

SUPREME COURT OF NEVADA

Clay v. Eighth Judicial District Court, 129 Nev. 445

305 P.3d 898 (2013) · No. 61986 · Decided July 11, 2013

SUMMARY

The Nevada Supreme Court considered an original petition for a writ of mandamus challenging the denial of a pretrial habeas petition concerning child-abuse-and-neglect indictments. The court held that, when nonaccidental physical injury is the alleged form of abuse or neglect, the prosecutor must inform the grand jury of the statutory definition of "physical injury" under NRS 200.508(4)(d), as required by NRS 172.095(2). The petition was granted in part because the omission likely affected probable cause for one count.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Douglas, J.; Gibbons, J.; Parraguirre, J.
JURISDICTION	Nevada
DECIDED	July 11, 2013
DOCKET	61986
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Original petition for a writ of mandamus or prohibition challenging the district court's denial of a pretrial petition for a writ of habeas corpus attacking a grand-jury indictment.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo. Issuance of mandamus is discretionary, and mandamus may issue to compel a legally required act or control an arbitrary or capricious exercise of discretion. The court described manifest abuse of discretion as a clearly erroneous interpretation or application of law or rule.
PRECEDENTIAL VALUE	Published Nevada Supreme Court opinion; precedential.
PARTIES	Bryan Clay v. The Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, The State of Nevada

TOPICS

- grand jury
- criminal procedure
- habeas corpus
- appellate procedure
- statutory interpretation

PRACTICE AREAS

criminal procedure

appellate procedure

statutory interpretation

grand jury

habeas corpus

QUESTIONS PRESENTED

1. Whether NRS 200.508(1) requires the State to prove that abuse or neglect, as defined by statute, occurred regardless of which alternative theory of liability is charged.
2. Whether, when an indictment under NRS 200.508(1) is based on nonaccidental physical injury, NRS 172.095(2) requires the prosecutor to instruct the grand jury on the statutory definition of physical injury.
3. Whether the omission of that statutory definition likely caused the grand jury to return count one on less than probable cause and therefore required dismissal of that count.
4. Whether mandamus was an appropriate remedy for the alleged grand-jury-procedure violation.

HOLDINGS

1. NRS 200.508(1) unambiguously requires the State to prove that abuse or neglect, as defined by NRS 200.508(4)(a), occurred regardless of whether the prosecution proceeds under the actual-harm or potential-harm theory.
2. When the State seeks an indictment under NRS 200.508(1) based on nonaccidental physical injury, NRS 172.095(2) requires the prosecutor to inform the grand jury of the statutory definition of physical injury because that definition is technical and narrower than the term's ordinary meaning.
3. The failure to instruct the grand jury on the statutory definition of physical injury likely caused the grand jury to return count one on less than probable cause, requiring dismissal of that count without prejudice.
4. Mandamus was an appropriate remedy to address the NRS 172.095(2) violation because direct appeal would not provide an adequate remedy where grand-jury error would likely be harmless after conviction, and the issue presented an important legal question warranting extraordinary review.

KEY QUOTATIONS

“We conclude that NRS 200.508(1) unambiguously requires the State to prove that “abuse or neglect,” as defined by NRS 200.508(4)(a), occurred regardless of the theory under which the offense is prosecuted.” (11)

“Given the difference between the statutory and common definition of “physical injury,” it was incumbent upon the prosecutor to provide the statutory definition of this element consistent with NRS 172.095(2).” (15)

“Because the failure to instruct the grand jury on the statutory definition of “physical injury” likely caused the grand jury to return an indictment on count one based on less than probable cause, the violation of NRS 172.095(2) requires dismissal of that count.” (17)

FACTUAL BACKGROUND

Bryan Clay was indicted for two incidents involving his sixteen-year-old girlfriend, E.F., who was pregnant with Clay's child. The first incident involved Clay slapping E.F. across the face; the second involved choking,

striking, and shoving her, after which she reported difficulty breathing and was taken to a hospital. The grand jury heard no testimony describing the nature or extent of injuries from the first incident and was not instructed that Nevada's statutory definition of physical injury requires permanent or temporary disfigurement or impairment of a bodily function or organ.

PROCEDURAL HISTORY

A grand jury indicted Bryan Clay on two counts of child abuse and neglect under NRS 200.508(1). Clay filed a pretrial habeas petition arguing both insufficient probable cause and the State's failure to instruct the grand jury on the statutory definition of physical injury; the district court denied the petition. The Nevada Supreme Court exercised its discretion to consider the statutory-instruction issue, granted extraordinary relief in part, and directed dismissal without prejudice of count one.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The clerk of the Nevada Supreme Court was directed to issue a writ of mandamus instructing the district court to dismiss count one of the indictment without prejudice. Relief was not granted as to count three.

CASES CITED

- Round Hill General Improvement District v. Newman, 97 Nev. 601, 637 P.2d 534 (1981)
- Lisle v. State, 114 Nev. 221, 954 P.2d 744 (1998)
- Lisle v. State, 113 Nev. 540, 937 P.2d 473 (1997), clarified on rehearing, 114 Nev. 221, 954 P.2d 744 (1998)
- Poulos v. Eighth Judicial District Court, 98 Nev. 453, 652 P.2d 1177 (1982)
- State ex rel. Department of Transportation v. Thompson, 99 Nev. 358, 662 P.2d 1338 (1983)
- Redeker v. Eighth Judicial District Court, 122 Nev. 164, 127 P.3d 520 (2006)
- Hidalgo v. Eighth Judicial District Court, 124 Nev. 330, 184 P.3d 369 (2008)
- Schuster v. Eighth Judicial District Court, 123 Nev. 187, 160 P.3d 873 (2007)
- Kussman v. Eighth Judicial District Court, 96 Nev. 544, 612 P.2d 679 (1980)
- Hylar v. Sheriff, Clark County, 93 Nev. 561, 571 P.2d 114 (1977)
- Schuster v. Eighth Judicial District Court, 123 Nev. 187, 160 P.3d 873 (2007)
- Phillips v. Sheriff, Clark County, 93 Nev. 309, 565 P.2d 330 (1977)
- Bigpond v. State, 128 Nev. [page not reproduced], 270 P.3d 1244 (2012)
- In re George J., 128 Nev. [page not reproduced], 279 P.3d 187 (2012)
- Ramirez v. State, 126 Nev. [page not reproduced], 235 P.3d 619 (2010)
- People v. Calbud, Inc., 402 N.E.2d 1140 (N.Y. 1980)
- People v. Ramos, 637 N.Y.S.2d 93 (App. Div. 1996)
- People v. Gnass, 125 Cal. Rptr. 2d 225 (Ct. App. 2002)

- People v. Woodring, 850 N.Y.S.2d 809 (App. Div. 2008)
- Gordon v. Eighth Judicial District Court, 112 Nev. 216, 913 P.2d 240 (1996)
- Sheriff, Washoe County v. Hodes, 96 Nev. 184, 606 P.2d 178 (1980)
- State v. Eighth Judicial District Court (Armstrong), 127 Nev. [page not reproduced], 267 P.3d 777 (2011)

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