

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILBER ERNESTO MARTINEZ
GUZMAN,

Petitioner,

v.

No. 81842

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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.

ANSWER TO PETITION FOR WRIT OF MANDAMUS

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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. The Washoe County grand jury returned an Indictment for all of the offenses in March of 2019, and since that time Guzman has filed several motions with the district court and a previous Petition for Writ of Mandamus with this Court

in an effort to dismiss the charges associated with the two murders and burglaries he committed in Douglas County.¹

This Court entertained Guzman's prior Petition concerning the jurisdiction of the Washoe County grand jury; however, this Court declined Guzman's invitation to dismiss the Douglas County charges outright. Instead, this Court directed the district court to reconsider Guzman's motion to dismiss and, in part, "review the evidence presented to the Washoe County grand jury to determine whether there is a sufficient connection between the Douglas County offenses and Washoe County." *Guzman v. State*, 136 Nev. 103, 104, 460 P.3d 443, 445 (2020).

The district court followed this Court's direction and, after additional briefing and argument from the parties, issued a detailed and well reasoned order denying Guzman's motion to dismiss. Guzman disagrees with the district court's discretionary decision and again asks this Court to make a pretrial determination that the Second Judicial District Court is the improper forum to try the Douglas County charges. However, this Court's intervention is not necessary or warranted now. If Guzman is convicted, he has an adequate remedy in the form of a direct appeal to address the

¹ These crimes are charged in Counts III, IV, V, and VI of the Indictment and will generally be referred to herein as the Douglas County charges, offenses, or counts. See Petitioner's Appendix ("PA") 2-4.

ultimate issue implicated here: whether the Second Judicial District Court has the authority to adjudicate his guilt for the Douglas County offenses. *See Guzman*, 136 Nev. at 110, 460 p.3d at 450. In addition, Guzman’s current Petition raises primarily factual issues, which should not be decided at this juncture. Moreover, Guzman has not shown that the district court manifestly abused its discretion below in any respect. This Court should not entertain Guzman’s most recent request for intervention.

II. STATEMENT OF THE CASE

The jurisdiction of the Washoe County grand jury and whether the Second Judicial District Court can adjudicate Guzman’s guilt for the Douglas County offenses has been extensively litigated in the district court since early 2019. Initially, Guzman focused his call for relief on the jurisdiction of the Washoe County grand jury and pursued a writ of mandamus or prohibition with this Court. *See Guzman*, 136 Nev. at 103-104, 460 P.3d at 444. As referenced above, Guzman encouraged this Court to determine that the Washoe County grand jury did not have jurisdiction over the Douglas County charges and to order the district court to dismiss the same. *Id.* at 111, 460 P.3d at 450.

While Guzman’s first Petition was pending with this Court—and just a matter of days before the *en banc* oral argument—Guzman filed a motion to

dismiss related to venue with the district court. 2 Real Party in Interest's Appendix ("RA") 259-263; *see also* Dtk. No. 79079 (oral argument occurred on November 5, 2019). There, Guzman argued that Washoe County is not the appropriate venue for the Douglas County offenses to be heard. 2 RA 259-263. After briefing, the district court denied his motion on January 12, 2020, relying on various statutes, constitutional provisions, and other legal authority. *Id.* at 308-319. In part, the Court found that Guzman's offenses were part of a common scheme or plan and were tied to Washoe County. *Id.* at 317-318. The district court further found that the Second Judicial District Court was a proper venue for the Douglas County offenses pursuant to NRS 171.030 and NRS 171.060. *Id.*

On March 26, 2020, this Court issued its opinion granting in part and denying in part Guzman's first Petition. *Guzman*, 136 Nev. at 111, 460 P.3d at 450. This Court refused to dismiss the Douglas County charges outright. *Id.* ("[w]e deny the petition to the extent it seeks a writ requiring the district court to grant his motion to dismiss outright."). This Court held that NRS 172.105 "empowers a grand jury to inquire into an offense so long as the district court that empaneled the grand jury may appropriately adjudicate the defendant's guilt for that particular offense." *Id.* at 110, 460 p.3d at 450. As such, this Court ordered the district court to reconsider Guzman's

motion to dismiss. This Court instructed that, even though Guzman did not raise venue in his motion below, the district court “must determine, based on the evidence presented to the Washoe County grand jury, if venue is proper in the Second Judicial District Court for the Douglas County charges under the applicable statutes.” *Id.* at 110-111, 460 P.3d at 450.

On April 9, 2020, in light of this Court’s decision, the district court vacated its prior order regarding the grand jury’s jurisdiction and ordered supplemental briefing. PA 29-33. On April 27, 2020, Guzman filed his supplemental brief in support of the motion to dismiss. *Id.* at 35-48. The State filed its supplemental opposition to the motion to dismiss on May 14, 2020. *Id.* at 49-74. The district court ordered oral argument on the supplemental briefs, which occurred on June 29, 2020. *Id.* at 75-112. On September 10, 2020, the district court issued an order denying Guzman’s motion to dismiss. *Id.* at 113-135. The district court’s order complied with this Court’s directive. It addressed the connection between the Washoe County and Douglas County charges and analyzed, among other things, the applicable venue statutes. *See id.*

On September 25, 2020, Guzman filed his second Petition for Writ of Mandamus, again seeking the dismissal of the Douglas County offenses.

On November 13, 2020, this Court ordered the State to Answer Guzman's most recent Petition.

III. STATEMENT OF FACTS²

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. On January 10, 2019, officers responded to the first murder and burglary crime scene in Gardnerville, Nevada. Another victim was discovered in Gardnerville three days later, and then two additional victims were found in Reno three days after the second victim was discovered.

After the second victim was found, law enforcement began to believe that the crimes were related. SA 68, 128-129. The similarities began with

² The State presented eight witnesses and 174 exhibits during the grand jury proceeding. Petitioner's Supplemental Appendix ("SA") 3, 266. The following facts are primarily based on the grand jury transcript and the transcript of Guzman's interview. Guzman's interview was conducted by Washoe County Sheriff's Office Detective Stephanie Brady, with the assistance of a court certified interpreter because Guzman speaks Spanish. SA 244-245. During the grand jury proceeding, Detective Brady authenticated a redacted video of Guzman's interview and described the interview and several important admissions. *Id.* at 247-261. As part of the litigation below regarding the grand jury's jurisdiction and the appropriate venue to adjudicate the Douglas County offenses, Guzman, the State, and the district court have relied on a transcript of Guzman's interview. The complete transcript is included in Volume 1 of the Real Party in Interest's Appendix.

the respective ages of all four victims. *Id.* at 129. Another common thread was that all killings appeared to have occurred during the perpetration or attempted perpetration of a burglary at the victims' homes. *Id.*

Additionally, it appeared that all four homicides possessed similarities with respect to the weapon used. *Id.* For example, on the kitchen floor of the third and fourth victims' home, law enforcement officers observed an unspent .22 caliber "snake shot" round. *Id.* at 68-70, 128-129. "Snake shot" is a term colloquially used to refer to handgun or rifle cartridges which are loaded with small lead shot pellets. *Id.* at 67, 135. Similarly sized pellets were observed in the right and left sides of the second victim's face during her autopsy. *Id.* at 179-181. An expended .22 caliber round was also recovered from a door in the second victim's home. *Id.* at 72. 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 147-148.

On January 19, 2019, Guzman was located sitting in his BMW in a parking lot in Carson City and subsequently arrested for the string of burglaries and murders. Following his arrest, Washoe County Sheriff's

Office 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; SA 148, 244-245. Prior to the onset of any questions related to the investigation, Guzman was advised of his *Miranda*³ rights and acknowledged his understanding of the same. Guzman waived his rights and voluntarily spoke with Detective Brady. 1 RA pgs. 80-82.

Guzman admitted to the burglaries and murders and confirmed many details that were discovered by law enforcement over the course of the early investigation. *See* SA 254-261 (summarizing Guzman's admissions and highlighting several important details that Guzman confirmed).

Importantly, Guzman explained how he chose his victims. In 2018 Guzman did landscaping work and identified the victims' garages and property as having valuable items he could steal. *Id.* at 250, 256; 1 RA 207-208.

Guzman confirmed that he drove the BMW to each of the victims' homes when he committed the burglaries and murders. *See* SA 251-252; 1 RA 82-83, 87-88, 207.

B. Counts I and II – The first burglaries in Washoe County.

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

³ *Miranda v. Arizona*, 384 U.S. 436 (1966).

“Mr. David and Mrs. David”, or collectively “the Davids”) property located at 760 La Guardia Lane in Reno and stole items, including a saw, from their barns or outbuildings. SA 85-88, 131-132, 257; 1 RA 214-216. On January 4, 2019, Guzman returned to La Guardia Lane and stole a hunting bag containing a .22 caliber revolver and other items from various outbuildings, sheds, barns, and trailers located on the Davids’ property. SA 88, 91-92, 131-132, 257-258; 1 RA 193-194, 213-214. 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 214-217. These early burglaries are charged in Count I and Count II of the Indictment. PA 1-2.

C. Counts III and IV - The murder of Constance Koontz and burglary of her home.

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 noticed Ms. Koontz’s property in 2018 when he did a yard cleaning nearby. 1 RA 15, 30-31, 37, 206-208. He thought she lived alone, and no one would notice if he took things from her. *Id.* at 208.

Guzman entered Ms. Koontz's home through an unlocked door and shot Ms. Koontz in the head, just above her right ear. SA 43, 155, 157-156, 168-169; 1 RA 188. Guzman also ransacked the home and stole various items, including jewelry, an Apple Watch, an iPhone, and an iMac computer. SA 296; 1 RA 187-188, 191-192. Guzman told Detective Brady that he wanted to take some items in order to sell them so he would have money to purchase drugs. SA 255-256; 1 RA 187-189. Guzman confirmed that when he saw Ms. Koontz, he shot her with the revolver he took from the Davids' property. 1 RA 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. SA 43-44. Evelyn Harmon lived in the home, but due to a medical condition was bound to a wheelchair and rarely left her room.⁴ *Id.* at 29, 36-37, 255-256; 1 RA 191. 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.

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⁴ During Guzman's interview, he indicated that there was "another woman" in the other room, which he believed was the decedent's mother. SA 255-256; 1 RA 191.

D. Counts V and VI - The murder of Sophia Renken and burglary of her home.

On January 12, 2019, or January 13, 2019, Guzman went to 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. SA 52. Guzman worked on Ms. Renken's yard when he worked for his uncle's landscaping company in 2018 and noticed she had valuable tools and machines in her garage. 1 RA 15, 30-31, 37, 223. Guzman entered through the unlocked back door and 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 220-223; SA 178-185, 258.

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. SA 57-58. When Jeffery Harris arrived at Ms. Renken's home, he immediately noticed that things were out of place — including that a number of gates were open when they were ordinarily closed and the back door to the home was open. *Id.* at 59, 62. Jeffery Harris cautiously entered the home and discovered Ms. Renken's lifeless body on the floor of her bedroom. *Id.* at 66. Guzman initially denied murdering Ms. Renken during his interview, but ultimately admitted that he "did her in." 1 RA

195-196, 210-211, 218-222. Guzman confirmed that he shot her several times, but denied taking anything from the home. *Id.* at 221-222. The murder of Ms. Renken and burglary of her home are charged in Count V and Count VI of the Indictment. PA 3-4.

E. Counts VII, VIII, IX, and X - The murders of the Davids, burglary of their home, and the subsequent possession of stolen firearms therefrom.

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. SA 256-258; 1 RA 197-198, 203-206. Guzman knew the property because he had worked on their lawn. SA 256; RA 202-203. 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. SA 146, 189-193. Guzman shot Mr. David five times in the head and once in the chest in the Davids' bedroom. *Id.* at 143, 193, 196-208.

Guzman told Detective Brady that he entered the home at approximately 6 in the morning through the unlocked back door when the female was coming out. 1 RA 197-199, 203-206. 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. *Id.* at 199-200. Guzman

confirmed that he used the same revolver he obtained earlier on the property and the same one 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. *Id.* at 229-230; SA 140-141, 144-145. Guzman stole many valuables from the Davids’ home, including, western wear and buckles, jewelry, and guns. 1 RA 200-201, 212-213, 217-218. Guzman confirmed that he took “weapons” and everything he thought he could use before he left, but acknowledged he left some items behind. *Id.*; SA 146.

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. SA 100-101. Concerned, Val Diaz approached the home and discovered that the back door leading to the mudroom was open. *Id.* at 102-105, 112. 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 113-114. 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 112, 117-119, 127. 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 132-133, 136, 138, 140, 141-142. The murders of the Davids and the burglary of their home are charged in Counts VII, VIII, and IX of the Indictment, respectively. PA 4-5. Count X concerns Guzman's possession of various firearms stolen from the Davids' residence over the course of the three burglaries. *See id.* at 6; SA at 228, 231-235, 239.

F. Guzman's arrest and relevant evidence discovered in the searches of his home, BMW, and BLM land near Carson City.

On January 19, 2019, Guzman was apprehended in Carson City. Guzman's apartment, also located in Carson City, and Guzman's BMW, were subsequently searched. Officers recovered items that were known to have been taken during the burglaries and murders. SA 218-222. For example, in Guzman's home, officers retrieved Ms. Koontz's Apple Watch, iPhone, and iMac computer. *See* 1 RA 165-167. In the BMW, officers discovered a pendant with "Connie" engraved in it, an airline ticket with the name "Madison Winkelman" (Connie Koontz's daughter), and a backpack with Gerald David's Reno Rodeo badge inside. SA 221-222. The officers also discovered a .22 caliber revolver, which holds nine cartridges, under the driver seat of the BMW and a box of ammunition with nine cartridges missing in another area of the BMW. *Id.* at 218-220, 222. During

Guzman's interview, he confirmed that he drove the BMW when he was traveling to and from the victims' homes to commit the crimes charged in this case. 1 RA 207. Many of the Davids' firearms were recovered near Carson City on January 20, 2019, based on a map Guzman drew during his interview. SA 228, 230, 235-239.

IV. STANDARD OF REVIEW

Writs of mandamus are extraordinary remedies, and the Nevada Supreme Court has complete discretion to decide whether to consider them. *Cote H. v. Eighth Judicial Dist. Ct.*, 124 Nev. 36, 39, 175 P.3d 906, 907-908 (2008). In deciding whether to entertain an extraordinary writ, the 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).

