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9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11
12 STATE OF NEVADA,
13 Plaintiff,
14 vs.
15 JESSE REED LAW,
16 Defendant.

Case No. C-23-379122-3
Dept. No. XVIII

17
18 **OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

19 AARON D. FORD, Attorney General for the State of Nevada, by and through Chief Deputy
20 Attorney General, ALISSA C. ENGLER, in the name and by the authority of the State of Nevada, hereby
21 files this OPPOSITION TO DEFENDANTS' MOTION TO DISMISS. The State makes and bases this
22 Opposition upon the pleadings and papers on file, the following Memorandum of Points and Authorities,
23 and any oral argument at hearing permitted by the Court.

24 DATED this 8th day of February, 2024.

25 Submitted by:
AARON D. FORD
26 Attorney General

27 By: /s/ Alissa Engler
ALISSA ENGLER (Bar No. 11940)
28 Chief Deputy Attorney General

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. PROCEDURAL HISTORY**

3 On December 6, 2023, Defendants, Michael J. McDonald, (hereinafter “MCDONALD”), James
4 Walter DeGraffenreid III, (hereinafter “DEGRAFFENREID”), Jesse Reed Law, (hereinafter “LAW”),
5 Duward James Hindle III, (hereinafter “HINDLE”), Shawn Michael Meehan, (hereinafter “MEEHAN”),
6 and Eileen A. Rice, (hereinafter “RICE”), collectively referred to throughout as (“DEFENDANTS”)
7 were charged by way of Indictment with the following: one (1) count of Offering False Instrument For
8 Filing Or Record, a category “C” Felony in violation of NRS 239.330 and one (1) count of Uttering
9 Forged Instruments: Forgery, a category “D” Felony in violation of NRS 205.110. On December 18,
10 2023, Defendants pleaded not guilty and waived their right to a speedy trial within sixty (60) days.
11 Calendar Call is set for March 4, 2023, and Jury Trial is scheduled to commence on March 11, 2023.

12 On January 29, 2023, Defendant Rice filed a Motion to Dismiss on January 29, 2024, which all
13 other Defendants joined in separate filings. The State responds as follows.

14 **II. FACTUAL HISTORY**

15 Around November 10, 2020, James Troupis contacted Kenneth Chesebro and asked that he do
16 some legal work related to election challenges in Wisconsin. *GJT Vol 2 at 26:11 – 27:18*. Subsequently,
17 Chesebro drafted a series of memoranda in connection with his work and on behalf of the Trump 2020
18 campaign. *GJT Vol 2 at 27:19-23*. In a November 18, 2020, memorandum, Chesebro suggested that in
19 order to have votes counted for Donald Trump, in the event the Wisconsin election litigation were
20 resolved in Trump’s favor, Trump electors would have to cast ballots by December 14, 2020, in order to
21 comply with federal statutory requirements. *GJT Vol 2 at 28:13 – 29:15*.

22 Subsequently, Chesebro drafted a memo describing the requirements under various federal and
23 state laws, that would have to be observed by Trump electors from states with ongoing litigation. *GJT*
24 *Vol 2 at 30:1 – 31:15*. Eventually, Chesebro, at the request of then Trump 2020 deputy campaign manager
25 Justin Clark, drafted voting documents based on those used in Wisconsin, for electors in other states to
26 review and adapt for use in the electors’ respective states. *GJT Vol 2 at 32:10 – 33:13*. On December
27 10 and 11, 2020, Chesebro forwarded those draft documents to Defendants DeGraffenreid, McDonald,
28 and Law. *GJT Vol 2 at 33:14-21, 34:13 – 35:3, GJ Exhibit 27*. The documents Chesebro provided to

1 Defendants DeGraffenreid, McDonald and Law consisted of a memorandum, and drafts of ballots,
2 certificate announcing result of voting for president and vice president, and a cover letter to be provided
3 with the executed certificates. *GJT Vol 2 at 35:4-20*.

4 Chesebro asked Defendant DeGraffenreid whether there was litigation pending in Nevada
5 connected to the election, but he did not receive a response. *GJT Vol 2 at 35:21 – 36:4*. Chesebro’s view
6 was that the existence of pending litigation was the only reason to cast alternate elector votes. *GJT Vol*
7 *2 at 36:5-15*. After Chesebro sent the draft documents, Defendant DeGraffenreid circulated the
8 documents for editing to Defendants McDonald, Law, Meehan, Hindle and Rice via e-mail, with the final
9 edits made on December 13, 2020. *GJ Exhibit 28*. The Documents were titled “CERTIFICATE OF THE
10 VOTES OF THE 2020 ELECTORS FROM NEVADA,” wherein the Defendants declare themselves “the
11 duly elected and qualified Electors for President and Vice President of the United States of America from
12 the State of Nevada.” *GJ Exhibit 4 and Exhibit 6A*. Throughout the dates of December 9 through the
13 afternoon of December 13, 2020, Defendant McDonald was physically located in Clark County, Nevada
14 and made numerous phone calls to co-defendants DeGraffenreid and Law. *Opposition Exhibit 1*
15 *(McDonald phone records)*. Similarly, Law was in Clark County December 9 through December 10, and
16 during that interval made several phone calls to co-Defendant McDonald. *Opposition Exhibit 2 (Law*
17 *phone records)*. These phone calls were interspersed during the timeframe in which the co-Defendants
18 were also exchanging emails with proposed draft language and revisions of the false or forged documents
19 they eventually offered for filing and uttered. *Opposition Exhibits 1 and 2, GJ Exhibit 28*.

20 Despite the denial of their election contest by the Nevada Supreme Court, the Defendants, who
21 reside in several locations throughout Nevada, including Las Vegas and Henderson, met in Carson City,
22 Nevada, on December 14, 2020, to execute the documents. *GJ Exhibits 6A, 13-18*. Defendant Law
23 printed and provided copies of the documents to Defendants McDonald, DeGraffenreid, Meehan, Hindle
24 and Rice. *GJ Exhibit 28*. The Defendants signed and executed the documents. *GJ Exhibit 29*.

25 The Defendants broadcast the vote nationally via Right Side Broadcasting, which posted the video
26 on Facebook and other social media platforms. *GJ Exhibit 6A; GJT Vol 2 at 9:4-16*. In response to a
27 subpoena, Right Side Broadcasting produced two videos, one edited version totaling 38 minutes, 46
28 second in length, and one raw footage that was a little over an hour in length, which depicted “the six

1 Nevada Republican nominee electors executing their ballots for the Electoral College election of the U.S
2 president and vice president,” in Carson City on December 14, 2020. See *GJT Vol 2 at 9:4-10:25*.
3 Defendants were identified as the individuals depicted in the video by comparing the individuals in the
4 Right-Side Broadcasting video to the certified copies of the Defendants Nevada Driver’s License records.
5 *GJT Vol 2 at 9:1-3, 12:4-13:1; GJ Exhibits 7-18*.

6 Following the meeting, Defendant DeGraffenreid mailed the completed documents from Minden,
7 Nevada, with a return mailing address of Michael J. McDonald, Nevada Republican Party at 840 S.
8 Rancho Dr. 4-800, Las Vegas Nevada 89106. See *GJ Exhibit 4, Exhibit 21 and Exhibit 29; GJT Vol 1 at*
9 *26:4-21*. The four mailings were paid for at the same time by the same person with one payment method,
10 all payments processed on December 14, 2020, at exactly 4:16:02 PM. See *GJT Vol 3 at 23; Exhibit 21*.
11 They were postmarked December 14, 2020. *GJT Vol 1 at 26:4-21; GJ Exhibit 21*.

12 The documents purporting to cast Nevada’s electoral votes for Donald J. Trump and Michael R.
13 Pence were sent to following locations by Defendants: (1) Archivist of the United States, 700
14 Pennsylvania Avenue NW, Washington D.C., 20408; (2) President of the Senate, United States Senate,
15 Washington D.C. 20510; (3) Secretary of State, State of Nevada, 101 N. Carson St., Suite 3, Carson City,
16 Nevada 89701; and (4) Honorable Miranda M. Du, Chief Judge, U.S. District Court, District of Nevada,
17 Lloyd D. George Courthouse, 333 Las Vegas Blvd South, Las Vegas, N.V. 89101. *GJ Exhibit 4, 20, 21*
18 *and 29; GJT Vol 1 at 26:4-21*.

19 On December 15, 2020, the Nevada Secretary of State received the forged electoral votes sent by
20 Defendants. *GJ Exhibit 21; GJT 89-94*. After consulting with the Secretary of State, who was in Las
21 Vegas, Mr. Wlaschin returned the documents to sender, along with a letter that stated the following:

22 “Enclosed please find documents received December 15, 2020 purporting to be votes of
23 the Nevada Electors in the December 14, 2020 vote of the Electoral College. Please be
24 advised that on December 14, 2020, the lawful Nevada Electors who were identified on
25 the official Certificate of Ascertainment cast their ballots for President of the United States
and Vice-president of the United States pursuant to federal and state law in a meeting
conducted by the Nevada Secretary of State.

26 Nevada law requires that all electors cast their ballots for the winner of the popular votes
27 in Nevada. As such the lawful electors cast their ballots for Joseph R. Biden for President
of the United States and for Kamala D. Harris for Vice-President of the United

1 States, in accordance with Nevada Law and the results of the 2020 General Election as
2 certified by the Nevada Supreme Court on November 24, 2020.

3 We are returning these documents as they do not meet the statutory requirement for filing
4 with our office.”

5 *GJ Exhibit 24, GJT Vol 3 at 93:20-94:15.*

6 On December 16, 2020, the U.S. District Court in Las Vegas received the forged electoral votes
7 sent by Defendants. *See Exhibit 21.* On December 21, 2020, the President of the United States Senate
8 received the forged electoral votes sent by Defendants. *GJ Exhibit 20 and 21; GJT Vol 3 at 53.* On
9 December 22, 2020, the National Archives received the forged electoral votes for Donald Trump and
10 Mike Pence, for President and Vice President. *GJT Vol 1 at 21:19 – 22:12. Grand Jury Exhibit 4.* These
11 appeared to be signed by Michael McDonald, James DeGraffenreid, Durward James Hindle III, Jesse
12 Law, Shawn Meehan, and Eileen Rice. *GJT Vol 1 at 24:8-14, 25:24.* These documents stated the
13 signatories were, “the duly elected and qualified Electors for President and Vice President of the United
14 States of America from the State of Nevada.” *GJT Vol 1 at 24:22 – 25:2, 25:9-14.*

15 **III. LEGAL ARGUMENT**

16 Defendants allege throughout their Motion to Dismiss that “because the alleged offense here
17 occurred in either Carson City (where the documents were executed) or in Douglas County (where the
18 documents were mailed), the offenses are triable only within one of those two judicial districts pursuant
19 to Nevada’s venue statute.” *See Motion to Dismiss, pg. 5.* Defendants further argue, “the grand jury that
20 heard the evidence and returned a true bill in this case is empaneled by the Eighth Judicial District Court
21 and can only hear cases triable within Clark County. *Id.* For reasons set forth below, this Court should
22 deny Defendants’ Motion to Dismiss.

23 **A. The Grand Jury empaneled in Clark County, Nevada had jurisdiction to return** 24 **a true bill.**

25 Under NRS 172.105, “The grand jury may inquire into all public offenses triable in the district
26 court or in a Justice Court, committed within the territorial jurisdiction of the district court for which it
27 is impaneled.” “Territorial jurisdiction” under NRS 172.105 is tied to our existing statutes governing the
28 proper court where a criminal case may be pursued, and thus the statute empowers a grand jury to inquire
into an offense so long as the district court that empaneled the grand jury may appropriately adjudicate

1 the defendant's guilt for that offense. *Martinez Guzman vs. Second Judicial Dist. Ct.*, 136 Nev. 103, 104,
2 460 P.3d 443, 445 (2020).

3 Pursuant to NRS 171.030, “When a public offense is committed in part in one county and in part
4 in another or the acts of effects thereof constituting or requisite to the consummation of the offense occur
5 in two or more counties, **the venue is in either county.**” (**Emphasis added.**) Venue does not involve an
6 element of the crime or relate to guilt or innocence; the State need only prove venue by a preponderance
7 of the evidence. *McNamara v. State*, 132 Nev. 606, 615-616, 377 P.3d 106, 113 (2016). Venue may be
8 established by circumstantial evidence. *James v. State*, 105 Nev. 873, 875, 784 P.2d 965, 967 (1989).
9 “Where there is evidence of a preparatory act plus intent in that county, an act requisite to the
10 consummation of the charged offense occurred there, and a grand jury may indict a defendant of that
11 offense.” *Martinez Guzman* at 605, 577.

12 In the instant case, Venue is proper in several counties of the state, including Clark County. The
13 state has alleged as to Count II, that the Defendants “uttered, offered, disposed of or put off as true a
14 forged writing, instrument or other thing titled, “CERTIFICATE OF THE VOTES OF THE 2020
15 ELECTORS FROM NEVADA” to the President of the United States..., with the intent to defraud.”
16 Therefore, the Defendants suggestion that the acts were completed once they dropped the envelopes into
17 the mail in Minden, is simply not true because the charges under NRS 239.300 and NRS 205.110 both
18 require that a false or forged instrument be offered or uttered, respectively—in other words, that they be
19 delivered to the recipients’ defendants addressed them to.

20 Additionally, the State has alleged these crimes were committed as a conspiracy, and venue is
21 proper wherever some portions of the conspiracy occurred. Defendants McDonald and Law, both Clark
22 County residents, were participating in the drafting and revision process of the false or forged
23 instruments. Circumstantial evidence was presented to the Grand Jury tending to prove that they were in
24 Clark County when they did those acts because they reside in Las Vegas and Henderson, respectively.

25 ///

26 On December 8, 2020, the Nevada Supreme Court ruled against Defendants and determined,
27 finally, that Joseph R. Biden had won the Presidential Election in Nevada. Once that ruling was issued,
28 Defendants undeniably had knowledge that they were not the presidential electors for Nevada. Still, in

1 the days following the Nevada Supreme Court’s ruling, Defendants took steps to draft, revise and execute
2 an instrument claiming the contrary to be true—that Donald Trump had won the election, and that they
3 were therefore the presidential electors for Nevada. These actions, taken after the ruling of the Nevada
4 Supreme Court, evidence Defendants’ intent to commit the crimes alleged. And they are also “preparatory
5 acts” that, when combined with said intent, satisfy the *Martinez Guzman* definition for “acts” under NRS
6 171.030. Additionally, the phone records attached to this Opposition prove that McDonald and Law
7 participated in the conspiracy during the relevant dates of December 9, 2020, through December 13,
8 2020, while they were in Clark County. Thus, jurisdiction was proper in Clark County.

9 **B. Venue is proper in Clark County.**

10 “When a public offense is committed in part in one county and in part in another or the acts or
11 effects thereof constituting or requisite to the consummation of the offense occur in two or more counties,
12 the venue is in either county.” NRS 171.030

13 The actions of Defendants began variously in Clark, Douglas, and Storey Counties, when the
14 Defendants began a conspiracy and started planning their crimes by drafting and revising the false or
15 forged instruments they later printed, executed, offered for filing, and uttered. They continued in Washoe
16 County, where Defendant Law printed the instruments, then to Carson City where all Defendants met to
17 execute the instruments, before returning to Douglas County, where, by use of the U.S. Mail, Defendant
18 DeGraffenreid mailed the instruments, before finally concluding in Washington D.C., Carson City, and
19 Clark County, where the instruments were delivered by the U.S. Mail and thereby offered for filing and
20 uttered.

21 Venue is proper in Clark County under at least three theories: (1) the acts constituting the crime
22 occurred in more than one county, of which one was Clark County; (2) preparatory acts occurred and
23 intent was formed in Clark County; and (3) some of the effects of the acts of Defendant which constitute
24 or are requisite to the consummation of these offenses occurred in Clark County.

25 The result in any case is the same: venue is proper in Clark County.

- 26 1. These Crimes were Committed in Multiple Counties and Venue is Proper in
27 any of them.

28 In *Walker v. State*, the Nevada Supreme Court considered these facts: Walker was hitchhiking

1 near Elko, was picked up, and at some point along the route from Elko to Reno, killed the person who
2 had picked him up. The Nevada Supreme Court held:

3 “With the uncertainty existing in this case, resulting from the finding of the body in
4 Washoe County as well as the pawning of the victim's jewelry therein, the jury could have
5 determined that the homicide took place in Washoe County as alleged. Even if it
6 determined that the acts resulting in the death were committed in part in one county, and
7 in part in another, or in two or more counties, of which Washoe County was one, then,
8 under NRS 171.030, venue was properly laid in Washoe County. The killing was
9 admittedly committed by appellant, and ‘the acts or effects thereof constituting or requisite
10 to the consummation of the offense’ could have occurred in two or more counties, one of
11 which was Washoe County.

12 Under the present state of our statutory law, with the evidence which developed in this
13 case known to the prosecuting attorney at the time the information was filed, it would
14 have been impossible for him to allege with any degree of certainty that the offense took
15 place in any specific county, and he would be faced with the same dilemma if the judgment
16 is reversed and the case remanded for a new trial.”

17 78 Nev. 463, 472, 376 P.2d 137, 141 (1962). Similarly here, the State could have correctly elected to file
18 in numerous judicial districts, no one county contained the entirety of the preparing, conspiring,
19 execution, and consummation of the crime.

20 NRS 171.015 deals with crimes in which the actions of defendants occur outside the state, but the
21 effects are directed into Nevada: “If the defendant consummated it in this State, through the intervention
22 of an innocent or guilty agent, or any other means proceeding directly from the defendant, in such case
23 the jurisdiction is in the county in which the offense is consummated.” While this statute is not directly
24 applicable to this matter, the statute is nonetheless instructive. The actions of Defendants herein, using
25 an innocent agent, took place, in part, in Clark County. Defendants engaged in the U.S. Mail to cause a
26 delivery in Clark County.¹ These actions must be understood to have “proceed[ed] directly from the
27 defendant[s.]”

28 The crimes alleged herein have been committed in multiple counties, of which, Clark County is

29 ¹ Defendants appear to downplay this fact, characterizing it as a “mistake” because the chambers for the Chief Judge of the
30 District of Nevada—Hon. Miranda Du—are in Reno. Motion to Dismiss at 7. But assuming Judge Du was located in Reno,
31 that does not change the fact that the Defendants “offered” and “uttered” the false and forged documents by mailing them to
32 Judge Du at the Las Vegas courthouse. And that fact means “acts or effects” of the charged offenses were consummated in
33 Clark County. But even if Judge Du’s location in Reno were relevant, by the same logic it would then be relevant that Nevada
34 Secretary of State Barbara Cegavske was in Las Vegas when she was informed about the documents that Defendants had sent
35 to the Secretary of State’s Carson City office. So, the result ends up the same if this Court considers venue to be controlled by
36 where the intended recipient was actually located, rather than where the Defendants mailed the documents—either way “acts
37 or effects” of the offense were still consummated in Clark County, making the Eighth Judicial District Court a proper venue
38 under NRS 171.030. *GJT Vol 3 at 89:24-90:1, 91:5-6.*

1 one. Venue in the Eighth Judicial District is therefore correct.

2 2. Defendants Committed Preparatory Acts While Having the Intent to Commit
3 These Crimes, in Clark County.

4 Venue is appropriate in Clark County for all Defendants, notwithstanding that only some of the
5 Defendants committed acts in Clark County. As outlined in *State v. Wilcox*, 105 Nev. 434, 436, 776 P.2d
6 549, 550 (1989), "[a]lthough respondent may not have committed any acts in Nevada in furtherance of
7 the conspiracy, he became subject to prosecution in this state when his co-conspirators carried out their
8 criminal design in Nevada." The facts of *Wilcox* are:

9 "Ralph Wilcox, was charged by information with one count of conspiracy to cheat at
10 gambling. Thereafter, respondent filed a motion in the district court to dismiss the
11 information for lack of jurisdiction. He contended that the crime of conspiracy was
12 completed in Arizona, where the agreement was made, and that only Arizona could
13 prosecute the crime. The district court agreed with this contention, and granted the motion
14 to dismiss.

15 Appellant, the State of Nevada, contends that Nevada has jurisdiction to prosecute
16 respondent for a conspiracy conceived in Arizona, where other members of the conspiracy
17 performed acts in Nevada in furtherance of the conspiracy. We agree.

18 [. . .]

19 Although [Wilcox] may not have committed any acts in Nevada in furtherance of the
20 conspiracy, he became subject to prosecution in this state when his co-conspirators carried
21 out their criminal design in Nevada."

22 *Id.* at 435, at 549-50.

23 The evidence adduced before the grand jury and attached to this Opposition illustrates that at least
24 two of the defendants—McDonald and Law—were physically present in Clark County during the time
25 after the Nevada Supreme Court affirmed the dismissal of their election contest, and before they traveled
26 to Carson City to execute their false and forged instruments. During the interval from late December 8,
27 2020, through the morning and early afternoon of December 13, 2020, Defendant McDonald made
28 numerous phone calls to his co-Defendants. During this same time period, Defendants were exchanging
emails with Kenneth Chesebro, and among themselves, drafting and revising the documents they would
eventually execute in a "unofficial ceremony" outside the Legislature in Carson City.

Additionally, during the interval between December 9 and December 10, 2020, Defendant Law
was in Clark County, and made numerous phone calls to his co-Defendant McDonald. Defendants had

1 the requisite intent to commit these crimes while in Clark County because as alleged in the Indictment,
2 these crimes were committed pursuant to a conspiracy. Defendants McDonald and Law committed acts
3 in Clark County to accomplish the goals of the conspiracy, and, as outlined above, some of the effects
4 necessary to the consummation of these crimes happened in Clark County. All Defendants joined the
5 conspiracy to commit offering a false instrument for filing or record and uttering a forged instrument,
6 and therefore, all Defendants are required to stand trial in any venue where some portion of the acts or
7 effects requisite to the crime occurred.

8 Moreover, as to intent, after the Nevada Supreme Court affirmed the District Court's ruling in a
9 December 8, 2020, opinion, Defendants knew that they were not the duly-qualified electors from Nevada.
10 When they prepared, executed, uttered and offered false or forged instruments stating that they were
11 Nevada's electors, they evidenced an intent to defraud the recipients of those instruments. "Where one
12 in possession of a forged instrument seeks to pass it, it is permissible to infer, for the purpose of
13 establishing probable cause, that he or she acted with the fraudulent intent necessary to support a charge
14 of forgery." *Patin v. Sheriff*, 92 Nev. 673, 675 (1976). All of this is significant circumstantial evidence
15 that preparatory acts and intent existed simultaneously in no less than two Defendants physically present
16 in Clark County in the days leading up to December 14, 2020. The State has proven venue is appropriate
17 in Clark County, and this matter should proceed to trial in the Eighth Judicial District Court accordingly.

18 3. Venue is Proper in Clark County Because "the acts or effects thereof
19 constituting or requisite to the consummation of the offense" Occurred in
20 Clark County

21 As discussed throughout, under NRS 171.030, "When a public offense is committed in part in
22 one county and in part in another or the acts of effects thereof constituting or requisite to the
23 consummation of the offense occur in two or more counties, the venue is in either county." Tellingly,
24 Defendants refer only to their overt acts—and at that, only portions of them—throughout the Motion
25 Dismiss, and do not mention that the effects of their actions, the necessary consummation of the offense,
undeniably occurred in Clark County.

