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Martinez Guzman (Wilber) v. Dist. Ct. (State), 137 Nev. Adv. Op. 61 (Sep. 30, 2021).

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Martinez Guzman (Wilber) v. Dist. Ct. (State), 137 Nev. Adv. Op. 61 (Sep. 30, 2021)[1]

NO PLACE LIKE HOME: CLARIFYING ACTS, INTENT, AND INTERCOUNTY VENUE

Summary

Martinez Guzman was indicted by a grand jury for five burglaries and four murders occurring in two counties. In *Martinez Guzman I*, the Nevada Supreme Court vacated an order denying dismissal for improper jurisdiction and remanded for reconsideration. There, the court held that territorial jurisdiction depends on whether the necessary statutory connections to the location of the court exist.[2] Here, the court again granted a writ of mandamus for Martinez Guzman. Because the court concluded the nexus between acts committed in one county were not sufficiently connected to offenses occurring in another, it considered the district court's venue determination to be a manifest abuse of discretion. The Nevada Supreme Court thus ordered that the alleged Douglas County crimes charged in Washoe County must be dismissed.

Background

Martinez Guzman was charged with five burglaries and four murders at three homes over two weeks. He stole twice from outbuildings at the David home in Washoe County. There, he took a revolver and ammunition. Within the week, he used that gun to kill Constance Koontz and Sophia Renken and burglarize their residences in Douglas County. He then returned to the David home, burglarizing it and killing Gerald and Sharon David. Four days later, Martinez Guzman was arrested. He confessed to committing the crimes after he had observed the homes as a landscaper. He told police he drove the same car to each of the properties; in the car, police discovered a revolver, ammunition, a name tag from the David home, and a pendant and document from the Koontz home.

A grand jury in Washoe County indicted Martinez Guzman for ten felonies. But Martinez Guzman argued that under state statute, the grand jury did not have jurisdiction to indict him for the Douglas County charges.[3] The district court determined that the court's territorial jurisdiction extended statewide and denied the motion to dismiss.[4] The Nevada Supreme Court granted the defendant's writ of mandamus, vacated the district court's order, and remanded the case for the lower court to determine whether venue would be proper in Washoe County for the Douglas County charges based on a sufficient connection between the acts and offenses.[5]

At the rehearing, Martinez Guzman argued that proper venue was not established under the two relevant state statutes. The state argued that venue was supported by those statutes and others. Again, the district court concluded that Washoe County was an appropriate venue for all charges

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[1] By Alyssa Williams.
[2] Martinez Guzman v. Second Judicial Dis. Court (Martinez Guzman I), 136 Nev. 103, 109–10, 460 P.3d 443, 449 (2020).
[3] *See* NEV. REV. STAT. § 172.105 (allowing grand juries to "inquire into all public offenses triable in the district court or in a Justice Court, committed within the territorial jurisdiction of the district court for which it is impaneled").
[4] *Martinez Guzman I*, 136 Nev. at 105, 460 P.3d at 446.
[5] *Id.* at 104, 460 P.3d at 445.

and denied the defendant's motion to dismiss. Martinez Guzman then petitioned the Nevada Supreme Court for a writ of mandamus on the ground that the district court's venue determination was a manifest abuse of its discretion.

Discussion

As an initial matter, the court noted that mandamus was proper to address the salient, disputed issue of what is the sufficient connection between where a crime is committed and where it is charged that must exist to make venue proper.

Neither the formation of intent or preparatory acts standing alone provide a basis for venue

NRS 171.030 provides that when a crime "or the acts or effects thereof constituting or requisite to the consummation" of the crime occur in more than one county, either is an appropriate venue.[6] The state argued that venue was proper because intent was necessary to commit the Douglas County crimes and it could have been formed in Washoe County. But the court found that assuming an element of the crime is an "act or effect" would conflate *actus reus* and *mens rea*. Based on statutory interpretation, the court held that intent is not an "act" and is thus an insufficient statutory basis for venue, unless accompanied by an action furthering that intent.

