IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANIEL RODIMER,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE TIERRA DANIELLE JONES, DISTRICT JUDGE DEPARTMENT 10,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 89950-COA

FILED

APR 09 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING PETITION

In this original petition for a writ of mandamus, petitioner Daniel Rodimer challenges a district court order denying a pretrial petition for a writ of habeas corpus seeking to dismiss an indictment.

"A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, NRS 34.160, or to control a manifest abuse or arbitrary or capricious exercise of discretion." *State v. Eighth Jud. Dist. Ct. (Armstrong)*, 127 Nev. 927, 931, 267 P.3d 777, 779 (2011). A writ will not issue if a petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170. Petitions for extraordinary writs are addressed to the sound discretion of the court, *see State ex rel. Dep't of Transp. v. Thompson*, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983), and the "[p]etitioner[ ] carr[ies] the burden of demonstrating that extraordinary relief is

warranted," *Pan v. Eighth Jud. Dist. Ct.*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

Rodimer has no adequate remedy at law. *See Chasing Horse v. Eighth Jud. Dist. Ct.*, 140 Nev., Adv. Op. 63, 555 P.3d 1205, 1211 (2024) (stating "a direct appeal from a final judgment of conviction—the ordinary remedy in the criminal context—may be inadequate when errors in a grand jury proceeding are alleged because any error in the grand-jury proceeding is likely to be harmless after a conviction" (internal quotation marks omitted)). And although the appellate courts "generally [will] not review pretrial challenges to the sufficiency of an indictment," an exception has been recognized for purely legal issues, such as the failure to present exculpatory evidence to the grand jury. *Ostman v. Eighth Jud. Dist. Ct.*, 107 Nev. 563, 565, 816 P.2d 458, 459-60 (1991). Based on the above, we elect to exercise our discretion to consider the petition.

Rodimer asserts the district court should have granted his pretrial habeas petition challenging the grand jury proceedings for several reasons. First, Rodimer argues the State introduced inadmissible hearsay when it elicited testimony from Dani Lyons that Rodimer's wife, Sarah, told Lyons not to talk to the police about what Lyons saw.

The district court concluded that Lyons' testimony about Sarah's statement did not constitute hearsay. We agree. Hearsay is "a statement offered in evidence to prove the truth of the matter asserted." NRS 51.035. Lyons' testimony did not assert the truth of the statement she described, merely that it was said. *See Wallach v. State*, 106 Nev. 470, 473, 796 P.2d 224, 227 (1990) ("A statement merely offered to show that the statement was made and the listener was affected by the statement, and which is not offered to show the truth of the matter asserted, is admissible

as non-hearsay."). Moreover, Sarah's directive to Lyons did not constitute hearsay because it made no factual assertions. *See United States v. Thomas*, 451 F.3d 543, 548 (8th Cir. 2006) ("Questions and commands generally are not intended as assertions, and therefore cannot constitute hearsay."); *United States v. Shepherd*, 739 F.2d 510, 514 (10th Cir. 1984) ("An order or instruction is, by its nature, neither true nor false and thus cannot be offered for its truth.").

Even if the statement constituted hearsay or was otherwise inadmissible, we conclude extraordinary relief is not warranted because, absent the testimony about Sarah's command, the State introduced sufficient evidence to sustain the grand jury's probable cause finding. *See Rugamas v. Eighth Jud. Dist. Ct.*, 129 Nev. 424, 435-46, 305 P.3d 887, 895-96 (2013) (determining whether there was sufficient evidence to sustain the grand jury's probable cause determination absent inadmissible evidence); *Robertson v. State*, 84 Nev. 559, 561-62, 445 P.2d 352, 353 (1968) (observing that an indictment will be sustained even if inadmissable evidence was presented so long as "there [was] the slightest sufficient legal evidence" presented). Lyons testified that Rodimer threatened to kill the victim and then attacked and punched him, and a medical examiner concluded that the victim's injuries were consistent with a battery.[1] Accordingly, the district court did not manifestly abuse its discretion in denying the petition on this ground.

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[1]To the extent Rodimer contends that Lyons' testimony about Sarah's statement was otherwise irrelevant, he did not make this argument in the pretrial habeas petition; thus, we do not consider it as a basis for assessing whether the district court manifestly abused its discretion in denying relief.

Second, Rodimer contends the State failed to introduce exculpatory evidence describing Lyons' history of drug use and instruct the grand jury on the effect of drug use on credibility.

The privilege that prosecutors enjoy to attend and present evidence to the grand jury "comes with responsibilities." *Chasing Horse*, 555 P.3d at 1212. In addition to presenting evidence in support of the State's case, the State must present the grand jury with any evidence that may explain away the charge. NRS 172.145(2). The State must also "inform the grand jurors of the specific elements of any public offense which they may consider as the basis of the indictment or indictments." NRS 172.095(2). However, the State "is not required to negate all inferences which might explain away an accused's conduct." *Schuster v. Eighth Jud. Dist. Ct.*, 123 Nev. 187, 192, 160 P.3d 873, 876 (2007).

Evidence about Lyons' drug use may have provided more insight into her ability to observe, perceive, and remember the events to which she testified, but it did not constitute exculpatory evidence. *See, e.g., Chasing Horse*, 140 Nev., Adv. Op. 63, 555 P.3d at 1214 (observing that evidence such as a witness's inconsistent statements generally does not explain away the charge); *Lay v. State*, 110 Nev. 1189, 1198, 886 P.2d 448, 453-54 (1994) (concluding that a prior statement undermining the credibility of a witness "[did] not 'explain away [a criminal] charge' within the meaning of the exculpatory evidence statute"). Rodimer was also not entitled to an instruction about the effect of drug use on credibility because the State is not required to instruct the grand jury on law related to potential defenses or the meaning of exculpatory evidence. *See Schuster*, 123 Nev. at 191, 160 P.3d at 876 (concluding that NRS 172.145(2) did not require instructions on self-defense elements). Accordingly, the district

court did not manifestly abuse its discretion in denying the petition on this ground..

Third, Rodimer contends the State allowed a detective to provide his opinion as to the ultimate issue of Rodimer's guilt. During Detective Westhead's testimony, the State questioned him about the course of the investigation. He acknowledged that the case was initially reported as a slip and fall. After interviewing several other witnesses, Detective Westhead concluded that the victim's injuries did not result from a fall.

A witness's opinion about the guilt of the accused is generally inadmissible as it does not assist the trier of fact. *Collins v. State*, 133 Nev. 717, 725-26, 405 P.3d 657, 665 (2017). But Detective Westhead did not offer such an opinion. Detective Westhead's testimony described the course of the investigation, particularly how the victim's injuries were initially reported as resulting from a fall and how further investigation revealed that the initial report was incorrect. Westhead did not give an opinion as to Rodimer's guilt or even mention Rodimer at all. Accordingly, the district court did not manifestly abuse its discretion in denying the petition on this ground.

Lastly, Rodimer contends the State's conscious indifference to procedural rules, as shown by the aforementioned purported errors, warrants dismissal of the indictment. Because Rodimer failed to demonstrate that the State introduced hearsay, that the State was obligated to introduce evidence possibly impacting a witness's credibility and to instruct the jury about that evidence, and that the State elicited testimony regarding the ultimate issue of his guilt, he has not shown that dismissal is warranted.

For these reasons, we conclude that the district court did not manifestly abuse its discretion in denying the pretrial habeas petition and that our intervention by way of extraordinary relief is not warranted on these claims. Accordingly, we

ORDER the petition DENIED.

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Tierra Danielle Jones, District Judge
Chesnoff & Schonfeld
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk