IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA,
Appellant

vs.

JAMES WALTER DEGRAFFENREID III, DURWARD JAMES HINDLE III, JESSE REED LAW, MICHAEL JAMES MCDONALD, SHAWN MICHAEL MEEHAN, AND EILEEN A. RICE,
Respondents.

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CASE NO.: 89064
Dist. Ct. Nos.: C-23-379122-1; C-23-379122-2; C-23-379122-3; C-23-379122-4; C-23-379122-5; C-23-379122-6

RESPONDENTS' ANSWERING BRIEF

Richard A. Wright
WRIGHT MARSH, LEVY
300 S. Fourth St., Ste 701
Las Vegas, NV 89101
Counsel for Michael James McDonald

Monti Jordana Levy
WRIGHT MARSH, LEVY
300 S. Fourth St., Ste 701
Las Vegas, NV 89101
Counsel for Eileen A. Rice

Margaret A. McLetchie
MCLETCHIE LAW
602 South Tenth St.
Las Vegas, NV 89101
Counsel for Jesse Reed Law

Brian R. Hardy
MARQUIS AURBACH
10001 Park Run Drive
Las Vegas, Nevada 89145
Counsel for Durward James Hindle, III

Sigal Chattah
CHATTAH LAW GROUP
5875 S. Rainbow Blvd.
#204
Las Vegas, NV 89118
Counsel for Shawn Michael Meehan

George P. Kelesis
COOK & KELESIS, LTD
517 S 9th Street
Las Vegas, NV 89101
Counsel for James Walter Degraffenreid, III

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I. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

ISSUE 1: Are state charges based on the act of purportedly submitting a forged document or offering a false document for filing to the U.S. District Court of Nevada (or any other federal agency) preempted?

ISSUE 2: What burden does the State have in establishing venue?

- Should the Court overrule *Martinez-Guzman I* and *Martinez-Guzman II* and hold that the State does not need to demonstrate venue by a preponderance of evidence to sustain an indictment?
- Should the Court overrule *Martinez-Guzman I* and *Martinez-Guzman II*, and allow the State to rely on evidence that was not presented to the grand jury to meet their evidentiary burden by calling it "harmless error"?
- Should the Court rewrite NRS 171.030 to allow any county that can claim any imaginable effects of a crime to exercise territorial jurisdiction?

ISSUE 3: Is the State's ability to refile the dismissed charges (if this Court affirms dismissal) relevant to the Court's analysis regarding territorial jurisdiction?

ISSUE 4: Does the fact that Defendants mistakenly addressed materials to Judge Miranda Du, Chief Judge of United States District Court for the District of Nevada, in Las Vegas, Clark County, Nevada establish venue in Clark County where the envelope should have been addressed to an address in Washoe County and where the materials were not opened or received by Judge Du in Las Vegas but rather sent

to the correct address in Reno?

ISSUE 5: Does the fact that (then-) Secretary of State Barbara Cegavske happened to be in Las Vegas when she learned of the instrument Respondents mailed to the Secretary of State's office in Carson City establish venue in Clark County?

ISSUE 6: If the State was permitted to rely on evidence it believes it could produce at trial, would Mr. McDonald's mere presence in Las Vegas and the mere fact of communication with other members of the Nevada Republican Party (or any other of the purported evidence the State relies on) establish venue anyway?

ISSUE 7: Does the "circumstantial evidence" the State relies on establish venue?

ISSUE 8: Do generalized arguments about statewide effects satisfy the State's burden?

II. JURISDICTIONAL STATEMENT

While Defendants do not dispute that this Court generally has jurisdiction over appeals of a district court's dismissal of a criminal indictment, Nevada courts do not have subject matter jurisdiction over the criminal charges alleged against Defendants to the extent that they rely on allegations regarding submission of documents containing purported false statements to the U.S. District Court of Nevada in Las Vegas, and to the extent that they rely on the contention that Judge Miranda Du was the victim of the alleged crimes. As argued *infra* (§ V(A)) under the Supremacy Clause of the United States Constitution.1 U.S. Const. art. VI, cl. 2, such crimes are

preempted by federal statute which strips Nevada courts of jurisdiction.

III. STATEMENT OF THE CASE

A. Background

Defendants were selected to be Presidential electors in the 2020 election by the Republican Party of Nevada. (4-APP-902.) They sent their own contingent elector certificate and related documents (the "Contingent Mailing") to various federal public offices and the Nevada Secretary of State as part of their efforts to challenge the results of the 2020 Election.[1] There is no evidence that Defendants were attempting to have the Contingent Certificate accepted as the real one; it bears their own signatures and does not include items such as the Nevada seal or the Secretary of State's signature. (1-APP-23-24.) Further, Defendants held a public ceremony celebrating the Contingent Certificate. (4-APP-864-865.) In his interview with Right Side Broadcasting, which documented the ceremony, Mr. Law made clear that the purpose of preparing contingent elector certificates was to "pull this right back into the courts." (2-APP-033; Exhibit B to Joint Memorandum of Points and Authorities (ordered to be transmitted by the clerk of the District Court) (raw

[1] Mr. DeGraffenried mailed the Contingent Certificate from Minden, Nevada (with the return address to Michael McDonald in Las Vegas) to the Secretary of State's Office in Carson City, Nevada; to the Archivist of the United States in Washington D.C.; to the President of the Senate in Washington D.C.; and, to Chief Judge Miranda Du of the U.S. District Court, District of Nevada. (4-APP-0856, 0905, 0933-0935; 5-APP-1088-1089, 1105-1106.)

video at 1:09).)[2]

After publicly stating Defendants' actions were not punishable under existing law, years later (and on the eve of the statute of limitations for one of the crimes charged), the Attorney General sought indictment by grand jury in Clark County for offering a false instrument for recording in a public office (NRS 239.330) and uttering a forged document (NRS 205.110), and a true bill was returned. (1-APP-0216-0219.)

B. The Motion to Dismiss; NO Evidence connecting the Alleged Crimes to Clark County.

On January 29, 2024, Ms. Rice filed a Motion to Dismiss for lack of venue, which was joined by the other Defendants. (2-APP-0401-0421.) While the State endeavors to politicize this matter and distract this Court with an inaccurate statement of the facts[3], Defendants wish to focus the Court's attention on the facts relevant to whether a Clark County grand jury had subject matter jurisdiction—*i.e.,* ***what evidence was submitted to the grand jury that supports jurisdiction in Clark County*****?**

[2] Regardless of their opinions' inaccuracy, the GOP Electors had a First Amendment right to challenge the 2020 election results, and to hold their ceremony.

[3] The State's distortion of facts echoes its failures to present exculpatory evidence and presentation of a misleading picture to the grand jury. These issues were raised in pretrial writ petitions, which were not adjudicated by the district court because it dismissed the case for lack of jurisdiction.

The State notes that after briefing on the Motion to Dismiss, the district court expressed doubts about whether the grand jury had territorial jurisdiction. (OB, p. 14, n. 5.) Rather than just dismissing the case, the district court gave the State a second bite at the apple: the opportunity to file a supplement (the "Supplement") identifying all facts it contended link the charges to Clark County. (3-APP-0620-0626.) The Supplement failed to identify any facts linking the charges to Clark County. Instead of illustrating any sufficient connection between the alleged crimes and Clark County, the Supplement detailed irrelevant facts which failed to establish any such connections.

1. The Republican Party Headquarters and Mailing Address.

The State cites the fact that the Nevada Republican Party's headquarters and mailing address are both in Las Vegas to support jurisdiction in Clark County. (OB, p. 8.) The Supplement does not list any evidence showing that any part of any offense took place at the headquarters. The only evidence linking the address to the alleged crimes that was presented to the grand jury was that it was listed on the return envelopes for the mailings. (4-APP-0856, 0905, 5-APP-1089, 5-APP-1105-1106.) The documents were not, in fact, sent from the headquarters; they were mailed by Mr. DeGraffenried from Minden, Nevada (with the return address to Mr. McDonald), as the State concedes. (OB, p. 8; 4-APP-0856, 0905, 0933-0935; 5-APP-1088-1089, 1105-1106.)

2. Two Respondents Reside in Clark County.

That Mr. McDonald and Mr. Law live (and work) in Clark County (3-APP-062)[4] is also irrelevant, and the State has never established any act (or preparatory act) taken by Mr. Law or Mr. McDonald in Clark County.

The State endeavors to create evidence tying the crime to Clark County by relying on various communications on which Mr. McDonald and Mr. Law were copied. For example, the Supplement relies on November 29, 2020, email to the Nevada Secretary of State's office to correct the names of the Republican electors because the Secretary of State's office erroneously listed the alternate elector slate on the Certificate of Ascertainment. (3-APP-0624; 4-APP-0898-0901.) Mr. Hindle, who does not reside in Clark County, sent the email; the other Defendants were merely copied on it. (4-APP-897-899.) The State presented no evidence to the grand jury that any Defendant received, opened, read, or responded to the email, let alone while in Clark County. Further, this email was sent prior to any correspondence regarding the alternate elector ballots.

Kenneth Chesebro first emailed Mr. DeGraffenreid, Mr. McDonald, and Mr.

[4] Mr. DeGraffenreid resides in Gardnerville, Nevada (4-APP-0888); Mr. Hindle resides in Virginia City, Nevada (4-APP-0885); Mr. Law resides in Henderson, Nevada (4-APP-894); Mr. McDonald resides in Las Vegas, Nevada (4-APP-0882); Mr. Meehan resides in Minden, Nevada (4-APP-0879); and, Ms. Rice resides in Zephyr Cove, Nevada (4-APP-0891).

Law on December 10, 2020. (1-APP-065-066; 3-APP-0623-0624; 5-APP-1055-1057.) However, the only Respondent who responded and communicated with Mr. Chesebro was Mr. DeGraffenreid. (5-APP-1055-1057.) No evidence was presented that Mr. McDonald or Mr. Law opened, read, or responded to any of Mr. Chesebro's correspondence at all, let alone while they were in Clark County.

The State relies on Mr. McDonald's and Mr. Law's phone records in its Opposition (but not its Supplement), claiming that the phone records provide evidence of an offense being committed in Clark County. (2-APP-0453.) However, not only were these records not presented to the grand jury, they do not establish venue in Clark County. First, the records show that Mr. Law was traveling outside of Clark County from December 11, 2020, until the evening of December 14, 2020. (SAPP0012-016.) Additionally, while Mr. Chesebro sent some emails to Mr. McDonald and Mr. Law while they were in Clark County, the State has never provided (let alone submitted to the grand jury) evidence that either Mr. Law or Mr. McDonald received, read, responded to, or acted on any of those emails while in Clark County or otherwise.

The State also relied on emails between some of Defendants that were sent on December 13-14, 2020. (3-APP-0624.) These emails, however, do not support venue in Clark County. First, the only participants in the communication were Mr. DeGraffenreid, Mr. Meehan, and Mr. Hindle, Contingent Electors who reside

outside of Clark County; while Mr. McDonald and Mr. Law are copied on the emails, there is no evidence that they received, opened, read, or responded to the communications. Further, while one of the emails states that Mr. Law offered to print the documents, by the State's own exhibit containing Mr. Law's phone records, this was done on a date that Mr. Law was not in Clark County.[5]

3. Nothing Was Received by the Federal Court in Las Vegas.

The State claims that the U.S. District Court received the documents addressed to Chief Judge Miranda Du in Las Vegas. (OB, pp. 8-9.) This is false: the State elides that the mailing was never opened in Clark County and merely made a pit stop on its way to its intended destination in Washoe County, the correct address for Judge Du. This is reflected in a recorded interview the State conducted of Debra Kempi, the Clerk of the U.S. District Court for the State of Nevada. Ms. Kempi stated that the documents are not filed or recorded but only stored in a vault at the court. (Recording at 6:27.)[6] Ms. Kempi was asked about documents received by certified mail from Mr. McDonald. (*Id.* at 7:45.) Ms. Kempi stated that the mailing was re-routed by either inter-office mail or brought up to Reno by someone and then delivered, unopened, to Judge Du's chambers in Reno. (*Id.* at 14:35.)

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[5] According to Law's phone records for December 13, 2020, he was in Virginia, Texas, and Reno, Nevada on that date. (SAPP012-16.)

[6] This Court ordered that this recording, which was Exhibit B to the Joint Reply in Support of the Motion to Dismiss, be transmitted from the district court.

4. Nothing Was Received by the Secretary of State in Las Vegas.

The documents received by the Secretary of State's Office in Carson City were returned to Mr. McDonald with a letter from Mark Wlaschin, the Deputy Secretary for Elections. (5-APP-1039.) While the elected Secretary of State, Barbara Cegavske, was in Las Vegas at the time her office received the documents in Carson City, there is no evidence that she personally ever saw the documents, let alone while she was in Las Vegas. (1-APP-178-179.)

C. The Decision

The district court carefully considered the State's evidence and correctly found that the State failed to meet its burden:

> The evidence listed in the Supplement does not establish, by a preponderance of the evidence, that an act or effect constituting or requisite to the consummation of the offense was committed in Clark County, or that a preparatory act plus intent was committed in Clark County.

(3-APP-0660, ¶ 16.) Thus, based on the factual finding regarding the lack of the necessary connections between Defendants' alleged crimes and Clark County, the district court properly dismissed the indictments. (3-APP-0694.)

The State distorts the district court's reasoning and order by focusing only on the portion of the order stating that the crimes were complete upon mailing (OB, p. 13), language that was added to the order at the State's insistence to try to create error where none exists. In fact, "[t]he [district] [c]ourt considered all the evidence and the

State failed to establish by a preponderance of the evidence that an act or effect constituting or requisite to the offense was committed in Clark County, or that a preparatory act plus intent was committed in Clark County." (3-APP-0736, ¶ 23.) Indeed, the district court considered *all* the evidence in the State's Supplement. (3-APP-0660, ¶ 16.)

The Order explains why the State's evidence failed to satisfy the appliable test. For example, the district court considered the State's arguments that connections to Clark County could be inferred, but properly concluded:

> The county of residence, mailing address, or headquarters of the Nevada Republican Party do not establish that an act or effect constituting or requisite to the consummation of the offense was committed in Clark County, or that a preparatory act plus intent was committed in Clark County with intent.

(*Id.*, ¶ 17.) Likewise, "[t]he fact defendants have ties to Clark County is insufficient to establish jurisdiction." (*Id.*, ¶ 18.) The Court further explained "[t]he mere possibility that preparatory acts were committed with intent in Clark County is speculative and insufficient." (*Id.*, ¶ 19.) Far from merely holding the crimes were complete upon mailing, the district court also explained, regarding the State's claim the Contingent Certificate was received by Judge Du in Las Vegas:

> The fact that the Defendants erroneously addressed a mailing to Chief Judge of the U.S District Court to Las Vegas instead of her chambers in Reno, Nevada, where it was ultimately received, unopened, is not evidence that an act or effect constituting or requisite to the consummation of the offense was committed in Clark County, or that a preparatory act plus intent was committed in Clark County.

(*Id.*, ¶ 20.) Likewise, regarding the State's bizarre contention that the Secretary of State's presence in Las Vegas when she had a conversation about the Contingent Certificate, the district court explained:

> The fact that the Secretary of State was physically in Las Vegas when the documents were received by the Secretary of State's Office in Carson City is not evidence that an act or effect constituting or requisite to the consummation of the offense was committed in Clark County, or that a preparatory act plus intent was committed in Clark County.

(*Id.*, ¶ 21.) Far from having "tunnel vision" as the State pretends (OB, p. 13), the district court carefully considered all the evidence—which it gave the State multiple opportunities to present—and correctly found that the State did not meet its burden.

D. Other Facts

While not relevant to the questions on appeal because none of the factual background pertains to Clark County, Defendants nonetheless address the State's misrepresentations that pending litigation was necessary for Defendants to challenge the 2020 election results. The State alleges that "in Chesebro's view, the existence of pending litigation was the only reason to cast elector votes." (OB, p. 6.) While Mr. Chesebro did testify to that at the grand jury proceedings, the State neglected to introduce exculpatory statements that Chesebro made during his video-taped proffer with the State that contradicted his false testimony to the grand jury.[7] For example,

[7] This issue was raised in the writ petitions filed on January 29, 2024 (2-APP-0248-0400); because the Motions to Dismiss were granted, the petitions were not heard or decided by the District Court.

during his video-taped proffer, Chesebro stated that he believed the Trump campaign might have beyond January 6th to win litigation based on a disagreement about the meaning of the 12th Amendment to the United States Constitution. Mr. Chesebro explained that the Senate could cause a test case to go to the United States Supreme Court that could cause a delay in the counting of the electoral votes. (2-APP-0333.)

The State also possessed an email from Kenneth Chesebro to "Judge" Troupis dated December 8, 2020, where he discusses the alternate electors and explains that, "Court challenges pending on Jan. 6 really not necessary." (3-APP-0610.) Mr. Chesebro says, "I think having the electors send in alternate slates of votes on Dec. 14 can pay huge dividends **even if there is no litigation pending on Jan. 6**...." (*Id.*) Thus, it is incorrect that Chesebro believed Defendants had to first file a certiorari petition in order to continue contesting the 2020 results and submit their Contingent Certificate—which was not altered to appear to be the official certificate and was plainly the GOP's alternate slate. (4-APP-0918-925; *compare* 4-APP-0927-0931 (official Nevada documents)). Thus, the Contingent Certificate was submitted to preserve the right to continue to challenge the results rather than to trick anyone, as Mr. Chesebro's explanations above make clear.

IV. SUMMARY OF THE ARGUMENT

A grand jury's jurisdiction under this statute is limited: "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." *Martinez-Guzman v. Second Judicial Dist. Court ("Martinez-Guzman I")*, 136 Nev. 103, 110, 460 P.3d 443, 449 (2020). In *Martinez-Guzman v. Second Judicial Dist. Court ("Martinez-Guzman II")*,137 Nev. 599, 609, 496 P.2d 572, 580 (2021), this Court also held that "[w]e decline to hand-wave, solely for convenience's sake, around the principle that that crimes should be tried where they are committed in the absence of a statutory exception."

Here, the State implicitly asks this Court to hand-wave around the principle that that crimes should be tried where they are committed to give the State a more favorable forum to prosecute Defendants—and even explicitly argues that this Court should reverse because it faces a statute of limitations problem of its own making. Each of the State's arguments depends on contorting NRS 171.030 and this Court's precedent to render the territorial jurisdiction requirement meaningless, and each therefore fails.