The court then addressed an issue of first impression: whether alleged preparatory acts for an offense are actions "requisite to the consummation" of that charge.[7] The state argued, and the court rejected, that obtaining the gun in Washoe County predicated the burglaries and murders in Douglas County. The court referenced analogous state statutes to interpret "preparatory acts" under NRS 171.030. California courts have held that its nearly identical statute[8] allows venue based on either preparatory acts or the effects of preparatory acts.[9] Other jurisdictions, however, have ruled that even if a crime could not be committed without certain actions, purely preparatory acts are an insufficient basis for venue.[10] Here, the court determined that venue in Nevada cannot lay upon preparatory acts without evidence to show those actions intended to further the charged offense.

Evidence presented to the grand jury was insufficient to support venue

Next, the court applied the rule to the facts. That is, the court evaluated whether evidence of a preparatory act in Washoe County plus intent for committing the Douglas County crimes was presented to the grand jury. The state relied on *Walker v. State* to argue that venue was proper

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[6] NEV. REV. STAT. § 171.030.

[7] *Id.*

[8] *Compare* Cal. Penal Code § 781 (West 2020), *with* NEV. REV. STAT. § 171.030; *see also* People v. Britt, 87 P.3d 812, 818 (Cal. 2004), *disapproved on other grounds by* People v. Correa, 278 P.3d 809 (Cal. 2012) (holding that § 781 is a venue statute despite speaking in terms of jurisdiction).

[9] People v. Simon, 25 P.3d 598, 617 (Cal. 2001) (allowing venue in the county where a gun was obtained when the defendant committed murder in another county); People v. Posey, 82 P.3d 755, 773 (Cal. 2004) (permitting venue in a county where a person received a call regarding a crime when the defendant placed it outside of the county).

[10] *E.g.*, State v. Preite, 564 P.2d 598, 601 (Mont. 1977) (holding that preparatory acts that are not essentials of the crime provide no basis for venue); Crittendon v. State, 388 So. 2d 1088, 1090 (Fla. Dist. Ct. App. 1976) (finding that preparation is not an elemental act "constituting or requisite to the commission" to a crime, even if those actions are necessary to commit that crime).

because intent could have been formed in either county.[11] The *Walker* court held that because it was not possible to provide evidence as to precisely where a crime was committed, venue was valid in a county where a preparatory or requisite act could have occurred.[12]

Here, however, the court concluded the evidence supported the intention to steal from the Douglas County homes preceded procuring the revolver in Washoe County. The court could not point to evidence that Martinez Guzman sought to steal the gun specifically—let alone took it in preparation for the subsequent burglaries and murders. The court noted that actions which *may* have been preparatory are distinct from preparatory acts occurring and giving rise to venue in one county for a crime entirely committed in another. Therefore, the court found that not only was the state's theory too speculative but that the evidence did not support venue.

Venue must be supported by evidence that proves more than mere possibilities

NRS 171.060 allows for a county to charge burglary when property is brought there after being taken from a different county during a burglary.[13] The district court agreed with the state's argument that venue was proper under this statute because items from the Koontz home were inside of Martinez Guzman's car. The Nevada Supreme Court, however, found that the district court manifestly abused its discretion because the statute only applied to the Koontz burglary and was still an inappropriate basis for venue. The court concluded that the grand jury was presented with only the mere possibility that the property was in the vehicle when Martinez Guzman traveled from Douglas County to Washoe County. Because the state did not show proof by a preponderance of the evidence, the court determined that venue was inappropriate under NRS 171.060.

Intercounty venue is distinct from interstate jurisdiction and joinder

Lastly, the court concluded intercounty venue cannot rest upon NRS 171.020 or NRS 173.115(1). NRS 171.020 provides that if an act that executes an intent to commit or results in the commission of a crime occurs within the state, Nevada is a proper venue.[14] NRS 173.115(1) allows the joinder of multiple offenses based on "the same act or transaction" or acts that constitute "a common scheme or plan."[15] The court found that the former applies to interstate jurisdiction and the latter does not concern venue at all. Thus, the district court erred in considering these statutes in addition to those that govern intercounty venue—NRS 171.030 and NRS 171.060.

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[11] 78 Nev. 463, 376 P.2d 137 (1962).

[12] *Id.* at 470–71, 376 P.2d at 140–41. In Walker, the state could not produce evidence to show exactly where a murder occurred but noted that the hitchhiker must have killed the driver after being picked up in Elko and before arriving in Reno.

[13] NEV. REV. STAT. § 171.060.

