

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHERIFF, CLARK COUNTY,  
Appellant,  
vs.  
KEVAN W. GILLETTE,  
Respondent.

SHERIFF, CLARK COUNTY,  
Appellant,  
vs.  
KEVAN W. GILLETTE,  
Respondent.

No. 37877

FILED

MAY 09 2002

JANE ITE M. BLOOM  
CLERK OF SUPREME COURT  
BY *Richard*  
CHIEF DEPUTY CLERK

No. 37887

ORDER OF REVERSAL AND REMAND

These are sheriffs' appeals from orders of the district court granting respondent Kevan W. Gillette's pretrial petitions for writs of habeas corpus. We elect to consolidate these appeals for disposition.<sup>1</sup>

On July 26, 2000, Gillette was charged by way of a criminal indictment with three counts each of driving and/or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor, and reckless driving.

On October 9, 2000, Gillette filed a pretrial petition for a writ of habeas corpus in the district court, arguing, among other things, that pursuant to NRS 172.095(2),<sup>2</sup> the State is required to explain the law

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<sup>1</sup>See NRAP 3(b).

<sup>2</sup>NRS 172.095(2) states that "[b]efore seeking an indictment . . . the district attorney shall inform the grand jurors of the specific elements of any public offense which they may consider as the basis of the indictment or indictments."

pertaining to the case before presenting evidence and testimony to the grand jury; in Gillette's case, the State advised the grand jury about the elements of the charged offenses subsequent to the testimony and presentation of the evidence. The State argued that prior to the hearing, the grand jury had an opportunity to review instructions on the elements of the offenses. Further, the State asked the grand jury prior to deliberations whether they had any difficulty understanding the relevant instructions on the elements, or whether there was a need for additional instructions, to which the foreman replied on the record for the grand jury that there was no need. And finally, the State argued that because an indictment is not sought until the end of the hearing, the State substantially complied with NRS 172.095(2). On May 9, 2000, after conducting a hearing on the matter, the district court filed an order granting Gillette's petition on the ground that the State violated NRS 172.095(2).<sup>3</sup> The district court also dismissed the indictment against Gillette without prejudice to the State.

On November 29, 2000, the State filed a superseding indictment charging Gillette with the same offenses as those listed in the previously dismissed indictment. At the hearing before the grand jury, the State did not present any witnesses but rather provided the original grand jurors and the three additional grand jurors with copies of the transcript from the previous hearing, the proposed indictment, and instructions on the elements of the offenses. The deputy district attorney noted for the record that the grand jurors had an opportunity prior to the

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<sup>3</sup>The district court rejected the other claims raised in Gillette's petition.

hearing to review the instructions. The foreman noted for the record that the grand jury did not require any further explanation, and the deputy district attorney informed the grand jury that if during deliberations questions arose, or if they would prefer certain witnesses recalled for questioning, that arrangements would be made. After deliberating for approximately ten minutes, the grand jury returned a true bill indicting Gillette for a second time.

On April 10, 2001, Gillette filed a pretrial petition for a writ of habeas corpus which the State opposed. On April 30, 2001, after conducting a hearing on the matter, the district court granted Gillette's petition, again on the ground that the grand jury was not sufficiently informed, and dismissed the superseding indictment against Gillette without prejudice to the State. The State now appeals from both of the district court orders.

This court will defer to the district court's determination of factual sufficiency when reviewing pretrial orders on appeal.<sup>4</sup> In Gillette's case, however, the district court's findings involved a matter of law and statutory interpretation which requires no deference and allows for de novo review on appeal.<sup>5</sup> We disagree with the district court's determination that the State violated NRS 172.095(2), and we disagree that the State failed to sufficiently inform the grand jury pursuant to statute in either instance. This court has stated that "[i]f the words of the

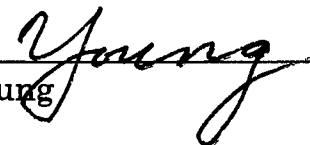
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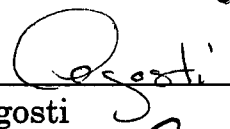
<sup>4</sup>See Sheriff v. Provenza, 97 Nev. 346, 630 P.2d 265 (1981).

<sup>5</sup>SIIS v. Snyder, 109 Nev. 1223, 1227, 865 P.2d 1168, 1170 (holding that "[q]uestions of statutory interpretation are subject to de novo review by this court on appeal").

statute have a definite and ordinary meaning, this court will not look beyond the plain language of the statute, unless it is clear that this meaning was not intended.”<sup>6</sup> The plain language of the statute in question cannot be read to require absolutely that the State advise and instruct the jury of the specific elements of the charged offenses prior to the presentation of testimony and evidence, or at the commencement of the hearing, as Gillette argued. Furthermore, this court has approved the use of transcript testimony in grand jury proceedings due to its “assurances of accuracy.”<sup>7</sup> We therefore conclude that the grand jury was sufficiently informed of the elements of the offenses charged, and that the district court erred in both instances by granting Gillette’s pretrial petitions for writs of habeas corpus. Accordingly, we

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

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Leavitt

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<sup>6</sup>Theis v. State, 117 Nev. \_\_\_, \_\_\_, 30 P.3d 1140, 1144 (2001).

<sup>7</sup>Gordon v. District Court, 112 Nev. 216, 224, 913 P.2d 240, 245 (1996) (holding that “indictment need not be dismissed because the grand jurors read transcripts”).

cc: Hon. Mark W. Gibbons, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Law Offices of John G. Watkins  
Clark County Clerk