IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCISCO VAZQUEZ-ROSAS,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE JAMES M. BIXLER, DISTRICT COURT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 59667

ORDER GRANTING PETITION

This original petition for a writ of mandamus or prohibition challenges an order of the district court denying petitioner Francisco Vazquez-Rosas' pretrial "Motion to Strike Language and Charge of Second Degree Felony Murder." Vazquez-Rosas stands accused of killing his missing wife. He argues that the indictment charging him with open murder and, alternatively, second-degree felony murder, is insufficient because it contains no facts to support the latter charge. Consequently, Vazquez-Rosas asks this court to direct the district court to strike the second-degree felony-murder language from the single-count indictment.[1]

[1]The indictment accuses Vazquez-Rosas of:

Willfully, feloniously, without authority of law, and with premeditation and deliberation, and with malice aforethought, kill[ing] Teresa Guzman . . . by strangling [her] and/or by manner or means

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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. See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). A writ of prohibition may issue to arrest the proceedings of a district court exercising its judicial functions in excess of its jurisdiction. See NRS 34.320; Hickey v. District Court, 105 Nev. 729, 731, 782 P.2d 1336, 1338 (1989). Generally, neither writ will issue if a petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. See NRS 34.170; NRS 34.330; Hickey, 105 Nev. at 731, 782 P.2d at 1338. However, even when a remedy at law arguably exists, this court may exercise its discretion to entertain petitions for extraordinary relief when judicial economy militates for issuance of the writ. See State v. Babayan, 106 Nev. 155, 175-76, 787 P.2d 805, 819 (1990). We conclude that this is such a case.

Both the United States and Nevada Constitutions require an indictment to allege a criminal offense in a manner that is sufficient to put the defendant on notice of the nature of the offense charged and the essential facts constituting the offense "in order to permit adequate preparation of a defense." Jennings v. State, 116 Nev. 488, 490, 998 P.2d 557, 559 (2000); see NRS 173.075(1) ("The indictment or the information must be a plain, concise and definite written statement of the essential

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. . . *continued*

unknown and/or by said killing having been involuntary but occurring in the commission of an unlawful act, which in its consequences, naturally tends to destroy the life of a human being.

facts constituting the offense charged."). To that end, this court has held that a charging document "which alleges the commission of the offense solely in the conclusory language of the statute is insufficient." Sheriff v. Levinson, 95 Nev. 436, 437, 596 P.2d 232, 233 (1979); see Earlywine v. Sheriff, 94 Nev. 100, 575 P.2d 599 (1978).

In Sheriff v. Morris, 99 Nev. 109, 659 P.2d 852 (1983), this court recognized that a charge of second-degree felony murder is permitted under Nevada law. See id. at 118, 659 P.2d at 858-59 (noting that legislature intended that "every involuntary killing which occurs in the prosecution of a felonious intent or which happens in the commission of an unlawful act which, in its consequences, naturally tends to destroy a human life is murder"). However, we have adopted this rule cautiously. See id. at 118, 659 P.2d at 859 ("We are not unmindful of the potential for untoward prosecutions resulting from this decision."); see also Rose v. State, 127 Nev. ___, ___, 255 P.3d 291, 295-96 (2011) (recognizing that this court has restricted use of second-degree felony murder rule and "further narrow[ing]" the rule "by applying the merger doctrine"). To that end, we have required indictments charging second-degree felony-murder to both allege a supporting felony that is "inherently dangerous and to "reference facts regarding defendant's conduct." Morris, 99 Nev. at 118, 120, 659 P.2d at 859, 860. Here, the State did neither and the district court concluded that the indictment was nevertheless sufficient to apprise Vazquez-Rosas of the charges against him. It was not.

Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the

district court to strike the second-degree felony-murder language from the indictment.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. James M. Bixler, District Judge
Oronoz Law Offices
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk