

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF LAS VEGAS,
Appellant,
vs.
MANDI TIMOTEO,
Respondent.

No. 41897

FILED

OCT 13 2003

ORDER OF REVERSAL AND REMAND

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

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

Timoteo was charged by way of a criminal complaint in the Las Vegas Municipal Court with one count of speeding, three counts of driving under the influence (DUI), one count of possession of drug paraphernalia, and one count of possession of one ounce or less of marijuana. The trial began in the municipal court on January 27, 2003. On that date, at some point during the proceedings, the municipal court acquitted Timoteo of count F, driving under the combined influence of alcohol and drugs, based on insufficient evidence.¹ Subsequently, Timoteo moved to have the other two DUI counts dismissed on double jeopardy grounds. The municipal court conducted a hearing, and based on Williams v. State,² denied Timoteo's motion. The municipal court continued the trial in order to allow Timoteo the opportunity to file a habeas corpus petition in the district court.

¹A transcript of the trial in the municipal court was not included in the record on appeal.

²118 Nev. ___, 50 P.3d 1116, cert. denied 537 U.S. 1031 (2002).

On May 1, 2003, Timoteo filed a petition for a writ of habeas corpus in the district court. The City opposed the petition. After conducting a hearing on July 15, 2003, the district court granted Timoteo's petition, thereby dismissing count B (driving under the influence with a prohibited substance in blood or urine above the proscribed limits for marijuana and marijuana metabolite) and count E (driving under the influence of intoxicating liquor, including the per se alcohol violation). The City now appeals from the district court's order granting Timoteo's habeas petition.

This court will defer to the district court's determination of factual sufficiency when reviewing pretrial orders on appeal.³ In Timoteo'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.⁴ Our review of the record on appeal reveals that the district court erred in dismissing the two remaining counts of DUI against Timoteo.

Both Timoteo in her petition below, and the district court in its order granting the petition, mistakenly apply this court's holding in Dossey v. State to the instant case.⁵ In Dossey, the defendant was convicted of three counts of DUI in violation of all three subsections of NRS 484.379(1), and this court on appeal vacated his conviction and sentences on two of the counts, stating, "We conclude that the legislature

³See Sheriff v. Provenza, 97 Nev. 346, 630 P.2d 265 (1981).

⁴See Sheriff v. Marcus, 116 Nev. 188, 192, 995 P.2d 1016, 1018 (2000).

⁵114 Nev. 904, 964 P.2d 782 (1998).

intended the subsections of this statute to define alternative means of committing a single offense, not separable offenses permitting a conviction of multiple counts based on a single act.”⁶ Dossey, however, addressed only the alternative DUI theories enumerated in NRS 484.379(1),⁷ and is distinguishable because Timoteo was charged with three counts of DUI in violation of NRS 484.379(1), (2) and (3), separate DUI offenses based on distinct elements.⁸ Because subsections (1) and (3) of NRS 484.379, counts B and E, each “define[] a separate offense for purposes of double jeopardy analysis,”⁹ we conclude that double jeopardy did not attach to counts B and E when Timoteo was acquitted in the municipal court of count F, driving while under the combined influence of alcohol and drugs in violation of NRS 484.379(2). Therefore, we conclude that the district court erred in granting Timoteo’s petition based on the Double Jeopardy Clause of the United States Constitution.¹⁰

Accordingly, we

⁶Id. at 909, 964 P.2d at 785 (citing Long v. State, 109 Nev. 523, 528, 853 P.2d 112, 115 (1993)).


⁷See id. at 908-10, 964 P.2d at 784-85 (holding that conviction of three counts of DUI in violation of NRS 484.379(1)(a)-(c) was impermissibly redundant); see also Albitre v. State, 103 Nev. 281, 283-84, 738 P.2d 1307, 1309 (1987).


⁸See Blockburger v. United States, 284 U.S. 299 (1932); Barton v. State, 117 Nev. 686, 30 P.3d 1103 (2001).


⁹See Williams, 118 Nev. at ___, 50 P.3d at 1124.

¹⁰U.S. Const. amend. V.

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


_____, J.
Rose


_____, J.
Leavitt


_____, J.
Maupin

cc: Hon. Joseph T. Bonaventure, District Judge
Las Vegas City Attorney
Law Offices of John G. Watkins
Clark County Clerk