

NO. 22-6224

In The
Supreme Court of the United States

Ali Shahrokhi,

Petitioner,

v.

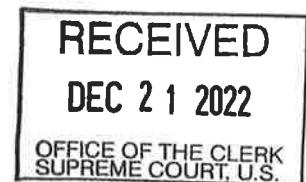
Kizzy J. S. Burrow,

Respondent.

On Petition for Writ of Certiorari
to the Supreme Court of Nevada

BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI

Kizzy Burrow
1819 SW 5th Ave. #167
Portland, OR 97201
Respondent
In Pro Se



LIST OF RELATED CASES / PROCEEDINGS

Federal Nevada District Court:

- Case Number: 20cv01019 Shahrokhi v. Harter, et al. (Dismissed)
- Case Number: 20cv01623 Shahrokhi v. Harter, et al. (Closed)

U.S. Court Of Appeals, Ninth Circuit:

- Case Number: 20cv16609 Ali Shahrokhi v. Matthew Harter, et al
- Case Number: 22cv16596 Ali Shahrokhi v. Matthew Harter, et al

JURISDICTIONAL STATEMENT

Shahrokhni raises a several previously unrepresented arguments in this petition.

RELEVANT STATUTORY PROVISIONS

NRS 33.018 Acts which constitute domestic violence; exceptions.

1. Domestic violence occurs when a person commits one of the following acts against or upon the person's spouse or former spouse, any other person to whom the person is related by blood or marriage, any other person with whom the person has had or is having a dating relationship, any other person with whom the person has a child in common, the minor child of any of those persons, the person's minor child or any other person who has been appointed the custodian or legal guardian for the person's minor child:

- (a) A battery.
- (b) An assault.
- (c) Coercion pursuant to NRS 207.190.
- (d) A sexual assault.
- (e) A knowing, purposeful or reckless course of conduct intended to harass the other person. Such conduct may include, but is not limited to:
 - (1) Stalking.
 - (2) Arson.
 - (3) Trespassing.
 - (4) Larceny.
 - (5) Destruction of private property.
 - (6) Carrying a concealed weapon without a permit.
 - (7) Injuring or killing an animal.
 - (8) Burglary.
 - (9) An invasion of the home.
- (f) A false imprisonment.
- (g) Pandering.

NRS 125C.0035 Best interests of child: Joint physical custody; preferences; presumptions when court determines parent or person seeking custody is perpetrator of domestic violence or has committed act of abduction against child or any other child.

1. In any action for determining physical custody of a minor child, the sole consideration of the court is the best interest of the child. If it appears to the court

that joint physical custody would be in the best interest of the child, the court may grant physical custody to the parties jointly.

* * *

4. In determining the best interest of the child, the court shall consider and set forth its specific findings concerning, among other things:

- (a) The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his or her physical custody.
- (b) Any nomination of a guardian for the child by a parent.
- (c) Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.
- (d) The level of conflict between the parents.
- (e) The ability of the parents to cooperate to meet the needs of the child.
- (f) The mental and physical health of the parents.
- (g) The physical, developmental and emotional needs of the child.
- (h) The nature of the relationship of the child with each parent.
- (i) The ability of the child to maintain a relationship with any sibling.
- (j) Any history of parental abuse or neglect of the child or a sibling of the child.
- (k) Whether either parent or any other person seeking physical custody has engaged in an act of domestic violence against the child, a parent of the child or any other person residing with the child.
- (l) Whether either parent or any other person seeking physical custody has committed any act of abduction against the child or any other child.

5. Except as otherwise provided in subsection 6 or NRS 125C.210, a determination by the court after an evidentiary hearing and finding by clear and convincing evidence that either parent or any other person seeking physical custody has engaged in one or more acts of domestic violence against the child, a parent of the child or any other person residing with the child creates a rebuttable presumption that sole or joint physical custody of the child by the perpetrator of the domestic violence is not in the best interest of the child. Upon making such a determination, the court shall set forth:

- (a) Findings of fact that support the determination that one or more acts of domestic violence occurred; and
- (b) Findings that the custody or visitation arrangement ordered by the court adequately protects the child and the parent or other victim of domestic violence who resided with the child.

6. If after an evidentiary hearing held pursuant to subsection 5 the court determines that each party has engaged in acts of domestic violence, it shall, if

possible, then determine which person was the primary physical aggressor. In determining which party was the primary physical aggressor for the purposes of this section, the court shall consider:

- (a) All prior acts of domestic violence involving either party;
- (b) The relative severity of the injuries, if any, inflicted upon the persons involved in those prior acts of domestic violence;
- (c) The likelihood of future injury;
- (d) Whether, during the prior acts, one of the parties acted in self-defense; and
- (e) Any other factors which the court deems relevant to the determination.

In such a case, if it is not possible for the court to determine which party is the primary physical aggressor, the presumption created pursuant to subsection 5 applies to both parties. If it is possible for the court to determine which party is the primary physical aggressor, the presumption created pursuant to subsection 5 applies only to the party determined by the court to be the primary physical aggressor.

* * *

10. As used in this section:

- (a) "Abduction" means the commission of an act described in NRS 200.310 to 200.340, inclusive, or 200.359 or a law of any other jurisdiction that prohibits the same or similar conduct.
- (b) "Domestic violence" means the commission of any act described in NRS 33.018.

NRS 200.575 Stalking: Definitions; penalties; entry of finding in judgment of conviction or admonishment of rights.

1. A person who, without lawful authority, willfully or maliciously engages in a course of conduct directed towards a victim that would cause a reasonable person under similar circumstances to feel terrorized, frightened, intimidated, harassed or fearful for his or her immediate safety or the immediate safety of a family or household member, and that actually causes the victim to feel terrorized, frightened, intimidated, harassed or fearful for his or her immediate safety or the immediate safety of a family or household member, commits the crime of stalking.

STATEMENT OF THE CASE

This matter arises from a Nevada custody case. Shahrokhi and Burrow (never married) have one child in common (“BES”).

Shahrokhi’s petition is more of a request to re-do the Nevada court proceedings than an issue with anything actually litigated at the district court level. He presents his own version of the facts, cites evidence never presented in the lower courts, and asks this Court to give him another chance.

During the course of litigation, Shahrokhi filed two lawsuits against the District Court Judge (as well as Burrow, her attorneys, and others). These lawsuits arose from and were directly related to the custody case. Also, during the litigation, Shahrokhi began publishing disparaging statements against the District Court Judge. Those disparaging statements are presented for the first time here in Shahrokhi’s current petition.

After filing the lawsuits and publishing the disparaging statements, Shahrokhi requested (three times) that the District Court Judge be disqualified. The Chief Judge denied each request, on the grounds that Shahrokhi cannot disqualify a judge based on Shahrokhi’s own conduct during the litigation. The Nevada Supreme Court affirmed: “a party should not be permitted to create a situation involving a judge and then claim that the judge should be removed due to the events the party created.”) PetExh. B, p.4.

After an evidentiary hearing, the Nevada Eighth Judicial District Court, Family Division, found that it was in their child’s best interest for Kizzy to have primary physical custody and sole legal custody. One of the factors used to determine the child’s best interest is whether either party had perpetrated domestic violence upon the other.

The evidentiary hearing was conducted over three days. The first day was devoted to the question of whether there was domestic violence. Shahrokhi presented no evidence at the domestic violence portion of the hearing. Burrow presented her own testimony, text messages, emails, messages sent through a court

ordered and monitored online app called Our Family Wizard, and an interview with the minor child.

The Court found that Shahrokhi had committed domestic violence. The findings were made under NRS 125C.0035(5), the custody statute. Although the order defined domestic violence by reference to criminal statutes, the finding that Shahrokhi had committed domestic violence was done solely to determine custody of the minor child.

ARGUMENT

Shahrokhi's Question 1:

Did the trial judge's refusal to recuse himself from presiding over the 3-day bench trial – while being an adverse party litigating against Shahrokhi – violate Shahrokhi's rights under the Due Process Clause.

Shahrokhi misrepresents the District Court Judge as “taunting him” over the lawsuits filed against him. Tellingly, Shahrokhi does not present any transcript of such “taunting.” What the District Court Judge actually said was that the lawsuits would not affect the custody matter.

Shahrokhi also misrepresents the two lawsuits he filed against the Judge as “unrelated.” Tellingly, Shahrokhi does not provide copies of his complaints in these lawsuits. In fact, the lawsuits arose directly from the custody matter, and alleged that the judge (and Burrow, her attorneys, and others) were violating his constitutional rights in the custody case.

Burrow lacks knowledge of the judge's bankruptcy case, but the judge was apparently exonerated from all wrongdoing by the Nevada Commission on Judicial Discipline (PetExh. K).

Shahrokhi tellingly does not present the decisions refusing to disqualify the district court judge.

Shahrokhi's Question 2:

Does Nevada Revised Statute 125C.0035(5) granting a single judge, to be the judge and prosecutor at the same time and the right to try and convict accused on criminal statutes, in a civil setting, with no indictment, no adequate notice of alleged crimes, no jury-trial as mandated by law, no attorney standing by to assist, no presumption of innocent, on a lesser proof of standard “clear and convincing” instead of the traditional proof requirement of “beyond reasonable doubt,” forcing litigants to be witness against themselves incriminating their 5th amendment rights interfere with the essentials of due process and fair treatment, as defined by the United States Constitution?

NRS 125C.0035(5) says nothing about prosecutors, indictments, notice of alleged crimes, jury trials, attorneys standing by to assist, or requiring litigants to be witnesses against themselves.