Generally, a writ of mandamus is not appropriate if the petitioner has a plain, speedy, or adequate remedy available at law. NRS 34.170. In addition, the appellate court is not the appropriate forum to resolve factual disputes and, even when important public interests are involved,

mandamus “will not be exercised unless legal, rather than factual, issues are presented.” *See Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981). Further, “[m]andamus will not lie to control discretionary action, unless discretion is manifestly abused or is exercised arbitrarily or capriciously.” *See id. at 603-604*, 637 P.2d at 536 (internal citation omitted); *see also Armstrong*, 931-32, 267 P.3d at 780 (the standard requires a showing of a clearly erroneous interpretation of the law or a finding based in prejudice, which is contrary to the evidence or established rules of law). “Where a district court is entrusted with discretion on an issue the petitioner’s burden to demonstrate a clear legal right to a particular course of action is substantial....” *Walker v. Second Judicial Dist. Ct. (Michaels)*, 136 Nev. Adv. Op. 80, *5 (Dec. 10, 2020) (*emphasis in original*).

V. SUMMARY OF ARGUMENT

Guzman has not shown that the district court manifestly abused its discretion or that he had a clear legal right to the dismissal of the Douglas County charges. The district court’s ruling is consistent with the evidence presented to the grand jury and is a reasonable application of *Guzman*, *supra*, and NRS 172.105. The district court’s decision to deny Guzman’s motion to dismiss also comports with the concepts of fundamental fairness,

judicial economy, and the Nevada Constitution. Moreover, Guzman has an adequate remedy at law to appeal the district court's decision regarding the Second Judicial District Court's ability to adjudicate the Douglas County offenses if he is convicted by a jury. *See* NRS 34.170. No other relevant mandamus considerations support this Court intervening in this case now, particularly because Guzman's Petition requires this Court to resolve factual issues, not legal ones. *See Round Hill*, 97 Nev. at 604, 637 P.2d at 536 (noting that even when important public interests are involved, mandamus "will not be exercised unless legal, rather than factual, issues are presented.").

VI. ARGUMENT

Guzman's Petition concerns the district court's decision to deny one of his many motions to dismiss. Venue determinations are traditionally subject to an abuse of discretion standard of review, as are motions to dismiss. *See e.g. Ford v. State*, 102 Nev. 126, 130, 717 P.2d 27, 29 (1986) ("[v]enue determinations are committed to the sound discretion of the trial judge and will remain undisturbed on appeal absent a clear demonstration of an abuse of discretion"); *Hill v. State*, 124 Nev. 546, 550, 188 P.3d 51, 54 (2008) (reviewing a motion to dismiss an indictment for abuse of discretion). Thus, to require this Court's intervention, Guzman must show

that the district court acted arbitrarily or capriciously, or that it manifestly abused its discretion by denying his motion to dismiss. *See Round Hill*, 97 Nev. at 603-604, 637 P.2d at 536. Guzman has failed to meet his burden here because he has not shown a clear legal right to dismissal of the Douglas County charges. *See Michaels*, 136 Nev. Adv. Op. 80, *5.

A. Guzman has not shown that the district court manifestly abused its discretion by deciding that the Second Judicial District Court has territorial jurisdiction over, and is an appropriate venue for, the Douglas County offenses pursuant to NRS 171.030 and NRS 171.060.

The motion to dismiss at issue in *Guzman* and again here concerns the grand jury's jurisdiction pursuant to NRS 172.105—i.e. the Washoe County grand jury's power to return an indictment for the Douglas County charges and the district court's ability to adjudicate him for the offenses. *See* 136 Nev. at 103-104, 110-111, 460 P. 3d at 445, 450. NRS 172.105 defines the “power” of the grand jury and 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.” In *Guzman*, this Court was asked to interpret the meaning of NRS 172.105, and specifically the term “territorial jurisdiction.” 136 Nev. at 103, 460 P. 3d at 445. This Court explained that if venue is proper in the Second Judicial District Court, “then the district court has ‘territorial jurisdiction’ over those criminal offenses and the grand jury thus

has authority to return an indictment on those charges.” *Id.* at 111, 460 P.3d at 450. Guzman has not shown that the district court’s decision to deny his motion to dismiss is contrary to the evidence or involves a manifest abuse of discretion requiring this Court’s intervention now. The State will begin its analysis with the statutes the parties agree are relevant here and the district court’s related factual findings.⁵

- i. *NRS 171.030 permits the Second Judicial District Court to adjudicate Guzman’s guilt for the Douglas County offenses.*

The State and Guzman agree that NRS 171.030 applies to this case; however, Guzman argues that NRS 171.030 does not establish venue in the Second Judicial District Court for the Douglas County offenses because the charges are “distinct and separate” and “the independent acts committed in Washoe County were not requisite to the offenses occurring in Douglas County.”⁶ Petition for Writ of Mandamus (“Pet.”) 19. The district court

⁵ As will be discussed in section B of this brief, Guzman incorrectly asserts that this Court instructed the district court to only consider two venue statutes to resolve his motion.

⁶ Guzman’s assertions that the offenses were “distinct and separate” or “independent acts” is central to the relief he requests—a dismissal of the charges. Elsewhere, Guzman urges this Court to conclude the crimes were temporally and spatiality distinct. *See e.g.* Pet. 19. These arguments are indicative of why Guzman’s Petition should not be considered at this time. Guzman calls on this Court to resolve central factual disputes and does not raise purely legal issues. *See Round Hill*, 97 Nev. at 604, 637 P.2d at 536.

rejected Guzman’s factual assertions, as well as his application of NRS 171.030. The district court’s decision is sound.

NRS 171.030 provides: “[w]hen a public offense is committed in part in one county and in part in another or the acts or effects thereof constituting or requisite to the consummation of the offense occur in two or more counties, the venue is in either county.” The district court applied the plain language of NRS 171.030 and found that “by a preponderance of the circumstantial evidence the State has proven that Washoe County is a proper venue for the Douglas County offenses: Counts III, IV, V, and VI of the Indictment.” PA 134. Consistent with this Court’s directive, the district court considered whether the evidence presented to the grand jury demonstrated a sufficient connection between the Douglas County offenses and Washoe County. *Id.* at 133-134. The district court found “there is a sufficient connection between the Douglas County offenses and Washoe County to allow the case to remain in Washoe County.” *Id.* at 134. In reaching its decision regarding venue and territorial jurisdiction, the district court adopted the State’s factual argument concerning the significance of Guzman’s procurement of the revolver and ammunition from Washoe County. It found that:

The predicate act of Mr. Guzman procuring the revolver and ammunition in Washoe County set into motion the commission of a

string of burglaries and murders across Northern Nevada in January 2019. With the revolver in his possession, Mr. Guzman escalated his plan that originated back in 2018, from stealing tools from garages, trailers, and shed[s] to home burglaries and the murder of its elderly occupants.

PA 132-133; *see also id.* at 130 (noting “[t]his arguably makes the attainment of the revolver and ammunition a preparatory action in the offenses charged.”).

Venue and territorial jurisdiction do not require proof beyond a reasonable doubt. Instead, the standard of proof is minimal—they require a showing by a preponderance of the evidence—and may be established through circumstantial evidence presented 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. 606, 615, 377 P.3d 106, 113 (2016) (“the State need only prove territorial jurisdiction by a preponderance of the evidence.”).

During Guzman’s interview, he acknowledged that he identified Ms. Renken’s and Ms. Koontz’s properties as having valuable items to steal while he was working for a landscaping company in 2018. 1 RA 15, 30-31, 37, 206-208, 223. Guzman claimed he committed the offenses in this case because he needed money for drugs. *See e.g. id.* at 1 RA 187-189. However, Guzman was initially focused on items he saw in the victims’ garages, not inside their homes. *Id.* at 206-208, 223. In other words, prior to obtaining

the revolver and ammunition from the Davids' property in Washoe County, Guzman's plan was to gain money for drugs by stealing tools and machinery from garages and outbuildings. Guzman pursued his original plan when he went to the Davids' property and burglarized their outbuildings on January 3, 2019, and then again on January 4, 2019. Guzman's behavior changed after the second night because that is the night he obtained the loaded .22 caliber revolver from the Davids' trailer. *See* 1 RA 214-217. Thereafter, Guzman entered the victims' homes and obtained valuable personal property that he could easily carry and transport in his BMW, such as jewelry, western wear, guns, and small electronics—including, an Apple Watch, an iPhone, and an iMac computer. *See* SA 296; 1 RA 187-188, 191-192; 200-201, 212-213, 217-218.

