

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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3
4 THE STATE OF NEVADA,)

5 Appellant,)

6 vs.)

7 NATASHA JACKSON,)

8 Respondent.)

9 NO. 67071) Electronically Filed
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11) Tracie K. Lindeman
12) Clerk of Supreme Court

13 **RESPONDENT'S ANSWERING BRIEF**

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Appellant,

VS.

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Respondent.

RESPONDENT'S ANSWERING BRIEF

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NRS 193.165	5, 6, 9, 15
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1 father gain control of the weapon. 1 ROA 41. Contemporaneously, Dominic
2 saw Natasha Jackson pulling his mother's hair while assaulting her with a
3 screwdriver. 1 ROA 41. Dominic was able to pull Jackson away from his
4 mother. 1 ROA 42. Dominic's mother, Julie Ramos, exclaimed that
5 "Havoc" and Jackson "[are] going to kill us. They're going to kill us." 1
6 ROA 42. Jackson responded, "We won't. We promise." 1 ROA 42.
7 Dominic testified that Jackson never demanded any property from them. 1
8 ROA 43.

9 At some point during the struggle, Dominic heard a single gunshot, but
10 was not clear whether the gun had been fired by "Havoc" or his father. 1
11 ROA 44. "Havoc" began stabbing Dominic's father with the screwdriver that
12 Dominic was able to wrest away from Jackson. 1 ROA 47. "Havoc" then
13 took the handgun away from Dominic's father, aimed it at Dominic, and
14 demanded the keys to the family's car. 1 ROA 48. When Dominic left
15 "Havoc's" presence to look for the car keys, he noticed an open bedroom
16 window and exited the house. 1 ROA 48. Dominic hid behind a nearby RV
17 with his younger sister, Jasmine, who had also managed to leave the house
18 during the struggle. 1 ROA 50. While he was hiding, Dominic heard
19 "Havoc" shouting Natasha's name, presumably unable to find her. 1 ROA
20 50. Dominic left his hiding place to see if "Havoc" was still around, but
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1 instead, he saw Natasha Jackson approaching him, alone. 1 ROA 51.
2 Dominic testified that he "kind of ignored the woman [Jackson]... because
3 she didn't seem threatening at the time." 1 ROA 52.
4

5 After "Havoc" and Jackson left, and police had arrived, Dominic re-
6 entered his house and noticed a pair of bolt cutters and a sheathed pocket
7 knife that he did not recognize. 1 ROA 53.
8

9 Cody "Havoc" Winters was eventually shot and killed by officers of
10 the Las Vegas Metropolitan Police Department. Natasha Jackson was placed
11 under arrest and charged with multiple felonies, including Burglary While in
12 Possession of a Firearm, Attempted Robbery With Use of a Deadly Weapon,
13 First Degree Kidnapping, and the First Degree Murder of Richard Ramos. A
14 grand jury returned an Indictment against Jackson for eight separate criminal
15 offenses that was filed on August 8, 2014. 1 ROA 1-4. On September 2,
16 2014, Jackson filed a Motion to Extend the Deadline to File a Pretrial Petition
17 for Writ of Habeas Corpus based on the fact that the State had not provided
18 any discovery. 1 ROA 174-176. Jackson filed a timely Petition for Writ of
19 Habeas Corpus on October 6, 2014, alleging, among other arguments, that
20 both Burglary While in Possession of A Firearm charges reflected in Count 1
21 and Count 8 must be dismissed because the State had failed to present any
22 evidence to the grand jury that Jackson had ever been in actual possession of
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1 a firearm before or during the burglary of 3930 Autumn Street or 3909
2 Almondwood Drive. 1 ROA 193-200; 2 ROA 201-206. The State filed its
3
4 Return on October 24, 2014. 2 ROA 211-225. Jackson filed a Reply on
5 October 29, 2014. 2 ROA 231-239.

6
7 The district court heard oral arguments on the Petition on November
8 10, 2014. Supplemental Appendix (hereafter "SROA") 1-19. At oral
9 argument, Jackson pointed out that even though there was no evidence
10
11 Jackson actually possessed a firearm, she did not challenge the other counts
12 alleging the deadly weapon enhancement because as to those charges, Brooks
13 v. State, 124 Nev. 203 (2008) supported the State's right to allege the
14 enhancement against the non-possessing co-defendant where the other co-
15 defendant had used a deadly weapon during the commission of the offenses.
16
17 SROA 2-3. Jackson pointed out the distinction between the "use" of a deadly
18 weapon as properly alleged in the counts containing a deadly weapon
19 enhancement, and the "possession" of a deadly weapon as charged in Count 1
20 and Count 8. SROA 2-3; 15-16.

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22
23 The district court understood this distinction, and granted that portion
24 of Jackson's Petition challenging Count 1 and Count 8. 2 ROA 256-258.
25 Specifically, in its order filed December 4, 2014, the district court concluded
26 "...the State failed to present slight or marginal evidence that Ms. Jackson
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1 had actual possession of a firearm or deadly weapon during the commission
2 of a burglary of the Ramos residence or the vacant home on July 29, 2014...
3
4 NRS 205.060(4) specifically states a person convicted of burglary who has in
5 his or her possession or gains possession of a firearm or deadly weapon at
6
7 any time during the commission of the crime is guilty of a category B felony.
8
9 The plaintiff must present slight or marginal evidence that Ms. Jackson
10 possessed a firearm or deadly weapon as opposed to just using [a] weapon as
11 set out in NRS 193.165. Because the statutes are separate and require the
12 State to provide different facts Brooks v. State is inapplicable here. The
13 State's argument that [it] presented slight or marginal evidence to support
14 Counts 1 and 8 by presenting evidence that Ms. Jackson was aware that [co-
15 defendant] Cody Winters had a firearm fails. Counts 1 and 8 are dismissed."
16
17
18 2 ROA 257.

19 The State filed a Notice of Appeal on December 12, 2014. 2 ROA
20 262-263. This Court ordered briefing on February 9, 2015. The State filed
21 its Opening Brief on February 24, 2015. The Respondent's Answering Brief
22 follows.
23
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25 STANDARD OF REVIEW

26 The State concedes that "in reviewing a district court's order granting a
27 pretrial petition for writ of habeas corpus for lack of probable cause," this
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1 Court “will not overturn the district court’s order unless the district court
2 committed substantial error.” Sheriff v. Burcham, 124 Nev. 1247, 1257
3 (2008), State’s Opening Brief, at 10. Because the district court did not
4 substantially err in its decision to dismiss Count 1 and Count 8 from the
5 Indictment, this Court’s historically deferential posture towards district court
6 rulings compels affirmance of its judgment.
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9 ARGUMENT

10 Both in its arguments to the district court and its Opening Brief to this
11 Court, the State ignores the critical distinction between the deadly weapon
12 enhancement codified in NRS 193.165, which punishes the “use” of a deadly
13 weapon, and the provisions of NRS 205.060(4), which punish the
14 “possession” of a firearm or other deadly weapon during the commission of a
15 burglary. The sole issue before this Court is a very simple one. While
16 Brooks v. State, 124 Nev. 203 (2008) provides that the “use” of a deadly
17 weapon may be proven by the benefit derived from a co-defendant’s
18 possession of such weapon, there is no authority for the proposition that the
19 “possession” element of NRS 205.060(4) may be satisfied in the same
20 manner. Because the State’s argument is not supported by Nevada law,
21 Counts 1 and 8 were properly dismissed by the district court.
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28 In Count 1 of the Indictment, Natasha Jackson was charged with the

1 direct commission of burglary of the Ramos residence at 3930 Autumn Street
2 while in possession of a firearm. In Count 8 of the Indictment, Jackson was
3 charged with the direct commission of burglary of an abandoned residence at
4 3909 Almondwood Drive while in possession of a firearm and/or knife.
5

6 Jackson was not charged with having entered into a conspiracy with Cody
7 "Havoc" Winters to commit these offenses, nor was she charged with having
8 aided and abetted her co-defendant in the commission thereof, as she was in
9 Counts 2, 3, 4 and 7. In Count 1, the State alleged that Jackson, herself, did
10 directly "...possess and/or gain possession of a firearm during the commission
11 of the crime [of burglary] and/or before leaving the structure." 1 ROA 2. In
12 Count 8, the State alleged that Jackson, herself, did directly "...possess
13 and/or gain possession of, a firearm and/or knife, a deadly weapon, during the
14 commission of the crime and/or before leaving the structure." 1 ROA 4.
15 There was simply no evidence presented to the grand jury, however, that
16 Jackson ever had possession of a firearm, either before entering the Ramos
17 residence or during the commission of the burglary. Nor was any evidence
18 presented that Jackson possessed a weapon either before entering the
19 abandoned house or during her time inside. At the grand jury hearing, only
20 one witness, Dominic Ramos, offered testimony regarding what happened
21 inside the Ramos residence. 1 ROA 36-56. Based on this testimony, it was
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1 clear that "Havoc," Jackson's co-defendant, brought the only firearm into the
2 residence. Natasha Jackson never had control of the firearm; in fact, from the
3 testimony presented, there was no evidence that Jackson ever touched the
4 firearm at all.
5

6 The first mention of a firearm during Dominic Ramos' testimony
7 reveals that Dominic saw "Havoc" and his father, Richard Ramos, on the
8 floor fighting over the weapon. 1 ROA 40. Dominic testified that during the
9 encounter, "Havoc" and Richard Ramos "...were both in a struggle the whole
10 time for that gun." 1 ROA 40. At some point during the struggle, Richard
11 was able to get control of the weapon. 1 ROA 41. Moments later, Dominic
12 heard a single shot ring out, but was uncertain whether it had been fired by
13 his father or by "Havoc," the male intruder. 1 ROA 44. Dominic testified
14 that "Havoc" "...was able to get the gun from my dad... He pulled it up,
15 aimed it at me... and said, 'All right, give me the car keys.'" 1 ROA 48. At
16 no time during Dominic's testimony did he state that Natasha Jackson ever
17 had possession of the firearm. She did not enter the residence with a gun, nor
18 did she ever gain possession of the gun during the encounter inside the house.
19 Additionally, there was no evidence that Jackson possessed a weapon before
20 entering or during her time inside the abandoned home she entered later with
21 "Havoc."
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1 In its argument to the district court, the State cited to Brooks v. State,
2 124 Nev. 203 (2008), for the proposition that when determining whether a
3 defendant “used” a deadly weapon in the context of a violation of NRS
4 193.165, “‘use’ means to put into action or service or to carry out a purpose
5 or action by means of.” 2 ROA 217-218. “Therefore,” writes the State, “an
6 unarmed offender ‘uses’ a deadly weapon and therefore is subject to a
7 sentence enhancement [under NRS 193.165] when the unarmed offender is
8 liable as a principal for the offense that is sought to be enhanced, another
9 principal of the offense if armed with and uses a deadly weapon in the
10 commission of the offense and the unarmed offender had knowledge of the
11 use of a deadly weapon.” 2 ROA 218; Brooks v. State, 124 Nev. at 210.

12 The State’s analysis, however, applies only to the deadly weapon
13 enhancement codified in NRS 193.165. This is not the sentencing
14 enhancement Jackson faced in Counts 1 and 8. In these two counts, the State
15 charged Jackson with a violation of NRS 205.060(4), a separate statute that
16 does not implicate the NRS 193.165 sentencing enhancement discussed in
17 Brooks v. State. NRS 205.060(4) does not punish the *use* of a deadly
18 weapon; rather, it punishes the commission of a burglary *while in actual*
19 *possession* of a firearm. While Jackson could rightly be charged with the
20 “use” of a deadly weapon pursuant to Brooks v. State, she could not be

1 charged with a violation of NRS 205.060 under the same theory. Brooks
2 makes clear that its holding is directed towards the “use” component of NRS
3 193.165, and does not extend to the “possession” requirement of NRS
4 205.060(4).
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7 This distinction is critical, as even the Brooks Court makes clear that
8 the deadly weapon enhancement set forth in NRS 193.165 “...does not
9 require ‘possession’ of a deadly weapon.” Brooks at 209. Unlike NRS
10 193.165, a violation of NRS 205.060 *does* require “possession” of a deadly
11 weapon, not mere “use.” While Jackson may be liable for her co-defendant’s
12 “use,” as charged in Counts 2, 3, 4, 5, and 7, she is not similarly liable for
13 “possession” of the weapon, as required by NRS 205.060(4). Further,
14 because Brooks partially rests its holding on the fact that the statutory deadly
15 weapon enhancement does not require “possession,” as does NRS
16 205.060(4), Brooks actually supports Jackson’s position that the State did not
17 present sufficient evidence to charge her with burglary while in possession of
18 a deadly weapon in Counts 1 and 8.
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24 Anderson v. State, 95 Nev. 625 (1979), and Jones v. State, 111 Nev.
25 848 (1995), cited by the State in its Opening Brief, also relate to the “use” of
26 a deadly weapon enhancement set forth in NRS 193.165, not the “possession”
27 crime set forth in NRS 205.060(4). As the State itself points out, this line of
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1 authority, like Brooks, makes clear “that an unarmed co-defendant is subject
2 to the deadly weapon enhancement of NRS 193.165 where they possess the
3 weapon either constructively or actually, exclusively or jointly.” State’s
4 Opening Brief at 11. Both of these cases involve situations where the State
5 argued that the unarmed co-defendant “used” the deadly weapon for purposes
6 of the NRS 193.165 enhancement by aiding and abetting the actual user of
7 the weapon in the commission of the charged offenses. These cases have no
8 applicability here. As pointed above, Jackson was not charged with “aiding
9 and abetting” her co-defendant in the commission of burglary in Counts 1 and
10 8; she was charged with the direct commission of the offenses while in
11 possession of a firearm or other deadly weapon. The case law cited by the
12 State, both before the district court and in its appellate brief, strictly applies to
13 the “use” enhancement of NRS 193.165.
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19 Even if this Court were to accept the State’s rationale, and ignore the
20 critical distinction between the “use” enhancement of NRS 193.165 and the
21 “possession” requirement in NRS 205.060(4), the facts of this case still do
22 not support charging Jackson for her co-defendant’s brandishing of a firearm
23 during the commission of the offenses. As the State points out, the
24 Anderson/Jones test for punishing one defendant for a co-defendant’s “use”
25 of a deadly weapon requires that “...the unarmed participant has knowledge
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1 of the other offender's being armed, and where the unarmed offender has...
2 *the ability to exercise control over the firearm.*" State's Opening Brief at 11;
3 Anderson v. State, 95 Nev. 625, 630 (1979) (emphasis added). There is no
4 evidence in the record that Jackson had the ability to exercise control over the
5 firearm that was used by her co-defendant, Cody "Havoc" Winters. The
6 unambiguous facts presented to the grand jury make clear that Winters
7 retained exclusive control over the firearm, except for the moments in which
8 he wrestled with the victim, Richard Ramos, for control of it. There is no
9 evidence that Natasha Jackson ever exhibited the ability to exercise control
10 over her co-defendant's weapon.
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15 Even if the State's logic were to be accepted, and the distinction
16 between the enhancements of NRS 193.165 and NRS 205.060(4) were to be
17 abolished, the facts of this case are analogous to Walters v. State, 106 Nev.
18 45 (1990). In Walters, the defendant and his friend, Gregory Samson, got into
19 an argument with the victim, Douglas Ueckert, at a bar in Sandy Valley,
20 Nevada. They left the bar to settle the argument, at which time Samson
21 displayed a knife. Walters at 46-47. At trial, Walters was convicted of
22 second-degree murder with use of a deadly weapon. On appeal, this Court
23 concluded that the deadly weapon sentencing enhancement was improperly
24 applied, determining "[t]here was no evidence suggesting that Walters had
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1 any kind of constructive possession of the knife used to kill Ueckert.
2 Moreover, the record does not supply a basis for inferring that Walters could
3 have exercised control over the weapon. Therefore, it was clear error to
4 statutorily enhance Walters' sentence." Walters at 49.
5

6
7 The State urges this Court to adopt the wrong test under which to
8 analyze this issue; however, even under the wrong test for liability, the
9 evidence in this case fails to meet it. Here, as in Walters, there is no evidence
10 to infer that Jackson had the ability to exercise control over her co-
11 defendant's weapon, and certainly not enough evidence upon which to rest a
12 finding that the district court committed substantial error in granting the
13 petition. The State's evidence that Jackson had the ability to exert control
14 over the firearm is highly tenuous, and it cannot be said that substantial error
15 was committed in the decision to reject this flimsy rationale.
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19 Finally, the State finds fault with the failure of the district court to
20 amend Counts 1 and 8 *sua sponte* to merely strike the possession
21 enhancement, rather than dismissing Counts 1 and 8 in their entirety. State's
22 Opening Brief at 15. Essentially, the State argues that rather than grant
23 Jackson's petition and dismiss the charges on which Jackson had been
24 indicted, the district court should have taken it upon itself to edit the State's
25 charging document. The State forgets that "...the district court may not
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1 generally amend a criminal complaint except by the State's motion," Grant v.
2 State, 117 Nev. 427, 432 (2001), and while it *may* order an amendment *sua*
3 *sponte* where the issue is raised in the pleadings, the district court is under no
4 obligation to rewrite the Indictment. The decision to amend an Indictment
5 *sua sponte* upon the granting of a petition for writ of habeas corpus is
6
7 discretionary, and the State is incorrect in suggesting that the district court
8 substantially erred by failing to exercise that discretion in the manner most
9 favorable to the prosecution. The State chose to indict Natasha Jackson on
10 two violations of NRS 205.060(4) without probable cause, and the district
11 court rightfully dismissed these counts. Had the State filed a motion to
12 amend the counts rather than proceed directly to appeal and this motion to
13 amend been denied, the State may have a more legitimate claim, but it is
14 absurd for the State to find fault with the district court's refusal to offer *sua*
15 *sponte* assistance. The State overreached by charging Jackson with two
16 violations of NRS 205.060(4). These counts were not supportable under
17 either the facts or the law. The district court's role in our criminal justice
18 system is to serve as a neutral referee between two adversaries, not to protect
19 the prosecution from the consequences of its own mistakes.
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1 accompanying brief is not in conformity with the requirements of the Nevada
2 Rules of Appellate Procedure.
3

4 DATED this 6th day of April, 2015.

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