta



_____, J.
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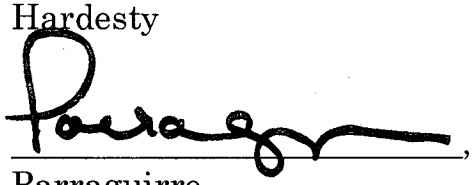

_____, J.
Parraguirre

cc: Hon. Michael Villani, District Judge
Bellon & Maningo, Ltd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

[2]We deny the motion for a stay of the district court proceedings.