The district court's findings regarding the significance of the revolver to Guzman's criminal conduct in Douglas County are supported by a preponderance of the evidence. Guzman had previously identified the victims, but he did not act without the revolver. Put another way, Guzman's procurement of that firearm was requisite to the formation of his intent to abandon his earlier plan and, instead, enter the living quarters of the victims in this case. As such, Guzman has not shown that the district court's findings are contrary to the evidence or amount to a manifest abuse

of discretion requiring this court to intervene. *See Armstrong*, 127 Nev. at 931-32, 267 P.3d at 780 (providing an arbitrary or capricious exercise of discretion is one contrary to the evidence). As the record supports the district court's findings, they are entitled to deference by this Court if it considers whether the Douglas County crimes are sufficiently connected to Washoe County to allow the Second Judicial District Court to adjudicate Guzman's guilt. *See Gonski v. Second Judicial Dist. Ct.*, 126 Nev. 551, 557, 245 P.3d 1164, 1168 (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)).

Guzman urged the district court, and now urges this Court, to determine that NRS 171.030 is a continuing offenses statute which only provides venue when the offenses at issue are continuing across county lines. Guzman cites a secondary source and non-binding authority to support his proposition. However, when a statute is clear on its face, the Court must attribute its plain meaning. *See State v. Lucero*, 127 Nev. 92, 95, 249 P.3d 1226, 1228 (2011). The plain language of NRS 171.030 does not support Guzman's reading. NRS 171.030 has two parts. First, it provides that venue is established when the offense is committed part in

one county and part in another—i.e. venue for continuing offenses. However, NRS 171.030 also establishes venue when an “act[] or effect[] thereof... requisite to the consummation of the offense” is committed in two or more counties. The Legislature used the disjunctive term “or” to separate the phrases and, therefore, NRS 171.030 provides two separate ways to establish venue.

Guzman’s limited interpretation of NRS 171.030 is also inconsistent with prior opinions from this Court. In *Guzman*, this Court rejected his proposed limited reading of NRS 172.105, and instead relied heavily on its opinion in *McNamara*, to aid its analysis of the statute and its application to this case. *See Guzman*, 136 Nev. at 108-110, 460 P.3d at 448-450 (citing *McNamara v. State*, 132 Nev. 606, 377 P.3d 106 (2016)). In *McNamara*, this Court interpreted the meaning of another venue statute - NRS 171.020.⁷ There, this Court reaffirmed that NRS 171.020 “gives jurisdiction to Nevada courts whenever the criminal intent is formed and *any act* is accomplished in this state in pursuance or partial pursuance *of the intent*.”

⁷ NRS 171.020 provides: “[w]henever a person, with intent to commit a crime, does any act within this State in execution or part execution of such intent, which culminates in the commission of a crime, either within or without this State, such person is punishable for such crime in this State in the same manner as if the same had been committed entirely within this State.”

McNamara, 132 Nev. at 611, 377 P.3d at 110 (quoting *Shannon v. State*, 105 Nev. 782, 792, 783 P.2d 942, 948 (1989)). In *McNamara*, this Court noted it previously interpreted the venue statute narrowly, but after a related Supreme Court of the United States Opinion it reversed course and gave the statute the full interpretation provided by the Legislature. *Id.* It follows that this Court should similarly reject Guzman’s limited reading of NRS 171.030 and apply the full meaning of the statute’s terms.

Additional support for the district court’s interpretation of NRS 171.030 is found in Nevada’s seminal case discussing the statute’s meaning, *Walker v. State*, 78 Nev. 463, 376 P.2d 137 (1962). Guzman attempts to distinguish *Walker*, but the *Walker* Court’s discussion of NRS 171.030 cautions against the type of limited reading of the statute propounded by Guzman here. In fact, the Court reasoned that venue is a matter “so pliant that it would expand under the slight pressure of convenience.” *Id.* at 472 (quoting a New Jersey Supreme Court opinion, *State v. Le Blanch*, 31 N.J.L. 82 (Sup. Ct. 1864)). Thus, the *Walker* Court adopted an expansive view of venue under NRS 171.030. It concluded that venue was proper under NRS 171.030 because “‘the acts or effects thereof constituting or requisite to the consummation of the offense’ *could have occurred in two or more counties*, one of which was Washoe County.” *Id.* at 471 (*emphasis added*).

The *Walker* Court’s analysis is directly applicable to this case. The Douglas County charges are specific intent crimes, as they allege two counts of murder and two counts of burglary, and the charges additionally allege they were committed with a firearm. As courts often instruct juries, intent may be established by circumstantial evidence and is rarely proven by any other means. *See e.g.* NRS 193.200; *Grant v. State*, 117 Nev. 427, 435 (2001) (“Intent need not be proven by direct evidence but can be inferred from conduct and circumstantial evidence.”). Here, Guzman initially formed his plan to steal from his victims months before the crimes in this case occurred when he was doing landscaping work, but he only chose to act on an escalated version of his original plan⁸ shortly after obtaining the revolver from the Davids. Thus, evidence suggests that Guzman formed the intent to burglarize and/or kill Ms. Koontz and Ms. Renken when he obtained the revolver in Washoe County. It is also possible that Guzman formed his intent shortly after obtaining the revolver, such as when he was driving home to Carson City or while he was home in Carson City. Even if these possibilities are not dispelled by the evidence adduced at the grand

⁸ As discussed above, Guzman’s original plan and intent was to simply steal from his victims’ garages to obtain money for drugs. However, after obtaining the revolver he entered their homes for more valuable property and to murder the residents.

jury proceeding, venue is proper in the Second Judicial District Court because the formation of Guzman's intent "could have occurred in two or more counties, one of which was Washoe County." *See Walker*, 78 Nev. at 471, 376 P.2d at 141. As such, this Court should not find that the district court applied NRS 171.030 erroneously, as it applied the statute consistent with this Court's prior decisions and it gave the statute the full effect of its terms.

Guzman also points to non-binding authority from other jurisdictions to support his contention that his act of procuring the revolver from Washoe County, which was later used in Douglas County, is insufficient to tie his Douglas County offenses to Washoe County. *See Pet. 22-28*. However, even in light of the non-binding authority cited by Guzman, he has not shown that the district court's decision to deny his motion to dismiss amounts to a manifest abuse of discretion.