First, the State elides its burden and endeavors to limit the holdings of *Martinez-Guzman I* and *II*. But the law is clear: the State must establish venue by a preponderance of the evidence submitted to the grand jury. Speculation and conjecture as to whether the requisite acts occurred in Clark County do not suffice. Likewise, while both acts and the effects of those acts can establish venue, both must "constitut[e] or [be] requisite to the consummation of the offense." NRS 171.030.

Nor can the State avoid its obligation to meet the applicable standard by claiming that the acts or effects it relies on are evidence of a conspiracy. This Court has made clear that venue cannot be based on supposedly preparatory acts unless the evidence shows that those acts were undertaken with the intent to commit the charged crime and in furtherance of that crime. *Martinez-Guzman II*, 137 Nev. at 609.

But under any interpretation, Clark County does not have jurisdiction because the purported crimes were not committed there, and there is no evidence of preparatory acts plus intent occurring there. Under the State's own theory of the alleged crimes, they were entirely completed in Northern Nevada. Even if that were not so, it does not change the reality that there are insufficient connections between Clark County and the alleged crimes. The mere fact that the Contingent Mailing was misaddressed to Judge Du in Las Vegas and forwarded from Las Vegas does not vest Clark County with venue, even if the State was not preempted from criminalizing misrepresentations to Judge Du. Likewise, the Contingent Certificate was mailed and offered to the Secretary of State's office in Carson City; that Ms. Cegavske had a conversation about it when she was physically present in Las Vegas does not change that reality.

The mere fact that two defendants, Mr. Law and Mr. McDonald, live and work in Clark County does not establish venue, and the State cannot rely on evidence it

failed to submit to the grand jury; thus, the State cannot rely on their phone records. Even if the State could rely on them, the phone records still do not establish venue because there is no evidence that Mr. McDonald or Mr. Law engaged in any acts—preparatory or conspiratorial—in Clark County. For example, just because Mr. McDonald was in Clark County and had phone calls with other members of GOP leadership and was copied on emails does not mean that there was preparation and intent—or that a conspiracy was formed—in Clark County (or anywhere). Likewise, that Mr. DeGraffenreid prepared documents—including a memo to be sent from Mr. McDonald—does not make Mr. McDonald the "source" of those materials. Permitting venue to lie in Clark County in these circumstances would render meaningless the limits in NRS 171.030, essentially allowing the State to prosecute in any county where any defendant works or lives rather than where the purported crime took place.

Though the State endeavors to distort the pertinent facts and limit the holdings of *Martinez-Guzman I* and *II,* the "necessary connections" between the alleged crimes and Clark County just don't exist. Thus, just as this Court has refused to ignore the limits of territorial jurisdiction for "convenience's sake," it should now refuse to ignore those limits for the sake of politics. The State was required to establish territorial jurisdiction for the venue it chose. The district court correctly determined the State failed to do so, and this Court should affirm.

V. ARGUMENT

A. The Alleged Crimes Are Preempted by Federal Statute, Stripping Nevada Courts of Jurisdiction.

On appeal, the State focuses much of its argument on allegations that the Defendants committed crimes under NRS 205.110 and NRS 239.330 in Clark County because the U.S. District Court purportedly received the forged documents in Clark County. Regarding the forgery charges (NRS 205.110), the State opines that the "the Legislature's intent in making uttering a forged instrument: forgery an offense is to prevent fraud" and "[t]hat harm occurs when the victim receives and relies on false or fraudulent information." (OB, p. 22.) Regarding 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 State opines that "[t]he 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" and that "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." (OB, p. 23 (citation omitted).)

One of the public offices that the State claims "received" the allegedly forged certificate is the United States District Court in Las Vegas, Nevada. (OB., p. 36

(citing 5-APP-1088–1089).)[8] However, it is within the federal government's purview, not Nevada's, to punish the submission of false instruments to, and frauds upon, federal agencies. The submission of false documents is already criminalized by 18 U.S.C. § 1001, a federal criminal statute that criminalizes false statements to any branch of the federal government (outside of parties to judicial proceedings) and preempts the State's ability to prosecute criminal charges based on such conduct.

In *In re Loney*, 134 U.S. 372, 376 (1890), the United States Supreme Court held that state courts have no jurisdiction over a complaint for perjury in a contested election case involving a seat in the Congress of the United States, even though the false swearing was made before a state notary public. The *Loney* court explained that the "power of punishing a witness for testifying falsely in a judicial proceeding belongs peculiarly to the government in whose tribunals that proceeding is had." *Id.* at 375. Just as the federal statute in *Loney* criminalized false statements in federal court proceedings, 18 U.S.C. § 1001 criminalizes false statements to any branch of the federal government outside of parties to judicial proceedings. Thus, just as the federal statute in *Loney* preempted the State's ability to prosecute the conduct at

[8] At hearing, the State argued that when the mailing to Judge Du made a "pit stop" in Las Vegas, "[t]hey can suggest that it's accidental, but undeniably, these documents are delivered to the victim in Clark County." (3-APP-0644 at 11-16.) This is false, as explained above, but makes clear the State predicates the NRS 239.330 charge on false representations to public office, and Judge Du in particular, to argue territorial jurisdiction in Las Vegas.

issue there, 18 U.S.C. § 1001 preempts the State's ability to prosecute criminal charges based on the conduct it emphasizes on appeal. Regarding the charges under NRS 239.330, the State of Nevada does not have the authority to criminalize providing false or forged instruments "to be filed, registered or recorded" in a federal office. *Cf. People v. Hassan*, 168 Cal. App. 4th 1306, 86 Cal. Rptr. 3d 314, 323-24 (Ct. App. 2008) (state could not prosecute fraudulent conduct committed in course of federal immigration investigation); *People v. Dillard*, 21 Cal. App. 5th 1205, 1226-1227 (Ct. App. 2018) (state criminal charges based on alleged misrepresentations to United States Department of Health and Human Services barred).

B. Standard of Review.

As the State correctly notes, 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). While legal determinations such as "[d]eciding what constitutes the essential elements of the crime presents a question of law and statutory interpretation" are decided de novo[9], factual determinations are subject to abuse of discretion review. Thus, the district court's factual findings—such as the fact that the mail to U.S. District Court Judge Du was not received in

[9] *Ibarra v. State*, 134 Nev. 582, 584, 426 P.3d 16, 18 (2018) (citing and quoting *Coleman v. State*, 134 Nev. Adv. Rep. 28, 416 P.3d 238, 240 (2018)) (internal quotation marks omitted).

Clark County, and that the evidence did not support an inference of preparation plus intent in Clark County—are subject to abuse of discretion review. *Cf. Las Vegas Metro. Police Dep't v. Blackjack Bonding, Inc.,* 131 Nev. 80, 89, 343 P.3d 608, 614 (2015) ("An abuse of discretion can occur when the district court bases its decision on a clearly erroneous factual determination...").

C. The State Must Meet the Burden Articulated in *Martinez-Guzman I* and *Martinez-Guzman II*.

1. The Limits of Territorial Jurisdiction.

NRS 172.105 provides that a "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 171.030 addresses crimes committed in more than one county as follows:

> 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 the consummation of the offense occur in two or more counties, the venue is in either county.

A grand jury's jurisdiction under this statute is limited, as this Court has explained:

> …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**.

Martinez-Guzman I, 136 Nev. at 110, 460 P.3d at 449 (emphasis added). In *Martinez-Guzman I* and *II*, this Court not only held that grand juries had limited

territorial jurisdiction—*i.e.*, only jurisdiction over crimes with the necessary connections to the county—it also made clear, *inter alia,* that the State had to establish jurisdiction by a preponderance of the evidence presented to the grand jury.

Neither *Martinez-Guzman I* nor *II* are narrow decisions; they make plain that prosecutors do not have unfettered discretion to seek indictment anywhere under NRS 171.030. Instead, the statute limits the State's power regarding where it can seek indictment: alleged crimes must have the necessary connections to the venue—and the State must establish that those connections exist based on a preponderance of the evidence presented to the grand jury. These holdings are not technical but make plain how NRS 171.030 should be applied.

Further, NRS 171.030 and this Court's clear directives in *Martinez-Guzman I* and *II*—that the state can only seek prosecution in a jurisdiction with sufficient connections to the alleged crime—should be understood in the context of the underpinning policy interests, in particular the constitutional guarantee of a fair trial and the right to "an impartial jury of the State and district wherein the crime shall have been committed." U.S. Const Amend. VI. This provision in the United States Constitution is the Vicinage Clause, which is a separate right from the Venue Clause (U.S. Const Art. III, §2, cl.3). The venue is the place where the trial is to be held, which is separate from the vicinage, which is the place from where jurors are to be drawn. *See A Jury of Your Peers: Venue, Vicinage, and Buffer Juries*, The Jury

Expert, 20 (3), 49-52 (September 2008). However, as the United States Supreme Court has explained, the Vicinage Clause "reinforces the coverage of the Venue Clause because, in protecting the right to a jury drawn from the place where a crime occurred, it functionally prescribes the place where a trial must be held." *Smith v. United States*, 599 U.S. 236, 245 (2023) (internal quotation marks omitted); *see also* The Place of Trial of Criminal Cases: Constitutional Vicinage and Venue, 43 Mich. L. Rev. 59 (1944). As one court has explained, "[p]roper venue in a criminal case is an essential part of a free and good government." *United States v. Petlechkov*, 922 F.3d 762, 766 (6th Cir. 2019) (citation and internal quotation marks omitted).

