

*filed via fax*RECEIVED
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CLERK OF SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF NEVADA

2008 JAN 23 PM 2:51

KRISTINA WILDEVELD,

Petitioner,

vs.

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

Respondent,

KENNETH COUNTS,

Real Party in Interest.

Case No. 50939
(Dist. Ct. No. C212667)**FILED**

JAN 23 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERKEMERGENCY MOTION FOR STAY OF PROCEEDINGSKRISTINA WILDEVELD, ESQ.
KRISTINA WILDEVELD, LTD.
Nevada Bar No. 5825
1100 S. 10th Street
Las Vegas, Nevada 89101
(702) 257-9500

Attorney for Appellant

DAVID J.J. ROGER
CLARK COUNTY, NEVADA
DISTRICT ATTORNEY
Nevada Bar # 2781
200 Lewis Street
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Attorney General
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(702) 486-3420

Counsel for Respondent

RECEIVED

JAN 23 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

08-01778

IN THE SUPREME COURT OF THE STATE OF NEVADA

KRISTINA WILDEVELD.

Petitioner,

VS.

THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, COUNTY OF
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KENNETH COUNTS,

Real Party in Interest.

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

EMERGENCY MOTION FOR STAY OF PROCEEDINGS

COMES NOW the Petitioner, KRISTINA WILDEVELD pursuant to NRAP 8 & 21, respectfully petitions this Honorable Court to stay the District Court proceedings.

This Motion is based upon the attached affidavit and relevant portions of the record and any argument should this Honorable Court order a hearing on this matter.

DATED this 2nd day of January, 2008.

KRISTINA WILDEVELD, LTD.

By

KRISTINA WILDEVELD, ESQ.
Nevada Bar No. 5825
1100 S 10th Street
Las Vegas, Nevada 89104
(702) 257-9500

VERIFICATION

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

KRISTINA WILDEVELD, being first duly sworn, deposes and states as follows:

1. That she is an attorney duly licensed to practice law in the State of Nevada and one of the private attorneys assigned to represent KENNETH COUNTS in a capital matter.

2. That MR. COUNTS, has authorized and directed MS. WILDEVELD, to file the foregoing Writ of Mandamus;

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

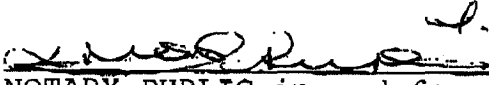
4. That MR. COUNTS has no other remedy at law available to him and that the only means to address this problem is through this writ, in that he is about to face capital murder proceedings;

5. That MS. WILDEVELD signs this Verification on behalf of MR. COUNTS, under his direction and authorization and further that MR. COUNTS is currently in custody of the authorities of the Clark County Detention Center.

FURTHER YOUR AFFIANT SAITH NAUGHT


KRISTINA WILDEVELD, ESQ.

SUBSCRIBED AND SWORN to before
me this 23rd day of January, 2008.


NOTARY PUBLIC in and for
said County and State.

ANA FLORES
Notary Public, State of Nevada
Appointment No. 07-1254-1
My App't Expires December 8, 2010

AFFIDAVIT OF COUNSEL

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

KRISTINA WILDEVELD, being first duly sworn, deposes and states as follows as to best of his information and belief:

1. That she is an attorney duly licensed to practice law in the State of Nevada and one of the private attorneys assigned to represent KENNETH COUNTS in a capital matter.

2. That MR. COUNTS is charged in a capital murder case where he is alleged by the State to be involved in a murder-for-hire against Timothy Hadland that occurred on or about May 19, 2005.

3. That the facts in the light most favorable to the State are essentially as follows: that Mr. Hadland was a short-term employee of the Palomino Adult Cabaret working as a doorman; that the owners/managers of the Palomino wanted to have Mr. Hadland killed for bad mouthing the club; that the owners/managers utilized MR. CARROLL and others to employ an individual named Kenneth Counts to kill Mr. Hadland; that MR. COUNTS lured Mr. Hadland out to an area where Mr. Counts was then able to shoot and kill Mr. Hadland.

4. In the State's Notice of Intent to Seek the Death Penalty (attached as Exhibit "A"), the State listed two qualifying, aggravating circumstances under NRS 200.033 which made this a death penalty case, to wit: (1) That this was a murder was committed by a person, for himself or another, to receive money or any other thing of monetary value and (2) that MR. COUNTS was currently under the sentence of imprisonment.

5. That MR. COUNTS is alleged to be the shooter of Mr. Hadland. Further, that MR. COUNTS's prior conviction was merely for

1 a 1999 crime of Possession of Marijuana for which he was placed on
2 three (3) years probation.

3 6. That MR. COUNTS filed a Motion to Strike the Aggravating
4 Circumstances which was heard by the District Court. A recent
5 hearing was held on the matter on or about May 15, 2007 and again on
6 January 22, 2008. That the District Court made a ruling denying MR.
7 COUNTS's motion.

8 7. That MR. COUNTS made it very clear on the record at all
9 proceedings that he desired to make a Motion for Extraordinary Relief
10 to the Nevada Supreme Court in the event the District Court denied
11 relief.

12 8. That MR. COUNTS asserts that facially neither
13 aggravating circumstance can withstand judicial scrutiny as a matter
14 of law. That a capital murder trial by its nature is an extraordinary
15 circumstance whereupon a person faces the most severe penalty known
16 to mankind. That from the onset, a capital murder case is "different"
17 in the hallowed words of Supreme Court Justice Stewart's holding in
18 Furman v. Georgia, 408 U.S. 238, 306-07, 92 S.Ct. 2726, 2760, 33
19 L.Ed.2d 346 (1972).

