

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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3 JASON MCCARTY

4 Appellant,

5 vs.

6 THE STATE OF NEVADA,

7 Respondent.

S.C. CASE NO. 58101

Electronically Filed
Aug 26 2014 01:04 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

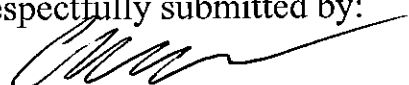
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9 **SUPPLEMENTAL BRIEF**

10 COMES NOW, Christopher R. Oram, Esq., attorney for Appellant, JASON
11 MCCARTY, and submits this Supplemental Brief to the State's Supplemental
12 Response filed July 30, 2014.

13 This motion is made and based the declaration of Christopher R. Oram, Esq.,
14 attached hereto.

15 DATED this 26th day of August, 2014.

16 Respectfully submitted by:

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POINTS AND AUTHORITIES

On July 30, 2014, the State filed a Supplemental brief. The State claims that Mr. McCarty raised a new claim in the reply and during oral argument. Mr. McCarty disagrees. In the State's supplement, the State provides,

The purpose of NRS 171.178 is to prevent "all the evil implications of secret interrogation of persons accused of crime" Sheriff Clark County v. Berman, 99 Nev. 102, 105-06 (1983). In other words, NRS 171.178 seeks to avert secret interrogations of those accused of committing crimes. Moreover, the promptness under NRS 171.178 aids to inform the accused of their privilege against self incrimination. Brown v. Justice Court, 83 Nev. 272, 276 (1967) (State's Supplemental Brief pp. 4-5).

Mr. McCarty agrees with the State's position regarding NRS 171.178. The purpose of the statute and state and federal case law is to prevent secret interrogations of those accused of crimes. Undoubtedly, the most egregious type of secret interrogation results when a man is sentenced to death based upon statements made during the time that he has been repeatedly interrogated without the right to counsel.

Mr. McCarty specifically raised this issue in his Opening Brief. In fact, Mr. McCarty cited Hamdi v. Rumsfeld, 542 U.S. 507, 124 S. Ct. 2633, 159 L. Ed. 578 (2004) (Opening Brief pp. 9). Mr. McCarty's brief provided the following argument to this Court.

The United States Supreme Court held that the fourth circuit court of appeals erred by denying Mr. Hamadi immediate access to counsel upon his detention and by disposing of his case without permitting him to meet with an attorney. Hamdi, had been held as an enemy combatant. The United States Supreme Court held that the fifth amendment's due process clause demanded that a citizen held in the United States as an asserted "enemy combatant" had to be given a meaningful opportunity to contest the factual basis for that detention before a neutral decision maker, including the right to access to counsel. Id.

The Sixth Amendment Right to Counsel, which applies to the States by way of the Fourteenth Amendment's Due Process Clause, Simmons v. State, 112 Nev. 91, 98, 912 P.2d 217, 221 (1996), prevents admission at trial of a defendant's statements

1 which police have deliberately elicited after the right has attached and without
2 obtaining a waiver or providing counsel. Fellers v. United States, 540 U.S. 519, 124
3 S. Ct. 1019, 157 L. Ed.2d 1016 (2004). Once a defendant invokes the Sixth
4 Amendment right to counsel, the government must cease further attempts to obtain his
5 statements until he has been provided counsel, unless he initiates the conversation and
6 waives his rights. Patterson v. Illinois, 487 U.S. 285, 108 S. Ct. 2389, 101 L. Ed.2d
7 261 (1988). Adversarial proceedings commence by way of formal charge, preliminary
8 hearing, indictment, information, or arraignment. Fellers, 540 U.S. 519, (2004).

9 Therefore, the State was on notice that Mr. McCarty complained that enemy
10 combatants have the right to counsel and so should Mr. McCarty, an American citizen.

11 During oral argument, at least one justice questioned Mr. McCarty's counsel as
12 to when the right to counsel attaches.

13 In Mr. McCarty's Opening Brief he specifically stated that he was arrested on
14 May 25, 2006 and not provided counsel until 14 days later, on June 7, 2006. During
15 this 14 day time period, the State elicited numerous and highly incriminating
16 statements to Mr. McCarty. Mr. McCarty was even taken from the jail by detectives
17 to search for the instrumentalities of the murders. At no time was Mr. McCarty
18 afforded counsel until June 7, 2006.

19 In the Opening Brief, Mr. McCarty raised several subsections regarding the
20 necessity for suppression of his statements. Hence, it is entirely disingenuous when
21 the Sate concludes..."McCarty may only complain of plain error based on the lack of
22 objection in the court below" (State's Supplement pp. 6). The Opening Brief
23 demonstrates that Mr. McCarty bitterly objected to the numerous constitutional
24 violations of his captivity and secret interrogations without the right to counsel. ¹

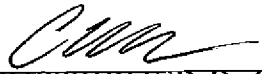
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27 ¹ On appeal Mr. McCarty complained that the State originally informed
28 counsel that they would not utilize McCarty's statements and Mr. McCarty was
therefore precluded in addressing the numerous facts in his statements. However,

Moreover, after the conclusion of oral argument in this case, this Court ordered McCarty to obtain transcripts from the hearings dated May 27, May 30, and June 7 of 2006 (06/05/2014 Order). The State now admits that there is absolutely no transcripts of any of these proceedings. Mr. McCarty attached the minutes of the Court in his "response to June 5, 2014 order to request transcripts". Now, the State claims that Mr. McCarty was afforded all of his constitutional rights. Where was his counsel for 14 days while he was incarcerated and continuing to be interrogated. Mr. McCarty's interrogation without the opportunity for counsel condemned him to death.

CONCLUSION

Mr. McCarty did object to all relevant constitutional issues which resulted in a violation of his fifth, sixth, and fourteenth amendment rights. This Court should not hold Mr. McCarty to the plain error standard given the numerous legal arguments made in his Opening Brief. The State's contention that NRS 171.178 is designed to prevent "all the evil implications of secret interrogations of persons accused of crime" is exactly one of the issues that Mr. McCarty complained of in the proceedings. This is the reason why he cited to Hamdi v. Rumsfeld. Supra.

Dated this 26th day of August, 2014.


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during guilt phase rebuttal closing argument, the prosecutor dedicated almost his entire argument to Mr. McCarty's statements. Included within these highly incriminating statements were recordings which demonstrated Mr. McCarty believed he was actually negotiating with the deputy district attorney Scott Mitchell by and through the Henderson Detectives.

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on August 26, 2014. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ-MASTO
Nevada Attorney General

STEVE OWENS
Chief Deputy District Attorney

CHRISTOPHER R. ORAM, ESQ.

BY:

/s/ Jessie Vargas
An Employee of Christopher R. Oram, Esq.