The limits of territorial jurisdiction have meaning in Nevada, and this Court has accordingly "decline[d] to hand-wave, solely for convenience's sake, around the principle that crimes should be tried where they are committed in the absence of a statutory exception." *Martinez-Guzman II*, 137 Nev. at 609. In this appeal, the State ignores *Martinez-Guzman I* and *II* in an effort to claim unfettered discretion over where a criminal case is tried, despite this Court's express disavowals of such a broad reading of a grand jury's territorial jurisdiction. In claiming that its burden is a "little murky" (OB, p. 14, n. 5), the State elides its burden and the limits of territorial jurisdiction in two respects. First, the State contends that the question is not what evidence was presented to the grand jury, but rather whether it might be able to establish venue at trial. Second, the State also claims, without citation, that its burden

is a "low hurdle" (OB, p. 14) and that it only needs the "slightest sufficient legal arguments" to establish venue. (OB, p. 14, n. 5.) These arguments were not presented below—as the State begrudgingly admits (*Id.* ("Admittedly, the State did not press this point below").) Thus, they are not properly before this Court. *Old Aztec Mine, Inc. v. Brown*, 623 P.2d 981, 983 (1981) ("a point not urged in the trial court … is deemed to have been waived and will not be considered on appeal"). More importantly, the State's contentions constitute a willful misreading of *Martinez-Guzman I,* which explicitly held that venue must be based on actual evidence submitted to the grand jury.

To escape the fact that it failed to establish territorial jurisdiction in Clark County by a preponderance of the evidence, the State also reads "acts" and "effects" in NRS 171.030 so broadly that the limits of territorial jurisdiction would be rendered meaningless. But it is not any act by any person that may have some relation to the crime or any conceivable effect; simply stated, the defendants' alleged crimes must have "**the necessary connections" to the location of the court.**

The State's view of its burden in establishing venue and its very broad read of the types of "acts" and "effects" that can provide jurisdiction cannot be reconciled with the plain text of Nevada statute, this Court's clear—and correct—holdings in *Martinez-Guzman I* and *II*, or the basic rationales underpinnings animating the limits of territorial jurisdiction.

The *Martinez-Guzman II* Court considered the specific question of whether the State met its burden on the facts of that case and further delineated the limits of a grand jury's jurisdiction, explaining "neither intent nor a supposedly preparatory act, standing alone, is sufficient to make venue proper in a charging county." 137 Nev. at 605. While venue may nonetheless lie if "intent is coupled with an act in furtherance of that intent", there must be nonspeculative evidence of both intent and an act in that County. *Id.* There, the defendant burglarized a home in Washoe county on January 3-4, 2019, stealing a gun and ammunition that he would use in subsequent crimes; he then committed murders and burglaries in other counties, but returned to Washoe on January 15, where he committed further burglary and murders. *Id.* at 600. After his January 19 arrest, the defendant confessed to the crimes, admitting that he used the same car (and the weapons he stole in Washoe) for all of them. *Id*. Despite these confessions, the Supreme Court found that none of the crimes other than the murders and burglaries in Washoe itself could be tried there (*id.* at 607-08) and expressly rejected the idea that NRS 171.030 conferred jurisdiction. *Id.* at 600.

Here, Defendants' alleged crimes had far fewer connections to Clark County than the defendant's crimes had to Washoe in *Martinez-Guzman II.* The State should not be permitted to solve this fatal problem by endeavoring to have this Court ignore its holdings and NRS 171.030's text.

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2. The State Must Establish Jurisdiction by a Preponderance of the Evidence Submitted to the Grand Jury, and Bare Speculation and Conjecture Do Not Suffice.

The State claims that its burden "rests on the State to prove venue during a grand jury proceeding remains a little murky" (OB, p.14, n.5) and endeavors to rely on evidence not presented to the grand jury—namely, Mr. McDonald's and Mr. Law's phone records. The State is incorrect—its burden is clear, and the State cannot rely on evidence not presented to the grand jury.

In *McNamara v. State*, 132 Nev. 606, 615-16, 377 P.3d 106, 113 (2016), this Court held that, under NRS 171.020, the State must establish jurisdiction over crimes occurring in another state by a preponderance of the evidence. Then, in *Martinez-Guzman I*, this Court held, in the context of intrastate jurisdictional issues, that a grand jury's "territorial jurisdiction...depends on whether the necessary connections, as identified in Nevada's statutes, to the location of the court exist." 136 Nev. at 110. The *Martinez-Guzman I* Court also made clear that not only was actual evidence required, but also that the evidence relied upon must be submitted to the grand jury. In granting a petition for writ of mandamus challenging the denial of a motion to dismiss for lack of venue and remanding, this Court gave the following clear instructions:

> …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. If so, then the district court has "territorial jurisdiction" over those criminal offenses….

Id. at 111 (emphasis added). Thus, *Martinez-Guzman I* made clear: (1) a grand jury must have territorial jurisdiction when it enters an indictment; (2) to support jurisdiction, the State must come forward with actual evidence; and (3) the evidence that the State relies on must have been presented to the grand jury.[10]

Then, following remand, in *Martinez-Guzman II*, this Court further defined the State's burden, holding:

> Because venue does not involve an element of the crime or relate to guilt or innocence, the State need only prove venue by a preponderance of the evidence. *Cf. McNamara v. State*, 132 Nev. 606, 615-16, 377 P.3d 106, 113 (2016).

137 Nev. at 603. Thus, whether the State tries to establish venue based on acts and effects requisite to the commission of the crime or by preparatory acts undertaken with intent, the State must do so with evidence submitted to the grand jury and it

[10] Because territorial jurisdiction is a matter of subject matter jurisdiction and goes to whether the grand jury had the authority to indict, the evidence necessarily is limited to what was presented to the grand jury. Further, it of course makes sense that the question of whether the "grand jury exceeded its power" (*Martinez-Guzman I*, 136 Nev. at 110) necessarily turns on the evidence that was presented to the grand jury when it acted. *Cf. Dekker/Perich/Sabatini Ltd. v. Eighth Judicial Dist. Court*, 137 Nev. 525, 530, 495 P.3d 519, 524 (2021) ("Generally, determining whether a court action is 'void ab initio' involves the underlying authority of a court to act on a matter."); *Washoe Med. Ctr. v. Second Judicial Dist. Court*, 122 Nev. 1298, 1304, 148 P.3d 790, 794 (2006) (recognizing that, when a complaint "is void ab initio, it does not legally exist and thus it cannot be amended").

must meet its burden by a preponderance of the evidence.[11]

This Court has noted that circumstantial evidence might suffice (*id.*) but that bare speculation did not. *Martinez-Guzman II*, at 600 (explaining that this Court had already held in *Martinez-Guzman I* that the State's "theories supporting venue were too speculative and unsupported by the evidence to make venue proper for any of the Douglas County charges"). Thus, this Court has already made clear that whenever a grand jury's territorial jurisdiction is challenged that the State must meet its burden by a preponderance of the evidence, and that speculation alone does not suffice to meet those burdens. These holdings were not limited to when the evidence is limited to preparatory acts and intent. And, as further discussed *infra*, there is no exception to these requirements where the State is concerned about statute of limitations issues.

3. The State Cannot Predicate Jurisdiction on Any Act.

The State argues:

> *Martinez-Guzman II* ... does not provide a comprehensive definition of acts—it only addresses when a defendant's *preparatory* acts satisfy the

[11] If anything, the burden should be higher. *See State v. Williams,* 326 Or. App. 64, 84, 530 P.3d 919, 931 (2023) ("… nearly all the state courts that have considered territorial jurisdiction in criminal cases have concluded that, in order to establish the state courts' authority to adjudicate an offense, the state must prove territorial jurisdiction either beyond a reasonable doubt or by a preponderance of the evidence."); *see also State v. Willoughby*, 181 Ariz 530, 536-39, 892 P2d 1319, 1325-26 (1995) (concluding that the majority view requires proof of territorial jurisdiction beyond a reasonable doubt, rather than a preponderance of the evidence, and adopting that rule; collecting cases).

> 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.

(OB, p. 20.) It later claims (for the first time on appeal) that acts by third party personnel at the U.S. District Court that led up to the delivery of a certificate to Judge Du—*i.e.*, forwarding it from Las Vegas to Reno—are sufficient to provide jurisdiction. But there is no basis for such a claim. In the parallel context of NRS 171.020, this Court has made clear that the question depends on whether the defendant performs any act in furtherance of criminal intent. *McNamara*, 132 Nev. at 611, 377 P.3d at 110. This supports finding that only the acts of the defendants—rather than third parties—are relevant. *See Martinez-Guzman I*, 136 Nev. at 110 (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.").

4. To Establish Jurisdiction through "Effects," the Effects Must Constitute or Be Requisite to the Consummation of the Offense.

