IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA,

Appellant,

vs.

JAMES WALTER DEGRAFFENREID III, DUWARD JAMES HINDLE III, JESSE REED LAW, MICAHEL JAMES MCDONALD, SHAWN MICHAEL MEEHAN, EILEEN A. RICE,

Respondents.

CASE NO. 89064

Dist. Court No.
C-23-379122-1
C-23-379122-2
C-23-379122-3
C-23-379122-4
C-23-379122-5
C-23-379122-6

Electronically Filed
Sep 04 2024 02:24 PM
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANT STATE OF NEVADA'S OPENING BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

RULES

JURISDICTIONAL STATMENT

This Court has jurisdiction over this appeal under NRS 177.015(1)(b), because it presents a challenge to a district court order granting a motion to dismiss an indictment. The district court issued its written order on July 26, 2024, and the State filed its notices of appeal the same day. 3-APP-0657–0687

ROUTING STATEMENT

This case is presumptively assigned to the Court of Appeals under NRAP 17(b)(2)(A) and NRAP 17(b)(11). But the Supreme Court should retain this case under NRAP 17(a)(11) and NRAP 17(a)(12) because the case presents issues that are matters of first impression and of "statewide public importance," including novel questions of statutory construction involving NRS 171.030, NRS 205.110, and NRS 239.330.

STATEMENT OF THE ISSUES

(1) Under the plain language of NRS 171.030, does the presentation of evidence that the Defendants mailed a forged instrument to the Chief Judge of United State District Court for the District of Nevada in Las Vegas, Clark County, Nevada establish venue in Clark County for the crime of uttering a forged instrument?

(2) Under the plain language of NRS 171.030, does the presentation of evidence establishing that the Defendants mailed a false or forged instrument to the United States District Court for the District of Nevada in Las Vegas, Clark County, Nevada, establish venue in Clark County for the crime of offering false instrument for filing or recording?

(3) Under the plain language of NRS 171.030, does the presentation of evidence that then Secretary of State Barbara Cegavske was in Las Vegas, Clark County, Nevada when she learned about the contents of instruments the Defendants mailed to the Secretary of State's office in Carson City, Nevada establish venue in Clark County for the crime of uttering a forged instrument and the crime of offering a false instrument for filing or recording?

(4) Assuming the State failed to present sufficient evidence of venue to sustain the indictment, whether any such error is harmless because the record before the district court shows that the State will be able to prove venue at trial.

* * *

STATEMENT OF THE CASE

I. The 2020 Presidential Election in Nevada.

Joseph R. Biden for President of the United States and Kamala D. Harris for Vice President of the United States received the highest number of votes in the State of Nevada. *Law v. Whitmer*, 136 Nev. 800, 477 P.3d 1124, 2020 WL 7240299, at *2 (2020) (unpublished table disposition).[1] Two weeks after the election, the GOP Electors filed a Statement of Contest in the First Judicial District Court, challenging the result of the Presidential Election in Nevada. *Id.* at *1. The Statement sought an order "declaring President Donald Trump the winner in Nevada and certifying [the GOP Electors] as the State's duly elected presidential electors." *Id.* at 2. In the alternative, the Statement requested an order declaring the election result "'null and void' and that the November 3 election 'be annulled and that no candidate for elector for the office of President of the United States of America be certified from the State of Nevada.'" *Id.*

[1] Pin citations to *Law* are citations to the pagination on Westlaw.

On December 2, 2020, the district court conducted an evidentiary hearing, allowing each party to present evidence. *Law*, 2020 WL 7240299, at *1. The next day, the district court heard arguments. *Id*. And the day after that, the district court dismissed the case. *Id.* at **1-21.

The GOP Electors appealed on December 7, 2020. *Id*. at *1. The same day, this Court ordered expedited briefing with specific directions for the GOP Electors "to identify by page and paragraph number the specific portions of the district court order they contest." *Id*. The parties filed their briefs. *Id*. And this Court issued an order affirming the district court's order and directing the clerk of court to "issue the remittitur forthwith" on December 8, 2020. *Id*. at **1-2.

The Nevada Secretary of State then moved forward with planning the meeting of the Electoral College for Nevada's Democratic Party electors. 1-APP-0170–0171. Secretary Barbara Cegavske presided over the meeting on the morning of December 14, 2020. 1-APP-0171–0172.

After the meeting concluded, Deputy Secretary of State for Elections Mark Wlaschin and his staff compiled the Certificate of Ascertainment, the Certificate of Vote, and the Certificate of Final Determination of Contests concerning Presidential Electors. 1-APP-0161,

0172–0175. And they sent copies of each document to the Nevada Secretary of State, Chief Judge of the U.S. District Court for the District of Nevada, the Archivist of the United States, and the President of the U.S. Senate. 1-APP-0176. The genuine Certificate of Vote contained Nevada's state seal, the Democratic Party's electors signed the Certificate of Vote, and their signatures matched the names on the Certificate of Ascertainment. 1-APP-0174–0175, 4-APP-0858.

II. With assistance from the Trump Campaign, the GOP Electors forge false Electoral College documents, conduct a fake signing ceremony, and mail the documents to various locations.

James Troupis contacted Kenneth Chesebro around November 10, 2020, and asked Chesebro to do some legal work related to challenges to election results in Wisconsin. 1-APP-0058–0059. Chesebro drafted various memoranda on behalf of the Trump Campaign, including a memorandum dated November 18, 2020, that suggested Trump electors would need to cast ballots by December 14, 2020, to comply with federal statutes, if the Wisconsin challenges succeeded. 1-APP-0060–0061; 5-APP-1042–1043.

Chesebro also drafted a memorandum addressing federal and state law elections standards for states where litigation over the election remained ongoing. 1-APP-0061-0063; 5-APP-1049–1053. And he drafted voting documents—based on Wisconsin's documents—for electors in other states to use as a modifiable template for use in the electors' respective states. 1-APP-0064–0065. And after he contacted James DeGraffenreid, Michael McDonald, and Jesse Law, Chesebro shared copies of those documents with DeGraffenreid. 1-APP-0065-0066; 5-APP-1055–1057,

When communicating with DeGraffenreid, Chesebro inquired about whether litigation was still pending in Nevada—in Chesebro's view, the existence of pending litigation was the only reason to cast alternate elector votes. 1-APP-0066. But he testified that never received an answer to his question—DeGraffenreid redirected him to the GOP Electors' lawyer Jesse Binnall, but DeGraffenreid did not otherwise answer Chesebro's question. 1-APP-0066, 5-APP-1055.

DeGraffenreid circulated the documents received from Chesebro to each of the GOP Electors on December 13, 2020. 5-APP-1060. And the documents, which were titled "CERTIFICATE OF THE VOTES OF THE

2020 ELECTORS FROM NEVADA," included declarations from the GOP Electors that they were "the duly elected and qualified Electors for President and Vice President of the United States of America from the State of Nevada." 4-APP-0837, 0845, 0909, 0918.

The next day, coming from various parts of Nevada, the GOP Electors convened in Carson City, Nevada where they executed the documents and broadcast their meeting via Right Side Broadcasting. 1-APP-0041–0042; 4-APP-0879, 0882, 0885, 0888, 0891, 0894.[2] Representatives from Right Side Broadcasting travelled to Nevada from Washington D.C. to provide live coverage of the event. 5-APP-0865 (video timestamp 00:25–1:00). In response to a subpoena, Right Side Broadcasting produced two videos, one edited version totaling 38 minutes, 46 second in length, and one raw footage that was a little over an hour in length, which depicted "the six Nevada Republican nominee electors executing their ballots for the Electoral College election of the

[2] The State is filing a contemporaneous motion seeking transmission of Grand Jury Exhibit 6A under NRAP 10(b)(2) and NRAP 30(d), which is a flash drive containing a video file of footage received from Right Side Broadcasting. 5-APP-0862–0865.