20 9. That the State had indiscriminately sought the death
21 penalty against every adult charged in the Information. This included
22 the owner/managers of the Palomino club who were not present, the
23 shooter, Mr. Counts and Deangelo Carroll.

24 10. That the State has made no secret of the fact that it
25 desires to prosecute the actual owner of the Palomino club, Luis
26 Hildago, Jr., and that he is even listed by name in the aggravating
27 circumstances, but that they do not have sufficient evidence. That
28 it is not a stretch of the imagination after using one co-defendant,

1 MR. COUNTS, who is still exposed to the death penalty, that the State
2 hopes to gain tactical advantage of forcing other co-defendant's to
3 cooperate by keeping the death penalty in place despite the fact that
4 it is supposed to be a very, narrow category of offenders and really
5 "the worst of the worst." This of course would be a wholly
6 inappropriate and potentially unconstitutional use of the death
7 penalty even if one "technically" qualifies for the death penalty
8 under the very widely worded provisions of NRS 200.033.

9 11. That the State could provide no reliable authority for
10 the proposition that Mr. Counts was under a sentence of imprisonment
11 at the time this murder took place. Instead, Mr. Counts was placed
12 on three (3) years of probation in 1999 for a possession of Marijuana
13 charge and failed to pay restitution.

14 12. That MR. COUNTS will be irreparably prejudiced by
15 having to go through an entire death penalty proceeding, from voir
16 dire to penalty phase, on aggravators that cannot stand proper
17 judicial scrutiny. That MR. COUNTS has the right to be able to appeal
18 this matter by extraordinary writ to the Nevada Supreme Court in a
19 timely fashion or he will be prejudiced and should under law and
20 equity be granted a stay so that these issues can be addressed fully
21 and properly.

22 13. That this Honorable Court should issue a stay so that
23 the District Court can submit and sign a full findings of fact and
24 conclusions of law whereupon MR. COUNTS can have the opportunity to
25 fully and properly address the matter by way of Extraordinary Writ
26 before this Court, but with the trial set to begin on January 28,
27 2008, it would be impossible to accomplish said proceedings which
28 would protect the due process rights of the Defendant in a capital

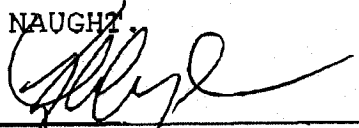
1 matter. That this Court has recently stated that in seeking relief
2 it is preferential to have written findings. See State v. Ruscetta,
3 163 P.3d 451 (2007).

4 14. That because it is impracticable because of the
5 requirement of time, MR. COUNTS asserts he is allowed under NRAP 8(a)
6 to seek stay and make application to a single justice of the Nevada
7 Supreme Court.

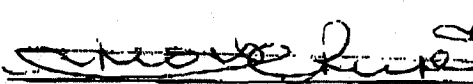
8 15. That there is a pending matter in the Nevada Supreme
9 Court at present regarding death penalty aggravators as they relate
10 to co-defendant, Deangelo Carroll which would reference the same
11 district court case number.

12 16. That pursuant to Supreme Court rule 250(4)(d) the
13 Defendant is permitted a reasonable continuance, if the State files
14 a late notice of intent. In the instant matter, the State filed a
15 Second Amended Notice of Evidence in Support of Aggravating
16 Circumstances on January 10, 2008. That regardless of Supreme Court
17 rule 250(4)(d), and a Defense request for reasonable continuance, the
18 Court has set trial for Defendant Counts on January 28, 2008.

19 FURTHER YOUR AFFIANT SAITH NAUGHT

20 
21 KRISTINA WILDEVELD, ESQ.

22 SUBSCRIBED AND SWORN to before
23 me this 2nd day of January, 2008.

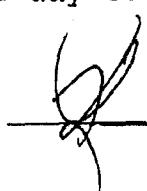
24 
25 NOTARY PUBLIC in and for
26 said County and State.

27 **ANA FLORES**
28 Notary Public, State of Nevada
Appointment No. 07-1254-1
My Appt. Expires December 8, 2010

DECLARATION OF FACSIMILE AND MAILING

ANA FLORES, an employee with KRISTINA WILDEVELD, hereby declares that she is, and was when the herein described mailing took place, a citizen of the United States, over 21 years of age, and not a party to, nor interested in, the within action; that on the 22nd day of January, 2008, declarant deposited in the United States mail at Las Vegas, Nevada, a copy of the Emergency Motion for Stay of Proceedings in the case of KRISTINA WILDEVELD, Petitioner vs. The Eighth Judicial District Court of the State of Nevada, County of Clark, the Honorable Valerie Adair, Respondent, KENNETH COUNTS, Real Party in Interest, District Court Case No. C212667, faxed and also enclosed in a sealed envelope upon which first class postage was fully prepaid, addressed to Catherine Cortez Masto, 100 North Carson Street, Carson City, Nevada 89701-4717; Judge Valerie Adair, District Court Judge, 200 Lewis Avenue and David J.J. Roger, 200 Lewis Avenue that there is a regular communication by mail between the places of mailing and the places so addressed. I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on the 22nd day of January, 2008.



1 RECEIPT OF A COPY of the foregoing **Emergency Motion for Stay**
2 **of Proceedings** is hereby acknowledged this 22nd day of January, 2008.

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

5 By 
6
7

8 RECEIPT OF A COPY of the foregoing **Emergency Motion for Stay**
9 **of Proceedings** is hereby acknowledged this 22nd day of January, 2008.

10 VALERIE ADAIR
11 DISTRICT COURT JUDGE, DEPARTMENT XXI

12 By 
13 for VALERIE ADAIR
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