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Summary of Dewey Davis v. State, 129 Nev. Ad. Op. 11

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Dewey Davis v. State, 129 Nev. Ad. Op. 11 (February 14, 2013)¹

CRIMINAL LAW AND PROCEDURE – INADEQUATE SERVICE
UNDER NRS 172.241(2)

Summary

The Court considered an original petition for a writ of mandamus challenging a district court order denying a motion to dismiss an indictment for inadequate service under NRS 172.241(2).

Disposition/Outcome

The Court concluded that the district court did not abuse its discretion in determining that facsimile service of a notice of intent to seek indictment and a grand jury notice is adequate service under NRS 172.241(2). Furthermore, the State did not need to include the time, place and location of the grand jury hearing in its grand jury notice. The Court therefore denied the petition for writ of mandamus.

Factual and Procedural History

Petitioner was served of a notice of intent to seek an indictment and grand jury notice to his counsel's office by facsimile. After the grand jury met and returned an indictment against him, Petitioner filed a motion to dismiss indictment on the basis that he was not provided reasonable notice because NRS 172.241(2) requires personal service and the grand jury notice did not include a time, date or place.

Discussion

The Court issued a per curiam opinion. While a writ of mandamus is appropriate to compel performance of an act of law or to control a "manifest abuse or arbitrary or capricious exercise of discretion,"² the writ will not be issued if the "petitioner has a plain, speedy and adequate remedy in the ordinary course of law."³ The Court denied the petition for this reason, but also exercised its discretion to consider the merits of the issue and concluded that a writ of mandamus is an appropriate remedy for inadequate notice of a grand jury hearing.

Because "generally, when the words in a statute are clear on their face, they should be given their plain meaning unless such a reading violates the spirit of the act,"⁴ the Court looked to the plain language of NRS 172.241(2), which does not include the

¹ By Sarah Mead

² Round Hill Gen. Improvement Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981); State v. Armstrong, 127 Nev. __, __, 267 P.3d 777, 780 (2011).

³ Nev. Rev. Stat. § 34.170 (2011).

⁴ Speer v. State, 116 Nev. 677, 679, 5 P.3d 1063, 1064 (2000).

words “personal service.”⁵ The Court concluded that the lack of the specific phrase “personal service” meant that the legislature did not intend the statute to require “personal service.”

The Court found that the state adequately served the petitioner pursuant to NRS 178.589(1), which allows service of any motion, notice or other legal document by facsimile⁶ because NRS 172.241(2) does not specifically require personal service.

Finally, the Court looked at the plain language of NRS 172.241(2)(b), and found that the statute provides that a “grand jury target” may testify before the grand jury if he “submits a written request to the district attorney and includes an address where the district attorney may send a notice of date, time and place of the scheduled proceeding.”⁷ The Court found that there is no language in the statute to indicate a requirement that the State provide a date, time and place before such a request.

Conclusion

The State can serve notice of intent to seek indictment by facsimile to the person whose indictment is being considered, that person’s attorney of record, or an attorney who purports to represent that person. The State need not include a time, date, or location of a grand jury hearing when serving a grand jury notice.

⁵ Nev. Rev. Stat. § 172.241(2) (2011). The statute provides that “reasonable notice” shall be served “upon a person whose indictment is being considered,” and “the notice is adequate if it is “given to the person, the person’s attorney of record, or an attorney who claims to represent that person.”

⁶ Nev. Rev. Stat. § 178.589(1) (2011).

⁷ Nev. Rev. Stat. § 172.241(2)(b) (2011).