26 Defendants suggest that once they dropped the envelopes into the mail in Minden, Nevada, the
27 crime—if any—was complete. This is simply not true—as pleaded in the Indictment herein, the charges
28 under NRS 239.300 and NRS 205.110 both require that a false or forged instrument be offered or uttered,

1 respectively—in other words, that they be delivered to the recipients’ defendants addressed them to.²

2 “[I]f the perjurious act be deemed to have been committed partly in Bronx County, in which the
3 oath was administered, and partly in Westchester County, in which the perjurious instrument was
4 delivered and uttered, the jurisdiction is in either County.” *People v. Gould*, 246 N.Y.S.2d 758 (County
5 Court, Westchester County, NY) (1964). Here, similarly, the crime is not complete until the false or
6 forged instruments were rendered to the locations at which they were offered and uttered. As such,
7 because the false or forged instruments were delivered to Chief Judge Du at the Lloyd D. George
8 Courthouse, 333 South Las Vegas Boulevard—a location in Clark County—“acts or effects . . . requisite
9 to the consummation of the offense” occurred in Clark County, and venue is therefore proper in the
10 Eighth Judicial District Court.

11 Consider the classic law school hypothetical: a person stands in California and shoots a gun. The
12 bullet flies across the border and strikes dead a victim in Nevada. Defendants would have this Court
13 believe that no Nevada court would be a proper venue for the hypothetical murder trial—that the State
14 of Nevada would be defenseless against such an act, that only in California could such a defendant be
15 properly charged, and only then and there charged with unlawful discharge of a firearm. Defendants’
16 argument is equivalent to an argument that the crime of murder was complete as soon as a murderer pulls
17 the trigger of his gun. Of course, such an argument fails—no murder has occurred until death is
18 occasioned, as that is the “effect . . . requisite to consummation of” murder. NRS 171.030.

19 In *Walker v. State*, discussed *supra* at B(1), the Nevada Supreme Court considered these facts:
20 Walker was hitchhiking near Elko, was picked up by a passing driver, and at some point along the route
21 from Elko to Reno, killed the person who had picked him up. The Nevada Supreme Court held that
22 venue was properly found in Washoe county, where the deceased was discovered: “[W]ith the evidence
23 which developed in this case known to the prosecuting attorney at the time the information was filed, it
24 would have been impossible for him to allege with any degree of certainty that the offense took place in
25 any specific county[.]” 78 Nev. 463, 472, 376 P.2d 137, 141 (1962).

26
27 ² NB: Defendants claim, *Motion to Dismiss* at 7:9, fn. 2, that the envelope addressed to Chief Judge Du’s chambers in Las
28 Vegas was in error, because she is “located” in Reno. To the extent, if any, Defendants’ argument is that venue may not lie in
the Eighth Judicial District as a result, it should be kept well in mind that Secretary of State Cegavske was located in Las
Vegas, and Defendants’ election to mail copies to her office in Carson City was likely a similar error.

1 Similarly, herein no one county contained the entirety of the preparing, conspiring, execution,
2 and consummation of the crime. Defendants live in Storey County, Douglas County, and Clark County.
3 “[T]he acts or effects . . . constituting or requisite to the consummation of the offense,” occurred—at
4 minimum—in Clark County, Washoe County, Douglas County, and Carson City. Venue would be proper
5 in any of those District Courts, and the State has chosen to prosecute this matter in the Eighth Judicial
6 District, as it is entitled to do under NRS 171.030.

7 Extended to its logical conclusion, Defendants’ argument suggests that anyone who commits their
8 crime while physically situating themselves outside Nevada is free to victimize the State or its residents
9 and that Nevada would be defenseless to protect itself and its citizens by prosecuting those who stayed
10 outside the state’s physical borders. Such an absurd result must not be entertained or invited.³

11 Here, NRS 171.015 is instructive: “If the defendant consummated [his crime] in this State,
12 through the intervention of an innocent or guilty agent, or any other means proceeding directly from the
13 defendant, in such case the jurisdiction is in the county in which the offense is consummated.” The
14 analogy then, is that Defendants herein, through an innocent agent—the U.S.P.S.—and by means
15 proceeding directly from the defendants, did cause these offenses to be consummated in Clark County.

16 Venue is proper wherever “the acts or effects thereof constituting or requisite to the
17 consummation of the offense occurred.” Where the acts or effects are “committed in part in one county
18 and in part in another . . . the venue is in either county.” NRS 171.030. The controlling law here is simple:
19 Defendants offered and uttered false and forged instruments in Clark County, so the State can elect to
20 initiate this matter in Clark County and has unfettered discretion in choosing to do so. Notwithstanding
21 that venue would be proper in other counties also, venue lies in Clark County.

