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IN THE SUPREME COURT OF THE STATE OF NEVADA

2007 NOV 29 AM 9:41

DAYVID J. FIGLER,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, COUNTY OF  
CLARK, THE HONORABLE VALERIE ADAIR,  
DISTRICT COURT JUDGE,

Respondent,

DEANGELO CARROLL,

Real Party in Interest.

Case No. 50576  
(Dist. Ct. No. C212667)

*filed via fax  
on 11-29-07.*

FILED

NOV 30 2007

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

PETITION FOR WRIT OF MANDAMUS AND  
EMERGENCY MOTION FOR STAY OF PROCEEDINGS

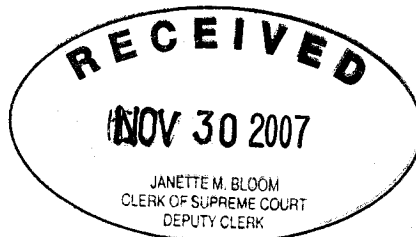
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Counsel for Respondent



07-25908

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Case No.  
(Dist. Ct. No. C212667)

VS.

Real Party in Interest.

This Petition is based upon the Memorandum of Points and Authorities and portions of the record relevant to the determination

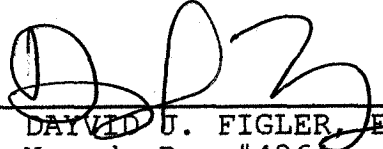
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1 of this Petition and any argument should this Honorable Court order  
2 a hearing on this matter.

3 DATED this 29th day of November, 2007.

4 BUNIN & BUNIN, LTD.

5  
6 By

  
DAVID J. FIGLER, ESQ.  
Nevada Bar #4264  
626 South Third Street  
Las Vegas, Nevada 89101  
(702) 386-0333

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1 VERIFICATION

2 STATE OF NEVADA )  
3 ) ss:  
4 COUNTY OF CLARK )

5 DAYVID J. FIGLER, being first duly sworn, deposes and states  
6 as follows:

7 1. That he is an attorney duly licensed to practice law in  
8 the State of Nevada and one of the private attorneys assigned to  
9 represent Deangelo Carroll in a capital matter.


10 2. That MR. CARROLL, has authorized and directed Mr.  
11 Figler, to file the foregoing Writ of Mandamus;

12 3. That MR. FIGLER, has read the foregoing Writ of Mandamus  
13 and knows the contents therein and as to those matters they are true  
14 and correct and as to those matters based on information and belief  
15 he is informed and believes them to be true;

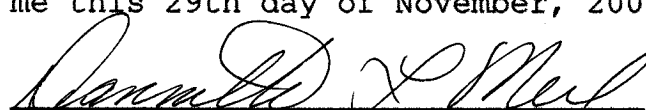
16 4. That MR. CARROLL has no other remedy at law available  
17 to him and that the only means to address this problem is through this  
18 writ, in that he is about to face capital murder proceedings;

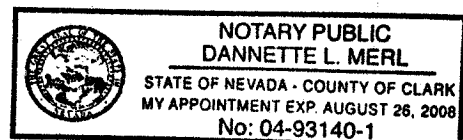
19 5. That MR. FIGLER signs this Verification on behalf of MR.  
20 CARROLL, under his direction and authorization and further that MR.  
21 CARROLL is currently in custody of the authorities of the Clark County  
22 Detention Center.

23 FURTHER YOUR AFFIANT SAITH NAUGHT.  
24

25   
26 DAYVID J. FIGLER, ESQ.

27 SUBSCRIBED AND SWORN to before  
28 me this 29th day of November, 2007.

  
NOTARY PUBLIC in and for  
said County and State.



1 POINTS AND AUTHORITIES

2 I.

3 STATEMENT OF THE ISSUES

4 1. Whether the District Court erred in denying the  
5 Defendant's Motion to Strike Aggravating Circumstances.

6 II.

7 STATEMENT OF THE CASE

8 Defendant, Deangelo Carroll, a cooperating witness regarding  
9 the shooting murder of Timothy Hadland (hereinafter "Hadland") on or  
10 about May 19, 2005, was charged by way of a criminal complaint with  
11 open murder based on multiple theories of liability including  
12 conspiracy and aiding and abetting. Mr. Carroll waived his  
13 preliminary hearing. However, preliminary hearings were held for four  
14 co-defendants, all of whom were bound over on the murder charge and  
15 other various offenses. The State eventually decided to seek the  
16 Death Penalty against four of the five co-defendants, including Mr.  
17 Carroll. The only co-defendant against whom the Death Penalty was not  
18 sought was a juvenile at the time and ineligible for the Death Penalty  
19 for that reason.

20 In the District Court, all defendants plead not guilty and  
21 the case was assigned to Eighth Judicial District Court Department  
22 XIV. Later, because of a change in counsel, the District Court  
23 recused itself and the matter was reassigned to Eighth Judicial  
24 District Court Department XXI. Co-defendants, Luis Hildago, III and  
25 Anabel Espindola filed a motion to strike the aggravating  
26 circumstances on numerous grounds and that motion was denied. A writ  
27 of mandamus was taken up by the co-defendants and that matter is still  
28 pending as of the date of this Petition.

1 On or about August 16, 2007, the Defendant filed a Motion  
2 to Strike Aggravating Circumstances in the District Court Department  
3 XXI. The State was given an opportunity to respond in writing and  
4 filed its opposition on or about October 4, 2007. The Court held a  
5 hearing on the matter on October 9, 2007 and took the matter under  
6 advisement. On October 10, 2007, a minute order was issued denying  
7 relief and specifically directing the State to prepare an order with  
8 specific findings of fact and conclusions of law. The minute order  
9 also **denied the motion for a stay of proceedings made by the Defendant**  
10 **in the District Court.** A written order denying the Defendant's  
11 motions was submitted but rejected by the District Court. The State  
12 did not submit a written order to the District Court until multiple  
13 prompting by the Defendant and eventually an order was submitted and  
14 signed on November 27, 2007. A Death Penalty trial is set to begin  
15 on December 3, 2007. The instant petition follows.

16 . III.

17 STATEMENT OF FACTS

18 Just before midnight on May 19, 2005, the Las Vegas Metropolitan  
19 Police Department (LVMPD) received a 9-1-1 call concerning a homicide  
20 on North Shore Road near Lake Mead (Reporter's Transcript of the  
21 Preliminary Hearing (hereinafter "RTP"), page 146). Upon arrival they  
22 found the body of Timothy Hadland (hereinafter "Hadland") lying in the  
23 middle of the road with an two gunshot wounds to the head. (RTP 151,  
24 157). Just south of the body were several flyers from a strip club  
25 in North Las Vegas called the Palomino Club which led police to do  
26 begin an investigation at the club. (RTP, 152-160). Additionally, the  
27 last number on Hadland's cell phone was from an individual identified  
28 as "Deangelo" on the phone itself, but the number was registered to

1 an individual named Anabel Espindola (hereinafter "Espindola") who was  
2 a key employee at the Palomino club. (RTP, 153-159).

3 It was determined that Hadland was a former employee of the  
4 Palomino club and that the Defendant, Deangelo Carroll was a current  
5 employee of the club. (RTP, 163-164). Carroll gave the police a  
6 lengthy, recorded statement which contains multiple versions of the  
7 motivations and intentions behind the events of the evening of May 19,  
8 2007, but in his statement, Carroll essentially admits that he drove  
9 a van out to Lake Mead on May 19, 2005 with three passengers in the  
10 car, Rontae Zone, Jason Taoipu, and Kenneth Counts; there they  
11 encounter Timothy Hadland who was friends with Carroll; at that point  
12 Kenneth Counts shot and killed Timothy Hadland. Rontae Zone, a  
13 juvenile who was not charged with any offense and Jason Taoipu, the  
14 juvenile co-defendant confirm this essential account and the State has  
15 not contested that Kenneth Counts was the actual shooter. (See  
16 Statement of the Defendant). The discrepancies and outright  
17 contradictory accounts made by Carroll to the police primarily  
18 surround the motivation for meeting with Hadland at the lake in the  
19 first place.

20 In one version of Carroll recitation of the events, after Hadland  
21 was shot he returned to the Palomino club where Kenneth Counts  
22 demanded 6,000 dollars in compensation for the shooting. Carroll told  
23 police that he got the 6,000 dollars from Anabel Espindola and gave  
24 it to Counts. (See Statement of the Defendant).