U.S president and vice president," in Carson City on December 14, 2020. 1-APP-0042; 4-APP-0863.

After the GOP Electors concluded their fake voting ceremony, DeGraffenried travelled to Minden, Nevada, where he mailed the completed documents by following Chesebro's instructions "exactly," and each envelope included a return mailing address of Michael J. McDonald, Nevada Republican Party at 840 S. Rancho Dr. 4-800, Las Vegas Nevada 89106. 1-APP-0026; 4-APP-0856, 0905, 0933–0935; 5-APP-1088–1089, 1105–1106. The documents purporting to cast Nevada's electoral votes for Donald J. Trump and Michael R. Pence were sent to the following locations by the GOP Electors: (1) Archivist of the United States,700 Pennsylvania Avenue NW, Washington D.C., 20408; (2) President of the Senate, United States Senate, Washington D.C. 20510; (3) Secretary of State, State of Nevada, 101 N. Carson St., Suite 3, Carson City, Nevada 89701; and (4) Honorable Miranda M. Du, Chief Judge, U.S. District Court, District of Nevada, Lloyd D. George Courthouse, 333 Las Vegas Blvd South, Las Vegas, N.V. 89101. 5-APP-1088–1089.

The Secretary of State received the documents on December 15, 2020. 1-APP-0178–0184. The U.S. District Court received the documents

two days later. 1-APP-0119–0120; 4-APP-0934. The President of the Senate received the documents on December 21, 2020. 1-APP-0142, 4-APP-0934. And the National Archives received the documents the day after that. 1-APP-0021–0022; 4-APP-0934.

III. The grand jury in Clark County returns a true bill, indicting the GOP Electors on one count of Offering a False Instrument for Filing or Recording and one count of Uttering a Forged Instrument: Forgery.

The State presented evidence to the grand jury in Clark County, establishing everything explained above, and more, over a period of three days. 1-APP-0001–0215; 4-APP-0835–0935; 5-APP-0936–1162. After the grand jury returned a true bill and the foreman signed the indictment, the State filed the indictment charging the GOP Electors with one count of Offering a False Instrument for Filing or Recording, and one count of Uttering a Forged Instrument: Forgery. 1-APP-0216–0219.[3]

IV. Eileen Rice files a motion to dismiss that the other GOP Electors joined by the other GOP Electors, and each of the GOP Electors file pretrial writ petitions.

Eileen Rice filed a motion to dismiss, and the other GOP Electors

[3] The Grand Jury Foreman signed the indictment, which had been identified as Grand Jury Exhibit 1A. 1-APP-0036–0037

filed joinders in her motion. 2-APP-0401–0421. The motion challenged the territorial jurisdiction of the Clark County grand jury under *Martinez Guzman v. Second Jud. Dist. Ct.*, 136 Nev. 103, 460 P.3d 443 (2020) (*Martinez Guzman I*) and *Martinez Guzman v. Second Jud. Dist. Ct.*, 137 Nev. 599, 496 P.3d 572 (2021) (*Martinez Guzman II*). 2-APP-0405–0408. The motion also asserted a violation of the Sixth Amendment's Vicinage Clause. 2-APP-0408–0409.

Rice, McDonald, and Law also filed pretrial writs and a joint memorandum that (1) challenged venue by incorporating Rice's motion to dismiss, (2) challenged the State's evidence on probable cause, and (3) asserted a violation of the duty to present exculpatory evidence. 2-APP 0260–0270, 0305–0400. And the other GOP Electors filed writs and joined the joint memorandum filed by Rice, McDonald, and Law. 2-APP-0248–0265, 0271–0304.

The State filed a return and opposed the motion to dismiss. 2-APP-0422–0465. Responding to the venue arguments, the State argued that venue is proper in Clark County because (1) the offenses were committed in part in Clark County, (2) that "acts . . . requisite to the consummation of the offense" occurred in Clark County, and (3) effects occurred in Clark

County. 2-APP-0431–0432; 0455–0462. And the State further argued that each of the foregoing made Clark County a proper venue under NRS 171.030. 2-APP-0431–0432; 0455–0462. And the State presented additional argument based on phone records for Law and McDonald that the State filed in support of its opposition to the motion to dismiss. 2-APP-0453, 0457.[4]

Rice, McDonald, and Law filed a joint reply, and the other GOP Electors joined. 3-APP-0473–0517. The reply challenged the State's arguments seeking to establish venue in Clark County, including emphasizing that no uttering occurred in Clark County because court staff at the U.S. District Court in Las Vegas forwarded the envelope addressed to the Chief Judge's chambers in Reno. 3-APP-0479–0497.

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[4] The district court granted the State's unopposed motion to file these exhibits under seal. 5-ER-1163. So those exhibits must remain under seal unless otherwise ordered. *See* Rule 7 of the Nevada Rules for Sealing and Redacting Court Records. For that reason, the State has not included those exhibits in the appendix. Instead, the State is filing a contemporaneous motion for transmission of exhibits that includes a request that this Court order transmission of the sealed exhibits to this Court for its consideration of this appeal under NRAP 10(b)(2) and NRAP 30(d).

At a hearing that followed briefing, the district court ordered the Sate to present a supplement to its opposition that pointed to all the facts that linked the case to Clark County. 3-APP 0585–0592. The State filed the supplement. 3-APP-0620–0625.

V. The district court dismisses the indictment after concluding that Clark County is not a proper venue.

After the State produced the supplement, the district court heard argument on the motion. 3-APP-0627–0656. The GOP Electors went through *Martinez Guzman I* and *Martinez Guzman II* and made their arguments asserting that the State failed to establish venue in Clark County. 3-APP-0631–0642. Among other things, they emphasized (1) this Court's recognition that venue will lie "where the community has an interest in prosecuting it," 3-APP-0633; (2) that copies of Electoral College documents are sent to offices required by federal law, not individuals, 3-APP-0636; and (3) repeatedly focused on the view that both crimes occurred in Carson City. 3-APP-0638–0639, 0641–0642.

The State made its own arguments, explaining how the evidence proved venue under NRS 171.030. 3-APP-0642–0653. In the midst of its arguments, commented that the State at best had proven "[p]lan and

preparation." 3-APP-0650. And the Court reiterated that point when it made its ruling from the bench, stating "I think at most you may have preparation and intent, arguably, but I don't even think that there's evidence of that. I think everything took place up north, and either of those two jurisdictions would have been the appropriate ones." 3-APP-0654.

The district court then issued its written order. 4-APP-0657–0663. The district court concluded that no acts or effects occurred in Clark County and any criminal offenses, "if any occurred, were completed when Defendants delivered the items for mailing at the Minden post office." 3-APP-0661.

SUMMARY OF THE ARGUMENT

The district court's order is plagued by numerous legal errors mandating reversal. The district court had tunnel vision that caused it to focus too heavily on the fanfare of the GOP Electors fake Electoral College ceremony, causing it to read too much into the result in *Martinez Guzman II* and failing to complete the analysis that *Martinez Guzman I* demands.