The reason Shahrokhi did not receive a prosecutor, an indictment, a jury trial, or counsel provided by the state is that this was a civil custody matter, not a criminal matter.

Shahrokhi failed to raise this issue in the district court case. He raised a different version of it in his appeal, in which he argued that because such things as stalking, harassment, and battery are crimes, the district court was thus making criminal findings without providing him criminal procedures. The argument that a statute is a criminal statute if it involves “scienter” is made here for the first time.

The Nevada Court appeals rejected the notion that the custody order was somehow criminal merely because it referred to criminal law to define relevant terms. PetExh. B, p. 5-6.

Shahrokhi alleges that he was “convicted” of stalking and harassment and that his name was added to the Nevada Criminal Repository. Shahrokhi did not raise this issue in the lower court, and to the best of Burrow’s knowledge it is not true. The orders appealed from contain no language of any reference to a conviction or to adding Shahrokhi’s information to the Central Repository for Nevada Records

of Criminal History. If Shahrokhi's name was added, it was not as a result of this case, but rather a prior felony conviction from October 2008.

Shahrokhi complains that he lacked notice of the domestic violence allegations. He did not raise this argument in the district court. Pursuant to civil discovery rules, Shahrokhi was entitled to inquire of Burrow what domestic violence she alleged. In fact, Shahrokhi did so and through discovery Burrow provided great detail for her allegations of domestic violence. That detail, however, never became part of the lower court record because Shahrokhi did not raise the issue.

Other Issues Presented in the Petition

A substantial part of the domestic violence evidence against Shahrokhi were his text messages and messages through the online application called "Our Family Wizard." Shahrokhi alleges he did not receive adequate notice of these messages. The district court found, however, that Shahrokhi had received more than adequate notice. Apart from the obvious fact that these were Shahrokhi's own messages, the messages had been provided in discovery. Moreover, Burrow's counsel stated the exhibits containing the messages to be admitted into evidence at trial had been served on his prior counsel months before. The exhibits were again served on a woman at Shahrokhi's address the week prior to trial. They were also left at his front door. They were then emailed. On the actual day of trial, when Shahrokhi claimed he still did not have a copy of the exhibits, the district court actually emailed the exhibits again. Given the multiple forms and attempts at providing Shahrokhi the exhibits, the district court found that service of the exhibits was more than sufficient.

Shahrokhi alleges that the district court should have answered questions and objections contained in his forty-two page "Motion Requesting Resolution of Essential Pre-trial, Questions of Law, Motioon [sic] Raising objections and Plea to the Jurisdiction." Aside from the fact that this motion contained mostly nonsensical arguments (for instance, he argued that all custody decisions and child support orders violate the US Constitution), Shahrokhi cites no authority requiring the

court to provide such answers. If Shahrokhi needed legal advice, he should have retained another attorney.

Shahrokhi argues that NRS 125C.0035(5) is unconstitutionally vague in its definition of domestic violence. He raises this argument for the first time in this petition. In his petition, Shahrokhi omits NRS 125C.0035(10) which defines domestic violence.

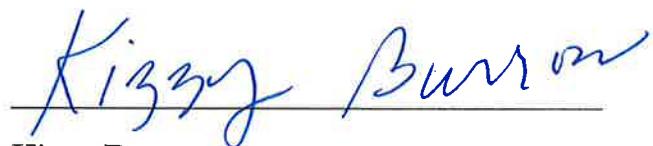
Shahrokhi later states that NRS 33.018 is unconstitutionally vague. Again, Shahrokhi raises the argument for the first time in this petition. Shahrokhi omits the bulk of NRS 33.018 by quoting only the first section. In later sections, NRS 33.018 defines domestic violence by listing actions which constitute domestic violence. These actions are then defined further in the criminal code of the NRS. For instance, the particular act of stalking is defined in NRS 200.575(1).

Shahrokhi argues that the “domestic violence conviction” violated his 2nd amendment rights. This issue has not been raised in any prior court – it appears for the first time here. Again, although the district court found Shahrokhi had committed domestic violence in the custody proceeding, Shahrokhi was not criminally convicted of domestic violence. Shahrokhi is prohibited from legally possessing firearms as a condition of his sentence from his 2008 criminal conviction (Case No. 02cr00405 U.S. District Court of Nevada), not from this custody matter.

CONCLUSION

Respondent respectfully requests that the petition for a writ of certiorari be denied.

Dated this 15th day of December, 2022.



Kizzy Burrow

CERTIFICATE OF WORD COUNT

I certify that the accompanying Brief in Opposition to Petition for a Writ of Certiorari, which was prepared using Century Schoolbook 12-point typeface, contains 1317 words, excluding the parts of the document that are exempted. This certificate was prepared using the word-count function of Microsoft Word.

Dated this 15th day of December, 2022.

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