



IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER SCOTT VOHS,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
NADIA KRALL, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 93054

ORDER DENYING PETITION

This original petition for a writ of mandamus challenges a district court order denying a pretrial petition for a writ of habeas corpus and a motion to suppress. Petitioner Christopher Vohs was indicted by a grand jury for driving under the influence causing death. He argues that the grand jury proceedings were defective and that evidence of breathalyzer and blood draw results should be suppressed.

A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust, or station, NRS 34.160, or to control an arbitrary or capricious exercise of discretion. *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). A writ of mandamus will not issue, however, if the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170. Further, mandamus is an extraordinary remedy, and it is within the discretion of this court to determine if a petition will be considered. *Poulos v. Eighth Jud. Dist. Ct.*, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982); *State ex*

rel. Dep't Transp. v. Thompson, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983). We address Vohs' challenges to the grand jury proceedings and to the denial of the motion to suppress separately.

First, Vohs argues the State was required to delay the grand jury proceedings until a final collision report was prepared and examined by Vohs' expert. Vohs asserts failure to do so amounted to a failure to present exculpatory evidence. We disagree. Vohs requested time to complete discovery, which we have explained is not a right held by those under investigation by a grand jury. *Gordon v. Ponticello*, 110 Nev. 1015, 1019-20, 879 P.2d 741, 744-45 (1994). Further, the State presented available exculpatory evidence, including that the motorcyclist Vohs struck may have been obscured by another vehicle and that the motorcyclist was likely speeding.

Second, Vohs contends the State used an unconstitutionally suggestive identification of Vohs by presenting a witness before the grand jury with a photograph of Vohs and asking if she recognized Vohs as the car's driver. Even if this were inadmissible, sufficient legal evidence established Vohs was the driver of the car, including that his wallet and identification were in the car, and that the car was registered to Vohs' wife. *See Dettloff v. State*, 120 Nev. 588, 595, 97 P.3d 586, 590 (2004) (holding that, even where some inadmissible evidence is presented to the grand jury, the indictment will stand where sufficient legal evidence was presented to establish probable cause).

Vohs also challenges the grand jury instruction on proximate causation, arguing it should read that the State must prove Vohs' intoxication led to a neglectful act, which caused the death or injury. This is unsupported by our caselaw, which has interpreted various versions of the DUI-causing-death statute to require proof of (1) intoxication, (2) operating a vehicle, and

(3) neglect of a duty which causes death. *See Cotter v. State*, 103 Nev. 303, 305-06, 738 P.2d 506, 508 (1987); *Anderson v. State*, 85 Nev. 415, 417, 456 P.2d 445, 446 (1969). Here, there was slight or marginal evidence to find Vohs was intoxicated based on field sobriety, breathalyzer, and blood tests, that Vohs operated a vehicle, and that Vohs failed to yield the right of way causing the motorcyclist's death.

Turning to the denial of the motion to suppress, Vohs can challenge the district court's decision on appeal in the event that he is convicted. NRS 177.015(3); NRS 177.045. Thus, Vohs has a plain, speedy, and adequate remedy at law, and therefore, this court's intervention by way of an extraordinary writ is not warranted. NRS 34.170. Vohs has not pointed to any circumstances that reveal urgency or strong necessity for this court to intervene even though there is an alternative remedy available. *Cf. Salaiscooper v. Eighth Jud. Dist. Ct.*, 117 Nev. 892, 901-02, 34 P.3d 509, 515-16 (2001) (explaining that even where an issue is common, it may not warrant entertaining a writ petition). Accordingly, we

ORDER the petition DENIED.



Bell, J.



Stiglich, J.



Cadish, J.

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