25 Carroll agreed to work with police in an attempt to ensnare the  
26 owners/managers of the Palomino club as involved with the shooting of  
27 Hadland. To that end, he wore a surreptitious listening device on his  
28 person and entered an establishment where Anabel Espindola and Luis

1 Hildago, III (the son of the owner of the Palomino Club), were  
2 present. There Carroll was able to solicit numerous statements from  
3 his eventual co-defendants that the State has cast as incriminating.  
4 At that meeting, Carroll placed his own life in jeopardy as the co-  
5 defendant's made Carroll strip his clothes off with the implication  
6 that if he was cooperating with police he would be killed. The  
7 listening device was not recovered. (See Statement of the Defendant).

8 Mr. Carroll asserts that the police, FBI and the prosecutors made  
9 him numerous promises regarding treatment in the criminal process in  
10 exchange for his cooperation. After the fact of his cooperation, no  
11 accord was made regarding a plea negotiation and Mr. Carroll had not  
12 secured either counsel or a written agreement regarding his  
13 cooperation prior to helping the police. Mr. Carroll was arrested on  
14 the charge of murder and the State is seeking the death penalty.

15 In the Amended Notice of Evidence in Aggravation filed November  
16 14, 2007, the State alleges two aggravating circumstances pursuant to  
17 NRS 200.033, to wit: murder for pecuniary gain and prior conviction  
18 for a crime involving violence. Essentially, the pecuniary gain comes  
19 from the 6,000 dollars given to Kenneth Counts by Anabel Espindola.  
20 The prior conviction involves a plea by the Carroll to the charge of  
21 conspiracy to commit robbery on June 18, 2002 for which Carroll  
22 received probation.

23 **ARGUMENT**

24 **The relief requested by the Petitioner should be**  
25 **properly granted by this Court**<sup>1</sup>.

26  
27 <sup>1</sup> To the extent that this is essentially an emergency motion, the Petitioner has already filed with  
28 this Court an "Emergency Motion for Stay of Proceedings." With trial beginning in a matter of days,  
that Motion sets forth the timing of these pleadings with Court. Additionally, the Petitioner intends to  
file with this Court a Supplemental Points and Authorities which outlines with greater specificity and  
more indepth analysis why the relief sought is appropriate, but needed to get the case in front of this  
Court as quickly as possible to avoid the manifest injustice underlying the improper seeking by the State  
of the Death Penalty.



1 This court may issue a writ of mandamus in order  
2 "to compel the performance of an act which the  
3 law especially enjoins as a duty resulting from  
4 an office, trust or station." NRS 34.160.  
5 Generally, a writ of mandamus may issue only when  
6 there is no plain, speedy, and adequate remedy at  
7 law. See NRS 34.170. However, where  
8 circumstances reveal urgency or strong necessity,  
9 this court may grant extraordinary relief. See  
10 Jeep Corp. v. District Court, 98 Nev. 440, 443,  
11 652 P.2d 1183, 1185 (1982). Moreover, "where an  
12 important issue of law needs clarification and  
13 public policy is served by this court's  
14 invocation of its original jurisdiction, our  
15 consideration of a petition for extraordinary  
16 relief may be justified." Business Computer  
17 Rentals v State Treas., 114 Nev. 63, 67, 953 P.2d  
18 13, 15 (1998).

19 It is Petitioner's position that facially the so-called  
20 "murder for hire" or pecuniary gain aggravating circumstance does not  
21 apply to him, or in the alternative, that it is so broad as to be  
22 Constitutionally infirm. Likewise, the so called "prior conviction  
23 for violence" aggravating circumstance does not apply to him because  
24 his prior conviction was for a mere conspiracy charge. In light of  
25 the utmost seriousness attached to the imposition of the Death Penalty  
26 on an individual under the present national and international debate  
27 on the subject that the public interest can only be served by analysis  
28 of our Nevada Supreme Court before another person potentially  
sentenced to death under an unconstitutional system.

When the State is not required to narrow the categories of those  
individuals eligible for and against whom the Death Penalty is sought,  
not only is it a manifest injustice for that individual, but the  
public confidence in a state where execution is allowed will be  
forever lost. When the State can and cannot seek the Death Penalty,  
especially in a case where they are seeking against all individuals  
involved, including the non-shooter and parties not even present,

1 there can be little argument that this is not an important issue of  
2 law which needs clarification and which serves the public policy. As  
3 such, the Petitioner implores this Court to stay these  
4 unconstitutional proceedings for time to consider the Petitioner's  
5 request for writ.

