

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHERIFF, CLARK COUNTY,

Appellant,

vs.

CHARLES DAMION VON LEWIS,

Respondent.

No. 38620

**FILED**

**NOV 21 2001**

JANE T E M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Bloom*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court granting respondent Von Lewis's pretrial petition for a writ of habeas corpus.

The State charged respondent with several offenses arising out of his participation in an armed robbery. During the robbery, the victim gained possession of a firearm and shot and killed the other alleged robber, Patrick Booker. One of the charges against Von Lewis was felony murder, which was based on the theory that Von Lewis's co-robber was killed during Von Lewis's commission of a felony robbery.

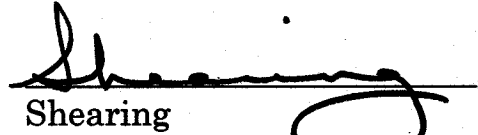
Von Lewis filed a pretrial petition for a writ of habeas corpus in the district court, seeking dismissal of the murder charge. Following a hearing, the district court entered a written order granting the petition on September 11, 2001. This appeal followed.

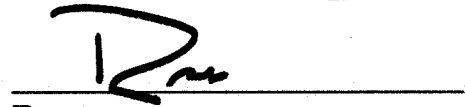
We conclude that the district court did not err in granting the petition. As the district court correctly noted, under Nevada law it is not


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possible for Von Lewis to be guilty of either the first or second-degree murder of Booker based on a felony-murder theory.<sup>1</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Shearing

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Becker

cc: Hon. Donald M. Mosley, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Wolfson & Glass  
Clark County Clerk

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<sup>1</sup>See Sheriff v. Morris, 99 Nev. 109, 659 P.2d 852 (1983); Sheriff v. Hicks, 89 Nev. 78, 506 P.2d 766 (1973); Payne v. State, 81 Nev. 503, 406 P.2d 922 (1965).