22 **C. Vicinage Clause does not apply.**

23 “The vicinage clause of the Sixth Amendment guarantees an accused ‘the right to a ... jury of the
24 ... district wherein the crime shall have been committed, which district shall have been previously
25 ascertained by law.’ U.S. Const. amend. VI.” *Stevenson v. Lewis*, 384 F.3d 1069, 1071 (9th Cir. 2004).

26 However, as the Ninth Circuit has said, “The Supreme Court has not decided whether the
27 Fourteenth Amendment incorporated the Sixth Amendment’s vicinage right. Neither have we. The only

28 ³ Indeed, the Legislature has ensured no such absurdity will occur. NRS 171.015.

1 circuits to squarely address the issue have concluded that the Fourteenth Amendment did not extend
2 federal vicinage protection to the states.” *Id.*, citing *Caudill v. Scott*, 857 F.2d 344, 345-46 (6th Cir. 1988);
3 *Cook v. Morrill*, 783 F.2d 593, 94-96 (5th Cir. 1986); *Zicarelli v. Dietz*, 633 F.2d 312, 320-26 (3rd Cir.
4 1980).

5 In *State v. Steward*, the Nevada Supreme Court determined that Nevada’s venue statute regarding
6 *in transitu* crimes, NRS 171.040, does not offend the State’s Constitution: “Not only was the common
7 law of England with reference to venue materially modified by statute at the time of the adoption of our
8 constitution but the same was, in the absence of constitutional prohibition, subject to the inherent right
9 of the legislature to make modifications pertaining to place of trial.” *State v. Steward*, 74 Nev. 65, 73,
10 323 P.2d 23, 26-27 (1958).

11 NRS 171.030 does not offend the Constitution of the State of Nevada or the Sixth Amendment.
12 Although Article I, Section 3 Nevada Constitution preserves the right to trial by jury, there is no mention
13 of vicinage in that provision or any other provision of the Nevada Constitution or Nevada’s statutes
14 governing the place of trail. The Vicinage Clause of the Sixth Amendment has never been incorporated
15 against the states by any circuit court, let alone the United States Supreme Court.

16 Moreover, as discussed above, venue and jurisdiction are both correct in the Eighth Judicial
17 District Court, as acts and effects necessary to the consummation of the crimes alleged occurred in Clark
18 County. As such, notwithstanding the absence of controlling authority holding that Nevada must comply
19 with the Sixth Amendment’s Vicinage Clause, there could be no argument that vicinage required the trial
20 be held anywhere else—for all the reasons explained above, the trial will be held in the county where
21 some of the acts and effects necessary to the consummation occurred, so the right of vicinage will be
22 satisfied.

23 **IV. CONCLUSION**

24 The Clark County Grand Jury may inquire into any matter for which the Eighth Judicial District
25 Court is an appropriate venue. Whether because preparatory acts and the intent to commit these crimes
26 existed in Clark County, because acts in furtherance of the conspiracy took place in Clark County, or
27 because the effects necessary to the consummation of the crime happened in Clark County, venue is
28 appropriate in the Eighth Judicial District, and the Clark County Grand Jury therefore had jurisdiction to

1 inquire into and return a true bill in this matter. That other acts or effects necessary to the consummation
2 of these crimes happened in other venues is of no moment in determining whether venue is appropriate
3 in the Eighth Judicial District.

4 Based upon the foregoing, the State respectfully request this Court deny Defendants' Motion to
5 Dismiss.

6 DATED this 8th day of February 2024.

7
8 Submitted by:

9 AARON D. FORD
10 Attorney General

11 By: /s/ Alissa Engler
12 ALISSA ENGLER
13 Chief Deputy Attorney General
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1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that
3 on February 8, 2024, I filed the **OPPOSITION TO DEFENDANTS MOTION TO DISMISS** via this
4 Court's electronic filing system. The following parties are registered with this Court's EFS and will be
5 served electronically.

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