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, MICHAEL JAMES MCDONALD, SHAWN MICHAEL MEEHAN, EILEEN A. RICE, Respondents	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

Amicus Brief of Nevada Attorneys for Criminal Justice in support of Respondents' Answering Brief

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in Nev. R. App. P. 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. Layla A. Medina

2. NACJ

/s/ Layla A. Medina
Layla A. Medina
Deputy Public Defender

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Nevada Attorneys for Criminal Justice (NACJ) is a state-wide, non-profit organization of criminal defense attorneys in Nevada. Our mission is to ensure accused persons receive effective, zealous representation through shared resources, legislative lobbying, and intra-organizational support. This includes the filing of Amicus Curiae Briefs pertaining to (1) state and federal constitutional issues; (2) other legal matters with broad applicability to accused persons; and (3) controversies with potential to impact our members' ability to advocate effectively for accused persons.

NACJ offers the collective experience of its members to assist this Court in deciding important issues presented by Respondents, and NACJ urges this Honorable Court to affirm the District Court's ruling on Eileen A. Rice's Motion to Dismiss, and the joined Respondents.

This Amicus Brief is filed in accordance with Nevada Rules of Appellate Procedure 29 and 32. Authority to file the brief derives from the motion to file, to which this brief is attached.

INTRODUCTION

The importance of this legal issue extends beyond political affiliations. While the facts in the case arise out of the contested 2020 presidential election, the holding may have significant implications on every day-cases, with every day-people. Broadening the venue laws will undisputably hinder a defendant's rights to a fair and impartial trial.

From our country's origin, the doctrine of venue has protected the idea that a trial must occur within the community that the alleged incident took place. "[P]roper venue in criminal proceedings was a matter of concern to the Nation's founders." *United States v. Cabrales*, 524 U.S. 1, 6, 118 S.Ct. 1772, 1775 (1998). This legal concept is so crucial to our system of justice, that it is detailed twice in the U.S. Constitution. First, Article III, § 2, cl. 3, instructs that "Trial of all Crimes ... shall be held in the State where the said Crimes shall have been committed" and second, the Sixth Amendment calls for trial "by an impartial jury of the State and district wherein the crime shall have been committed." *Id.*

In State cases, the law on venue is typically governed by statute. Nevada maintains that in instances where an offense has occurred in more than one county, the law dictates that venue is correct in either county, as long as, the evidence shows "[a] preparatory act *plus* intent in that county, an act requisite to the consummation of the charged offense has occurred there." *See* NRS 171.020; *Martinez Guzman v. Second Judicial Dist. Court*, 137 Nev. 599, 605, 496 P.3d 572, 577 (2021).

These rules protect against the State's ability to charge a case in a venue with minimal connections; or worst, no connections at all. However, if the State is allowed to file charges in a county where the *offense* did not occur, it will generate unfair burdens on the defense.

First, in cases where the accused is incarcerated in a distant county, it would limit their ability to communicate with family and friends as they await trial. Second, if venue is *improper*, the defense would have to exhaust more resources in order to conduct a thorough investigation in the *proper* venue. Lastly, the accused would not be afforded an impartial jury made up of its peers,

because the county in which the offense is charged, would likely not be their county of residence.

In this case, the State is trying to circumvent the law for its own personal agenda. If this Court allows the State to charge the defendants in Clark County, it will have a significant effect on all future cases. The State will be free to venue shop, simply by identifying the slightest connection to the county it wants to file in. The District Court's grant of Respondents' Motion to Dismiss was proper and the ruling should be affirmed.

ARGUMENT

I. A straightforward application of Nevada law shows that Clark County was not the appropriate venue.

Martinez Guzman v. Second Judicial Dist. Court ("Martinez Guzman I"), 136 Nev. 103, 110, 460 P.3d 443, 449 (2020) and *Martinez Guzman v. Second Judicial Dist. Court ("Martinez Guzman II")* 137 Nev. 599, 609, 496 P.2d 572, 580 (2021), are the seminal cases on venue in Nevada. In both cases, this Court was tasked to interpret NRS 171.030 and NRS 172.105. The Court clarified that while venue is not an element of the crime related to

guilt or innocence, the State only needs to prove venue by a "preponderance of the evidence," and may present "circumstantial evidence." 137 Nev. at 603, 460 P.3d at 576.

In *Martinez Guzman I*, the Court held that "territorial jurisdiction" prescribed in NRS 172.105, is a "term of art" that allows a grand jury to inquire and indict criminal offenses where "venue is proper under the Nevada statutes in the district wherein its empaneled." 136 Nev. at 450, 460 P.3d at 111.

More importantly, in *Martinez Guzman II*, the Court held that under NRS 171.030 "neither formation of intent alone nor preparatory acts alone are sufficient to make venue proper in a charging county." 137 Nev. at 604, 496 P.3d at 576. These rules make it evident that the State must charge an offense where there are *necessary* connections to the county in which it empanels a grand jury.

Here, the Government failed to establish by a preponderance of the evidence that the Respondents committed the offenses of Offering False Instrument for Filing or Record and Uttering Forged Instruments in Clark County, Nevada. The Government's

arguments that venue was sufficiently met because the Republican Headquarters are located Las Vegas, or that a few Respondents reside in Las Vegas, or that one of the mailings was misaddressed to Judge Du in Las Vegas, are without merit.

By that reasoning, anytime an accused has a vacation home in another county, then the State would be free to indict them in that county, even though no actual part of the offense occurred there. That is not what this Court envisioned when it addressed these matters in *Martinez Guzman I* and *II*. In fact, *Martinez Guzman II*, stressed the importance of limiting the venue requirements by stating, "[M]any crimes involve countless acts which lead to the ultimate act being possible. But it is obvious that not every action by a defendant which puts them in particular place, time, and circumstances was done with the intent to commit that offense." 137 Nev. at 605, 496 P.3d at 577.

Here, the alleged incident has practically no connection to Clark County. Nothing in the record shows that Respondents had the intent coupled with a preparatory act, to "utter and offer" the false instrument in Clark County. The fact that the Republican

headquarters is located in Las Vegas, is irrelevant because nothing in the record seems to suggest that the alleged crimes were carried out in that building. The signing and mailing of these purported documents occurred in Douglas County, which presumably would complete the crime; thus, that would be the appropriate venue to empanel the grand jury. *See Neff v. State*, 915 N.E.2d 1026, 1034 (Ind. Ct. App. 2009) (holding the trial venue improper because the crime of child solicitation is completed at the time the messages are uttered; the defendant sent all the messages to the child in Madison County not Hamilton County, and the purported child victim did not even reside in Hamilton County).

II. Important policy considerations support existing law requiring crimes to be tried in counties where the crime took place.

Questions of venue in criminal cases "[a]re not merely matters of formal legal procedure, they also raise deep issues of public policy in the light of which legislation must be construed. [Additionally], these are matters that touch closely the fair administration of criminal justice and public confidence in it, on which it ultimately rests." *United States v. Johnson*, 323 U.S. 273, 65 S.Ct. 249. (1944).

Presenting a criminal case in the proper venue affords the defendant a fair trial, witness accessibility, jury composition reflective of its demographics, and lower costs and logistics.

Venue requirements are critical for both adversaries, but particularly for defense attorneys who must guard against "the unfairness and hardship involved when an accused is prosecuted in a remote place." *United States v. Cores*, 356 U.S. 405, 407, 78 S.Ct. 875, 877 (1958). A defendant in a criminal prosecution already faces a significant number of obstacles, but being charged in a distant venue from where the offense actually took place, creates its own set of unique challenges.

For example, a change in venue creates a huge barrier between the accused and his family, his legal team, and access to properly investigate his case. If the venue laws become more expansive, it would collapse the system's protections against the accused. It is important that the Court does not overlook the hardships that this ruling may have on those charged with criminal offenses, particularly the thousands of indigent clients that come through the system every year.

A. In most cases, defendants are charged with crimes near where they live; the law of venue protects the ability of in-custody defendants to see friends and family.

Originally, the rationale of the venue requirement, was based in part on transportation concerns since automobiles were not yet invented. *Cores*, 356 U.S. at 410, 78 S.Ct. at 879 (noting that general policy of venue provisions is to relieve criminal defendants "of the inconvenience incident to prosecution in a district far removed from his residence"). But despite the rise of modern transportation, if a criminal defendant is charged in a venue that is far from home, he will suffer personal consequences that otherwise would not occur if the proper venue was selected.

For instance, if an accused is forced to stand trial in a county that is nowhere near his place residency, familial support will diminish. The farther an inmate is housed from home, the less likely he or she is to receive visits from friends and family members. *See* Rebecca Cooper, *Far From Home: The Additional Punishment of D.C.'s Out of State Detention Policy and Opportunities for Reform*, 55 Am. Crim. L. Rev. 789 (2018). In D.C., where all adjudicated

individuals are sent to facilities outside the jurisdiction, research shows that 49.6% of state prisoners housed less than 50 miles from home received a visit in [a] month, compared to 25.9% of inmates housed 101-500 miles from home, and only 14.5% of inmates housed between 501-1000 miles from home have received such a visit. *Id.* at 795. Not to mention, most federal prison facilities are sited in remote locations, making it harder for families to travel to those locations via public transportation. *Id.* at 796.

While the situation in D.C. deals with *convicted* persons, whose incarceration can exceed hundreds of miles from home, the hardships would not be all that different for defendants here in Nevada. This State covers a huge geographic area, much of which is rural, meaning that public transportation to most counties except Clark and Washoe, is limited or nonexistent. Theoretically, if the Respondents in the present matter were indigent and housed at the Clark County Detention Center, their families in Douglas County and Carson City would have a difficult time visiting them as they awaited trial. Not to mention, the financial strains it would place on families that already struggle with funds. Such inconveniencies

should not be a collateral consequence simply because the State wants to choose the county where it believes it can gain an advantage.

B. For the defense function, reliability is significantly enhanced by trying a case where it happened, particularly in cases where counsel is appointed by a county governing body.