In *Martinez Guzman I* this Court addressed the power of the grand jury in Nevada. This Court held that NRS 172.105 limits the territorial reach of the grand jury power by concluding that the phrase "territorial jurisdiction" is tied to Nevada's "statutes governing the proper jurisdiction and venue for criminal prosecutions." *Martinez Guzman I*, 136 Nev. at 104, 460 P.3d at 445.

For that reason, when a defendant challenges the territorial jurisdiction of a grand jury, *Martinez Guzman I* requires the Court to determine whether the State's evidence proves venue. Proving venue is a low hurdle, even when accepting the premise that the State has the burden to prove venue by a preponderance of the evidence to the grand jury.[5] Venue may be proper in more than one county under a statute like

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[5] After *Martinez Guzman I* and *Martinez Guzman II*, what burden rests on the State to prove venue during a grand jury proceeding remains a little murky. Although this Court cited a case identifying a preponderance standard in *Martinez Guzman II*, that case addressed the burden of proof on venue at trial. 137 Nev. at 603, 496 P.3d at 576. Meanwhile, this Court has long defined the State's burden to sustain an indictment as one of presenting "the slightest sufficient legal evidence" or "even marginal evidence." *See*, *e.g.*, *Rugamas v. Eighth Jud. Dist. Ct.*, 129 Nev. 424, 436, 305 P.3d 887, 895 (2013) (internal quotation marks omitted). Admittedly, the State did not press this point below. But unlike

NRS 171.030. But there is no further limit on the territorial reach of the grand jury's power to indict, even if the defendant thinks a different district court would have provided a *better* venue.

In contrast, *Martinez Guzman II* is a narrow decision holding that preparatory acts are, by themselves, insufficient to establish venue under NRS 171.030. 137 Nev. at 608-09, 496 P.3d at 580. That decision does not, however, comprehensively define how the State proves venue under NRS 171.030. Breaking down the plain language of NRS 171.030 shows that the State can prove venue under that statute in multiple ways, only one of which this Court addressed in *Martinez Guzman II*. And the State's grand jury evidence establishes venue under NRS 171.030 in numerous ways, including satisfying the *Martinez Guzman II* test on preparatory acts *plus* intent.

First, the district court erred as a matter of law when it concluded that any offense was complete upon delivery of the imposter documents

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the district court (and the GOP Electors), the State is not convinced that this Court, in *Martinez Guzman II*, intended to raise the burden of proof necessary to sustain an indictment. Even so, this Court need not address that issue here because the State's grand jury evidence easily meets the preponderance standard.

to the U.S. Post Office in Douglas County. Consideration of the plain statutory language for each offense—language that appears nowhere in the district court's order, 3-APP-0657–0662—shows that the material elements of both offenses were committed, at least in part, in Clark County, establishing venue under NRS 171.030. Case law interpreting similar statutes from other states reinforces the State's position on this point. So too does federal case law that addresses similar crimes.

Second, the district court's analysis overlooks relevant evidence proving (1) "acts . . . constituting or requisite to the consummation of" both offenses that occurred in Clark County, and (2) "effects thereof" that occurred in Clark County. This Court should reverse and order reinstatement of the indictment.

Finally, even assuming the State failed to prove venue, that shortcoming fails to support outright dismissal on this record. In particular, this Court can—and should—determine that any failure to prove venue was harmless because (1) one of the GOP Electors' arguments from their reply in support of the motion to dismiss implicitly concedes that the State can establish venue, and (2) the State presented sufficient additional evidence to establish venue with its opposition to the

motion to dismiss. This Court should hold that any shortcoming in the State's grand jury presentation is harmless and remand for further proceedings.

ARGUMENT

I. Standard of review

This Court reviews "a district court's decision to grant or deny a motion to dismiss an indictment for abuse of discretion." *Hill v. State*, 124 Nev. 546, 550, 188 P.3d 51, 54 (2008). Such review is typically deferential to the district court, but "deference is not owed to legal error." *AA Primo Builders v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010). Legal questions—like statutory construction—are reviewed de novo. *See*, *e.g.*, *Funderburk v. State*, 125 Nev. 260, 163, 212 P.3d 337, 339 (2009).

II. A grand jury in any county that is a proper venue for a criminal trial possesses the power to inquire into the underlying offense.

"The 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 (emphasis added). The phrase "territorial jurisdiction" is "tied to our existing statutes governing the proper court where a criminal case may

be pursued." *Martinez Guzman I*, 136 Nev. at 104, 460 P.3d at 446. The territorial jurisdiction requirement of NRS 172.105 "incorporates Nevada's statutes governing venue" and is satisfied when the evidence shows that the district court for the county that empaneled the grand jury is a proper venue for trial. *Id*. at 110, 460 P.3d at 450.

Consistent with *Martinez Guzman I*, NRS 172.105 places no other territorial limit on the power of the grand jury. There is no further limit on the grand jury's power to issue an indictment when the State has presented evidence demonstrating that more than one district court would be a proper venue for trial. If the State's evidence establishes that the court that empaneled the grand jury would be a proper venue for trial, the grand jury has power to issue an indictment.

For that reason, when the power of the grand jury is challenged under NRS 172.105, *Martinez Guzman I* requires the district court to determine whether the State proved venue. Once the threshold for proving venue is satisfied, there is no question that the grand jury has the power to indict. When the proper analysis is done, the State has easily met that threshold here.

III. There are numerous ways for the State to establish venue under NRS 171.030.

As is explained in greater detail throughout this brief, the evidence presented to the grand jury shows that the underlying criminal enterprise, which was charged as a conspiracy, transcended county lines. 1-APP-0217–0218. "When 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 consummation of the offense occur in two or more counties, the venue is in either county." NRS 171.030.

Based upon the plain language of the statute, the first way to satisfy venue under NRS 171.030 is to show that part of the crime was committed within the county of indictment. The location of the commission of a crime—the *locus delicti*—depends on where the essential elements of the crime occurred. *State v. Pray*, 30 Nev. 206, __, 94 P. 218, 221 (1908) *overruled on other grounds by Knight v. State*, 116 Nev. 140, 993 P.2d 67 (2000); *see also* Black's Law Dictionary, LOCUS DELICTI, (12th ed. 2024) ("The place where an offense was committed; the place where the last event necessary to make the actor liable occurred."). Applying that test here, the evidence the State presented to the grand

jury establishes venue in Clark County for both offenses. *See infra* Argument IV.

This Court has also addressed the meaning of the word "acts" under NRS 171.030 in *Martinez Guzman II*. There, this Court held that evidence of preparatory acts alone are insufficient to establish venue under NRS 171.030. *Martinez Guzman II*, 137 Nev. at 605, 496 P.3d at 577. Acts "undertaken with the intent to commit the charged crime and in furtherance of the that crime," however, will establish venue under NRS 171.030. *Id*. And the analysis below also shows that the State's evidence satisfied NRS 171.030 because "there is evidence of preparatory acts *plus* intent" in Clark County. *Id*.; *see infra* Argument V.

But *Martinez Guzman II* also does not provide a comprehensive definition of acts—it only addresses when a defendant's *preparatory* acts satisfy the plain language of NRS 171.030. Other "acts . . . requisite to the consummation of the offense" that occur while the offense is in progress also establish venue under the plain language of NRS 171.030. And when considering an alternative argument that the GOP Electors presented in their reply on the motion to dismiss, venue is proper here under that reading of NRS 171.030 too. *See infra* Argument VII(A).

Finally, the State is aware of no authoritative decision from this State squarely addressing the meaning of the phrase "effects thereof" under NRS 171.030. This Court should give the word "effects" its plain meaning, while also reading that term in the context of how it appears in the statute. *Southern Nevad Homebuilders Ass'n v. Clark County*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (addressing requirements of giving all provisions a statute meaning and seeking harmonious reading that serves general purpose of the statute). In doing so, to avoid redundancy that renders the words "effects thereof" meaningless, that phrase must mean something other than the location of where the crime is committed and "acts . . . constituting or requisite to consummation of the offense." *Id*.

"Effect" means "[s]omething produced by an agent or cause; result, outcome, or consequence." Black's Law Dictionary, EFFECT (12th ed. 2024).[6] And reading the statute in context, "effects" is modified by "thereof," which more broadly demonstrates that effects is modified by

[6] The singular number includes the plural number, and the plural includes the singular." NRS 0.030(1)(a).

the phrase "acts . . . constituting or requisite to the consummation of the offense." NRS 171.030 (emphasis added). So the plain language of the statute suggests that "effects" means the effects of any "acts . . . constituting or requisite to the consummation of the offense." In other words, the location of such effects is also a proper venue under NRS 171.030.

When defining what those "effects" are, this Court should consider what is the particular harm the Legislature has tried to prevent by making particular conduct criminal. Both charges in this case provide good examples of how that should work. One of the essential elements of uttering a forged instrument: forgery is the intent to defraud. NRS 205.110. Thus, the Legislature's intent in making uttering a forged instrument: forgery an offense is to prevent fraud. That harm occurs when the victim receives and relies on false or fraudulent information. So the receipt of false or fraudulent information would be an "effect" of the crime of uttering a forged instrument: forgery.

The same logic applies to offering a false instrument for filing or recording. That offense addresses the offering of "any false or forged instrument to be filed, registered or recorded in any public office, which

instrument, if genuine, might be filed registered or recorded in a public office under any law of this State or the United States." NRS 239.330. The Legislature's obvious intent is to prevent submission of false instruments to public agencies that the government or the public may need to rely upon as a genuine record. *See*, *e.g.*, *People v. Miller*, 78 Cal. App. 5th 1051, 1057 (Cal. App. 2022) ("Section 115 was crafted to prevent the recordation of spurious documents knowingly offered for record and to protect the integrity of judicial and public records." (internal quotation marks and citations omitted)). So the public office's receipt of the "false or forged instrument" would be an "effect" of the crime of the offering false instrument for filing or recording.

This straightforward reading of the plain language of NRS 171.030 provides another path to establishing venue in Clark County. *See infra* Argument VI.

IV. Both offenses were committed, at least in part, in Clark County.

It is the State's burden to prove venue by a preponderance of the evidence. *Martinez Guzman II.*, 137 Nev. at 603, 496 P.3d at 576 (*Martinez Guzman II*) (citing *McNamarra v. State*, 132 Nev. 606, 615-16,

377 P.3d 106, 113 (2016)); *but see supra* n.5 (expressing doubt that *Martinez Guzman II* changed the modicum of proof necessary to sustain an indictment). The State can meet that burden through presentation of circumstantial evidence. *Id.* (quoting *James v. State*, 105 Nev 873, 875, 784 P.2d 965, 967 (1989)). And grand jurors are entitled to make inferences from the evidence in concluding whether the State met its burden to obtain an indictment. *Sheriff, Clark Cnty., Nev. v. Fernandez*, 97 Nev. 61, 64, 624 P.2d 13, 15 (1981).

Determining the *locus delicti* for an offense requires determining where the material elements of the offense were committed. *Pray*, 30 Nev. at __, 94 P. at 221. That determination is a question of law. *Ibarra v. State*, 134 Nev. 582, 584, 426 P.3d 16, 18 (2018).

Here, the district court's analysis determining that any offense was complete when the GOP Electors deposited their imposter documents in the mail is incompatible with the plain language of the statutes addressing the offenses at issue. On this record, properly defining the material elements of the offenses establishes venue in Clark County under NRS 171.030. The factual record shows that the GOP Electors committed at least part of each charged offense in Clark County. As a

result, the district court's determination that the State failed to prove venue is incorrect as a matter of law.

A. On this record, the *locus delicti* for uttering a forged instrument: forgery includes Clark County.

The district court erred under *Martinez Guzman I* because it failed to conduct a proper analysis for determining whether Clark County is a proper venue. Both in its oral pronouncement of its ruling and in its written disposition, the district court focused on the wrong conduct. 3-APP-0654, 0661. Forgery and uttering a forged instrument are separate offenses that address distinct conduct. NRS 205.110. But the district court improperly focused on the fanfare of the GOP Electors' forgery ceremony and failed to consider the elements of uttering. 3-APP-0654, 0661. The analysis that *Martinez Guzman I* demands proves that Clark County is a proper venue for trial on the charge of uttering a forged instrument: forgery because the GOP Electors committed the crime of uttering, at least in part, in Clark County.

* * *

1. The *locus delicti* for uttering a forged instrument: forgery, when committed by mail, includes the county to which the defendant mailed the forged instrument.

The State has found no reported case from this state identifying the *locus delicti* for, or otherwise defining the essential elements of, the offense of uttering a forged instrument: forgery, as defined by NRS 205.110. So the State starts with the plain language of NRS 205.110:

> Every person who, knowing the same to be forged or altered, and with intent to defraud, shall utter, offer, dispose of or put off as true, or have in his or her possession with the intent so to utter, offer, dispose of . . . any forged writing, instrument or other thing, the false making, forging or altering of which is punishable as a forgery, shall be guilty of forgery the same as if the person had forged the same.

Although the statutory language requires treating uttering as proof of forgery, the necessary elements for proving the uttering are distinct from the act of forging the instrument. Uttering occurs when a person (1) knows that a "writing, instrument or other things, the false making, forging or altering of which is punishable as forgery" is "forged or altered," and (2) "utter[s], offer[s], dispose[s] of or put[s] off as true . . . the forged writing, instrument or other thing, the false making, forging

or altering of which is punishable as forgery," (3) with "intent to defraud." NRS 205.110

Utter means "[t]o deliver for an unlawful purpose any unlawful article or thing. The more restricted meaning of this word is the disposal or negotiation, with a fraudulent intent, of a forged instrument or a false coin, knowing it to be forged or false.'" Black's Law Dictionary, UTTER (12th ed. 2024) (quoting Cushman K. Davis, *The Law in Shakespeare* 252 (1883)). Given the plain meaning of utter, the act of uttering is not complete until the false or forged instrument is delivered.

Similarly, offer means "the act or an instance of presenting something for acceptance." Black's Law Dictionary, OFFER (12th ed. 2024). So given the plain meaning of offer, the act of offering a forged instrument is the presentation of the instrument *for acceptance*.

The plain meaning of the terms setting out the conduct that NRS 205.110 makes criminal shows that the offense of uttering is not complete when a defendant drops a forged instrument into the mail. The plain meaning of the words uttering or offering contemplate that those acts—when they are accomplished by mail—are not consummated or complete

until the forged instrument is delivered to the location the defendant mailed it.