6 Capital punishment is reserved for the most heinous of murders.  
7 Not all murders qualify for death as the punishment. "Death is  
8 different" goes the famous and oft-quoted citation of the United  
9 States Supreme Court. Not surprising, the United States Supreme Court  
10 has relied upon this principle and its application to Eight Amendment  
11 implications for decades. See Gregg v. Georgia, 428 U.S. 153, 188  
12 (1976); Ring v. Arizona, 536 U.S. 584, 606 (2002).

13 The Nevada Supreme Court also recognized its "obligation to  
14 ensure that aggravators are not applied so liberally that they fail  
15 to perform their constitutionally required narrowing function."  
16 Redeker v. Eighth Judicial District Court, 122 Nev. \_\_\_\_, 127 P.3d  
17 520, 526 (2006) (citations omitted). In interpreting the statute at  
18 issue, the Nevada Supreme Court looks to the plain language of the  
19 statute. State v. Colosimo, 122 Nev. \_\_\_\_, 142 P.3d 352  
20 (2006) (citing State v. Washoe County, 6 Nev. 104, 107 (1870)). If a  
21 penal statute is ambiguous, "rules of statutory  
22 interpretation...require that provisions which negatively impact a  
23 defendant must be strictly construed, while provisions which  
24 positively impact a defendant are to be given a more liberal  
25 constructions." Colosimo, 122 Nev. At \_\_\_\_, 142 P.3d at 359 (quoting  
26 Mangarella v. State, 117 Nev. 130, 134, 17 P.3d 989, 992 (2001)).

27 1. PRIOR CONVICTION INVOLVING THE USE OR THREAT OF VIOLENCE TO  
28 THE PERSON OF ANOTHER.

1 Defendant Carroll was convicted of *conspiracy* to commit robbery,  
2 not robbery. Understandably, the State has alleged in the Notice of  
3 Intent to Seek the Death Penalty the "underlying" facts of the  
4 conviction to which the Defendant plead guilty, however, the State  
5 does not allege how a conspiracy, the crime for which the judgment of  
6 conviction was entered is a crime of violence in and of itself which  
7 is required to proceed under the Death Penalty. See Redeker v. Eighth  
8 Judicial District Court, 122 Nev. \_\_\_\_\_, 127 P.3d 520(2006).

9 Conspiracy is defined as "an agreement between two or more  
10 persons for an unlawful purpose." Bolden v. State, 121 Nev. 908, 124  
11 P.3d 191 (2005). Simply stated, and irrespective of the underlying  
12 facts averred in the information, an agreement cannot contain an actus  
13 reus of violence by definition. The act of violence, or the threat  
14 of violence is not an element of the offense of conspiracy.

15 The State cannot offer any authority for the proposition that the  
16 Nevada Supreme Court has authorized a conspiracy charge to stand for  
17 the narrowing required to make it an death eligible aggravator.  
18 Indeed, to the contrary, the Nevada Supreme Court seems to have  
19 indicated that the moment of striking aggravators for failure to  
20 narrow is at hand. See Leslie v. Warden, 118 Nev. 773, 59 P.3d 440  
21 (2002) (Maupin concurring opinion).

22 NRS 200.033(2)(b) is unconstitutionally vague both on its face  
23 and in its application to this case. Under these circumstances the  
24 aggravating factor of conspiracy to commit robbery is invalid.  
25 Further, the State cannot provide any meaning to "use or threat of  
26 violence" and whether that phrase provides a principled guide for the  
27 choice between death and a lesser penalty as required by Maynard v.  
28 Cartwright, 486 U.S. 356, 361-364 (1988) and Godfrey v. Georgia, 446

1 U.S. 429 (1980).

2 A statute violates due process if it is so vague that it fails  
3 to give persons of ordinary intelligence fair notice of what conduct  
4 is prohibited and fails to provide law enforcement officials with  
5 adequate guidelines to prevent discriminatory enforcement." Hernandez  
6 v. State, 118 Nev. 513, 524 (2002).