[14] *Id.* § 171.020.

[15] *Id.* § 172.115(1).

Conclusion

The court declined to extend the bounds of venue's pliancy,[16] deciding that neither intent nor a preparatory act alone is a sufficient basis for venue. But if a preponderance of the evidence shows intent coupled with an act, venue may be proper. However, it is not enough to present evidence that allows the grand jury to merely speculate that intent could have formed in the county claiming venue.

Dissent

According to the dissent authored by Justice Pickering, almost all courts, including the Nevada Supreme Court, agree that alleged criminal acts provide the "necessary connection" to establish proper venue.[17] Justice Pickering found that the evidence presented here showed the nexus between the acts committed in Washoe County and the offenses occurring in a Douglas County.

Because Nevada and California have nearly identical intercounty venue statutes, Justice Pickering would interpret § 171.030 in accordance with § 781.[18] California courts have held that venue is permitted in a county where only preparatory acts have occurred and the acts need not constitute an offense element.[19] That is, venue is proper if a jury can reasonably infer from the facts that acts committed in one county were likely preparation for the crime committed in another.[20] The dissent's rule differed from the majority opinion by finding that a sufficient connection between the forum county and the defendant's offense related acts, standing alone, may satisfy Nevada state statute.[21]

Justice Pickering also asserted that the majority's factual inquiry of intent posed a substantive question for the jury that belied Nevada law.[22] Rather, he saw the absence of an intent requirement as a clear implication that the legislature intended for the statute to enable venue within multiple counties.[23] The justice pointed out that Martinez Guzman confessed to using the revolver he stole in Washoe County to commit the burglaries and murders in Douglas County.

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[16] *See* Zebe v. State, 112 Nev. 1482, 1484, 1484–85, 929 P.2d 927, 929 (1996) ("[E]ach county will have independent jurisdiction over a criminal offender for conduct occurring in that county.").
[17] Martinez Guzman v. Second Judicial Dis. Court (Martinez Guzman I), 136 Nev. 103, 109–10, 460 P.3d 443, 449 (2020).
[18] *Supra* note 8.
[19] *Supra* note 9; *see also* People v. Thomas, 274 P.3d 1170, 1175 (Cal. 2012).
[20] People v. Price, 821 P.2d 610, 640 (Cal. 1991).
[21] Justice Pickering additionally noted that jurisdictions following the majority approach (i.e., requiring proof of an act and intention to further the offense to lay venue in the proposed forum) have constitutional guarantees limiting criminal venue, whereas California and Nevada do not. *See* People v. Posey, 82 P.3d 755, 765 (Cal. 2004); Walker v. State, 78 Nev. 463, 472, 376 P.2d 137, 141 (1962).
[22] *Compare* Valdez v. State, 124 Nev. 1172, 1197, 196 P.3d 465, 481 (2008) (holding that the jury must determine whether a defendant had the requisite intent to commit an offense), *with Martinez Guzman I*, 136 Nev. at 11, 460 P.3d at 450 (finding that venue is a question of law for the court).
[23] Compare with its sister statute NEV. REV. STAT. § 171.020 ("Whenever a person, with intent to commit a crime, does any act within this State in execution or part execution of such intent, which culminates in the commission of a crime, either within or without this State, such a person is punishable for such crime in this State . . . .").

Because he found that such evidence formed a sufficient connection to the proposed forum, the justice saw no legal or practical demand split the charges into two trials in two counties.

Finally, Justice Pickering concluded that venue was proper even under the majority's interpretation of NRS 171.030. The state must prove venue by preponderance of the evidence,[24] meaning evidence that suggests the existence of the contested fact is more likely than its nonexistence.[25] Martinez Guzman twice stole from the David home in Washoe County without entering the primary residence and without a weapon. Only after he took the revolver from there did he burglarize residences and murder occupants in Douglas County. Justice Pickering believed a reasonable jury could find it was more likely than not that the Washoe County acts were intended to commit the Douglas County offenses. Thus, the justice found sufficient evidence was presented to the grand jury and venue was proper in Washoe County under this statute.

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[24] McNamara v. State, 132 Nev. 606, 615–16, 377 P.3d 106, 113 (2016).

[25] Abbott v. State, 122 Nev. 715, 734, 138 P.3d 462, 475 (2006).