Authority from other states uniformly supports the State's understanding of the *locus delicti* for the offense of uttering. But the State has found no case from any other state jurisdiction holding that the county to which the defendant mailed the forged instrument is *not* a proper venue for the offense of uttering a forged instrument.[7]

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[7] The closest thing the State has been able to find to *any* case supporting the district court's conclusion that the offense is complete on mailing is a reference to *U.S. v. Plympton*, 4 Cranch C.C. 309, 27 F. Cas. 578 (C.C.D.D.C 1833), in *Palliser v. U.S.*, 136 U.S. 257, 267 (1890), which suggests that the court in *Plympton* "held that where a letter containing a forged check was put in the post-office at Baltimore, addressed to a person in Washington, there was no uttering of the forged paper in Washington," and *United States v. Johnson*, 323 U.S. 273 (1944). But even then, *Plympton* involved obtaining money by false pretenses, and the decision in that case seems to suggest that the false pretenses were made in Baltimore and the money obtained in Baltimore. 4 Cranch C.C. 309, 27 F. Cas. at 578 (granting "a new trial because the false pretences, if made at all, were not made in this county; and the bills were accepted and paid by the prosecutor, in Baltimore"). So the reference to *Plympton*, which is a complete outlier, is of questionable relevance. And the rationale of *Johnson* is inapplicable here because that case involved a particularized inquiry into the congressional intent on when a violation of the Federal Denture Act is complete. 323 U.S. at 273-78.

Looking as far back as the 1830s, some states have applied the common law principle that venue is proper where the crime was committed to the offense of uttering. And those courts concluded that "venue was in the county where the letter containing the forged instrument *was received* and not in the county where it *was mailed*" because the entire offense of uttering is committed upon delivery. *State v. Hudson*, 32 P. 413, 414 (Mont. 1893) (citing *People v. Rathbun*, 21 Wend. 509 (N.Y. Sup. Ct. 1839)) (emphasis added). As the Oregon Supreme Court explained in *State v. Swank*, 195 P. 168, 171–72 (Or. 1921), the reason for this is the point the State made by looking at the plain language of NRS 205.110: forging an instrument and uttering the forged instrument are distinct offenses.

Courts in other states have held that venue is proper in either county—the county from where the defendant mailed the forged instrument *or* the county to which the defendant mailed the forged instrument. Those states treat the crime as having "begun in one county and consummated in another." *Seay v. State*, 180 So. 620, 621 (Ala. Ct. App. 1925); *see also People v. Thorn*, 33 P.2d 5, 14 (Cal. Ct. App. 1934);

Bradford v. State, 156 So. 655 (Miss 1934); *cf. People v. Gould*, 246 N.Y.S.2d 758, 761-62 (1964).[8]

Finally, federal authority also supports the State's position that the place of delivery is a proper venue. *See Palliser*, 136 U.S. at 266-67. Relevant federal authority also fall within the two strains identified above, depending on the offense at issue. In some instances, the offense at issue is committed at the time of delivery of the mail to its intended destination, and in others, the offense is a seen as a continuing offense that makes venue proper in the place from which the mail is sent and the place to which it is sent. *See*, *e.g.*, *U.S. v. Blecker*, 657 F.2d 629, 632-33 (4th Cir. 1981); *see also Reass v. U.S.*, 99 F.2d 752, 754 (4th Cir. 1938). But in either case, the place to which the mail is delivered is a proper venue. *Id.*

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[8] Given this Court's analysis in *Martinez Guzman II*, venue is proper in both counties under NRS 171.030. Even accepting the proposition that the complete offense occurs in the county to which the defendant mails a forged instrument, mailing of the forged instrument would be a preparatory act with intent sufficient to establish venue in the county where the defendant deposited the forged instrument in the mail. But that just reinforces the point that venue can be proper in more than one county under NRS 171.030. And the district court erred here when deciding that Clark County was not a proper venue.

The plain language of the NRS 205.110 and relevant precedent from other jurisdictions addressing venue establish that the county to which a defendant mailed a forged instrument is a proper venue for the charge of uttering a forged instrument: forgery. For that reason, the district court's determination that "the crimes, if any occurred, were completed when Defendants delivered the items for mailing at the Minden post office" is wrong as a matter of law with respect to the offense of uttering a forged instrument: forgery. 3-APP-0661.

2. The GOP Electors committed the offense of uttering a forged instrument: forgery, at least in part, in Clark County when they mailed their imposter documents to the federal district court in Las Vegas.

Given the district court's legal error in determining the *locus delicti* for uttering a forged instrument: forgery, the State presented evidence establishing venue in Clark County. The GOP Electors mailed an envelope containing their imposter documents from Douglas County to the federal courthouse in Las Vegas. 5-APP-1088–1089. They did this because, as the December 9, 2020 Chesebro memorandum indicated, federal law requires the electors from each state to send a copy of the official Electoral College documents to "the federal district court where

the electors meet." 5-APP-1088. Given the plain language of NRS 205.110 and relevant authority from other jurisdictions, when a defendant utters a forged instrument by sending it through the mail, the *locus delicti* includes the location to which the defendant mailed the document. *See supra* Argument IV(A)(1). When the GOP Electors mailed their imposter documents to the federal court in Las Vegas, they made Clark County a proper venue for trial. For that reason, the district court manifestly abused its discretion by dismissing the charge for uttering a forged instrument: forgery.

B. On this record, the *locus delicti* for offering false instrument for filing or recording includes Clark County.

The district court's dismissal of the charge of offering false instrument for filing or recording is plagued by the same failure to comply with *Martinez Guzman I*. The analysis that *Martinez Guzman I* demands proves that Clark County is a proper venue for trial on the charge of offering false instrument for filing or recording because the location of the public office to which the defendant offered the "false or forged instrument" is a proper venue. *See* NRS 239.330.

1. The *locus delicti* for offering false instrument for filing or recording when committed by mail includes the county to which the defendant mailed the false or forged instrument.

The State is aware of no reported case from this State addressing the *locus delicti* for, or otherwise defining the elements of, the crime of offering false instrument for filing or recording. But again, the plain language of the statute and precedent from another jurisdiction supports applying the rule that the location of delivery if the document makes sense when determining the *locus delicti* for the offense of offering a false instrument for filing or recording.

The State starts again with the plain language of the statute, here NRS 239.330.

> 1. Except as otherwise provided in subsection 2, a person who knowingly procures or offers any false or forged instrument to be filed, registered or recorded in any public office, which instrument, if genuine, might be filed registered or recorded in a public office under any law of this State or the United States is guilty of a Category C felony and shall be punished as provided in NRS 193.130.
>
> 2. The provisions of subsection 1 do not apply to a person who is punishable pursuant to NRS 293.800.

NRS 239.330. Based upon the plain language of the statute, the conduct of putting the false or forged instrument in the mail does not complete the offense. The essential elements of the offense are (1) "offer[ing]," (2) a "false or forged instrument," that "if genuine, might be filed registered or recorded in a public office under any law of this State or the United States," (3) "to be filed, registered or recorded," (4) "in any public office." NRS 239.330. Again, offer means "the act or an instance of presenting something for acceptance." Black's Law Dictionary, OFFER (12th ed. 2024).

Given the foregoing, the location of the public office to which the defendant offers the "false or forged instrument"—even if the offering is conducted through the mail—is a proper *locus delicti* for the offense. The South Dakota Supreme Court reached the same conclusion applying a similar statutory provision. *See*, *e.g.*, *State v. Thomason*, 872 N.W.2d 70, 78 (S.D. 2015) ("From the evidence, the jury could reasonably infer that Ken offered the false or forged Special Power of Attorney and joint warranty deed (via his knowledge that Getty Abstract *would mail the documents to Lawrence County* to complete the closing) for filing, registering, or recording *in Lawrence County*.") (emphasis added). And

the analysis above addressing the term "offer" with respect to uttering a forged instrument: forgery, just reinforces the point that receipt of the document is part of the offering element for this offense too. *See supra* Argument IV(A).

The plain language of the NRS 205.110 and relevant precedent from other jurisdictions addressing venue establish that the county where the public office to which the defendant offered a "false or forged instrument" is located is a proper venue because the offering is not complete by merely depositing the false or forged instrument in the mail. For that reason, the district court's determination that "the crimes, if any occurred, were completed when Defendants delivered the items for mailing at the Minden post office" is wrong as a matter of law with respect to the offense of offering false instrument for filing or recording. 3-APP-0661.

2. Evidence that the GOP Electors mailed their imposter documents to the U.S. District Court in Las Vegas established venue for offering false instrument for filing or recording in Clark County.

Given the plain language of NRS 239.330, the offense of offering false instrument for filing or recording is not complete until the false or

forged instrument is offered to the relevant public office, which makes the location of that office a proper venue for trial under NRS 171.030. *See supra* Argument IV(B)(1). When the GOP Electors mailed their imposter documents to the federal court in Las Vegas, they made Clark County a proper venue for trial on the charge of offering false instrument for filing or recording. 5-APP-1088–1089. For that reason, the district court manifestly abused its discretion by dismissing the charge for offering false instrument for filing or recording.

This Court need go no farther than this to reverse. The district court erred as a matter of law when it concluded that any offense was complete upon the GOP Electors depositing the imposter electoral documents in the mail in Douglas County. 3-APP-0661. The defendants "uttered" and "offered" their imposter documents in Clark County by mailing them to the United States District Court for the District of Nevada at its courthouse located in Las Vegas, Clark County, Nevada. 5-APP-1088–1089. Although the district court may be right that venue would be appropriate in places other than Clark County, 3-APP-0649, that does not make Clark County an improper venue. It just means venue is proper in Clark County under NRS 171.030.

And the GOP Electors' argument based on their documents making a "mere pitstop" in Las Vegas before court staff forwarded the documents to Chief Judge Du in Reno is irrelevant. 1-APP-0493. As the GOP Electors argued to the district court, "[w]e're talking about the office." 3-APP-0636. It matters not that Chief Judge Du's main duty station is at the Reno courthouse. There is only one United States District Court for the District of Nevada with courthouses in both Reno and Las Vegas. *See*, *e.g.*, U.S. District Court, District of Nevada: About, *https://www.nvd.uscourts.gov/court-information/about/* (last viewed Sept. 4, 2024). And the GOP Electors sent that envelope to Judge Du, consistent with Chesebro's instructions, in her capacity as the Chief Judge of "the federal district court where the electors meet." 5-APP-1089, 1093, 1115. Delivery to the federal district court at the courthouse in Las Vegas was delivery to the "office" of the relevant federal district court.[9]

[9] If it was not, and this Court accepts the GOP Electors' alternative argument that the uttering or offering was not complete until Chief Judge Du opened the envelope containing the documents and learned of their contents, that point remains unavailing to the GOP Electors. By the same logic, Secretary of State Barbara Cegavske was in Las Vegas when she learned of the documents (and the statements made in those

V. Evidence of the conspiracy proves at least the necessary preparatory acts plus intent to satisfy the test under *Martinez Guzman II*.

When the grand jury evidence is looked at in its totality, there is sufficient evidence to establish a conspiracy that, at least in part, took place in Clark County. There is sufficient circumstantial evidence to establish formation of the conspiracy and overt acts in furtherance of the conspiracy that occurred in Clark County by a preponderance of the evidence. And that evidence then establishes venue in Clark County under *Martinez Guzman II*. 137 Nev. at 609, 496 P.3d at 580.

In *Martinez Guzman II*, this Court held that preparatory acts alone do not establish venue under NRS 171.030. *Id*. But this Court indicated that preparatory acts with proof of intent are enough to establish venue under that statute. *Id*. The State met that standard when it presented proof of the conspiracy to the grand jury.

"Conspiracy is an agreement between two or more persons for an unlawful purpose." *Thomas v. State*, 114 Nev. 1127, 1143, 967 P.2d 1111,

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documents) that the GOP Electors mailed to the Secretary. 1-APP-0178–0179; 5-APP-1089. Under their theory, venue remains proper in Clark County either way.

1122 (1998) (quoting *Doyle v. State*, 112 Nev. 879, 894, 921 P.2d 901, 911 (1996)). Because the State often lacks direct evidence of a conspiracy, the necessary agreement may be proven "by inference from the conduct of the parties." *Id.* (quoting *Gaitor v. State*, 106 Nev. 785, 790 n.1, 801 P.2d 1372, 1376 n.1 (1990)) (internal citations omitted). "Therefore, if a coordinated series of acts furthering the underlying offense is sufficient to infer the existence of an agreement, then sufficient evidence exists to support a conspiracy conviction." *Id.*

In other words, proving conspiracy and acts taken in furtherance of the conspiracy is the equivalent of proving preparatory acts plus intent. This case is a perfect example of that.

The fake Electoral College ceremony the GOP Electors put on in Carson City on December 14, 2020, was anything but happenstance. And the video of that event shows that McDonald and Law, both residents of Clark County, were key players in the event. 4-APP-0865, 0882, 0894.

The preparatory acts that led up to the GOP Electors committing the charged offense began on December 10, 2020. 5-APP-1056. At that time, Chesebro sent to DeGraffenreid, McDonald, and Law a memorandum and templates of documents intended to assist the Nevada

electors in preparing their imposter Electoral College documents, resulting in continued communication between Chesebro and DeGraffenreid. 5-APP-1055–1056.

Three days after the initial communication from Chesebro, all six of the GOP Electors were included in an e-mail discussing edits to the documents that Chesebro had sent to DeGraffenreid, McDonald, and Law. 5-APP-1059–1086. And the day after that—December 14, 2020—all six GOP Electors and two alternate electors noted their presence when the roll was taken during the ceremony where they executed the imposter documents outside the Legislature in Carson City. 5-APP-0865 (video timestamp 09:12–10:00). They were also joined by representatives from Right Side Broadcasting, who traveled from Washington D.C. to Nevada on December 13, 2020, to broadcast and provide live commentary on the event the GOP Electors held in Carson City. 5-APP-0865 (video timestamp 00:25–01:00). And when the ceremony ended, DeGraffenreid travelled to Minden in Douglas County, where he mailed four envelopes containing the imposter documents the GOP Electors, following "exactly" the instructions from the Chesebro memorandum. 1-APP-0109; 5-APP-1088, 1106.

And there are a few additional key pieces of circumstantial evidence specific to intent and participation in the preparation by Law and McDonald. First, attached to e-mail communications from December 13, 2020, is a draft memorandum identifying McDonald as the source of the document to be executed on December 14, 2020. 5-APP-1061. Second, there are e-mail communications between all the Electors on December 13, 2020, showing that there were additional communications happening between the various Electors outside of the e-mail presented to the grand jury, including a discussion about whether Law or someone else would be printing the documents. 5-APP-1059–1060. Third, although much of the coordination with Chesebro occurred through communication with DeGraffenreid, there is also an e-mail dated December 14, 2020, from DeGraffenreid to "private@bernardkerik.com" that indicates DeGraffenreid sent the e-mail at the direction of "Chairman McDonald." 5-APP-1088. But McDonald easily could have forwarded the e-mail himself because he was a recipient of the original e-mail. 5-APP-1088 Finally, the State presented evidence that Law and McDonald both reside in Clark County, and the return address on each envelope the GOP

Electors mailed listed McDonald's work address in Clark County. 4-APP-0856, 0882, 0894, 0905, 0933–0935; 5-APP-1088–1089, 1105–1106.