7 **2. MURDER FOR HIRE / PECUNIARY GAIN**

8 From the onset it should be noted that this aggravator (albeit  
9 plead differently at least at it relates to the co-defendants) has  
10 already been challenged by the co-defendants, Luis Hidalgo III and  
11 Anabel Espindola, is now on appeal as a writ of mandamus, or in the  
12 alternative, as a writ of prohibition. Defendant Carroll would  
13 additionally set forth that at least one portion of the State's  
14 averment must be stricken from the record in that he is listed as both  
15 hirer and hiree and the plain language of the statutory aggravator at  
16 issue, NRS 200.033(6) cannot be applied on both ends of the equation.  
17 Also, there is no dispute that Defendant Carroll did not physically  
18 kill Timothy Hadland, nor is it alleged that it was his plan to kill  
19 Timothy Hadland. Rather the State is seeking to establish liability  
20 for murder under aiding and abetting and conspiracy theories, though  
21 there is no authority that a go-between who did not do the original  
22 hiring or who did not do the actual killing is exposed to this  
23 aggravator.

24 **3. IN ORDER TO SEEK THE Death Penalty THE STATE FOR MURDER FOR**  
25 **PECUNIARY GAIN, THE STATE RELIES EXCLUSIVELY ON THE DEFENDANT'S OWN**  
26 **CONTRADICTIONARY STATEMENTS TO THE POLICE WHICH IS A VIOLATION OF THE**  
27 **CORPUS DELICTI RULE**

28 It has long been established that the corpus delicti must be

1 demonstrated by evidence independent of the confessions or admissions  
2 of the defendant. Sheriff, Washoe County v. Dhadha, 115 Nev. 175, 980  
3 P.2d 1062 (1999) citing Sheriff v. Middleton, 112 Nev. 956, 921 P.2d  
4 282, 285 (1996); In Re Kelly, 28 Nev. 491, 498, 83 P. 223, 225 (1905).  
5 This rule protects against an accused's conviction being based solely  
6 upon an uncorroborated confession. Domingues v. State, 112 Nev. 683,  
7 692, 917 P.2d 1364, 1371 (1996). The rule arose from judicial distrust  
8 of confessions and admissions generally, combined with the recognition  
9 that juries are likely to accept such statements uncritically. City  
10 of Bremerton v. Corbett, 106 Wash.2d 569, 723 P.2d 1135, 1139 (1986),  
11 limited on other grounds by Aten, 130 Wash.2d 640, 927 P.2d at 220-21.  
12 The distrust of confessions stems from the possibility that they may  
13 have been misreported or misconstrued, elicited by force or coercion,  
14 based on mistaken perception of the facts or law, or falsely given by  
15 a mentally disturbed individual. Id. Thus, none of the statements made  
16 by Carroll to the police should be considered as grounds for any  
17 aggravator to the extent that they are not facially or  
18 constitutionally infirm.

#### 19 4. MOTION FOR A STAY

20 In that there are two aggravators at issue in the Notice of  
21 Intent to Seek the Death Penalty, and both are potentially infirm,  
22 statutorily and constitutionally - and since the Nevada Supreme Court  
23 is currently considering the validity of both the "act of or threat  
24 of violence" aggravator as well as the "murder for hire/pecuniary  
25 gain" aggravator - it only makes sense to stay these proceedings under  
26 at least word comes down from the Nevada Supreme Court on these  
27 issues. Further, the Defendant intends to appeal this Court's ruling  
28 if it is denied to grant the specific relief sought. Defendant

1 Carroll will suffer irreparable harm by having to stand trial for a  
2 capital case despite the invalid Notices of Intent to Seek the Death  
3 Penalty. Because this is currently a capital case, he is being held  
4 without bail and may not be released from custody and is therefore  
5 unable to assist his counsel in preparation for his defense in an  
6 effective manner. Further, court resources will be unnecessarily  
7 expended by the potentially lengthy proceedings concerning the capital  
8 penalty hearing, a lengthy and complicated jury selection process,  
9 transcript expenses and other costs incurred by this case which would  
10 not be incurred if the Notices of Intent to Seek the Death Penalty are  
11 dismissed. Finally, there is a prejudice to the Defendant in facing  
12 a "death-qualified" jury. To the contrary, the State in the interest  
13 of justice should be sure that the aggravators being used to  
14 potentially execute a human being are valid.

15 Pursuant to the requirements of NRAP 8, the Defendant did make  
16 motion in the District Court for stay and that was denied by written  
17 order. The request for stay is not being made of the Supreme Court.

18 **CONCLUSION**

19 Petitioner prays and it would be in the best interest of the  
20 public, to not induce the waste of judicial resources and public  
21 confidence that would result from holding a Death Penalty trial when  
22 there is no justifiable or Constitutionally sound argument in support  
23 of it. Death as a means of punishment in the modern era is an  
24 extraordinary issue filled with debate to the extent that the United  
25 States Supreme Court is currently considering whether it violates the  
26 Eight Amendment and one state after another are falling in moratoriums  
27 disallowing the State from even seeking it. In the present case there  
28 can be no legitimate claim that Deangelo Carroll, who cooperated with

1 police, who is not the shooter, and who did not plan the killing of  
2 Timothy Hadland is facing the Death Penalty. If the District Court  
3 refuses to consider the broader picture and really scrutinize the  
4 State's decision-making in the case where every adult co-defendant in  
5 what is, not callously, but frankly in the modern world filled with  
6 hundreds of murders each year in our jurisdiction, an unremarkable  
7 murder case -- the Nevada Supreme Court hopefully will take on that  
8 task.

9 NRS 200.033 as used by the District Attorney in Clark County is  
10 clearly on a slippery slope with regard to how and who is being  
11 "narrowly" defined for eligibility. It inches closer and closer to  
12 seeking it in a way that will eventually preclude the Nevada structure  
13 from meeting Constitutional muster. In the present case, the State  
14 has crossed the line and this extraordinary relief is the only real  
15 remedy. Petitioner again requests that the trial be stayed and the  
16 writ be fully briefed and heard so that these very important issues  
17 can be resolved and guidance given to all district courts.

18 Respectfully submitted,

19 BUNIN & BUNIN, LTD.

20  
21 By 

22 DAYVID J. FIGLER, ESQ.  
23 Nevada Bar #4264  
24 626 South Third Street  
25 Las Vegas, Nevada 89101  
26 (702) 386-0333  
27  
28

1                    **DECLARATION OF FACSIMILE AND MAILING**

2 Kira Matheson, an employee with Bunin & Bunin, hereby declares that  
3 she is, and was when the herein described mailing took place, a  
4 citizen of the United States, over 21 years of age, and not a party  
5 to, nor interested in, the within action; that on the 28th day of  
6 November, 2007, declarant deposited in the United States mail at Las  
7 Vegas, Nevada, a copy of the Petition for Writ of Mandamus and  
8 Emergency Motion for Stay of Proceedings in the case of Dayvid J.  
9 Figler, Petitioner vs. The Eighth Judicial District Court of the State  
10 of Nevada, County of Clark, the Honorable Valerie Adair, Respondent,  
11 Deangelo Carroll, Real Party in Interest, District Court Case No.  
12 C212667, enclosed in a sealed envelope upon which first class postage  
13 was fully prepaid, addressed to Catherine Cortez Masto, 100 North  
14 Carson Street, Carson City, Nevada 89701-4717; Judge Valerie Adair,  
15 District Court Judge, 200 Lewis Avenue and David J.J. Roger, 200 Lewis  
16 Avenue that there is a regular communication by mail between the  
17 places of mailing and the places so addressed. I declare under penalty  
18 of perjury that the foregoing is true and correct.

19                    EXECUTED on the 29th day of November, 2007.

20  
21                    Kira Matheson  
22                    KIRA MATHESON



1 RECEIPT OF A COPY of the foregoing **Petition for Writ Of**  
2 **Mandamus and Emergency Motion for Stay of Proceedgins** is hereby  
3 acknowledged this 29th day of November, 2007.

4 DAVID J.J. ROGER  
5 CLARK COUNTY DISTRICT ATTORNEY

6  
7 By   
8

9 RECEIPT OF A COPY of the foregoing **Petition for Writ of**  
10 **Mandamus and Emergency Motion for Stay of Proceedgins** is hereby  
11 acknowledged this 29th day of November, 2007.

12 VALERIE ADAIR  
13 DISTRICT COURT JUDGE, DEPARTMENT XXI

14  
15 By   
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