While NRS 171.030 does provide for jurisdiction in a county where the "effects" of acts constituting or requisite to the consummation of a crime occur, just like acts, the effects must "constitute[e]" or be "requisite to" "the consummation of the offense." Indeed, the language "constituting or requisite to the consummation of the offense" directly follows "effects thereof." Thus, it is not the case, as the State

urges, that the courts of any county have jurisdiction where any conceivable effects of a crime may be alleged to have occurred. Yet the State's interpretation on the statute on appeal is that

> 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

(OB, p. 22.) This interpretation is anything but true to the plain language of the statute; the false idea that the language "constituting or requisite to the consummation of the offense" limits "acts" but not "the effects thereof" is unsupported. Instead of asking the Court to give NRS 171.030 its plain meaning, the State asks the Court to rewrite the statute as follows:

> 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 the consummation of the offense **or the effects thereof** occur in two or more counties, the venue is in either county~~.~~

If the Legislature had wanted the statute to say what the State imagines, it would have written the statute differently. As actually written, the phrase "constituting or requisite to the consummation of the offense" follows "acts or effects thereof" and thus limits both "acts" and "effects thereof". Thus, under basic rules of statutory interpretation, the effects referred to are only those effects that constitute or are requisite to the consummation of the offense. *Cf. Barnhart v. Thomas,* 540 U.S. 20, 26, 124 S. Ct. 376, 380 (2003) (citing 2A N. Singer, Sutherland on Statutory

Construction § 47.33, p 369 (6th rev. ed. 2000)) (explaining that the statutory construction rule of the last antecedent means that the phrase should be read as modifying the phrase it immediately follows).

But even if the State were correct that the "constituting or requisite to the consummation of the offense" language does not qualify "effects," it concedes the language limits "acts" and, thus, at best, only effects of acts that "constitute[]" or are "requisite to the consummation of the offense" can establish venue. And there is no effect—and no act—that is requisite to the consummation of the purported crime under either of the offenses at issue that occurred in Clark County.

5. The State Cannot Rely on Out-of-Jurisdiction Acts or Effects by Labeling Them Evidence of a Conspiracy.

The State also endeavors to have this Court ignore its own precedent, arguing that if there is evidence of any act that may be part of a conspiracy, that suffices to establish territorial jurisdiction.[12] The State's impermissible[13] new effort to mask its lack of evidence by relabeling it as evidence of a conspiracy does not save the day

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[12] The State argues "[t]here 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" but goes on to argue it need not show intent, other than by a coordinated series of acts. (OB, p. 39.) Then the State goes on to argue that facts such as the fact that Mr. McDonald and Mr. Law live in Clark County, that emails were sent to them, and that the Contingent Certificate was later executed at a ceremony establish venue (OB, pp. 40-42). As argued *infra*, the State is mistaken on both counts.

[13] *Old Aztec Mine, Inc.*, 623 P.2d at 983.

and is not a workaround to this Court's mandate in *Martinez-Guzman II* that the State must have both evidence of preparatory acts "plus intent" when the asserted jurisdiction is based on preparation.

Indeed, in *Martinez-Guzman II*, this Court specifically rejected a similar approach to that urged by the State regarding alleged evidence of a conspiracy. This Court explained that in California, the territorial jurisdiction statute "must be given a liberal interpretation to permit trial in a county where only preparatory acts have occurred."[14] Thus, this Court noted, "California has, for example, held that where a defendant was part of a conspiracy to commit a murder and traveled to one county to obtain a gun for subsequent use in committing that murder in another county, venue for the murder was proper in the county where he obtained the gun"[15] and that, "[i]n California, even a 'telephone call for the purpose of planning a crime received within [a] county is an adequate basis for venue, despite the fact the call was originated outside the county…"[16]. Further, *Martinez-Guzman II* noted that "California not only allows venue to be based on preparatory acts, but also 'on the

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[14] *Martinez-Guzman II*, 137 Nev. at 604 (citing and quoting *People v. Simon*, 25 Cal. 4th 1082, 108 Cal. Rptr. 2d 385, 25 P.3d 598, 617 (Cal. 2001)) (internal quotation marks omitted).

[15] *Martinez-Guzman II*, 137 Nev. at 604 (*citing People v. Price*, 1 Cal. 4th 324, 3 Cal. Rptr. 2d 106, 821 P.2d 610, 640 (Cal. 1991)).

[16] *Martinez-Guzman II*, 137 Nev. at 604 (citing and quoting *People v. Posey*, 32 Cal. 4th 193, 8 Cal. Rptr. 3d 551, 82 P.3d 755, 773 (Cal. 2004)) (internal quotation marks omitted)

effects of preparatory acts,' such as the person in the charging county receiving the defendant's call from another county…"[17] This Court then explicitly rejected the California approach, and adopted the following test instead:

> …in Nevada, **venue cannot be based on supposedly preparatory acts unless the evidence shows that those acts were undertaken with the intent to commit the charged crime and in furtherance of that crime**. Many crimes involve countless acts which lead to the ultimate criminal act being possible. But it is obvious that not every action undertaken by a defendant which puts them in the particular place, time, and circumstances of an offense was done with the intent to commit that offense.

Thus, contrary to the State's efforts to ignore this Court's holdings, if the State relies on preparatory acts—even where a conspiracy is alleged—it must show those acts were undertaken with the necessary intent to commit the charged crime and that they were undertaken in furtherance of that crime.

In any case, conspiracy is a specific intent crime; therefore, the State must prove that each defendant had the intent to agree or conspire and the intent to commit the offense that is the object of the conspiracy. *Washington v. State*, 132 Nev. 655, 664, 376 P.3d 802, 809 (2016). An "agreement among two or more persons is an essential element of the crime of conspiracy, and mere association is insufficient to support a charge of conspiracy." *Sanders v. State*, 110 Nev. 434, 436, 874 P.2d 1239, 1240 (1994). While a coordinated series of acts may be sufficient to establish a

[17] *Martinez-Guzman II*, 137 Nev. at 604 (quoting and citing *People v. Thomas*, 53 Cal. 4th 1276, 140 Cal. Rptr. 3d 184, 274 P.3d 1170, 1176 (Cal. 2012)).

conspiracy, again, "mere association is insufficient to support a charge of conspiracy." *Peterson v. Sheriff*, 95 Nev. 522, 598 P.2d 623, 625 (1979) (dismissing conspiracy charge). Thus, for example, even if the State could avoid meeting the standard in *Martinez-Guzman II* by relying on conspiracy evidence, evidence such as merely communicating with other defendants while in Clark County would not suffice.

D. The Court Should Not Be Swayed by Issues Regarding the Statute of Limitations.

This burden does not change where, as here, the State fears it may not be able to refile the charges should it not convince this Court it has territorial jurisdiction. Thus, whether the State will be able to refile the dismissed charges is not relevant to the Court's analysis regarding territorial jurisdiction.[18] Yet, the State all but begs the Court to contort its own case law and ignore the shortcomings in its evidence purporting to establish venue so that it can prosecute Respondents (OB, pp. 49-50).[19]

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[18] Further, any issue with refiling charges is a problem of the State's own creation; the State first took the position that existing law did not criminalize the conduct at issue and then, just before the applicable statutes of limitations ran, suddenly sought an indictment in Clark County, a jurisdiction where venue does not lie, on December 6, 2023.

[19] (*See, e.g.,* OB, p. 50 ("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

This line of argument is highly improper—this Court should not overrule, limit or misapply NRS 171.030 and precedent just so the State can prosecute Defendants. Further, this Court, as discussed above, has made plain that whether territorial jurisdiction exists is determined by an examination of the evidence presented to the grand jury. The State does not and cannot offer case law to support its proposition to the contrary or that the Court can overlook the State's failure to meet its burden by evidence presented to the grand jury by calling it "harmless error."

Moreover, the State's conclusory claim that the error was harmless because "there is sufficient evidence in the record showing that the State will be able to establish venue at trial" (OB, p. 50) is false: as discussed above, none of the speculation the State relies on regarding Mr. McDonald's presence in Clark County suffices. And, of course, the State's moral outrage and fervent desire to prosecute Defendants in a jurisdiction with a more favorable jury pool do not suffice.

E. The State's *Locus Delecti* Arguments Fail to Establish Reversible Error.

The district court correctly held that the crimes were complete at mailing. Even if that were not the case, that the crimes were not complete was not the sole basis for the district court's rulings; the district court considered all the State's

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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."))

evidence and simply found insufficient evidence to link Clark County and the alleged crimes.

1. The Crimes Here Were Complete Upon Mailing.

The district court correctly held that the crimes were complete at mailing. The "locus delicti must be determined from the nature of the crime alleged and the location of the act or acts constituting it." *United States v. Anderson*, 328 U.S. 699, 703, 66 S. Ct. 1213, 1216 (1946).[20]

While the State only focuses only uttering and offering and ignores the rest of the statute, under NRS 205.110, no uttering or offering is needed; the crime can also be based on: (1) disposing of or putting off a forged instrument as true; and (2) merely possessing a forged instrument "with intent so to utter, offer, dispose of or put off any forged writing, instrument or other thing."

Likewise, while the full text is ignored by the State, NRS 239.330 criminalizes

[20] "The constitutional specification is geographic; and the geography prescribed is the district or districts within which the offense is committed. This may or may not be the place where the defendant resides; where the draft board is located; or where the duty violated would be performed, if performed in full. The places of residence, of the draft board's location, of final and complete performance, **all may be situated in districts different from that where the criminal act is done. When they so differ, it is the latter, not any of the former, which determines the jurisdiction**." (emphasis added). While this Court has not addressed whether the limits of territorial jurisdiction are constitutionally required, it has, consistent with this discussion from the federal context, held similarly—*i.e.*, that it is the place where the crime was committed (or the place where preparatory acts with intent were committed).

both procuring and offering 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 of the United States.

While, if there had not been evidence of prior procuring and possessing, the *locus delecti* may have been the place where the mailing was, in fact, received, here, the *locus delecti*, *i.e.*, "the place where the last event **necessary** to make the actor liable occurred"[21] was indisputably in Northern Nevada where the Contingent Certificates were mailed. In *State v. Pray*, 30 Nev. 206, 223-24, 94 P. 218, 222 (1908)[22], the State held "[t]here can be no question that the offense of receiving stolen goods is consummated when the goods are received with the unlawful intent specified in the statute." Likewise, here, there were no subsequent acts necessary to consummate the alleged crime under NRS 239.330 once the Contingent Certificate was mailed.

This case is unlike the cases the State relies on; here, had the Contingent Certificate never been received, the alleged crimes still would be complete. *Compare Seay v. State*, 21 Ala. App. 339, 340 (1925) (crime was not consummated in first county). The State's reliance on *People v. Thorn*, 138 Cal. App. 714, 732, 33 P.2d

[21] Black's Law Dictionary, LOCUS DELICTI, (12th ed. 2024) (quoted in OB, p. 19)).
[22] (Cited in OB, p.19; *overruled on other grounds* in *Knight v. State,* 116 Nev. 140, 143, 993 P.2d 67, 70 (2000)).

5, 14 (Ct. App. 1934) is also misplaced. Not only does California have a broader approach to county territorial jurisdiction, as discussed *supra*, that case involved a different statute criminalizing only the **presentment** of a false claim—and found preparatory acts in Los Angeles vested that county with jurisdiction. That does not support the proposition that the crimes here were not complete upon mailing. The State's reliance on *People v. Gould*, 41 Misc. 2d 875, 878, 246 N.Y.S.2d 758, 761 (Cnty. Ct. 1964) is also misplaced: under that statute, "[t]he making of a certificate is deemed complete from the time when it is **delivered** by the defendant to any other person with intent that it be uttered or published as true." (emphasis added).

Likewise, *Bradford v. State*, 156 So. 655 (Miss 1934), is distinguishable because the alleged crime charged included publication. In short, unlike the crimes in the cases relied on by the State, there could be different theories of liability under NRS 205.110 and NRS 239.330 but, in this case, on the State's facts and theories, they were not just "begun" in Northern Nevada; they were completed there. Nothing was actually prepared in Clark County; nor did anything "ultimately come to rest" with any agency in Clark County. *Compare United States v. Blecker*, 657 F.2d 629, 632 (4th Cir. 1981) ("Venue in the present case was therefore unquestionably appropriate in the District of Maryland in which the false claims were prepared or in the District of Columbia in which they ultimately came to rest with the GSA.")

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2. That the Crimes Were Complete in Northern Nevada Was Not the Sole Basis for the District Court's Ruling.

As noted *supra*, in endeavoring to save its case on appeal and claiming the district court erred in finding that the State failed to establish the necessary connections between the subject crimes and Clark County, the State distorts the district court's order. To be clear, the conclusion that any offense was complete when Defendants mailed their elector paperwork in Northern Nevada was not the only basis for the court's ruling.[23] Instead, applying *Martinez-Guzman I* and *II*, and properly refusing to rely on speculation, the district court simply found that the State did not establish the necessary connections between the crimes and Clark County.

A district court may make determinations in the alternative. *See, e.g.*, *Mason v. Mason*, 115 Nev. 68, 69-71, 975 P.2d 340, 341 (1999). Further, it is "well settled that the opinion of the trial judge is no part of the judgment roll, and that it can only be used to aid this court in the proper determination of the appeal." *Hunter v. Sutton*, 45 Nev. 430, 439, 195 P. 342, 205 P. 785, 787 (1922). Thus, even if, *arguendo*, the district court's conclusion regarding any offense's completion were erroneous, that does not warrant reversal. *See also Rosenstein v. Steele*, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987) ("[T]his court will affirm the order of the district court if it reached the correct result, albeit for different reasons.").

[23] And, again, this language was added the draft order at the insistence of the State.

3. Nothing Was Received in Clark County.

Even if that were not the case, whether the district court erred in finding the crimes were complete when the Contingent Certificate was mailed from Northern Nevada—an issue the State intentionally created to confuse this appellate proceeding—is irrelevant to the analysis on appeal: even assuming the State is correct that venue is proper under NRS 205.110 and NRS 239.330 in either the County where the certificate was possessed, created, and mailed or the county where certificate was received, Clark County does not have territorial jurisdiction because nothing was received in Clark County. In its NRS 205.110 analysis reaching the contrary conclusion, the State conflates the place to which a forged instrument is mailed with the place where a forged instrument is received in its discussion. However, the cases the State cites make clear that it is the place of actual receipt, not mailing, gives rise to territorial jurisdiction.

Applying a similar statute to NRS 172.105, the Court in *State v. Hudson*, 13 Mont. 112, 114, 32 P. 413, 414 (1893) (cited at OB, p. 29) explained:

> …in the case at bar the crime was not partly committed in Gallatin county. The uttering was the offense. **There was no uttering until the receipt of the letter** in Silver Bow county. The mailing, as above observed, was not the uttering. Had the letter been cut off in its passage from Gallatin to Silver Bow county, or **had it been destroyed, or never received, there would have been no uttering at any place; nor were the acts or effects constituting the offense committed in Gallatin county**. That which constitutes the offense was the uttering.

(emphasis added.) And in *Gould*, 41 Misc. 2d at 878, 246 N.Y.S.2d at 761, the

alleged false document was not only actually delivered, it "was filed in the local office of the Rent Commission in [the County exercising jurisdiction]." The *Gould* court further explained:

> It appears from the minutes that delivery of the perjured application was in Westchester County at the White Plains office of the Rent Commission, where obviously it was intended to be uttered as true and to induce favorable action by the commission.

41 Misc. 2d at 878, 246 N.Y.S.2d at 761-62. Here, nothing was uttered or actually delivered in Clark County; no other act or effect was alleged to have occurred in Clark County; thus, venue does not lie in Clark County. *See also Bell v. State*, 284 Ga. 790, 793, 671 S.E.2d 815, 819 (2009) (citation omitted) ("Uttering or delivering the writing being an essential element of forgery in the first degree, the offense is not completed until the writing is uttered or delivered, and venue lies in the county in which the unauthorized writing was uttered.")

Likewise, in *State v. Thomason*, 2015 S.D. 90, 872 N.W.2d 70, 78 (S.D. 2015), the sole case the State relies on its discussion of the *locus delecti* under NRS 239.330, the focus of the analysis was that the county where the mortgage documents at issue would ultimately need to be filed, registered, or recorded gave rise to venue in that county's court. Contrary to the State's apparent suggestion, it is not the place from which the documents would have been forwarded that had venue, it was the official place of receipt. Likewise, it was not the place to which a document was mailed in error but never received, or a place a public official discussed the

instrument, that makes venue in that place proper.

Here, the place of receipt for the instrument at issue was Washoe for both the Chief Judge of the U.S. District Court of Nevada and Carson City for the Secretary of State's Office.[24] Thus, assuming the place of receipt has territorial jurisdiction, it is still either Washoe or Carson that would have had venue under NRS 205.110 and NRS 239.330.

What the State fails to do for either of the specific crimes set forth in NRS 205.110 or NRS 239.330—despite its very lengthy discussion of *locus delicti* and where venue can lie for each crime[25]—is cite any case law for the novel propositions that either the "pit stop" the unopened mailing made on its way to Judge Du in Northern Nevada (discussed *infra*, §V(F)) or the fact the Secretary of State was notified of the existence of the Contingent Certificate while in Las Vegas (discussed *infra*, §V(G)) vests Clark County with territorial jurisdiction.

F. Erroneously Mailing an Envelope to Judge Du Does Not Create Jurisdiction.

The district court properly found that the Certificate was never "delivered" to Judge Du in Clark County. (4-APP-0661, ¶ 20.) While the State hid these facts from the grand jury, the envelope, unopened, was forwarded to Judge Du's correct address

[24] (4-APP-0856, 0905, 0933-0935; 5-APP-1088-1089, 1105-1106.)
[25] (OB, pp. 23-31 (NRS 205.110), and pp. 32-35 (NRS 239.330).)

in Reno. (*Id.*) Thus, nothing was "offered or uttered" in Clark County and nor were there any "effects" in Clark County. Accordingly, no act or effects pertinent to NRS 239.330 occurred in Clark County; that statute provides that "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 of the United States, is guilty of a category C felony."

Likewise, none of the acts or effects requisite to or constituting NRS 205.110 occurred in Clark County for the same reason: nothing was uttered or offered here. NRS 205.110 states:

> 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 intent so to utter, offer, dispose of or put off any forged writing, instrument or other thing, the false making, forging or altering of which is punishable as forgery, shall be guilty of forgery the same as if the person had forged the same.

Thus, Clark County does not have jurisdiction.

While the Defendants did address the mailing to Judge Du in Clark County in error, the point is that the Certificate was not delivered or offered to Judge Du in Clark County at all; the Las Vegas address was a mere "pit stop" from which the mail was forwarded to the correct address. Thus, it does not matter whether the crimes were complete at the time of "utterance," mailing or delivery; because none of those acts occurred in Clark County.