Given the foregoing, these key pieces of *circumstantial* evidence provide sufficient evidence to show that it is more likely than not that either McDonald or Law engaged in the comingling of the preparatory acts and intent required to establish venue in Clark County under *Martinez Guzman II*. First, the temporal proximity of the coordination with Chesebro, the GOP Electors coordinating with each other to modify the documents to their liking, a proposed memorandum addressing the imposter documents that identifies McDonald as the memorandum's author, and all six GOP Electors appearing in Carson City the day after they completed modification of the documents shows a consistent timeline across short period of time that demonstrates the formation of the necessary intent during that five-day period.

Second, the circumstantial evidence also proves the necessary preparatory acts. Various e-mail communications demonstrated off-line coordination between the other GOP Electors and Law and McDonald—whether by telephone or other means. 5-APP-1059. The central role that McDonald and Law played in the ceremony, as exhibited throughout the

entirety of the Right Side Broadcasting footage, suggests their involvement in preparation for the ceremony. 5-APP-0865. The e-mail indicating that DeGraffenreid was communicating with persons outside Nevada at McDonald's request supports McDonald's involvement in preparation for the signing event, including DeGraffenreid's communications with persons outside of Nevada. 5-APP-1088. The fact that Law and McDonald both reside in Clark County. 4-APP-0881, 0894. And the return address indicating that McDonald conducts his business as the Chair of the Nevada Republican Party out of a Clark County address. 5-APP-1088–1089. All of the foregoing is circumstantial evidence that would allow grand juror to make a reasonable inference that it is more likely than not that McDonald or Law actively participated in the preparation and coordination of the December 14, 2020 ceremony from within Clark County.

Taking the foregoing together, the district court erred when it stated that "[t]he mere possibility that preparatory acts were committed with intent in Clark County is speculative and insufficient." 3-APP-0661 Comparing the evidence addressed above and the district court's statement suggest that the district court held the State to a requirement

of presenting *direct* evidence of the preparatory acts and intent necessary to establish venue under *Martinez Guzman II*.

That is legally wrong. The State is permitted to rely on circumstantial evidence to carry its burden of proving venue. *Martinez Guzman II.*, 137 Nev. at 603, 496 P.3d at 576. And the evidence the State presented here sufficiently proves that it is more likely than not that the GOP Electors engaged in the alleged conspiracy and that at least one of the GOP Electors committed acts in furtherance of the conspiracy while present in Clark County. And that is also proof of preparatory acts *plus* intent, which makes venue proper under *Martinez Guzman II*. 137 Nev. at 609, 496 P.3d at 580.

VI. Alternatively, the district court erred when it concluded that the State failed to establish venue in Clark County because under NRS 171.030 "effects" of "acts . . . constituting or requisite to the consummation of the offense[s]" occurred in Clark County.

There is a third path to proving venue in Clark County under NRS 171.030 based on the facts of this case. This path still leads to establishing venue, even when accepting the premise that the GOP Electors completed the relevant offenses when they deposited their imposter documents in the mail. The "effects" identified in NRS 171.030

are the effects of the "acts . . . constituting or requisite to the consummation of the offense." *See supra* Argument III.

At argument, the GOP Electors addressed this Court's decision in *Martinez Guzman II*. 3-APP-0633. In doing so, amongst other things that are a consideration for venue, they pointed out that venue will lie "where the community has an interest in prosecution of" an offense. 3-APP-0633.

The State agrees. This point reinforces the State's reading of "effects thereof" from NRS 171.030. *See supra* Argument III. When the "effects" of "acts . . . constituting or requisite to the consummation of the offense" occur in a county other than the county where the crime is committed, the county where the effects occurred should be a proper venue under NRS 171.030.

The facts of this case are perhaps not the best example of how that should work because the effects of the GOP Electors' criminal acts were felt statewide and beyond. The State, however, is not asking this Court to interpret NRS 171.030 in a way that—as the GOP Electors have tried to suggest, 3-APP 0480, 0497, 0641—gives the State unfettered discretion to select any county in the State as a proper venue.

Instead, the State's argument is this: "effects" from NRS 171.030 are—categorically speaking—the class of harm the Legislature intended to prevent by making particular kinds of conduct criminal. *See supra* Argument III. Here, (1) the receipt of "false or forged" instruments that were intended to defraud the recipient, and (2) a public office receiving a "false or forged instrument" that the government or the public may need to rely upon as a genuine record. *See supra* Argument III.

The nature of the underlying offenses in this case helps drive home the point. Accepting the district court's view that the crimes were complete in either Carson City or Douglas County would have far-reaching consequences for victims of fraudulent schemes if "effects" under the statute would not reach Clark County in this case. Take this hypothetical for example: a man forges a check while in Carson City, and he mails the forged check from a post office in Douglas County to a business in Las Vegas in exchange for the performance of a service. The company receives the check and performs the service. But then the bank refuses to honor the check when it determines that the check is forged.

In this scenario, the business in Clark County suffers the loss when the bank fails to honor the check. But if forging the check and mailing it

were the "acts . . . constituting or requisite to the consummation of the offense," Clark County is left without a means to vindicate the interests of its community unless the loss the Clark County business suffered is an "effect" under NRS 171.030.

The same concept also tracks for the offense of offering false instrument for filing or recording. Take this hypothetical as an example: a man forges a deed in Carson City and mails it from a Douglas County post office to the Recorder in Clark County. And the document is believed to be genuine and accepted for recording. If the offense is complete upon mailing, once again, Clark County is left without a means to vindicate the interests of its community unless the loss resulting from recording the forged deed, which was believed to be genuine, is an "effect" under NRS 171.030.

The full extent of the harm that the GOP Electors inflicted on the People of this State when they "uttered" and "offered" their imposter documents is not easily defined by geographic location. But that does not mean that their acts did not also result in the same category of harms the Legislature intended to prevent when adopting NRS 205.110 and NRS 239.330. The GOP Electors' acts in committing the offense of

uttering a forged instrument: forgery had an "effect" in Clark County when Secretary Cegavske—the intended recipient of the forged instrument—learned that the GOP Electors had produced the imposter documents and held themselves out as "the duly elected and qualified Electors for President and Vice President of the United States of America from the State of Nevada" while she was in Las Vegas. 1-APP-0178–0179; 4-APP-0909, 4-APP-1039. And the GOP Electors' acts in committing the offense of offering false instrument for filing or recording had an effect in Clark County when the U.S. District Court received the GOP Electors' imposter documents at the Las Vegas courthouse. 4-APP-0905–0925.

Thus, even accepting the idea that the GOP Electors completed the offense by depositing their documents in the mail—a point that has been thoroughly rejected around the nation, *see supra* Argument IV—venue remains proper in Clark County under NRS 171.030. The "effects" of the GOP Electors' "acts . . . constituting or requisite to consummation of the offense[s]" occurred in Clark County, which satisfies the venue requirements under NRS 171.030.