In one of the cases cited by the district court, *People v. Betts*,⁹ the California Supreme Court suggested that a similar venue statute to NRS

⁹ This Court has also relied on *People v. Betts* to assist its analysis of one of Nevada's venue statutes. As already discussed, this Court looked to *McNamara*, to aid its interpretation of NRS 172.105. *See Guzman*, 136 Nev. at 109-110, 460 P.3d at 449 (citing 132 Nev. at 610-612, 377 P.3d at 109-111). In *McNamara*, this Court relied on few relevant California cases to aid its interpretation of the related venue statute- NRS 171.020. 132 Nev. at 616, 377 P.3d at 113. One of the cases cited by this Court in *McNamara*

171.030 should be “construed liberally” and reaffirmed that “the phrase ‘acts or effects requisite to the consummation’ of a crime does not require that those acts amount to an element of the crime. Those words encompass preparatory acts.” See 103 P.3d 883, 894 (Cal. 2005) (internal quotations and citations omitted). It is noteworthy that in *Betts*, the primary acts constituting the offenses — lewd acts on a child — did not occur in the county where the defendant was tried and convicted. *Id.* at 885. However, that did not deter the California Supreme Court from finding venue was appropriate because circumstantial evidence supported a conclusion that the defendant’s intent was formed in the county where he was tried. *Id.* at 894-895 (citing *People v. Crew*, 74 P.3d 820 (Cal. 2003), for its conclusion that there were sufficient preparatory acts to support venue in Santa Clara County, when there was evidence that the defendant formed the intent to kill the victim and picked her up in Santa Clara County, even though he drove to Alameda County and killed her a day or two later).

Further, the *Betts* case also dispels Guzman’s argument that the crimes in this case are too temporally separated to tie the Douglas County offenses to Washoe County. In *Betts*, the California Supreme Court was not

was *Betts*. See *McNamara*, 132 Nev. at 616, 377 P.3d at 113 (citing 103 P.3d 883).

concerned with how many days had elapsed between when the preparatory acts were completed, or the intent was formed, and when the offenses were committed. *See* 103 P.3d at 141-142. The offenses at issue in *Betts* spanned several months and none were committed in the county where the defendant was tried — the crimes occurred in other California counties and other states. *Id.* The Washoe County offenses bookend the Douglas County offenses and they all occurred within a span of two weeks. In other words, the offenses at issue here are much more temporally connected than the offenses in *Betts*. *See* 103 P.3d at 141-142.

The California Supreme Court's decision in *People v. Price*, 821 P.2d 610, 640 (Cal. 1991), also supports the district court's venue determination in this case. In *Price*, the California Supreme Court considered a similar issue to the issue posed here regarding territorial jurisdiction. The California Supreme Court concluded that Humboldt County had territorial jurisdiction to try a murder committed in Los Angeles, where the defendant stole weapons in Humboldt County and later used the stolen weapons in the Los Angeles murder. *Id.* The Court in *Price* found territorial jurisdiction because the "jury could reasonably infer from the[] facts that defendant committed acts in Humboldt County that were preparatory to the murder...." *Id.*

Guzman attempts to distinguish this case from *Price*, by pointing to the fact that the defendant in *Price* was instructed to obtain a firearm prior to going to Humboldt County. However, the defendant in *Price* stayed in Humboldt County for *three months* before returning and committing the murder at issue in Los Angeles. 821 P.2d at 640. Here, Guzman developed his initial plan to steal from the victims while completing landscaping jobs across northern Nevada in 2018. Yet, this crime spree occurred in a condensed timeline and there is a very clear triggering event for the Douglas County offenses: Guzman’s procurement of the revolver and ammunition from Washoe County. Within days of obtaining the revolver from the Davids’ property, Guzman committed the burglaries and murders at issue in Douglas County and then returned to Washoe County to further victimize the Davids—this time by burglarizing their home and murdering them. Simply put, Guzman’s crime spree occurred over a two-week period and began and ended in Washoe County. Thus, the connection in *Price* between the procurement of the firearm and the ultimate murder months later is much more attenuated than the connection between the Washoe and Douglas County offenses at issue in this case.

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Moreover, even if this Court adopts Guzman's more limited reading of NRS 171.030 and holds that the statute requires an element,¹⁰ "an overt act, which is necessary to complete the crime",¹¹ or an act "essential in the consummation of the crime"¹² to occur in Washoe County in order for it to be considered an appropriate venue, that standard has been met here. The crimes are interrelated. Guzman's acquisition of the revolver impacted his subsequent behavior—in that shortly thereafter he decided to enter the homes to steal valuable personal property and to murder the victims, as opposed to simply burglarizing their garages as he previously planned. This changed behavior is not only relevant to Guzman's intent and conduct in Douglas County,¹³ but it is also illustrative of other matters of significance, such as Guzman's intent, knowledge, and lack of mistake when he subsequently burglarized and murdered the Davids in Washoe County.¹⁴

¹⁰ Pet. 22-23 (citing *Williams v. State*, 383 So. 2d 547 (Ala. Crim. App. 1979)).

¹¹ Pet. 24 (citing *Addington v. State*, 431 P.2d 532, 563-64 (Kan. 1967)).

¹² Pet. 24 (citing *Addington*, 431 P.2d at 543).

¹³ The Douglas County burglaries and murders are alleged to have been committed with a firearm. PA 2-4. Thus, Guzman's procurement of the revolver in Washoe County was a requisite act to an essential element of all of the offenses, not just the murders.

¹⁴ Guzman claimed during his interview that Mrs. David scared him, and he shot her as a result. 1 RA 198-199. Guzman also claimed he mistakenly shot both of the Davids. *Id.* at 212. As Guzman learned in Douglas County, he would likely encounter occupants by choosing to break

Stated differently, the connection to Washoe County is not only the “tool” used to commit the crimes.¹⁵ The revolver was essential and necessary to Guzman completing the Douglas County offenses and subsequent Washoe County offenses in the manner he chose. As such, even if this Court disagrees with the district court’s interpretation of NRS 171.030, Guzman has not shown that extraordinary intervention is appropriate here because the facts established below show a sufficient connection between the crimes to satisfy even the more stringent interpretation of the statute that Guzman proposes. *See Michaels*, 136 Nev. Adv. Op. 80, *5 (explaining that the petitioner bears the burden to demonstrate a clear legal right to a particular course of action); *see also Armstrong*, 127 Nev. at 932, 267 P.3d at 780 (defining a manifest abuse of discretion as a “clearly erroneous

into their homes. This was even more likely when he admittedly entered the Davids’ home at 6 a.m. *See* 1 RA 205-206.

¹⁵ Guzman asserts the State is bootstrapping its venue argument based on emotion. He attempts to illustrate his point with what he contends is an analogous scenario where he instead came into Washoe County to steal tools and later used the tools to break into homes in Douglas County. Guzman argues that stealing tools in his example, or the gun in this case, from Washoe County is not jurisdictionally significant. Guzman’s example again illustrates the factual nature of the issue he presents to this Court and why this court should not entertain his Petition. Unlike the incomplete example Guzman provides, it is the change in Guzman’s previously developed plan and relationship to his future conduct that elevates the significance of the revolver in this case.

interpretation of the law or a clearly erroneous application of a law or rule”) (internal quotations omitted).

- ii. *NRS 171.060 permits the Second Judicial District Court to adjudicate Guzman’s guilt for the Douglas County offenses.*

The State and Guzman agree that NRS 171.060 applies to this case; however, Guzman argues that NRS 171.060 does not establish venue in the Second Judicial District Court for the Douglas County burglary offenses¹⁶ because the items he carried from Douglas County back to Washoe County did not have “independent significance for purposes of establishing jurisdiction and venue.” Pet. 30. NRS 171.060 provides:

[w]hen property taken in one county by burglary, robbery, larceny or embezzlement has been brought into another, the venue of the offense is in either county, but if, at any time before the conviction of the defendant in the latter, the defendant is indicted in the former county, the sheriff of the latter county must, upon demand, deliver the defendant to the sheriff of the former.

The district court applied the plain language of NRS 171.060 and concluded that the Second Judicial District Court is an appropriate venue to adjudicate Guzman’s guilt for the burglary charges.