Regarding effects, the State explains that the effects that the Legislature was trying to prevent in enacting NRS 205.110 are the "(1) the uttering or 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." (OB, p. 46.) The State is correct: the "effects" constituting or requisite to the consummation of both offenses are tied to the instruments themselves—not them passing through somewhere in a sealed envelope or, as discussed below, not someone learning about their existence.

Regarding NRS 239.330, the State argues that "it is the public office's receipt of the 'false or forged instrument' [that] would be an 'effect' of the crime of the offering false instrument for filing or recording." However, the envelope to Judge Du was not opened in Clark County; it was forwarded for proper receipt in Northern Nevada. (*See* § III(B)(3), *supra*.) There was no act or effect in Clark County.

Finally, the State's argument that Defendants somehow conceded venue is false; the contention that court staff forwarding the envelope to Judge Du creates jurisdiction in Clark County (OB, p. 52)—raised for the first time on appeal, and thus waived[26]—is also without merit, as such acts are not requisite to the crime. Indeed, they are not Defendants' actions at all; the "pit stop" did not create sufficient connections between the alleged crime and Clark County.

[26] *Old Aztec Mine, Inc.*, 623 P.2d at 983.

G. Ms. Cegavske's Presence in Las Vegas Does Not Confer Territorial Jurisdiction.

In its effort to read NRS 171.030 broadly enough to render it meaningless, the State imagines that because the then Secretary of State was physically in Las Vegas when she "learned" that the Certificate was delivered to her in Carson City, that somehow confers jurisdiction. However, while NRS 171.030 provides for jurisdiction in a county where the effects of a crime occur, it is not any effects: just like acts, the effects must be effects that "constitute[e]" or are "requisite to" "the consummation of the offense." Under both alleged crimes, there is no act or effect that is requisite to the consummation of the crime, and the fact that Ms. Cegavske was in Las Vegas when a copy of the certificate was received by the Secretary of State's Office and that she had a phone call with staff about it does not cure the State's fatal jurisdiction problem.

As a last-ditch effort, after failing to establish that the envelope containing a copy of Defendants' certificate passing through Las Vegas, the Secretary of State having a conversation about the certificate while she happened to be in Las Vegas, or Mr. McDonald's presence in Clark County before the alleged crimes establish territorial jurisdiction, the State endeavors to rely on even wilder speculation and hyperbolic, political arguments, which also fail.

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H. Mr. McDonald's Presence In Las Vegas Before the Alleged Crimes Does Not Establish Jurisdiction.

The State's efforts to rely on Mr. McDonald's alleged presence in Las Vegas, Nevada, before the alleged crimes were committed—even if grand jury territorial jurisdiction could somehow be established with facts that were not presented to the grand jury[27]—fail. The State argues that "Michael McDonald was in Las Vegas until the afternoon of December 13, 2020" and that 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." (OB, p. 53.) Again, "neither intent nor a supposedly preparatory act, standing alone, is sufficient to make venue proper in a charging county." *Martinez-Guzman II,* 137 Nev. at 605. While venue may nonetheless lie if "intent is coupled with an act in furtherance of that intent," there must be **nonspeculative** evidence of both intent and an act in that County. *Id.*

The State does not have nonspeculative evidence of either intent or preparatory acts. Regarding intent, the mere fact that the GOP Electors

[27] Mr. McDonald's phone records were not presented to the grand jury, as the State concedes. (OB, p. 11.) Thus, they are not before the Court and the State's claim that "[t]he GOP Electors admit that Michael McDonald was in Las Vegas until the afternoon of December 13, 2020" is of no moment—but what Defendants pointed out is that the phone records show that Mr. McDonald was not in Clark County beginning the afternoon of December 13, 2020. (3-APP-0477, n.4.)

communicated with each other after the 2020 election is not evidence of intent before the afternoon of December 13, 2020. The State now relies largely on the effects of the purported crimes on the U.S. District Court, but charges predicated on such conduct are preempted by federal law, as discussed above. Even if that were not the case, the State's efforts to rely on the purported mailing to Judge Du in Las Vegas—where unopened mail was merely forwarded—fail on factual and legal grounds.[28] Likewise, the fact that other persons sent Mr. McDonald an email is not evidence of intent; there is not even evidence that Mr. McDonald received or read those emails.[29]

As for preparatory acts, the State presented zero evidence of any preparatory act or any other act in Clark County, as discussed above. While the State speculated at the hearing that tables used at a ceremony discussing the alleged acts may have

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[28] *Cf. United States v. Espinosa*, 771 F.2d 1382, 1392-1393, 1397 (10th Cir. 1985), *cert. denied*, 474 U.S. 1023 (1985) ("evidence of mere presence at the scene of the crime or association with codefendants is not enough to support a conspiracy [drug] conviction; while a jury need not ignore presence, proximity and association when presented in conjunction with other evidence of guilt, mere proximity to illegal drugs, mere presence on the property where they are located, or mere association with persons who do control them, without more, is insufficient to support a finding of possession.") Likewise, in this context, the fact that Mr. McDonald was in Clark County and communicated with other leaders of the Nevada Republican Party or that he later committed alleged crimes is not non-speculative evidence of a preparatory act plus intent, let alone a preponderance of evidence of a preparatory act plus intent.

[29] Even if he had, as federal courts have explained, mere "knowledge of the existence and goals of a conspiracy does not of itself make one a coconspirator." *United States v. Ceballos*, 340 F.3d 115, 124 (2d Cir 2003) (internal quotation marks omitted); *see also United States v Shabani*, 513 U.S. 10, 16, 115 S. Ct. 382, 130 L Ed 2d 225 (1994) ("the criminal agreement itself is the *actus reus*" of conspiracy.)

come from Las Vegas[30], the first time the evidence shows Mr. McDonald engaged in any acts relating to the documents at issue was when they "met in Carson City, Nevada, on December 14, 2020, to execute the documents." (3-APP-0477-478.)

If the State's arguments were to be accepted—that Mr. McDonald formed intent in Clark County because he traveled from Clark County to Northern Nevada and later committed a crime there—the limits in *Martinez-Guzman II* would be meaningless. Indeed, in that case, there were far more facts supporting jurisdiction than the State has come forward with here. Yet this Court found that Washoe County was not a proper venue for a burglary in another county where "the grand jury was not presented with evidence that the stolen items were in the vehicle when [the defendant] went to Washoe County." 137 Nev. at 608. "The only evidence the State point[ed] to in support of this argument" was the circumstantial evidence the defendant "drove the same car" in Washoe County after the items were stolen but before they were later found in the same car. *Id.* The Court "conclude[d] that the mere possibility that the property found in Martinez Guzman's car at the time of arrest was transported everywhere inside the car for days after it was stolen is insufficient to show proof by a preponderance of the evidence" (*id.*) and there was

[30] At the hearing, the State engaged in much conjecture about things like where the furniture for the ceremony Defendants held came from. (3-APP-0650:10-20.) Not only is it pure speculation that the tables came from Clark County, preparing and holding the ceremony itself are not part of the charged crimes—and nor could they be, as such acts are protected by the First Amendment. (*See* 3-APP-0482-483.)

"insufficient evidence that property taken from Douglas County had been brought into Washoe County to justify venue there under NRS 171.060." *Id.* at 600.

If the facts in *Martinez-Guzman* did not suffice to establish venue, it cannot suffice to assume that Mr. McDonald formed intent in Clark County because he was there and later allegedly committed a crime in Northern Nevada; just as the Court did not assume from the facts the defendant had the same car when the items were stolen and when the items were later found within it, the Court cannot assume that because Mr. McDonald was in Clark County before the criminal acts were committed that he formed intent, let alone committed any preparatory acts there.

I. The State's Attenuated Conspiracy Evidence Does Not Suffice.

The State can only rely on preparatory acts in Clark County if coupled with intent and it cannot rely on mere speculation. As discussed above, alleging a conspiracy does not provide an exception to this requirement and the State didn't even raise the conspiracy argument below. In any case, the State's circumstantial "conspiracy" evidence the State relies on does not help establish that Clark County has territorial jurisdiction, even if the State had made its "conspiracy" argument below.

First, the mere fact that two of the six Contingent Electors live and work in Clark County and that there was a subsequent ceremony in Carson City discussing the Contingent Certificate that was, in the State's words, "anything but

happenstance" does not confer jurisdiction in Clark County; it is exactly the type of conjecture that is impermissible. *Martinez-Guzman II*, 137 Nev. at 606-07. The fact that Defendants and Right Side Broadcasting eventually met up in Carson City does not establish anyone committed preparatory acts beforehand in Clark County with intent, even if they were all sent emails before the event (OB, pp. 39-40), which the State never established were received by Mr. McDonald or Mr. Law, let alone while they were in Clark County.

If the State could assume, as it endeavors to do, that preparatory acts occurred and intent was formed in Clark County because some alleged conspirators lived and worked here and a crime involving them later occurred elsewhere, the statute would state:

> 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 the consummation of the offense occur in two or more counties, the venue is in either county **or any county where any defendant resides or works.**

Under existing law, the State needs actual evidence of preparatory acts committed in Clark County plus intent in Clark County. Even where criminal liability is based on a conspiracy, and even some lesser burden applied in conspiracy cases, the State must show that acts from which the conspiracy is inferred occurred in Clark County, and mere place of residence is not sufficient.

Second, again, the phone records the State relies on (SAPP02-16) were not

presented to the grand jury and they are thus not properly before this Court. Further, they show both Mr. Law and Mr. McDonald were not in Clark County much of the time, including on the dates/times of the communications the State relies on.[31]

Third, just as the county of residence or workplace is not sufficient evidence, being sent communications by Mr. Chesebro (OB, p. 39) or others is not an act in Clark County or even an act by Mr. Law or Mr. McDonald at all; those were acts of senders outside of Clark County. Likewise, the State relies on communications from Mr. DeGraffenried (OB pp. 39-40), who is not even a resident of Clark County; thus, the fact he communicated with Mr. Chesebro has nothing to do with Clark County. Again, to establish territorial jurisdiction, the State must establish that such acts were undertaken in Clark County—and that they were undertaken there with intent.

Fourth, the "few additional key pieces of circumstantial evidence" (OB, pp. 41-43) that the State imagines show "intent and participation in the preparation by Law and McDonald" are irrelevant for multiple reasons, most markedly because they all depend on assuming acts and intent were formed in Clark County. Again, the State cannot assume that acts or "intent and participation" by Mr. Law and Mr. McDonald occurred in Clark County merely from place of residence or employment

[31] Mr. McDonald was traveling outside of Clark County beginning the afternoon of December 13, 2020. (SAPP008-010.) Mr. Law was traveling outside of Clark County from December 11, 2020, until the evening of December 14, 2020. (SAPP014-015.)

and the phone records were not presented to the grand jury. Further, the district court gave the State express instructions to catalog each piece of evidence it relied on and none of the "additional key pieces of circumstantial evidence" were included on the Supplement the State filed below, and thus cannot be argued now.[32]

Even if that were not the case, the purported conspiracy evidence would still not establish jurisdiction in Clark County, as detailed below:

State's Evidence	**Analysis**
"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-1051	The State's citation is erroneous. If it is referring to 5-APP-1061, the document in no way reflects Mr. McDonald created the attachments, let alone while in Clark County. While the transmission memo (5-APP-1061) was prepared to be formally transmitted from Mr. McDonald on December 14, 2020, there is zero evidence he was the "source" or the preparer. In fact, the State's evidence shows the opposite; *Mr. DeGraffenreid* prepared and emailed the documents. (5-APP-1060 ("Attached are the corrected elector ballots and forms… primarily **I** changed 'Arizona' to 'Nevada' everywhere it appeared, and corrected Chairman of the College to Michael J.") (emphasis added).) Thus, the record makes clear that Mr. DeGraffenried was the source. Additionally, the date of the document

[32] *Old Aztec Mine, Inc.*, 623 P.2d at 983.

State's Evidence	Analysis
	is December 14, 2020, when Mr. McDonald was not in Clark County (SAPP008-010.)
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.	These emails reflect Mr. Law would print the documents, not that he did so in Clark County (indeed, he was not even in Clark County) or even that he or Mr. McDonald discussed doing so in Clark County. Again, Mr. Law was not even in Clark County. (SAPP014-015.)
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	The email cited was sent at 8:16 pm on December 14, 2024, after Defendants sent the mailing. And there is no evidence the "direction of Chairman McDonald" occurred in Clark County
"the State presented evidence that Law and McDonald both reside in Clark County, Electors mailed listed McDonald's work address in Clark County." 4-APP-0856, 0882, 0894, 0905, 0933–0935; 5-APP-1088–1089, 1105–1106.	The county of residence and place of work is not automatically vested with jurisdiction and it cannot be assumed that a conspiracy was formed, or that any preparatory act occurred here, let alone with intent. (The fact that the return address was to Mr. McDonald was of no consequence—returning the envelope with the letter from Secretary of State was not an act that would cause venue to lie in Clark County)
"The central role that McDonald and Law played in the ceremony, as	That defendants who live and work in Clark County had a "central role" in the

State's Evidence	Analysis
exhibited throughout the entirety of the Right Side Broadcasting footage, suggests their involvement in preparation for the ceremony." 5-APP-0865.	December 14, 2020, ceremony taking place outside of Clark County, does not suffice.
"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.	That Mr. DeGraffenried forwarded documents after the event at Mr. McDonald's request (and specifically noted then that he was doing so) does not support the assumption that Mr. McDonald told Mr. DeGraffenried to send any prior emails (indeed, the opposite can be assumed).

The State's effort to connect the dots between these flimsy pieces of "circumstantial" evidence fails under any analysis. Again, the central question is whether there are sufficient connections to a defendant's alleged crimes and the place where he or she is tried. Here, even more so than was the case in *Martinez-Guzman II*, the State's theories are just "too speculative and unsupported by the evidence." 137 Nev. at 600.

J. Hyperbole Regarding Effects Is Not Evidence of Territorial Jurisdiction.

As a last-ditch effort to try to support jurisdiction, the State relies on implicitly political arguments such as "[t]he 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" (OB, p.47) and "the effects of the GOP Electors' criminal acts were felt statewide and beyond." (OB, p.45.)

These arguments should be ignored; they do not constitute evidence that supports jurisdiction. The Court's analysis regarding whether there are sufficient connections between the alleged crimes and Clark County are defined by statute and precedent, not by the State's moral outrage.

VI. CONCLUSION

The question in this appeal is not whether the Defendants conduct was illegal or "anti-democratic"; the sole question on appeal is whether Clark County has territorial jurisdiction.

Despite the State's efforts to contort the law and the facts, it cannot establish that Clark County had jurisdiction. Defendants' conduct simply does not have the necessary connections to Clark County: no acts or effects constituting or requisite to the consummation of the offense occurred in Clark County. Likewise, there is no evidence of intent coupled with a preparatory act.

The Attorney General's office should also not be spared the consequences of delaying prosecution and seeking prosecution in a jurisdiction without sufficient connection to the alleged crimes; there is no legal support for the idea that there is a "harmless error" exception to the requirement that the State establish venue by a preponderance of the evidence presented to the grand jury. Nor is there any exception when the State is facing statutes of limitations. But even if the phone records showing Mr. McDonald and Mr. Law were in Clark County before the

alleged crimes were committed were properly before the Court, that would not solve the State's lack of evidence. Merely receiving communications or having phone conversations with other leaders of the Nevada GOP does not constitute a preparatory act plus intent (or conspiracy).

At the end of the day, looking past the politics and other distractions the State relies on, NRS 171.030, *Martinez-Guzman I* and *II* require the State to establish venue—the necessary connections between Clark County and the alleged crimes—by a preponderance of the evidence submitted to the grand jury. The State abjectly failed to meet this burden—despite getting two bites at the apple in district court. Indeed, the evidence here is even slimmer than that found insufficient by this Court in *Martinez-Guzman II.* If the State's evidence were accepted as sufficient to establish the grand jury had authority to act, the limits of territorial jurisdiction would be rendered meaningless.

This Court should affirm.

DATED this 11th day of October, 2024.

/s/ Richard A. Wright
Richard A. Wright
WRIGHT MARSH, LEVY
300 S. Fourth St., Ste 701
Las Vegas, NV 89101
Counsel for Michael James McDonald

/s/ Monti Jordana Levy
Monti Jordana Levy
WRIGHT MARSH, LEVY

300 S. Fourth St., Ste 701
Las Vegas, NV 89101
Counsel for Eileen A. Rice

/s/ Margaret A. McLetchie
Margaret A. McLetchie
MCLETCHIE LAW
602 South Tenth St.
Las Vegas, Nevada 89101
Counsel for Jesse Reed Law

/s/ Brian R. Hardy
Brian R. Hardy
MARQUIS AURBACH
10001 Park Run Drive
Las Vegas, Nevada 89145
Counsel for Durward James Hindle, III

/s/ Sigal Chattah
Sigal Chattah
CHATTAH LAW GROUP
5875 S. Rainbow Blvd. #204
Las Vegas, Nevada 89118
Counsel for Shawn Michael Meehan

/s/ George P. Kelesis
George P. Kelesis
COOK & KELESIS, LTD
517 S 9th Street
Las Vegas, NV 89101
Counsel for James Walter Degraffenreid, III

CERTIFICATE OF COMPLIANCE

Pursuant to NRAP 32(a)(9)(A):

I hereby certify that this brief 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 the RESPONDENTS' ANSWERING BRIEF has been prepared in a proportionally spaced typeface (14-point Times New Roman font).

I further certify that this RESPONDENTS' ANSWERING BRIEF complies with the type-volume limitation of NRAP 32(a)(7)(ii) because it contains 13,710 words.

Finally, I hereby certify that I have read this appellate 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 all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the 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.

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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.

DATED this 11th day of October, 2024.

/s/ Margaret A. McLetchie

Margaret A. McLetchie, Nevada Bar No. 10931
MCLETCHIE LAW
602 S. Tenth Street
Las Vegas, Nevada 89101
Telephone: (702) 728-5300; Fax: (702) 425-8220
Email: efile@nvlitigation.com
Counsel for Jesse Reed Law

CERTIFICATE OF SERVICE

I hereby certify that the foregoing RESPONDENTS' ANSWERING BRIEF was filed electronically with the Nevada Supreme Court on the 11th day of October, 2024 by using the Nevada Supreme Court's E-Filing System (eFlex). Electronic service of the foregoing document shall be made in accordance with the Master Service List.

/s/ Leo S. Wolpert
Employee of McLetchie Law