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## Summary of Schuster v. Eighth Jud. Dist. Ct., Nev. Adv. Op. No. 23

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## CRIMINAL AND CONSTITUTIONAL LAW – GRAND JURY INDICTMENTS

### Summary

Petitioner filed a writ of mandamus or prohibition on the ground that the District Court improperly denied petitioner's writ of habeas corpus and/or motion to dismiss the indictment based on the State's improper refusal to instruct the grand jury on the law of self-defense.

### Disposition/Outcome

The Nevada Supreme Court denied petitioner's writ of mandamus or prohibition because neither Nevada law nor the U.S. Constitution requires the State to instruct the grand jury on the law of self-defense.

### Factual and Procedural History

The State brought the petitioner, Donald Schuster, before the grand jury, relating to charges resulting from an altercation between him, his brother, and three teenagers. Schuster allegedly introduced a firearm into the altercation and fired three shots. One teen was killed, one was injured, and the third was unharmed.

Schuster did not testify, but the State presented a videotape of his statement to police. In the tape, Schuster said that he fired the shots in defense of both himself and his brother. Based on the medical examiner's conclusion that the decedent teenager's manner of death was a homicide, the grand jury charged Schuster with murder with the use of a deadly weapon, among other charges.<sup>2</sup>

The district court denied Schuster's writ of habeas corpus and/or motion to dismiss. Subsequently, Schuster filed this writ of mandamus or prohibition.

### Discussion

The Court may issue a writ of mandamus to compel an act that the law requires, and may issue a writ of prohibition to stop proceedings falling outside a district court's jurisdiction. However, neither a writ of mandamus or prohibition, both of which are extraordinary remedies, will issue if there is a "plain, speedy, and adequate remedy in the ordinary course of law." NEV. REV. STAT. § 34.170 (2005); NEV. REV. STAT. § 34.330 (2005).

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<sup>1</sup> By Sherry Moore

<sup>2</sup> Charges are as follows: 1) one count of murder with the use of a deadly weapon; 2) two counts of attempted murder with the use of a deadly weapon; 3) one count of battery with the use of a deadly weapon; and 4) one count of assault with the use of a deadly weapon.

Schuster's petition centered on the assertion that the State has a duty, under NRS 172.145(2),<sup>3</sup> to instruct the grand jury on the law of self-defense because not having such a requirement renders the presentation of exculpatory evidence absurd.<sup>4</sup> The Supreme Court opined Schuster's argument is without merit. In reaching this conclusion, the Court considered both NRS 172.145(2)'s construction and the grand jury's traditional role.

1. *Statutory Construction*<sup>5</sup>

“In construing a statute, the primary goal is to ascertain the legislature's intent in enacting it, and we presume that the statute's language reflects the legislature's intent.”<sup>6</sup> The statute's words shall be given their plain meaning unless such a reading will violate the statute's spirit,<sup>7</sup> and ambiguities are generally construed in favor of the defendant.<sup>8</sup>

The Court found the statute silent as to a duty for the State to instruct the grand jury on the law relating to self-defense. Because the plain language of the statute does not expressly impose such a duty, Schuster must demonstrate that the duty arises from some other source. Schuster fails in his attempt to find such a duty within the role of the grand jury.

2. *Role of the Grand Jury*

The role of the grand jury is purely investigatory and accusatory. The grand jury's primary, historical function is to review all evidence and then determine if there is probable cause to believe that the accused has committed a crime.<sup>9</sup> The full presentation, explanation, and credibility of evidence are all functions reserved to the adversarial process of trial.<sup>10</sup>

Thus, requiring the State to provide the grand jury with the law relating to self-defense is not consistent with the traditional investigative, accusatory role of a grand jury. Therefore, Schuster fails to provide any source from which a duty arises for the State to instruct the grand jury on the law of self-defense. Nonetheless, Schuster may present this type of legal explanation at trial.

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<sup>3</sup> NEV. REV. STAT. § 172.145(2) (2005) states that the State has the duty to present to the grand jury all known exculpatory evidence. Exculpatory evidence is evidence that explains away the crime with which the defendant is accused. *King v. State*, 998 P.2d 1172, 1178 (Nev. 2000); *see* NEV. REV. STAT. § 172.145 (2005).

<sup>4</sup> *See* *Wilson v. State*, 114 P.3d 285, 293 (Nev. 2005) (stating that a statute should be interpreted to avoid absurd results); *Hunt v. Warden*, 903 P.2d 826, 827 (Nev. 1995).

<sup>5</sup> Statutory construction is a question of law, and as such, the district court's decision shall be reviewed *de novo*, with no deference to the district court. *Walker v. Dist. Ct.*, 101 P.3d 787, 790 (Nev. 2004).

<sup>6</sup> *Moore v. State*, 27 P.3d 447, 449 (Nev. 2001).

<sup>7</sup> *Speer v. State*, 5 P.3d 1063, 1064 (Nev. 2000) (quoting *Anthony Lee R. v. State*, 952 P.2d 1, 6 (Nev. 1997)).

<sup>8</sup> *Bergna v. State*, 102 P.3d 549, 551 (Nev. 2004).

<sup>9</sup> *United States v. Williams*, 504 U.S. 36, 51 (1992); *Sheriff v. Bright*, 835 P.2d 782, 784 (Nev. 1992).

<sup>10</sup> However, if the grand jury asks for advice, the prosecutor is authorized to explain matters of law. *Sheriff v. Keeney*, 791 P.2d 55, 58 (Nev. 1990).

## **Conclusion**

Although the State is required to present exculpatory evidence to the grand jury, it does not have the concomitant duty to instruct the jury on the law of self-defense because the relevant statute does not impose such a duty, and the grand jury's primary, traditional role is that of an investigatory, and not of an adjudicatory, body. Further, Schuster failed to present any Nevada law, or federal constitutional law,<sup>11</sup> relating to grand juries suggesting the State has such a duty. Accordingly, petitioner's writ of mandamus or prohibition was denied.

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<sup>11</sup> See U.S. Const. amend. V; Nev. Const. art. 1, § 8.