

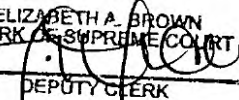
IN THE SUPREME COURT OF THE STATE OF NEVADA

BRENDA JONES,  
Petitioner,  
vs.  
THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
MICHELLE LEAVITT, DISTRICT  
JUDGE,  
Respondents,  
and  
THE STATE OF NEVADA,  
Real Party in Interest.

No. 86589

FILED

NOV 17 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

*ORDER DENYING PETITION*

This original petition for a writ of mandamus challenges a district court order denying petitioner Brenda Jones's pretrial petition for a writ of habeas corpus. Jones argues the State failed to present exculpatory evidence to the grand jury, as required by NRS 172.145(2), and asks this court to issue a writ of mandamus directing the district court to dismiss the indictment.

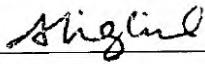
A petitioner carries "the burden of demonstrating that extraordinary relief is warranted." *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). A writ of mandamus is available "to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station." NRS 34.160. Although we "generally [will] not review pretrial challenges to the sufficiency of an indictment," we have recognized an exception for purely legal issues, such as the failure to present exculpatory evidence to the grand jury. *Ostman v. Eighth Judicial Dist. Court*, 107 Nev. 563, 565, 816 P.2d 458, 459-60 (1991).

In particular, we have held that the district court has a duty to dismiss an indictment where the prosecution fails to present exculpatory evidence to the grand jury. *Id.* at 565, 816 P.2d at 459.


Jones argues the State should have presented the testimony of a witness whose phone interview with a detective suggested Jones had authority to withdraw money from the purported victim's bank account. NRS 172.145(2) requires the State to present to the grand jury any known evidence that "will explain away the charge," or explain away the slight or marginal evidence supporting at least one element of the charge. *See Sheriff v. Hodes*, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980) (recognizing that the probable cause required to secure an indictment "may be based on slight, even 'marginal' evidence"). "Unlike a trial jury, the grand jury sits not to determine guilt or innocence, but to assess whether there is adequate basis for bringing a criminal charge." *Mayo v. Eighth Judicial Dist. Court*, 132 Nev. 801, 806, 384 P.3d 486, 489 (2016) (internal quotation marks omitted). "Requiring the prosecutor to . . . present all evidence that could be used at trial to create a reasonable doubt as to the defendant's guilt would be inconsistent with the purpose of the grand jury proceeding . . . ." *Id.* at 807, 384 P.3d at 490 (quoting *United States v. Williams*, 504 U.S. 36, 69 (1992) (Stevens, J., dissenting)); *see also Schuster v. Eighth Judicial Dist. Court*, 123 Nev. 187, 192, 160 P.3d 873, 876 (2007) ("[T]he State is not required to negate all inferences which might explain away an accused's conduct."). Thus, while the prosecutor must present exculpatory evidence to the grand jury, "the full presentation and credibility of an accused's defense are matters reserved for the adversarial process of trial." *Schuster*, 123 Nev. at 193, 160 P.3d at 877.

We conclude that Jones has not shown that the evidence she identified explains away the charges. Consequently, she has not shown that the State was required to present that evidence to the grand jury or that the district court had a duty to dismiss the indictment. Additionally, we disagree with Jones's contention that the petition presents an issue of law requiring clarification or that judicial economy and administration necessitate our intervention by way of an extraordinary writ. *See Walker v. Second Judicial Dist. Court*, 136 Nev. 678, 683-84, 476 P.3d 1194, 1198-99 (2020) (addressing circumstances in which the court may entertain an advisory mandamus). Accordingly, we

ORDER the petition DENIED.

  
\_\_\_\_\_, C.J.  
Stiglich

  
\_\_\_\_\_, J.  
Lee

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Michelle Leavitt, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk