IN THE SUPREME COURT OF THE STATE OF NEVADA

WILBER ERNESTO MARTINEZ GUZMAN,
Petitioner,
v.

THE SECOND JUDICIAL DISTRICT COURT, IN AND FOR THE COUNTY OF WASHOE; THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.
_____/

No. 79079

ANSWER TO PETITION FOR WRIT OF PROHIBITION OR, IN THE ALTERNATIVE, WRIT OF MANDAMUS

JOHN L. ARRASCADA
Washoe County Public Defender

JOHN REESE PETTY
Chief Deputy Public Defender
350 South Center Street, 5th floor
Reno, Nevada 89501

ATTORNEYS FOR PETITIONER

CHRISTOPHER J. HICKS
Washoe County District Attorney

MARK JACKSON
Douglas County District Attorney

MARILEE CATE
Appellate Deputy
TRAVIS LUCIA
Deputy District Attorney
One South Sierra Street
Reno, Nevada 89520

ATTORNEYS FOR REAL PARTY IN INTEREST

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Pages

Cases

TABLE OF AUTHORITIES (Continued)

TABLE OF AUTHORITIES (Continued)

Statutes

TABLE OF AUTHORITIES (Continued)

Other Authorities

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILBER ERNESTO MARTINEZ GUZMAN,
Petitioner,
v.

THE SECOND JUDICIAL DISTRICT COURT, IN AND FOR THE COUNTY OF WASHOE; THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA
Real Party in Interest.

No. 79079

_____/

ANSWER TO PETITION FOR WRIT OF PROHIBITION OR, IN THE ALTERNATIVE, WRIT OF MANDAMUS

I. INTRODUCTION

In early January of 2019, Petitioner Wilber Ernesto Martinez Guzman (hereinafter, "Guzman") went on a two week crime spree traversing back and forth from his home in Carson City to Washoe and Douglas Counties, where he murdered four people and burglarized their homes. Guzman's Petition concerns Counts III, IV, V, and VI of the Indictment, which charge him with two murders and the related burglaries in Douglas County. Guzman suggests that his Petition presents a purely legal question

regarding a grand jury's power under NRS 172.105. However, Guzman's legal argument is based on an incorrect factual premise—that the crimes alleged in Counts III, IV, V, and VI occurred "solely" in Douglas County. Guzman ignores the district court's factual finding on point, and instead relies on the wording used in the charging document to support his argument.

To the extent this Court considers Guzman's legal argument regarding NRS 172.105, it should reject Guzman's assertion that the Washoe County Grand Jury (hereinafter, "the Grand Jury") did not have the power to return a True Bill for Counts III, IV, V, and VI of the Indictment. Guzman's interpretation of NRS 172.105 is inconsistent with the plain language of the statute, as well as the legislative history and other tenets of statutory construction. The district court correctly concluded that the Grand Jury's jurisdiction was statewide and that it had the power to return a True Bill on all of the charges in the Indictment. As such, Guzman has not demonstrated that extraordinary intervention is appropriate in this case.

II. ANSWER TO QUESTION PRESENTED

Guzman suggests that the Court should consider the following issue: "[w]hether the Washoe County Grand Jury had the power, under [NRS

172.105], to inquire into and return a true bill on four public offenses alleged to have been committed solely within Douglas County, Nevada." Original Petition ("OP") 3.

Guzman's question presented assumes that the allegations in a charging document are evidence and establish the facts in this case. Guzman also ignores the district court's finding that "the formation of intent and preparatory acts [to Counts III, IV, V, and VI] were in Washoe County even though they culminated in the charged crimes that took place in Douglas County." Petitioner's Appendix ("PA") 217. The district court's findings are entitled to deference and Guzman does not dispute its findings in his Petition. Guzman has not demonstrated that the district court exceeded its authority or manifestly abused its discretion when it denied his motion to dismiss and his pretrial petition for writ of habeas corpus on this subject. NRS 172.105 provided the Grand Jury with the power to consider and return a True Bill for the crimes charged in Counts III, IV, V, and VI of the Indictment. Therefore, this Court should deny Guzman's request for extraordinary relief.

/ / /

/ / /

/ / /

III. ROUTING STATEMENT

The Nevada Supreme Court should retain jurisdiction and decide whether Guzman's Petition requires extraordinary intervention because this is a death penalty case. *See* NRAP 17(a)(1).

IV. PROCEDURAL HISTORY

On March 13, 2019, the State presented evidence to the Grand Jury concerning the ten felony offenses committed by Guzman over the course of two weeks across northern Nevada in January of 2019. The Grand Jury returned a True Bill and the Indictment was filed the same day. Guzman is charged with the following ten felony offenses: a single count of burglary, four counts of burglary while gaining or in possession of a firearm, four counts of murder with the use of a deadly weapon, and a single count of possession of a stolen firearm. PA 1-8.

Guzman was arraigned on March 19, 2019. A plea of "not guilty" was entered on his behalf and the case was set for jury trial to commence on April 6, 2020. *Id*. at 219.

On April 18, 2019, Guzman filed the underlying motion to dismiss, which generally asserted that Counts III, IV, V, and VI of the Indictment occurred in Douglas County and the Grand Jury did not have jurisdiction to consider such charges. *Id*. at 15-19. Contemporaneously therewith,

Guzman filed a pretrial petition for writ of habeas corpus, which primarily raised sufficiency of the evidence issues but also included the jurisdictional argument from his motion to dismiss. *Id*. at 20-43. On May 2, 2019, the State filed an opposition to the motion to dismiss (*id*. at 44-79) and a response to the petition. *Id*. at 80-121. On May 8, 2019, Guzman filed a reply in support of his motion to dismiss. *Id*. at 122-122.

On May 20, 2019, the district court heard oral argument on the motion to dismiss and pretrial writ. The district court took the matters under submission at the conclusion of the hearing. *Id*. at 186-187. The district court issued an order denying Guzman's motion to dismiss on June 21, 2019. *Id*. at 191-203. The next day, the district court issued a corrected order denying Guzman's motion to dismiss (*id*. at 219-231), as well as an order denying Guzman's pretrial writ. *Id*. at 204-218.

On July 1, 2019, Guzman filed his Petition with the Nevada Supreme Court. On July 25, 2019, the Court ordered the State to answer the Petition.

V. STATEMENT OF FACTS

A. Overview of the Crimes and Investigation in this Case.

In the first two weeks of January 2019, there was a string of burglaries and murders across northern Nevada. As the victims were discovered, law enforcement began to believe that the crimes were related.

2 Real Party in Interest's Appendix ("RA") 326, 502-503. The similarities began with the respective ages of all four victims. Another common thread was that all of the killings appeared to have occurred during the perpetration or attempted perpetration of a burglary at the victims' homes. Additionally, it appeared that all four homicides possessed similarities with respect to the weapon used. For example, on the kitchen floor of the third and fourth victims' homes, law enforcement officers observed an unspent .22 caliber "snake shot" round. *Id*. at 328, 387. "Snake shot" is a term colloquially used to refer to handgun or rifle cartridges which are loaded with small lead shot pellets. *Id*. at 325, 393. Similarly sized pellets were observed in the right and left sides of the second victim's face during her autopsy. *Id*. at 437-439. An expended .22 caliber round was also recovered from a door in the second victim's home. Lastly, no spent casings were found at any of the crime scenes—leading to the hypothesis that the killer used a revolver. After the third and fourth victims were discovered, a collective manhunt ensued where many local law enforcement agencies across northern Nevada and the FBI worked together to find the killer. *Id*. at 502-503.

On January 19, 2019, Guzman was apprehended in Carson City. Officers recovered items in Guzman's apartment located in Carson City and

Guzman's car that were known to have been taken during the burglaries and murders. *Id*. at 476-480. Following his arrest, Washoe County Sheriff's Detective Stephanie Brady interviewed Guzman at the Carson City Sheriff's Office with the assistance of a court-certified Spanish interpreter. *See generally* 1 RA 1-258; 2 RA 406, 502-503. Prior to the onset of any questions related to the investigation, Guzman was advised of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), and acknowledged his understanding of the same. Guzman waived his rights and voluntarily spoke with Detective Brady. 1 RA 78-80. Guzman admitted to the burglaries and murders, and confirmed many details that were discovered by law enforcement over the course of the early investigation.

B. Guzman's Two Week Crime Spree.[1]

On January 3, 2019, Guzman committed the first burglary in Washoe County. That day, Guzman went to Gerald and Sharon David's (hereinafter,

[1] The following facts are primarily based on the Grand Jury transcript and the transcript of Guzman's interview. With respect to Guzman's interview, the State notes that Guzman included the complete transcript as an exhibit to his petition for writ of habeas corpus, but it was not included in Guzman's appendix. The district court relied on the evidence presented to the grand jury and Guzman's interview to decide the motion to dismiss and petition for writ of habeas corpus. Guzman does not raise a sufficiency of the evidence issue in his Petition. OP 7. Thus, the Court should assume the truth of the following facts and make all reasonable inferences in favor of the State when resolving Guzman's Petition. *See e.g. Sheriff v. Dhadda,* 115 Nev. 175, 980 P.2d 1062 (1999).

"Mr. David and Mrs. David", or collectively "the Davids") property located at 760 La Guardia Lane and stole items, including a saw, from their barns or out-buildings. 1 RA 215-216; 2 RA 343-346, 389-389-390. On January 4, 2019, Guzman returned to La Guardia Lane and stole a revolver, among other things, from various out-buildings, sheds, barns, and trailers located on the Davids' property. 1 RA 193, 214; 2 RA 346, 349-350, 389-390. During Guzman's interview, he confirmed that on the first night he only stole a small "machine" to "cut things" and the second night he stole the revolver and some fishing poles. 1 RA 215-217. These early burglaries are charged in Count I and Count II of the Indictment. PA 1-2.

In the evening hours of January 9, 2019, or the early morning hours of January 10, 2019, Guzman entered the home of Constance Koontz (hereinafter, "Ms. Koontz"), located at 1439 James Road in Gardnerville, with the stolen revolver from the Davids' property. Guzman shot Ms. Koontz in the head, just above her right ear. 2 RA 301, 413, 415-416, 426-427. Guzman also ransacked the home and stole various items, including jewelry, an Apple iWatch, an iPhone, and an iMac computer. 1 RA 187-188, 191-192; 2 RA 297. Guzman told Detective Brady that he wanted to take some items in order to sell them so he would have money to purchase drugs. 1 RA 188-189. Guzman confirmed that when Ms. Koontz came out,

he shot her with the revolver he took from the Davids' property. *Id*. at 189-190, 193. Ms. Koontz's mother, Evelyn Harmon, discovered Ms. Koontz's lifeless body and head resting in a pool of blood in the kitchen/laundry room area of the home on the morning of January 10, 2019. 2 RA 301-302. Evelyn Harmon lived in the home, but due to a medical condition was bound to a wheelchair and rarely left her room.[2] 2 RA 287, 290, 294-295. The murder of Ms. Koontz and the burglary of her home are charged in Count III and Count IV of the Indictment. PA 2-3.

On January 12, 2019, or January 13, 2019, Guzman entered Sophia Renken's (hereinafter, "Ms. Renken") home located at 943 Dresslerville Road in Gardnerville, which is approximately one mile away from Ms. Koontz's home. 2 RA 310. Guzman shot Ms. Renken multiple times, including twice in the face, once in the right shoulder, and once in the lower back with the revolver taken from the Davids' property. *Id*. at 436-443. On January 13, 2019, Ms. Renken's friend of fifty years, Jeffery Harris, went to check on Ms. Renken after his multiple calls that day went unanswered. *Id*. at 315-316. When Jeffery Harris arrived at Ms. Renken's home, he immediately noticed that things were out of place—including that a number

[2] During his interview, Guzman acknowledged the presence of Ms. Harmon in the home. He indicated that there was "another woman" in the other room, which he believed was the decedent's mother. 1 RA 191.

of gates were open when they were ordinarily closed and the back door to the home was open. *Id*. at 317, 320. Jeffery Harris cautiously entered the home and discovered Ms. Renken's lifeless body on the floor of her bedroom. *Id*. at 324. The ensuing investigation indicated that nothing of value was taken from the home. *Id*. at 333. Guzman initially denied murdering Ms. Renken, but ultimately admitted that he "did her in." 1 RA 195-196, 210-211, 219-220. Guzman confirmed that he shot her several times, but did not take anything from the home. *Id*. at 220-222. The murder of Ms. Renken and burglary of her home are charged in Count V and Count VI of the Indictment. PA 3-4.

Just a few days later, on the night of January 15, 2019, or the morning of January 16, 2019, Guzman returned to the Davids' property at La Guardia Lane in Reno, but this time Guzman went inside the home. 1 RA 197-198, 204-206. Guzman shot Mrs. David once in the head in the mudroom, which connected the back door of the residence to the kitchen and living room. 2 RA 404, 447-451. Guzman shot Mr. David five times in the head and once in the chest in the Davids' bedroom. *Id*. at 401, 451, 454-466. Guzman told Detective Brady that he was entering the home through the back door when the female was coming out. Guzman indicated that he "got scared" and "shot her" before quickly going inside and shooting the

man while he was sitting on the bed changing. 1 PA 198-199. Guzman confirmed that he used the same revolver he used to kill Ms. Koontz. *Id*. at 201-202. At some point after the murders, Guzman covered both bodies with blankets—Mrs. David's body was found under a blanket in the mudroom and Mr. David's body was found under bedding on the master bed. 1 RA 229-230; 2 RA 398-399, 402-403. Guzman stole many valuables from the Davids, including, western wear and buckles, jewelry, and guns. Guzman confirmed that he took "weapons" and everything he thought he could use before he left, but acknowledged he left some items behind. 1 RA 200-201, 211-212, 218; 2 RA 404-405.

The Davids' bodies were discovered on January 16, 2019, after Val Diaz, who assisted the Davids in caring for their horses and property, arrived and noticed that things were out of place and unusual in the barn area. 2 RA 358-359. Concerned, Val Diaz approached the home and discovered that the back door leading to the mudroom was open. *Id*. at 360-363, 370. Val Diaz entered the residence through the open door, stepping over a blanket on the floor covering what he later learned was Mrs. David's body. *Id*. at 371-372. Once inside, he observed open cabinets in the kitchen and living room, so he immediately backed out of the home and called 911. *Id*. at 370, 375-377, 385. When law enforcement officers arrived

and cleared the home, they discovered the bodies of Mr. and Mrs. David, as well as numerous signs of theft. *Id*. at 390-391, 394, 396, 398, 399-400.

The murders of the Davids and the burglary of their home are charged in Counts VII, VIII, and IX of the Indictment.[3] PA 4-5.

VI. STANDARD OF REVIEW

A writ of prohibition appropriately addresses allegations that a district court is acting in excess of its jurisdiction. *See* NRS 34.320; *see also State v. Dist. Ct. (Anzalone)*, 118 Nev. 140, 146-147, 42 P.3d 233, 237 (2002). "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, or to control a manifest abuse or an arbitrary or capricious exercise of discretion." *Cote H. v. Eighth Judicial Dist. Ct.*, 124 Nev. 36, 39, 175 P.3d 906, 907-908 (2008) (internal citations and quotations omitted). Writs of prohibition and writs of mandamus are extraordinary remedies, and the Nevada Supreme Court has complete discretion to decide whether to consider them. *Id*. Generally, neither writ is appropriate if the petitioner has a plain, speedy or adequate remedy available at law. *See* NRS 34.170; NRS 34.330. In deciding whether to entertain an extraordinary writ, the

[3] Count X concerns Guzman's possession of various firearms stolen from the Davids' residence over the course of the three burglaries. PA 6; *see also* 2 RA 486, 489-493, 497.

Court "must consider whether judicial economy and sound judicial administration militate for or against issuing the writ, including whether an important issue of law needs clarification and public policy is served by this court's invocation of its original jurisdiction." *State v. Eighth Judicial Dist. Ct. (Armstrong)*, 127 Nev. 927, 931, 267 P.3d 777, 780-81 (2011) (internal quotations and citations omitted).

Guzman does not allege that the district court exceeded its jurisdiction in this case; thus, his Petition is more appropriately one for mandamus. "Mandamus will not lie to control discretionary action, unless discretion is manifestly abused or is exercised arbitrarily or capriciously." *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 603-604, 637 P.2d 534, 536 (1981) (internal citation omitted). "An arbitrary or capricious exercise of discretion is one founded on prejudice or preference rather than on reason, or contrary to the evidence or established rules of law...." *Armstrong*, 127 Nev. at 931-32, 267 P.3d at 780 (internal quotations and citations omitted). "A manifest abuse of discretion is a clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule." *Armstrong*, 127 Nev. at 932, 267 P.3d at 780 (internal quotations omitted).

/ / /

/ / /

VII. ARGUMENT

A. Guzman Has Not Shown that Extraordinary Relief is Warranted Here Because His Petition Rests on the Determination of a Factual Issue, Not Purely a Legal Issue.

Guzman suggests that extraordinary intervention is appropriate in this case because he presents a legal issue that is fully developed and not bound in fact. OP 12-13. While a legal issue is raised in Guzman's Petition regarding the interpretation of NRS 172.105, his arguments in Guzman's are tied to this Court's acceptance of his factual assertion that the crimes alleged in Counts III, IV, V, and VI of the Indictment occurred "solely" in Douglas County. Guzman's factual assertion is inconsistent with the record and the district court's findings in this case.

In the proceedings below, Guzman argued that the Grand Jury did not have jurisdiction to consider Counts III, IV, V, and VI because they occurred "solely" in Douglas County. This argument was raised in Guzman's pretrial writ and motion to dismiss. PA 15-43. The district court's analysis of the issue was the same in both its order denying Guzman's pretrial writ and order denying the motion to dismiss, but its factual finding on this point is only included in its order denying the pretrial writ. The district court rejected Guzman's argument and found:

> The crimes charged in the Indictment in Counts III, IV, V, and VI were properly considered by the Washoe County Grand Jury

> which had jurisdiction to enter a True Bill as to those crimes. *The formation of intent and preparatory acts were in Washoe County even though they culminated in the charged crimes that took place in Douglas County*.
>
> PA 217 (*emphasis added*).

Guzman ignores the district court's finding in his Petition and, instead, suggests that this Court should decide, as a matter of law, that the crimes alleged in Counts III, IV, V, and VI were "solely" committed in Douglas County based on the wording used in the Indictment. *See e.g.* OP 3 (according to Guzman, the question presented is whether the Grand Jury had the power to inquire and return a true bill on "four public offenses *alleged to have been committed solely within Douglas County, Nevada*."); *accord*. OP 7, 9, 20. This Court should decline Guzman's invitation to resolve this factual issue in his favor at this stage in the litigation. *See Round Hill General Imp. Dist.*, 97 Nev. at 604, 637 P.2d at 536 (providing that the appellate court is not the appropriate forum to resolve factual disputes and that, even when important public interests are involved, mandamus "will not be exercised unless legal, rather than factual, issues are presented.").

This Court should not be distracted by Guzman's focus on the allegations in the Information. Issues of jurisdiction and venue are not defined simply by the allegations in a charging document. They are matters

subject to proof at trial. *See James v. State*, 105 Nev. 873, 875, 784 P.2d 965, 967 (1989) ("venue may be established by circumstantial evidence and need not be shown beyond a reasonable doubt"); *McNamara v. State*, 132 Nev. Adv. Op. 60, 377 P.3d 106, 109 (2016) ("the State need only prove territorial jurisdiction by a preponderance of the evidence"). And, even then, the standard of proof is minimal. *See id.*

Further, as district courts commonly instruct juries, the allegations in a charging document should not be considered as evidence in a case. The purpose of the charging document is to put the defendant on notice of the charges he faces. *See e.g. Shannon v. State*, 105 Nev. 782, 785, 783 P.2d 942, 944 (1989) (providing that the State must describe the "essential facts" of the charge sufficient to put the defendant on notice of the State's theory of prosecution so the defense can prepare an adequate defense). Nevada law does not require the State to allege a specific county in a charging document, it only requires an allegation that the crime occurred "within the State of Nevada." *See Application of Alexander*, 80 Nev. 354, 358-359, 393 P.2d 615, 617 (1964). Charging documents are subject to change throughout a criminal case, even as late as trial in some circumstances. *See* NRS 173.095(1). In other words, dismissal is not required simply because the State alleged that Counts III, IV, V, and VI occurred in Douglas County,

as opposed to alleging that they occurred in Douglas and/or Washoe County.

If this Court wishes to address the proper interpretation of NRS 172.105, it should consider Guzman's arguments in light of the district court's factual findings. *See Gonski v. Second Judicial Dist. Ct.*, 126 Nev. 551, 245 P.3d 1164 (2010) (providing that even in the context of writ petitions, the district court's factual findings are entitled to deference) (overruled on other grounds in *U.S. Home Corp. v. Michael Ballesteros Trust*, 134 Nev. Adv. Op. 25, 415 P.3d 32 (2018)). The district court found that Guzman formed his intent and performed preparatory acts in Washoe County. PA 217. Guzman does not challenge this finding in his Petition.

In light of the district court's factual finding, Guzman cannot demonstrate that the district court manifestly abused its discretion when it applied NRS 172.105 and declined to dismiss Counts III, IV, V, and VI. Guzman acknowledges that a grand jury may consider crimes spanning across judicial districts, as long as there is something connecting the crime to the district. *See* OP 19-20 (suggesting that the facts of *McNamara*, *supra*, are consistent with his reading of NRS 172.105 because the crimes alleged originated in Illinois, but continued into Clark County and the case was heard in the Eighth Judicial District Court). Here, the district court

determined that the crimes at issue continued across county lines. Even if this Court were to accept Guzman's interpretation of NRS 172.105 (which it should not), the district court properly rejected Guzman's suggestion that Counts III, IV, V, and VI should be dismissed because the criminal conduct was tied to Washoe County through the formation of intent and preparatory acts. Thus, Guzman has not demonstrated that extraordinary intervention is necessary or warranted in light of the facts established below.

B. The Grand Jury's Power to Inquire into Criminal Offenses Mirrors the District Court's Power to Preside Over the Offenses at Trial.

To the extent this Court wishes to provide future guidance on the limits of a grand jury's power in this State, this Court should review NRS 172.105 de novo. *See Cote H.*, 124 Nev. at 40, 175 P.3d at 908 ("[e]ven when raised in a writ petition, this court reviews questions of statutory interpretation de novo."). Guzman's interpretation of NRS 172.105 centers on the phrase "territorial jurisdiction" to the exclusion of other phrases in the statute. The district court also focused on the meaning of territorial jurisdiction in its orders. The district court correctly concluded that the phrase "territorial jurisdiction" provides a grand jury jurisdiction to consider matters committed statewide. While the district court did not discuss its conclusion in light of the other language contained in NRS

172.105, the district court's decision to deny Guzman relief is consistent with the other language in the statute and, therefore, does not represent a manifest abuse of discretion. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (the Court will affirm a district court's decision if it reached the correct result, even if for the wrong reason).

"When interpreting a statute, the legislative intent is the controlling factor." *State v. Lucero*, 127 Nev. 92, 95, 249 P.3d 1226, 1228 (2011) (citation and internal quotations omitted). The starting point of the analysis is the statute itself. *Id*. When a statute is clear on its face, the court must attribute its plain meaning. *Id*. If the statute is open to two or more reasonable interpretations, then the statute is ambiguous and the court may look to legislative history in order to construe it in a manner that is consistent with reason and public policy. *Id*. If a statute is ambiguous, the court must examine the context and spirt of the law as an interpretive aid. *Leven v. Frey*, 123 Nev. 399, 405, 168 P.3d 712, 717 (2007). In addition, "statutory interpretation should not render any part of a statute meaningless, and a statute's language should not be read to produce absurd or unreasonable results." *Id*. (citations and internal quotations omitted).

NRS 172.105 discusses the power of the grand jury. The statute provides, "[t]he grand jury may inquire into all public offenses triable in the

district court or in a Justice Court, committed within the territorial jurisdiction of the district court for which it is impaneled." NRS 172.105. Guzman suggests that this Court should focus on a single phrase in the statute, "territorial jurisdiction," to find that a grand jury's power is limited to the boundary of a judicial district. Guzman's interpretation is inconsistent with the plain language of the statute. In the event this Court determines NRS 172.105 is ambiguous, Guzman's interpretation is also inconsistent with other applicable statuary interpretation principles.

1. Guzman's interpretation of NRS 172.105 is inconsistent with its plain language.

Guzman's argument focuses solely on a single phrase in NRS 172.105. Guzman suggests that the phrase "territorial jurisdiction" means that the Grand Jury's jurisdiction in this case was tied to the Second Judicial District Court as an institution, and thereby to the invisible line making up the judicial district. Guzman also argues that the territorial limitation on the grand jury's power "should not be conflated with the question of where a properly found charge by a grand jury may ultimately be tried." OP 17-18. Guzman confuses the concepts of jurisdiction and venue. A grand jury's power in Nevada is defined by both.

Jurisdiction and venue are distinct concepts. *Walker v. State*, 78 Nev. 463, 472, 376 P.2d 137, 142 (1962). Venue refers to the locality of

prosecution. 4 Crim. Proc. 16.1(a), LaFave (4th ed., Nov. 2018) ("venue sets the particular judicial district in which a criminal charge is to be filed and in which it will be tried"); *see also e.g*. NRS 171.030. Jurisdiction, on the other hand, refers to the authority or power of a court to act. 4 Crim. Proc. 16.1(a), LaFave (4th ed., Nov. 2018); *accord. State v. County Com'rs*, 19 Nev. 332, 10 P. 901 (1886) ("[i]t is the jurisdiction conferred upon the court that gives it its power and authority, not the name"). With these general principles in mind, this Court may rely on the plain language of NRS 172.105 to determine that the statute is focused on the overall power of a grand jury and that power is not limited simply by district boundaries.

As discussed above, the term "jurisdiction" is a term of art. The same is true of the phrase "territorial jurisdiction." *See McNamara*, 132 Nev. Adv. Op. 60, 377 P.3d at 109 ("*[t]erritorial jurisdiction* has long been required in criminal cases") (*emphasis added*). Thus, the particular meaning for the phrase must be applied here. *See Blackburn v. State*, 129 Nev. 92, 98, 294 P.3d 422, 426 (2013) (reaffirming that "words that have a technical or special meaning are presumed to carry their technical or special meaning") (citation omitted).

The Nevada Supreme Court's opini0n in *McNamara v. State* is instructive because it discusses the meaning of "territorial jurisdiction" and

how it has changed over time. Guzman argues that *McNamara, supra*, does not apply because the Court interpreted NRS 171.020, not NRS 172.105. The opinion was not as limited as Guzman suggests. NRS 171.020—the statute interpreted in *McNamara, supra*—does not include the phrase "territorial jurisdiction." Yet, the concept and definition of "territorial jurisdiction" was directly at issue because the case concerned crimes that crossed State boarders. In *McNamara*, the Court held, "Nevada courts obtain *territorial jurisdiction* whenever (1) a defendant has criminal intent (irrespective of where it was formed) and (2) he or she performs any act in this state in furtherance of that criminal intent." 377 P.3d at 110 (*emphasis added*). The statewide concept of territorial jurisdiction was reaffirmed in the Court's reasoning and holding. *Id*. ("[t]he broad language of NRS 171.020 demonstrates a legislative objective to confer territorial jurisdiction over crimes having a sufficient connection to Nevada"); *see also id*. (concluding that the crime of kidnapping continued "into Nevada's territorial jurisdiction...."). Therefore, even at common law, "territorial jurisdiction" was not defined in terms of judicial districts, as Guzman suggests; instead, the phrase was equated with statewide boundaries. *See id*. at 109-110 (*citing, among others, People v. Betts*, 34 Cal. 4th 1039, 23 Cal. Rptr. 3d 138, 103 P.3d 883, 886 (2005), for the

proposition that territorial jurisdiction at common law was limited to a single State).

The phrase "territorial jurisdiction" has long been synonymous with statewide authority.[4] This Court should presume that the Legislature intended the phrase "territorial jurisdiction" to be given its historical meaning when it adopted NRS 176.105 in 1967. *See Beazer Homes Nevada, Inc. v. Eighth Judicial Dist. Court ex rel. County of Clark*, 120 Nev. 575, 581, 97 P.3d 1132, 1136 (2004) ("[w]hen a legislature adopts language that has a particular meaning or history, rules of statutory construction also indicate that a court may presume that the legislature intended the language to have meaning consistent with previous interpretations of the language."). This interpretation is consistent with the general distinction of jurisdiction and venue. *See Walker, supra; LaFave, supra*. In other words, this Court should decide, like the district court, that the phrase "territorial jurisdiction" was used by the Legislature to confer

/ / /

[4] In a recent civil case concerning subpoena power, the Court also recognized that historically a territory was defined by state lines. *See Quinn v. Eighth Judicial Dist. Court*, 410 P.3d 984, 988 (Nev. 2018) (internal quotations and citations omitted) (providing that a statutory territorial restriction "reflects the traditional concept of states as sovereign powers, exercising plenary jurisdiction within their territories but largely powerless beyond state lines.").

grand juries with the jurisdiction to inquire into crimes committed statewide.

Guzman urges this Court to adopt a limited reading of the phrase "territorial jurisdiction" to avoid turning the Grand Jury into some "roving commission" that inquires into crimes committed elsewhere in the State. OP 17. Guzman's suggestion is inconsistent with the basic rules of statutory interpretation because it places emphasis on a few terms to the exclusion of others. *Blackburn*, 129 Nev. at 97, 294 P.3d at 426 ("[a] statute cannot be dissected into individual words, each one being thrown onto the anvil of dialectics to be hammered into a meaning which has no association with the words from which it has violently been separated.") (citations and internal quotations omitted). Simply because a grand jury has the authority, or territorial jurisdiction, to inquire into an offense, does not necessitate the result Guzman suggests. Nevada's venue statutes prevent a grand jury from inquiring into crimes that are wholly unrelated to the district where it is impaneled. *See* NRS 171.030- NRS 171.065; *see also Walker, supra*.

NRS 172.105 begins by stating that a grand jury may inquire into "all public offenses triable in the district court or in a Justice Court...." The Legislature's reference to offenses "triable in the district court" incorporates

a venue limitation into a grand jury's power. The phrase also demonstrates that a grand jury's power to inquire into criminal offenses is tied to the authority provided to the judges to hear matters, or preside over the ultimate trial. If this Court adopts Guzman's interpretation of the phrase "territorial jurisdiction," it would render the initial phrase in NRS 172.105 meaningless. Pursuant to the plain language of NRS 172.105, the Grand Jury possessed the power to return a True Bill for all of the offenses charged in the Indictment.

2. Even if this Court treats NRS 172.105 as Ambiguous, Guzman Has Not Shown that Extraordinary Relief is Warranted Here.

Even if this Court finds that NRS 172.105 is ambiguous, Guzman does not offer a reasonable interpretation of the phrase "territorial jurisdiction" or the statute as a whole. NRS 172.105 was adopted in 1967 as part of an omnibus criminal procedure bill, Assembly Bill 81. NRS 172.105 was enacted as section 83 of 468 sections, which either added new law or amended existing law concerning criminal procedure in Nevada, under Title 14 of the Nevada Revised Statutes. The intended jurisdiction or power of a grand jury was not discussed at the hearings on the bill. However, when the Legislature enacted Assembly Bill 81, it expressed a focus on simplicity and judicial economy, which should be honored when NRS

172.105 is interpreted. *See Colello v. Real Estate Div.*, 100 Nev. 344, 347, 683 P.2d 15, 16 (1984) ("[w]here the purpose of the legislature is expressly stated, that purpose is a factor to be considered in interpreting a given statute."). The Legislature codified its intent for Nevada's criminal procedure rules in NRS 169.035, which provides:

> This Title is intended to provide for the just determination of every criminal proceeding. Its Provisions shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

Compare NRS 169.035 *with* Section 4, Assembly Bill 81 (1967).

Guzman's suggestion that a grand jury's power is more limited than a district court's power to hear a case is inconsistent with Legislative intent, particularly in this case where Guzman accepts that the Second Judicial District Court is the proper venue for all of the crimes charged in the Indictment. Indeed, during the argument at district court, Guzman's counsel said, "[w]e are not saying this case cannot at some point in time be joined, but that is somewhere down the road." PA 135-136. As the district court noted in its order, Guzman did not raise a venue argument below.[5]

[5] Guzman's decision not to challenge venue in this case is sound. Venue is proper in Washoe County for Counts III, IV, V, and VI because Guzman committed an act requisite to those offenses in Washoe County—i.e. he procured the firearm used in those offenses from the Davids' trailer in Washoe County. *See* NRS 171.030; *Walker*, 78 Nev. at 471, 376 P.2d at 141 (finding that venue was properly laid in Washoe County because,

Guzman's interpretation of NRS 172.105 is unreasonable from a practical standpoint and is inconsistent with the Legislature's clearly expressed purpose of Assembly Bill 81. Guzman suggests that the State should indict him in Washoe County for some of the charges and then proceed through preliminary hearing in Douglas County on the others. These processes could not occur simultaneously, since Guzman is currently in custody in Washoe County. Even ignoring the logistical nightmare of pursuing the charges separately and the delay associated, how are the matters joined? Which district court judge has authority to join the offenses for one trial? What if the judges disagree, which decision controls? "The district courts of this state have equal and coextensive jurisdiction; therefore, the various district courts lack jurisdiction to review the acts of

---

among other reasons, "[t]he killing was admittedly committed by appellant, and "the acts or effects thereof constitution or requisite to the consummation of the offense[s] could have occurred in two or more counties, one of which was Washoe County.") Venue is also proper in Washoe County for other important reasons. For example, the evidence in each individual case is cross-admissible. The factual underpinnings of Guzman's crime spree are so intertwined that the investigation could not be discussed at trial without reference to other crimes. *See* NRS 48.035(3). Similarly, the evidence adduced from each individual case is germane to all cases as it relates to Guzman's intent, motive, knowledge, identity as the perpetrator, and so forth. *See* NRS 48.045(2). The Nevada Constitution also gives victims the right to the timely disposition of a criminal matter, which can only be accomplished by proceeding with one trial in Washoe County. Further, by conceding venue in Washoe County, Guzman ensures a larger jury pool and limits his exposure to one criminal trial.

other district courts." *See Rohlfing v. Second Judicial Dist. Court*, 106 Nev. 902, 803 P.2d 659 (1990). If the Court adopts Guzman's suggestion it will create absurd results. Guzman's suggestion does not provide for a just determination of his case, or any future cases involving multicounty crime sprees. Guzman's interpretation of NRS 172.105 is not simple, nor fair to victims and witnesses, and does not avoid unjustifiable expense and delay. Thus, Guzman's interpretation of NRS 172.105 frustrates the purpose of Title 14.

In addition, Guzman's proposed interpretation of NRS 172.105 ignores the Legislature's use of varying language within related statutes concerning grand jury powers and duties. *See e.g. Williams v. State*, 402 P.3d 1260, 1264 (Nev. 2017) (reaffirming that when possible, the Court will interpret a statute in harmony with other rules or statutes). Guzman suggests that the Legislature intended the phrase "territorial jurisdiction" to mean the statutorily created boundary of the district court. The Legislature enacted NRS 172.175 and NRS 172.185 at the same time as the statute at issue here, NRS 172.105. NRS 172.175 and NRS 172.185 appear under the same "Powers and Duties of Grand Jury" heading. However, in NRS 172.175 and NRS 172.185, the Legislature defined the scope of a grand jury's power in terms of the "county" or "district." The Legislature used the

terms "county" and "district" in these related statutes to define the limits of a grand jury's other powers and duties; thus, when interpreting NRS 172.105, this Court "must presume that the variation in language indicates a variation in meaning."[6] *Williams*, 402 P.3d at 1264; *see also Ex parte Arascada*, 44 Nev. 30, 189 P. 169 (1920) (discussing the principle expression *unius est exclusion alterius*—meaning, "when the legislature enumerates certain instances in which an act or thing may be done, or when certain privileges may be enjoyed, it names all that it contemplates; otherwise what is the necessity of specifying any?").

As discussed above, the fact that the phrase "territorial jurisdiction" contemplates statewide authority, does not equate to a grand jury having unlimited power to inquire into offenses completely unrelated to the district where it is impaneled. The initial phrase of NRS 172.105—providing

---

[6] Guzman relies on the statute defining Nevada's judicial districts, NRS 3.010, to suggest that the Legislature intended the term "territorial jurisdiction" to mean the statutorily created boundary of the judicial district. Guzman's reliance is misplaced because NRS 3.010 was in effect at the time that NRS 172.105 was enacted. Guzman's contention that NRS 172.105 is the codification of a limited concept of territorial jurisdiction adopted from *People v. Gleason*, 1 Nev. 173, 178 (1865), and *State v. Pray*, 30 Nev. 206, 221 (1908), is similarly misplaced. In 1967, the Legislature was aware of how to limit a grand jury's power to a judicial district, as evidenced by the language used in NRS 172.185, but the Legislature chose to define a grand jury's power with respect to criminal offenses more broadly.

that the grand jury may inquire into "all public offenses triable in the district court"—places a limitation on that power to hear matters that are appropriately venued in the district. *See* NRS 172.105.

It is not unprecedented for a court to look to venue statutes to determine the limits of a grand jury's power. For example, in 2014, the Supreme Court of Ohio considered and rejected a similar challenge to a grand jury's power to inquire into offenses across county lines by relying, in part, on Ohio's venue statutes. In *State v. Jackson*, the court considered a grand jury statute with more limited language, but concluded that the court could not consider Ohio's grand jury statute in isolation, as doing so would not address the "modern mobility of criminal offenders." *Compare* 23 N.E. 3d 1023, 141 Ohio St. 3d 171, 193-196 (Ohio 2014) (reviewing Ohio's statute which instructs the grand jury to "inquire of and present all offenses committed within the county") *with* NRS 172.105 (referring to matters "triable in the district court" and maters committed within the "territorial jurisdiction" of the district court). In *Jackson*, the defendant engaged in a crime spree across county lines which included perpetrating six robberies of small businesses, at night, and along the line of travel between the counties. The Supreme Court of Ohio rejected the defendant's argument that the grand jury did not have jurisdiction to indict him. The court relied on a

venue statute and concluded that the grand jury had the power to hear the case because the offenses from other counties were part of the same course of criminal conduct. 23 N.E. 3d at 1047-1048.

Guzman does not have a constitutional right to be tried in any particular county in Nevada. *See Walker*, 78 Nev. at 472-473, 376 P.2d at 141-142. This Court should reject Guzman's suggestion that there is a district jurisdictional distinction at the grand jury level, when none is expressly provided for by statute. NRS 172.105 provides a grand jury with the power to inquire into the offenses triable by the district court. Guzman does not dispute that Washoe County is the proper venue for his trial on all of the offenses in the Indictment. Thus, the Grand Jury had the power to return the True Bill for Counts III, IV, V, and VI of the Indictment and the district court did not manifestly abuse its discretion when it declined to dismiss the same.

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

VIII. CONCLUSION

Based on the foregoing, this Court should deny Guzman's request for extraordinary relief.

DATED: August 22, 2019.

MARK JACKSON
Douglas County District Attorney

CHRISTOPHER J. HICKS
Washoe County District Attorney

By: MARILEE CATE
Appellate Deputy

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this answer complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this answer has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in Georgia 14.

2. I further certify that this answer complies with the page limitations of NRAP 32(a)(7) because, excluding the parts of the answer exempted by NRAP 32(a)(7)(c), it does not exceed 80 pages.

3. Finally, I hereby certify that I have read this answer, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this answer complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the answer regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in

/ / /

/ / /

/ / /

the event that the accompanying answer is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: August 22, 2019.

MARK JACKSON
Douglas County District Attorney

CHRISTOPHER J. HICKS
Washoe County District Attorney

BY: MARILEE CATE
Appellate Deputy
Nevada State Bar No. 12563
One South Sierra Street
Reno, Nevada 89520
(775) 328-3200

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on August 22, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

John Reese Petty
Katheryn Hickman
Gianna Verness
Joseph W. Goodnight

Chief Deputy Public Defenders

I further certify that a copy of this document was hand delivered to the Hon. Connie J. Steinheimer, Second Judicial District Court, Department 4.

/s/ Margaret Ford
MARGARET FORD