

## Scholarly Commons @ UNLV Boyd Law

---

Nevada Supreme Court Summaries

Law Journals

---

7-24-2008

### Summary of Hill v. State, 124 Nev., Advance 52

Meredith Holmes  
*Nevada Law Journal*

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>



Part of the [Criminal Law Commons](#), and the [Criminal Procedure Commons](#)

---

#### Recommended Citation

Holmes, Meredith, "Summary of Hill v. State, 124 Nev., Advance 52" (2008). *Nevada Supreme Court Summaries*. 421.

<https://scholars.law.unlv.edu/nvscs/421>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact [youngwoo.ban@unlv.edu](mailto:youngwoo.ban@unlv.edu).

## *Hill v. State*, 124 Nev., Advance 52 (July 24, 2008)<sup>1</sup>

### CRIMINAL PROCEDURE – GRAND JURY BIAS

#### Summary

Defendant-Appellant argued that the district court improperly denied his motion to dismiss the grand jury indictment and pretrial petition for writ of habeas corpus based on the State's failure to report grand jury bias.

#### Disposition/Outcome

The Supreme Court affirmed the District Court's denial of the motion and petition and held that it is the domain of the district court judge, not the prosecuting attorney, to determine whether grand juror bias exists. The Court went on to hold that when a defendant is found guilty by a petit jury, any error that may have occurred as a result of grand juror bias is harmless.

#### Factual and Procedural History

A jury convicted defendant Joaquin Hill of the murder of Alice Mosconi, an elderly woman. The State got an indictment by a grand jury for the prosecution.

Five of the grand jurors disclosed that they knew witnesses in the case or were familiar with the facts of the case. Four of these grand jurors stated that they could act impartially, and one was excused. The grand jury, including the four who were in some way familiar with the case, participated in the proceedings that led to Hill's indictment for first-degree murder, with deadly weapon and elderly person enhancements.

Hill challenged the indictment based upon the five grand jurors' familiarity with the case and the prosecution's failure to bring the issue of grand juror bias to the attention of the district court. The district court denied the petition for writ of habeas corpus and motion to dismiss on the ground that Hill had demonstrated no prejudice.

Hill was found guilty at trial by the petit jury and sentenced to consecutive life sentences without possibility of parole.

Hill's only claim on appeal was that his Fifth Amendment right to due process was violated because his case was not heard by an unbiased grand jury.

#### Discussion

The Court noted that a district court should grant a petition for a writ of habeas corpus when the prosecution acted in "willful or consciously indifferent manner with regard to a defendant's procedural rights, or where the grand jury indicted the defendant on criminal charges without probable cause."<sup>2</sup> It went on to state that the Court "will not disturb a decision of the district court that the prosecution exhibited conscious indifference to a defendant's important procedural rights if there is substantial evidence in the record to support the district court's determination."<sup>3</sup> A grand jury indictment need only be dismissed on appeal if the defendant shows actual prejudice.

---

<sup>1</sup> By Meredith Holmes

<sup>2</sup> *Hill v. State*, 124 Nev. Advance Opinion 52 at 5 (quoting *Dettloff v. State*, 120 Nev. 588, 595, 97 P.2d 586, 590 (2004)).

<sup>3</sup> *Hill v. State*, 124 Nev. Advance Opinion 52 at 6 (quoting *Sheriff v. Roylance*, 110 Nev. 334, 871 P.2d 359 (1994)).

Based on NRS 172.097<sup>4</sup> and the holding in *Lane v. District Court*,<sup>5</sup> the Court held that “it is unquestionably the domain of the district court, not the State, to resolve issues concerning potential bias or interest of sitting grand jurors in individual cases.”<sup>6</sup> In the present case, the State did not bring the bias issues to the attention of the district court, and therefore failed to comply with the requirements of NRS 172.097.

Although the State failed to report the grand jury bias issues, the court could find no actual bias issues, as none of the grand jurors indicated that they were incapable of making an impartial decision. Additionally, Hill did not provide any evidence of actual bias or prejudice. As a result, the court concluded that “the district court’s evaluation of the bias issue post-indictment did not violate Hill’s due process rights under the Fifth Amendment”<sup>7</sup> and found the dismissal of the motion and petition proper.

The court also concluded that even if there was a Fifth Amendment violation, “any such error would be harmless as a matter of law.”<sup>8</sup> The court based its decision on the U.S. Supreme Court’s holding in *United States v. Mechanik*<sup>9</sup> that “‘a jury verdict of guilty resulting from a fair trial may render harmless an error in the grand jury proceedings.’”<sup>10</sup> Because Hill did not argue that he did not receive a fair trial, the court concluded that any error in the grand jury proceedings was harmless.

### **Conclusion**

While the State improperly failed to report issues of potential grand juror bias to the district court, because there was no actual bias the district court properly denied the motion to dismiss the indictment and the pretrial petition for writ of habeas corpus. Additionally, because the petit jury convicted him and he did not argue that he did not receive a fair trial, any potential grand juror bias was harmless.

---

<sup>4</sup> NRS 172.097 provides that “[t]he district judge impaneling a grand jury shall supervise its proceedings.”

<sup>5</sup> 104 Nev. 427, 760 P.2d 1245 (1988) (holding that “the grand jury should function independently of the prosecution” and that “grand juries have traditionally been within the control of the courts, and the trial judge should exercise his powers when appropriate”).

<sup>6</sup> Hill v. State, 124 Nev. Advance Opinion 52 at 7.

<sup>7</sup> *Id.* at 8.

<sup>8</sup> *Id.*

<sup>9</sup> 475 U.S. 66, 71-73 (1986).

<sup>10</sup> Hill v. State, 124 Nev. Advance Opinion 52 at 8 (quoting *Echavarría v. State*, 108 Nev. 734, 745 n.4, 839 P.2d 589, 596 n.4 (1992)).