

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHAD DONALD NORTON, JOSEPH  
CORDOVA, AND MATTHEW  
CHARNIGA,  
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
JESSIE ELIZABETH WALSH,  
DISTRICT JUDGE,  
Respondents,  
and  
THE STATE OF NEVADA,  
Real Party in Interest.

No. 60286

**FILED**

SEP 27 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY R. Malone  
DEPUTY CLERK

ORDER GRANTING PETITION

This original petition for a writ of mandamus or prohibition challenges an order of the district court denying petitioner Chad Norton's pretrial petition for a writ of habeas corpus challenging the sufficiency of the indictment. Norton argues that the charges alleged in the indictment fail to give him sufficient notice to defend against the State's allegations. See NRS 34.160; NRS 34.320; Round Hill Gen. Imp. Dist. v. Newman, 97

Nev. 601, 603-04, 637 P.2d 534, 536 (1981). Norton's codefendants, Joseph Cordova and Matthew Charniga, have joined in the petition.<sup>1</sup>

Petitioners contend that the charging document is inadequate as it fails to set forth any description of the acts alleged to have been committed supporting the conspiracy to commit burglary count or even sufficiently identify the crime that was the goal of the conspiracy. Further, the other charges have similar language that fails to sufficiently identify what acts each defendant is accused of doing. Such an indictment, petitioners argue, would allow the State to change its theory of prosecution without giving adequate notice to the defense.

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 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). Instead, the indictment must

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<sup>1</sup>The clerk of this court shall add Cordova and Charniga to the caption in this proceeding as petitioners, consistent with the caption on this order.

include “a statement of the acts constituting the offense in ordinary and concise language” and put the defendant on notice of the State’s theory of prosecution. Viray v. State, 121 Nev. 159, 162, 111 P. 3d 1079, 1082 (2005) (quoting Jennings, 116 Nev. at 490, 998 P.2d at 559). Where one offense may be committed by one or more specified means, an accused must be prepared to defend against all means alleged. See State v. Kirkpatrick, 94 Nev. 628, 630, 584 P.2d 670, 672 (1978).

We conclude that extraordinary relief is warranted because the challenged allegations are not sufficiently plain, concise, and definite for the following reasons. First, Count 1, which charges conspiracy to commit burglary, alleges that the defendants conspired to commit any felony. Such a charge permits the State far too much latitude to change its theory of the crime at will and thus is insufficient to permit adequate preparation of a defense. See Jennings, 116 Nev. at 490, 998 P.2d at 559. Second, Count 2, which charges burglary, and Counts 4, 5, 6, and 7, which allege theft, charge each defendant as a principal, aider and abettor, and coconspirator and further list numerous generic forms of aiding and abetting, also alleging that the defendants aided and abetted each other as well as other unnamed individuals. These counts are insufficiently precise as to “who is alleged to have done what,” State v. Hancock, 114 Nev. 161, 165, 955 P.2d 183, 185 (1998) (internal quotations omitted), and lack “additional information as to the specific acts constituting the means of aiding and abetting so as to afford the defendant[s] adequate notice to prepare [their] defense,” Barren v. State, 99 Nev. 661, 668, 669 P.2d 725, 729 (1983). Third, Count 3, which charges conspiracy to commit theft, relies on the aforementioned theft allegations to identify the overt act for

the conspiracy charge. As we have found those charges insufficiently precise to permit the defendants to prepare a defense, this charge is rendered insufficiently precise for the same reasons. Accordingly we,

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to grant the pretrial petition for a writ of habeas corpus.

Cherry, C. J.  
Cherry

Pickering, J.  
Pickering

Hardesty, J.  
Hardesty

cc: Hon. Jessie Elizabeth Walsh, District Judge  
William B. Terry, Chartered  
Thomas F. Pitaro  
Law Office of John J. Momot  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk