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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 24 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

EMERGENCY MOTION FOR STAY OF PROCEEDINGS

KRISTINA 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  
Las Vegas, Nevada 89155  
(702) 671-2500

CATHERINE CORTEZ MASTO  
Attorney General  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(702) 486-3420

Counsel for Respondent

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JAN 24 2008

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Real Party in Interest.

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

## By

KRISTINA WILDEVELD, ESQ.  
Nevada Bar No. 5825  
1100 S 10<sup>th</sup> 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.

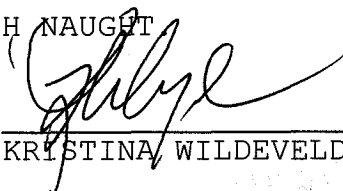
2. That MR. COUNTS, has authorized and directed MS. WILDEVELD, to file the foregoing Writ of Mandamus;

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 23<sup>rd</sup> 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 Appl. Expires December 6, 2010

1 AFFIDAVIT OF COUNSEL

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

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

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

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

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

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

27           5. That MR. COUNTS is alleged to be the shooter of Mr.  
28 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.

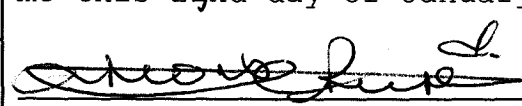
8 15. That there is a pending matter in the Nevada Supreme  
9 Court at present regarding death penalty aggravators as they relate  
10 to co-defendant, Deangelo Carroll which would reference the same  
11 district court case number.

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 2<sup>nd</sup> day of January, 2008.

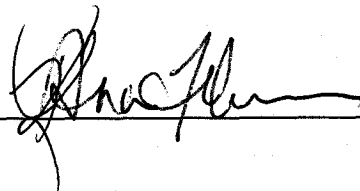
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25 NOTARY PUBLIC in and for  
26 said County and State.

27 **ANA FLORES**  
28 Notary Public, State of Nevada  
Appointment No. 07-1254-1  
My Appt. Expires December 6, 2010

1                                    **DECLARATION OF FACSIMILE AND MAILING**

2            ANA FLORES, an employee with KRISTINA WILDEVELD, hereby declares  
3 that 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 22nd day of  
6 January, 2008, declarant deposited in the United States mail at Las  
7 Vegas, Nevada, a copy of the Emergency Motion for Stay of Proceedings  
8 in the case of KRISTINA WILDEVELD, Petitioner vs. The Eighth Judicial  
9 District Court of the State of Nevada, County of Clark, the Honorable  
10 Valerie Adair, Respondent, KENNETH COUNTS, Real Party in Interest,  
11 District Court Case No. C212667, faxed and also enclosed in a sealed  
12 envelope upon which first class postage was fully prepaid, addressed  
13 to Catherine Cortez Masto, 100 North Carson Street, Carson City,  
14 Nevada 89701-4717; Judge Valerie Adair, District Court Judge, 200  
15 Lewis Avenue and David J.J. Roger, 200 Lewis Avenue that there is a  
16 regular communication by mail between the places of mailing and the  
17 places so addressed. I declare under penalty of perjury that the  
18 foregoing is true and correct.

19                                    EXECUTED on the 22<sup>nd</sup> day of January, 2008.

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1 RECEIPT OF A COPY of the foregoing **Emergency Motion for Stay**  
2 **of Proceedings** is hereby acknowledged this 27<sup>th</sup> day of January, 2008.

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

5 By \_\_\_\_\_  
6 *Judy Grey*  
7

8 RECEIPT OF A COPY of the foregoing **Emergency Motion for Stay**  
9 **of Proceedings** is hereby acknowledged this 27<sup>th</sup> day of January, 2008.

10 VALERIE ADAIR  
11 DISTRICT COURT JUDGE, DEPARTMENT XXI

12 By \_\_\_\_\_  
13 *for* *Valerie Adair*  
14 VALERIE ADAIR  
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