The evidence, as adduced at the grand jury proceeding, is that Ms. Koontz’s pendant and an airline ticket with her daughter’s name on it were found in Guzman’s BMW after his arrest. SA 221-222. Guzman admitted

¹⁶ Counts IV and VI of the Indictment. PA 3, 4.

that he drove the same vehicle to commit each of the crimes charged in this case. 1 RA 207. It is undisputed that the murders of the Davids and burglary of their home occurred in Washoe County subsequent to the Douglas County burglaries. Thus, the circumstantial evidence suggests that the items stolen by Guzman during the burglary of the Koontz's residence on January 9 or 10, 2019, which were subsequently located and recovered from Guzman's BMW after his arrest ten days later, remained inside his BMW while he continued his crime spree from Douglas County back to Washoe County.

The district court agreed and found that "Mr. Guzman is charged with burglary in Douglas County, and circumstantial evidence suggests that he took items from Douglas County and brought them into Washoe County when he allegedly drove his vehicle into Washoe County to commit the offenses charged in Counts VII-IX."¹⁷ PA 129. The district court's factual finding is sound and entitled to deference. *See Gonski*, 126 Nev. at 557, 245 P.3d at 1168. Moreover, Guzman appears to concede that the circumstantial evidence shows that Guzman brought property from his Douglas County burglaries into Washoe County.

¹⁷ These charges pertain to the murders of the Davids and the burglary of their home on January 15 or 16, 2019.

Instead, like with NRS 171.030, Guzman argues that NRS 171.060 includes limitations that do not exist the face of the statute. He asserts that NRS 171.060 requires the property at issue be significant in some way to the case to establish venue in Washoe County. Guzman also argues that the property must have some value to confer jurisdiction and that there must be more than an “incidental carrying of property” into the county. Pet. 30. NRS 171.060 does not include any such requirements. Instead, the plain language of the statute suggests the Legislature’s intent to cast a wide net regarding venue for burglary offenses, since the property obtained can subsequently be easily moved between counties. NRS 171.060 addresses the issue Guzman raises regarding the significance of acts related to the burglary by providing that the county where the burglary occurred has priority to prosecute the case, even if prosecution has begun elsewhere. NRS 171.060 (instructing that “if, at any time before the conviction of the defendant in the latter, the defendant is indicted in the former county, the sheriff of the latter county must, upon demand, deliver the defendant to the sheriff of the former.”).

The district court appropriately applied the plain language of NRS 171.060 to the facts of this case. Guzman does not dispute that items from Mrs. Koontz’s home were carried into Washoe County. As such, Guzman

has not shown that the district court's factual findings are inconsistent with the record or that the district court relied on a clearly erroneous interpretation of NRS 171.060 to deny him relief. *See Lucero*, 127 Nev. at 95, 249 P.3d at 1228 (instructing that when a statute is clear on its face, the court must attribute its plain meaning); *see also Armstrong*, 127 Nev. at 931-32, 267 P.3d at 780 (defining an arbitrary or capricious exercise of discretion as "one founded on prejudice or preference rather than on reason, or contrary to the evidence or established rules of law...").

B. Guzman has not shown that the district court manifestly abused its discretion by considering NRS 173.115 to aid its analysis of territorial jurisdiction or the factual issues presented in Guzman's motion to dismiss.

i. *Guzman has not shown that the district court manifestly abused its discretion by considering NRS 173.115 to resolve his motion to dismiss.*

Guzman begins his brief by asserting that the district court committed a legal error below by considering NRS 173.115. Guzman asserts that this Court limited the district court's analysis to two statutes: NRS 171.030 and NRS 171.060. Pet. 15-18. The State disagrees.

The issue presented below required the district court to consider whether the Washoe County grand jury exceeded its power and authority by returning an indictment for the Douglas County offenses, but it also required the district court to consider its own ability to adjudicate Guzman

for the Douglas County crimes. *See Guzman*, 136 Nev. at 110, 460 P.3d at 449 (“just as in a case involving interstate offenses, territorial jurisdiction in a case involving intercounty offenses depends on whether the necessary connections, as identified in Nevada’s statutes, to the location of the court exist”); *see also id.* at 110, 460 P.3d at 450 (holding that NRS 172.105 “empowers a grand jury to inquire into an offense so long as the district court that empaneled the grand jury may appropriately adjudicate the defendant’s guilt for that particular offense.”). NRS 173.115¹⁸ is one of the relevant statutes to the inquiries outlined by this Court in *Guzman* because it addresses the State’s ability to charge multiple offenses in the same case, which also implicates the district court’s ability to adjudicate multiple offenses in the same case. NRS 173.115 similarly speaks to whether the crimes are sufficiently connected –i.e. part of a common plan or scheme— for the State to pursue them in the same criminal action when they are not based on the same act or transaction. *See id.* at 104, 460 P.3d at 445 (instructing the district court to “review the evidence presented to the

¹⁸ NRS 173.115(1) provides: “[t]wo or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or gross misdemeanors or both, are: (a) [b]ased on the same act or transaction; or (b) [b]ased on two or more acts or transactions connected together or constituting parts of a common scheme or plan.”

Washoe County grand jury to determine whether there is a *sufficient connection* between the Douglas County offenses and Washoe County”) (*emphasis added*); *see also id.* at 110, 460 P.3d at 449 (describing the inquiry as “whether the necessary connections, as identified in Nevada’s statutes, to the location of the court exist.”).

In addition, NRS 173.115 was part of the same omnibus criminal procedure bill, Assembly Bill 81, which enacted the grand jury jurisdiction statute at issue (NRS 172.105) and the local jurisdiction statutes that the parties agree are central to the resolution of the venue question also posed by this Court (NRS 171.030 and NRS 171.060). *See* 1967 Nev. Stat., ch. 523, §§ 1-468, at 1413. In *Guzman*, this Court looked to other statutes enacted as part of the same omnibus criminal procedure bill to aid its interpretation of the term “territorial jurisdiction.” *See Guzman*, 136 Nev. at 109-110, 460 P.3d at 448-450. Thus, it was reasonable for the district court to similarly look to other related statutes to aid its decision regarding the Washoe County grand jury’s power to return an Indictment for the Douglas County offenses and its own ability to adjudicate the offenses. *See Doolin v. Department of Corrections*, 134 Nev. 809, 440 P.3d 53 (2018) (“[w]henever possible, we will interpret a rule or statute in harmony with other rules or statutes”) (citations omitted).

Further, it is disingenuous for Guzman to chastise the district court for relying on NRS 173.115 to address venue in its order, when Guzman himself raised the statute and argued it was applicable to the district court's venue determination in the first instance. In the briefing associated with Guzman's motion to dismiss for improper venue (which is not the subject of this Petition) Guzman cited NRS 173.115 in support of his argument. *See* 2 RA 304. Indeed, Guzman conceded that "joinder of the counts might be appropriate pursuant to NRS 173.115," but argued that the State did not follow the proper procedure by moving to join the cases after they had already been initiated in their respective counties.¹⁹ 2 RA 304. In the district court's order regarding Guzman's venue motion, it disagreed with Guzman's application of NRS 173.115 and, instead, found that NRS 173.115 supported its decision to try all of the offenses in Washoe County because the murders and burglaries were part of one common scheme or plan. *Id.* at 311, 317-318. In Guzman's supplemental brief regarding the motion to dismiss at issue here, Guzman repeatedly challenged the district court's prior factual finding that the offenses occurred as part of a common scheme

¹⁹ This argument appears in Guzman's Reply brief, but the State did not raise NRS 173.115 in opposition to Guzman's venue motion. *See* 2 RA 264-295 (State's Opposition), 304 (citation in the Reply brief). Thus, Guzman put the statute at issue.

or plan.²⁰ Thus, it is not surprising that the district court pointed again to NRS 173.115, a statute Guzman relied on previously related to venue, to address Guzman’s arguments concerning the connection between his criminal offenses.

Guzman has not shown that the district court manifestly abused its discretion below by relying on NRS 173.115 to aid its decision, particularly when Guzman has repeatedly placed NRS 173.115 at issue. While Guzman takes particular issue with the district court’s reference to NRS 173.115 as a “venue statute” in its most recent order, that reference must be considered in context and is not dispositive of the relief he seeks in his Petition or indicative of legal error requiring extraordinary intervention. *See Michaels*, 136 Nev. Adv. Op. 80, *8 (explaining that a writ of mandamus is not simply a writ of error). Moreover, the district court’s decision to deny Guzman relief was also independently based on NRS 171.030 and 171.060. *See e.g.* PA at 125 (“[n]ext, the Court analyzes the applicability of the venue statutes Mr. Guzman believes the Nevada Supreme Court intended this Court to

²⁰ Guzman asserted that the Douglas County charges were “spatially and temporally distinct” (PA 40), “discrete and episodic offenses” (*id.* at 42), and there was only an “incidental connection” between the offenses (*id.* at 45). Guzman further argued the district court should not “improperly *join* together separate isolated events occurring in two separate counties....” *Id.* at 44 (*emphasis in original*).

consider....”). Therefore, even if this Court determines that the district court improperly considered NRS 173.115 when it denied Guzman’s motion, the record does not reveal that its decision amounts to a manifest abuse of discretion. *See Michaels*, 136 Nev. Adv. Op. 80, *5 (explaining that “mandamus relief does not lie where a discretionary lower court decision results from a mere error in judgment; instead, mandamus is available only where the law is overridden or misapplied, or when the judgment exercised is manifestly unreasonable or the result of partiality, prejudice, bias or ill will”) (cleaned up)).²¹ In other words, Guzman’s contention, even if true, does not necessitate this Court’s intervention because he has not shown a clear right to dismissal of the Douglas County charges. *See id.* at *5.

- ii. *The district court’s factual findings regarding the connection between the offenses in this case are relevant to the factual issue raised in this Petition and are entitled to deference.*

Guzman begins his argument for relief by claiming that it was legal error for the district court to rely on NRS 173.115 to deny his motion in an effort to create a legal dispute for this Court to resolve; yet, the crux of Guzman’s arguments regarding venue are premised on the detailed factual determinations made by the district court. The district court concluded

²¹ “Cleaned up” is used to indicate that internal quotation marks, alterations, and citations have been omitted. *See e.g. Redlin v. United States*, 921 F.3d 850, 860 (9th Cir. 2019).

that there was a sufficient connection between the Douglas County and Washoe County offenses under NRS 173.115 to show a common plan or scheme and to make Washoe County an appropriate place to adjudicate all of Guzman's offenses. As relevant here, the district court found:

...that the joinder of the Washoe and Douglas County crimes in the same Indictment is proper. The Court also finds that while the Washoe County and Douglas County acts took place over a period of two weeks in different counties, the offenses appear to be part of a common scheme or plan. The offenses alleged appear to be connected together or constituting parts of a common scheme or plan. It follows that on January 3, 2019 and January 4, 2019, Mr. Guzman allegedly stole among other items, the revolver and ammunition from the Davids' residence in Washoe County. Then, Mr. Guzman drove his BMW to Douglas County on January 9 or 10, 2019 and, again on January 12 or 13, 2019, to commit the burglaries and murders charged therein, using the revolver and ammunition he had stolen from Washoe County. On January 15 and 16, 2019, Mr. Guzman then drove back to Washoe County to further burglarize and murder Mr. and Mrs. David using the revolver and ammunition he had stolen from the Davids' residence on January 4, 2019.

The stealing of the revolver and ammunition coupled with knowledge of property to steal in Douglas and Washoe County were all part of Mr. Guzman's plan to gain money to purchase drugs. Mr. Guzman acknowledged that he drove his BMW to commit all of the Douglas and Washoe County offenses charged. Furthermore, Mr. Guzman admitted that the revolver found in his vehicle upon his arrest on January 19, 2019, was used in the commission of the burglaries and murders in both counties.

PA 124-125 (footnotes 7-11 with detailed citations to the record to support each finding of fact are removed).

Guzman cites *Davis v. Ewalefo* to support his contention that deference is not owed to these findings because they amount to legal error

or findings so conclusory that they mask legal error. Pet. 18 (131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015)). *Davis* is a child custody case where the district court did not address the statutorily required factors (such as the child’s wellbeing) or make factual findings in its order. The case is inapposite.

In Guzman’s argument below, and again now, he seeks a factual determination that offenses in this case were distinct acts that occurred solely in their respective counties because that finding is essential to the relief he requests and his interpretation of NRS 171.030.²² The district court disagreed with Guzman’s contentions and repeatedly found that the Douglas County crimes were sufficiently connected to Washoe County based on the unique facts of this case. PA 124, 129, 133-134. Its decision is supported by detailed citations to the record. As such, Guzman has not shown that the district court’s findings were conclusory or amount to such

²² These and similar suggestions are repeated throughout his pleadings. *See e.g.* PA 40 (arguing the crimes at issue here are “spatially and temporally distinct”), 40 (classifying the crimes in this case as “discreate and episodic offenses”), 44 (arguing the district court should not “improperly *join* together separate isolated events occurring in two separate counties....”) (*emphasis in original*), 45 (asserting there was only an “incidental connection” between the offenses); *see also* Pet. 22 (arguing “NRS 171.030 does not apply to discrete episodic offenses occurring separately in distinct counties”), 28 (asserting that the facts in this case demonstrate that Guzman’s contact with Washoe County was “incidental or marginal and not essential”).

an error that this Court should decline to provide the findings deference.

See Gonski, 126 Nev. at 557, 245 P.3d at 1168.

C. Guzman has an adequate remedy at law to challenge the district court's discretionary decision to deny his motion to dismiss, if he is in fact convicted, and Guzman has not shown that this Court should depart from its general reluctance to intervene before trial in discretionary matters.

This Court should not intervene in this case now because, if Guzman is convicted, he has an adequate remedy through a direct appeal to litigate whether the Second Judicial District Court was an appropriate forum to adjudicate him for Douglas County offenses. *See Cote*, 124 Nev. 39, 175 P.3d at 908 (noting that “an appeal generally constitutes an adequate and speedy remedy precluding writ relief.”). The State recognizes that under limited circumstances this Court will depart from its general rule precluding mandamus relief when an appellate right exists. However, Guzman has not shown a legal right to have the Douglas County offenses tried separately or that intervention is necessary under any of the considerations this Court has previously outlined. *See id.* (explaining that the Court has, nonetheless, exercised its discretion to intervene “under circumstances of urgency or strong necessity, or when an important issue of law needs clarification and sound judicial economy and administration

favor the granting of the petition”) (citation and internal quotations omitted); *see also Michaels*, 136 Nev. Adv. Op. 80, *5.

Regardless of this Court’s decision, Guzman will still be tried in Washoe County for the six offenses not at issue here. He will also be subject to prosecution for the Douglas County offenses, either as charged now in Washoe County or in a later prosecution in Douglas County. Thus, Guzman’s Petition does not present an urgency or a necessary circumstance requiring intervention now.