VII. This Court should deem any failure to establish venue before the grand jury harmless because the district court record includes additional evidence that is sufficient to prove venue at trial.

"Dismissal is an extreme sanction," especially when the dismissal is with prejudice. *State v. Gonzalez*, 139 Nev. __, 535 P.3d 248, 251 (2023) (internal quotation marks and citation omitted). And this Court has recognized that errors in grand jury proceedings may be deemed harmless, including citing with approval the U.S. Supreme Court's decision in *U.S. v. Mechanik*, 475 U.S. 66, 70 (1986), where the Supreme Court rejected a challenge to the sufficiency of the evidence to support an indictment as harmless. *See*, *e.g.*, *Lisle v. State*, 114 Nev. 221, 224-25, 954 P.2d 744, 746-47 (1998); *see also Von Severence v. State*, 136 Nev. 874, 456 P.3d 601, 2020 WL 582104, at *2 (2020) (unpublished table disposition) (relying on *Mechanik* to reject challenge to sufficiency of indictment).

Moreover, dismissals are presumed to be without prejudice unless stated otherwise. *Gonzalez*, 139 Nev. at ___ n.1, 535 P.3d 251 at n.1. "[D]ismissal with prejudice is warranted when the evidence against a defendant is irrevocably tainted or the defendant's case on the merits is

prejudiced to the extent that notions of due process and fundamental fairness would preclude reindictment." *Sheriff, Clark Cnty. v. Keeney*, 106 Nev. 213, 217, 791 P.2d 55, 57 (1990) (internal quotation marks and citation omitted). And to support a dismissal with prejudice the district court must balance the "deterrent objectives" of dismissal "with the interest of society in prosecuting those who violate its laws." *Gonzalez*, 139 Nev. at __, 535 P.3d at 251 (internal quotation marks and citation omitted).

The district court did not address whether this dismissal is with prejudice. 3-APP-0662. But the statute of limitations for the charge of offering false instrument for filing or recording is three years under NRS 171.085. So, unless the State can seek reindictment with the support of equitable tolling, any dismissal of that charge is effectively with prejudice. But this Court should deem harmless any shortcoming in the State's evidence on venue before the grand jury because, as explained below, there is sufficient evidence in the record showing that the State will be able to establish venue at trial. For that reason, this Court should reverse, order reinstatement of the indictment, and remand to permit this case to proceed in the district court.

A. An argument the GOP Electors asserted in the joint reply on the motion to dismiss implicitly concedes venue.

This Court has addressed the meaning of "acts . . . requisite to the consummation of the offense." *Martinez Guzman II*, 137 Nev. at 604-06, 496 P.3d at 576-78. But this Court did not provide a comprehensive definition for that phrase. Instead, in *Martinez Guzman II* this Court only explained that the term "acts" includes preparatory acts *when* those preparatory acts are accompanied by a sufficient showing of intent. *Id.* at 609, 496 P.3d at 580. It did not say that the term "acts" is exclusive to preparatory acts. *Id.*

In the reply on the motion to dismiss, the GOP Electors presented an alternative argument asserting that the "uttering" or "offering" happened only after their documents made a "mere pitstop" in Las Vegas when the federal district court's staff forwarded the envelope containing the imposter documents to Chief Judge Miranda Du in Reno. 3-APP-0493. But that position concedes a point that still establishes venue in Clark County. When accepting the GOP Elector's position and considering the plain language of NRS 171.030, the acts of court staff in

redirecting the envelope to Chief Judge Du in Reno would be "acts . . . requisite to the consummation of the offense."

As explained above, a material element of each offense is the "offering" or the "uttering" of the imposter documents. *See supra* Argument IV. And if the acts of "offering" or "uttering" were not consummated until Chief Judge Du received the package containing the imposter documents in Washoe County, then "acts . . . requisite to consummation of" both offenses still occurred in Clark County.

When the GOP Electors made what they call a "mistake" by mailing their documents to the federal district court in Las Vegas, they also admit that courthouse staff forwarded the envelope to Chief Judge Du in Reno. 4-APP-0493. So under the GOP Electors alternative theory, the "offering" and the "uttering" could not have been completed without the acts the court staff took to forward the envelope to Chief Judge Du. So venue would remain proper in Clark County, even if this Court accepts the proposition that the underlying offenses were not complete until Chief Judge Du received the documents in Reno. For that reason, this Court should treat any shortcoming in the State's evidence of venue as

harmless because the GOP Electors made an argument that implicitly concedes venue in Clark County.

B. The State has presented the district court with additional evidence proving preparatory acts plus intent in Clark County.

The GOP Electors admit that Michael McDonald was in Las Vegas until the afternoon of December 13, 2020. 3-APP-0477 n.4. And it was not mere coincidence that McDonald just happened to leave Las Vegas that day and appear in Carson City the next day—December 14, 2020. Instead, as the GOP Electors acknowledge, his phone records show that he was in communication with the other GOP Electors from Clark County throughout the planning stages of the events that took place in Carson City on December 14, 2020. 3-APP-0477 n.4.[10] That evidence—combined with all the evidence the State addressed above, *see supra* Argument V—is circumstantial evidence of McDonald's intent and preparatory acts that occurred within Clark County under *Martinez Guzman II*.

[10] Again, the relevant records were filed under seal in the district court and are the subject of the State's motion for transmission of physical exhibits. 2-APP-0467–0468; 5-APP-1163.

Because the State's presentation of that evidence at trial would establish venue by a preponderance of the evidence under *Martinez Guzman II* and NRS 171.030, that means this case is triable in the Eighth Judicial District Court. And that should also mean the Clark County grand jury had the power to indict the GOP Electors for these offenses under NRS 172.105 because it means venue lies in Clark County. *Martinez Guzman I*, 136 Nev. at 111, 460 P.3d at 450. For that reason, this Court should treat any failure to establish venue before the grand jury as a harmless error, reverse the district court's order for dismissal, and remand for this case to proceed.

* * *

CONCLUSION

For the foregoing reasons, this Court should reverse and remand with instructions to reinstate the indictment.

RESPECTFULLY SUBMITTED this 4th day of September 2024

AARON D. FORD
Attorney General

By: /s/ *Jeffrey M. Conner*
Chief Deputy Solicitor General
Attorneys for Petitioner

CERTIFICATE OF COMPLIANCE

Pursuant to NRAP 32(a)(7)(C), I certify that:

This brief complies with the type-volume limitation of NRAP 21(d) because the brief contains 10,781 words, excluding the parts of the brief exempted under NRAP 32(a)(7)(B)(iii). This brief complies with the typeface requirements of NRAP 32(a)(5) and the type-style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionately spaced typeface with Microsoft Word using Century Schoolbook 14-point font.

* * *

Finally, I hereby certify that I have read this brief, 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 brief complies with applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in a brief 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 brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

RESPECTFULLY SUBMITTED this 4th day of September 2024,

AARON D. FORD
Attorney General

By: /s/ *Jeffrey M. Conner*
Chief Deputy Solicitor General
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Attorney General's Office, and pursuant to NRAP 25(b) and NEFCR 9 I electronically filed the foregoing **APPELLANT STATE OF NEVADA'S OPENING BRIEF** with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing System (Eflex) on August 26, 2024. Participants in the case who are registered with Eflex as users will be served by the Eflex system.

I further certify that based on written consent a copy of the same was served by electronic mail at the following address: gkelesis@bckltd.com.

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/s/ *Amanda White*
Amanda White
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