As documented in a number of sources, defense counsel has an obligation to investigate the strength of the State's case. *See, e.g., In re Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases*, ADKT 411, Nev. Indigent Defense Standards of Performance, Standard 4-7(a) (Oct. 16, 2008) ("Counsel should conduct, or secure the resources to conduct, a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction."); Am. Bar Association, *Criminal Justice Standards for the Defense Function*, Standard 4-4.1(a) (4th ed. 2017) ("Defense counsel has a duty to investigate in all cases, and to determine whether there is a sufficient factual basis for criminal charges.").

This obligation is complicated by long-distance defense. Travel to conduct basic investigation is both more time consuming (because it requires additional travel) and more resource consuming (because the traveler must pay travel expenses). It is not uncommon for an investigator to need to visit a witness's home or workplace multiple times before making contact. Even friendly witnesses might require multiple meetings to prepare testimony. *See generally* Lane Goldstein, *Trial Technique* § 11:2 (3d ed. Dec. 2023 Update) ("Every witness, whether lay or expert, should be interviewed for the purpose of preparing him to be a 'good' witness."); *id.* § 11:10 ("Fundamental to any effective presentation is the complete preparation by the attorney and the witness for every question that the attorney is going to ask, and the witness is going to answer."); *id.* ("The more nervous, confused, inexperienced and less intelligent the witness, the more important is an exact recount of the questions.").

Because of the obligation to investigate, trying a case in the county where the offense happened, significantly enhances the defense function. Local counsel and their investigator can perform

the defense function without the added expense or inconvenience of travel. This is particularly so where counsel is appointed, where investigation costs are subject to budgetary oversight. For example, in Clark, "[r]equests for funds for investigators or expert witnesses shall be made through the [Office of Appointed Counsel]." *In re Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases*, ADKT 411, Clark County's Administrative Plan for Appointment of Counsel, at 12 (May 1, 2008) (approved by Bd. of Indigent Def. Services on Oct. 6, 2021).[1] In other counties, investigative costs cut into the fee the attorney receives, creating an economic disincentive to incur the cost of travelling to investigate. *See, e.g.*, The Douglas County Plan for the Provision of Indigent Defense Services (Updated Oct. 3, 2024) at 8 (noting that attorney compensation "may be based on a flat fee, an hourly basis, or a combination of both" and must

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[1] Available at https://dids.nv.gov/uploadedFiles/didsnvgov/content/CountyResource/Approved%20Clark%20County%20Plan(1).pdf

consider allowing "for investigative and expert witness fees" as a factor).[2]

Thus, the State's theory of venue poses a special challenge for appointed counsel, who would be appointed in the charging county and charged with investigating a crime that took placed in another county. This will undermine the defense function by making it harder to investigate cases.

C. The law governing venue protects against forum shopping.

Venue requirements are in place to prevent the government from choosing an advantageous tribunal or one which may be unduly inconvenient for the defendant. *United States v. Rivera*, 388 F.2d 545, 548 (2d Cir. 1968). In *Neff,* the Indiana Court of Appeals warned against the dangers of forum shopping, stating that it would be inappropriate for the State "[t]o direct [undercover informants] or other out-of-state volunteers posing as child

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[2] Available at https://dids.nv.gov/uploadedFiles/didsnvgov/content/Resources/Selection_and_Billing/Forms/Douglas%20County%20Updated%20Plan%20for%20Provision%20of%20Indigent%20Defense%20Services%20BOCC%20-%20Approved%2010032024.pdf

"victims" to claim residency of whatever county it wished, simply to get the trial to go in that county because it was deemed harsher on defendants." 915 N.E.2d at 1035 (citing *Travis v. U.S.*, 364 U.S. 631, 634, (1961) (holding that statutory venue provisions should not be so freely construed as to give the Government the choice of a tribunal favorable to it) (internal citations omitted).

Again, the criminally accused is afforded rights and protections when charged with an offense. Here, it would be inappropriate to choose Clark County as the venue to charge Respondents because not only is it "unduly inconvenient" for them (since the majority do not reside in Clark County), but it also has no real connection to the alleged offenses (the mail certificates were not written or submitted in Clark County). It is inherently unjust to strip an accused of yet another right—the Constitutional and statutory right to be tried in the tribunal where the crime occurred and by a jury of your own peers.

CONCLUSION

The issues in this case go beyond political disagreements. The Government should not be given a pass to charge Respondents in Clark County, simply because of the controversial nature of the case. Nevada's well-established law on venue does not support an indictment in Clark County. The District Court's grant of Respondents' Motion to Dismiss was proper and the ruling should be affirmed.

Dated this 17th day of October, 2024.

Respectfully submitted,

/s/ Layla A. Medina
Layla A. Medina
Deputy Public Defender

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 21(d), NRAP 32(a)(4) and NRAP 32(c)(2), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

1. This Amicus Curae brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Century Schoolbook.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 2,771 words and 276 lines of text which does not exceed type/volume limitations set forth in NRAP 21(d) and NRAP 32(a)(7).

3. Finally, I hereby certify that I have read this Amicus Curae 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. 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 17th day of October, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on 17th day of October, 2024, I electronically filed the foregoing document with the Nevada Supreme Court by using the appellate electronic filing system. The following participants in the case will be served by the electronic filing system:

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