In addition, the district court has now considered venue and whether the Douglas County charges are sufficiently connected to Washoe County twice. First, after Guzman filed a motion to dismiss for improper venue while his prior Petition was pending with this Court and recently in relation to this Court’s directive. *See* 2 RA 308-319; PA 113-135. Guzman has not pursued extraordinary relief to address the district court’s independent venue determination. Venue and territorial jurisdiction are typically matters subject to proof at trial; yet, Guzman asks this Court to decide the issues now on the incomplete record he presented and when the facts of the case have not been fully developed. Judicial economy and sound judicial administration do not favor the court’s intervention. *See Michaels*, 136 Nev. Adv. Op. 80, *6 (explaining that it is typically preferable to resolve an

appealable issue after the conclusion of the matter “because we can issue a decision after reviewing the entire record in the regular way, when we can enjoy the advantage of having the whole case before us”) (cleaned up); *see also James*, 105 Nev. at 875, 784 P.2d at 967 (standard of proof for venue); *McNamara*, 132 Nev. at 615, 377 P.3d at 113 (standard of proof for territorial jurisdiction).

Moreover, Guzman’s Petition does not raise an important question of law that requires clarification. This Court already addressed the important question of law in Guzman’s first Petition and sent the matter back to the district court to apply NRS 172.105, as interpreted by this Court, and to make factual determinations based on the record before the grand jury. In part, it ordered the district court to “review the evidence presented to the Washoe County grand jury to determine whether there is a sufficient connection between the Douglas County offenses and Washoe County.” *See Guzman*, 136 Nev. at 104, 460 P.3d at 445. The district court followed this Court’s directive. It analyzed the record, applicable venue statutes, and other authority and then found that by a preponderance of the evidence that the offenses are sufficiently connected to try them together in Washoe County. *See* PA 113-135. This Court should not issue a writ of mandamus because Guzman has not demonstrated that the district court misapplied

the law or that its decision was manifestly unreasonable based on the record before it. *Michaels*, 136 Nev. Adv. Op. 80, *5 (explaining that in discretionary matters mandamus is available “only where the law is overridden or misapplied, or when the judgment exercised is manifestly unreasonable or the result of partiality, prejudice, bias or ill will.”).

D. The district court’s decision to allow the Douglas County offenses to be tried in Washoe County strikes an appropriate balance between competing interests and does not represent a manifest abuse of discretion.

The district court also concluded that “judicial economy, fundamental fairness, and the Nevada Victims’ Bill of Rights support venue in Washoe County.” PA 134 (the court; however, noted that these considerations could be outweighed if they infringed upon Guzman’s constitutional rights). Guzman’s rights are not infringed by one trial in Washoe County.

Initially, allowing this case to proceed as charged in Washoe County is fundamentally fairer to Guzman. Washoe County provides Guzman a larger jury pool. In addition, a single trial in Washoe County guarantees that Guzman will be defended effectively and consistently for each crime by the same Washoe County Public Defender attorneys who have represented him since the inception of this case in 2019.

The current procedural posture also promotes judicial economy because a single trial will be held, which will resolve effectively four

separate, yet connected, homicides. The entire factual underpinnings of Guzman's crime spree are so intertwined that witnesses in an individual trial would not be able to describe the investigation without reference to other acts, crimes, or evidence. This would also include the evidence related to the recovery of the weapons buried by Guzman. The evidence adduced from each individual case is germane across all events, as it relates to Guzman's intent, his use of a weapon, his identity as the perpetrator, and so forth. What's more, a myriad of examples exist where cross-admissible evidence would be adduced from each event in order to tell the complete story of the crime. Put simply, should each murder be tried individually in three separate trials, the evidence from the other murders and burglaries would be cross-admissible. *See* NRS 48.045 (discussing the admissibility of other act evidence to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident); NRS 48.035(3) (concerning *res gestae* evidence).

As a consequence, splitting the Douglas County and Washoe County offenses will frustrate judicial economy because each trial will likely include evidence gathered across the entire scope of all four killings and associated burglaries, resulting in each respective murder trial requiring the same presentation of the evidence. This scenario equates to considerable cost,

both fiscal and temporal. This also creates the potential of inconsistent rulings from each judge regarding the admissibility of evidence, appropriate jury instructions, etc., which will further frustrate the principles of judicial economy and sound judicial administration. *See e.g. Marshall v. State*, 118 Nv. 642, 646-647, 56 P.3d 376, 379 (2002) (in the context of a severance motion in a co-defendant case, providing that joinder is preferable as long as it does not compromise a defendant's right to fair trial because it "promotes judicial economy and efficiency" and avoids inconsistent verdicts).

Further, recent additions to the Nevada Constitution provide compelling support for one trial. Now, the Constitution allows a victim – defined to include their family – the right to a timely disposition of a criminal matter. Nev. Const. Art. 8A § (1)(i). If venue were altered, multiple trials would unavoidably take place. However, they would not occur concurrently. As such, it is reasonable to forecast years of delay until all crimes could be adjudicated. Such a result, when the law clearly supports the contrary, would be a violation of the Victims' Bill of Rights in Nevada.

Finally, Guzman does not have a right to be tried in a particular venue or county in Nevada. *See State v. Steward*, 74 Nev. 65, 67-68, 323 P.2d 23,

23-24 (1958) (analyzing another venue provision, NRS 171.040, and rejecting the defendant's contention that defendants enjoy a fundamental right to be tried in the particular county where the offense(s) occurred). As this Court suggested in *Walker*, venue is amorphous and may bend to matters such as convenience because it is not a constitutional limitation. *See* 78 Nev. at 471-472, 376 P.2d at 141. Similarly, in *People v. Thomas*, the California Supreme Court explained that venue does not implicate a trial court's fundamental personal or subject matter jurisdiction over a defendant in a criminal case. 274 P.3d 1170, 1173 (Cal. 2012). Instead, the court explained that venue statutes promote convenience of the parties, but their primary purpose today is to "safeguard against the unfairness and hardship involved when an accused is prosecuted in a remote place." *Id.* at 1174. The State is not prosecuting Guzman in some remote place. The State is attempting to resolve Guzman's crimes through one trial in the jurisdiction where his crime spree began and ended: Washoe County.

VII. CONCLUSION

Guzman has failed to meet his burden to establish that extraordinary intervention is warranted to correct the district court's discretionary decision to deny his motion to dismiss. The evidence adduced at the grand jury proceeding demonstrates a sufficient connection between the Douglas

County offenses and Washoe County to allow the prosecution to move forward in the Second Judicial District Court. Put another way, Guzman has not shown that he has a clear right to dismissal of the Douglas County offenses. *See Michaels*, 136 Nev. Adv. Op. 80, *5. This Court should not intervene now and, instead, it should hold the State to its burden to prove venue and territorial jurisdiction by a preponderance of the evidence at trial. Based on the foregoing, this Court should deny Guzman's Petition.

DATED: December 11, 2020.

CHRISTOPHER J. HICKS
Washoe County District Attorney

MARK JACKSON
Douglas 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 (as it is a capital case).

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

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

DATED: December 11, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on December 11, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

John Reese Petty
Chief Deputy Public Defender

I further certify I served a copy of this document by e-mailing a true and correct copy to:

Hon. Connie J. Steinheimer
Second Judicial District Court, Dept. 4

John Arrascada
Washoe County Public Defender

Katheryn Hickman
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Joseph W. Goodnight
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/s/ Tatyana Kazantseva
TATYANA KAZANTSEVA