

1 This Opposition is based on the following Memorandum of Points and
2 Authorities, and all papers and pleadings on file herein.

3 Dated this 17 day of September, 2012.

4 GORDON SILVER

5 

6 MICHAEL V. CRISTALLI
7 Nevada Bar No. 006266
8 EUNICE M. MORGAN
9 Nevada Bar No. 010382
10 3960 Howard Hughes Pkwy., 9th Floor
11 Las Vegas, Nevada 89169
12 (702) 796-5555
13 Attorneys for Petitioner/Defendant
14 Keith Mathahs
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Mr. Mathahs previously filed an Emergency Motion to Stay Proceedings,
5 which this Court denied in its order filed September 12, 2012. (See September 12,
6 2012, Order, attached as Exhibit A).

7 The basis for Mr. Mathahs' motion was that the proceedings should be
8 stayed until this Court decided the Writ that was filed by Mr. Mathahs on July 27,
9 2012, because the outcome of the Writ could drastically affect trial, currently
10 scheduled for October 22, 2012.

11 The Writ presented two issues:

- 12 I. WHETHER A PETITION FOR AN EXTRAORDINARY WRIT IS
13 THE APPROPRIATE VEHICLE TO CHALLENGE THE DISTRICT
14 COURT'S JURISDICTION TO PROCEED BASED ON THE
15 CRIMINAL CHARGES PENDING AGAINST PETITIONER
REGARDING PETITIONER'S ARGUMENT THAT THE
INDICTMENT IS CONSTITUTIONALLY AND STATUTORY
DEFECTIVE.
- 16 II. WHETHER THE INDICTMENT MUST BE DISMISSED AS
17 AGAINST MATHAHS BECAUSE IT IS CONSTITUTIONALLY
18 AND STATUTORILY DEFECTIVE AND DOES NOT PROVIDE
ADEQUATE NOTICE SUFFICIENT FOR MATHAHS TO
DEFEND HIMSELF AGAINST THE CHARGES ALLEGED.

19 This Court directed that the State answer the Writ within 20 days.
20 Thereafter, the State requested an extension of time to file its response. As such,
21 Mr. Mathahs requested that this Court stay the proceedings until resolution of the
22 Writ.

23 On September 12, 2012, this Court denied Mr. Mathahs' request, stating that
24 although the answer (with an extension being given) was not due until September
25 17, there was "sufficient time. . . to resolve this original proceeding before the
26 scheduled trial date of October 22, 2012." See Exhibit A. On September 17, 2012,
27 the date the answer was due, the State filed a second request for enlargement of
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1 time in which to respond. (See State's Motion for Enlargement of Time (Second
2 Request) attached hereto as Exhibit B).

3 This Opposition follows.

4 **II.**

5 **RELEVANT STATEMENT OF FACTS**

6 In the case at bar, the June 4, 2010 Indictment (the "First Indictment") was
7 filed in Case No. 10C265107-3. The First Indictment is currently before
8 Department XXI (the "First Indictment Matter"). The First Indictment states (in
9 part) that Mr. Mathahs is being charged (along with his two co-Defendants) with
10 criminal neglect of patient stemming from his employment with Dr. Desai. One of
11 the patients alleged to have been harmed, as charged in the First Indictment, was
12 Mr. Meana, by Defendants' purportedly infecting him with Hepatitis-C.

13 Recently, a "Second" Indictment was filed in Department XXIII. The
14 "Second" Indictment states, in relevant part, that between September 21, 2007, and
15 April 27, 2012, Defendants killed Mr. Meana by introducing Hepatitis C into his
16 body during the commission of an unlawful act, to wit: criminal neglect of patient.
17 (the "Second Indictment Matter").

18 Inexplicably, the State argues that the Second Indictment Matter is a
19 "completely separate matter" although the second degree murder charge stems
20 directly from the alleged criminal negligence and/or reckless disregard of the
21 Defendants that led to the filing of the First Indictment. In fact, the State, during a
22 hearing in the Second Indictment Matter, alluded to the First Indictment Matter as
23 the "underlying case". (A copy of the transcript proceedings is attached as Exhibit
24 C, at p. 20).

25 Regardless of whether the Second Indictment is a "separate matter or not",
26 Mr. Mathahs filed an emergency motion to continue trial in the First Indictment
27 Matter due to the fact that as a result of Mr. Meana's death, the penalty for any
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1 finding that Mr. Mathahs is liable for the death of Mr. Meana automatically carries
2 an enhancement of 1-20 prison term, versus the 1-6 prison term that Mr. Mathahs
3 could have been penalized for, prior to Mr. Meana's death. ¹

4 _____
5 ¹ There can be no real dispute as to whether the Second Indictment is a separate matter.
6 On August 22, 2012, the parties came before the court in the Second Indictment
7 Matter on Mr. Mathahs' Motion to Stay Proceedings. Counsel for Mr. Mathahs argued as
8 follows:

9 The charge for which we're before your Honor is a charge of second-degree
10 murder arising out of the death of Mr. Meana who is . . . one of the . . . alleged
11 named victims in the criminal . . . indictment. . . that is pending before Judge
12 Adair.

13 He is contained in one of the indictments which is criminal neglect. In that charge
14 as that particular charge statutorily has a provision which increases the penalty if
15 death occurs subsequent to the allegations of neglect.

16 The indictment, the way it's pled in this case, is identical to the way it's pled in
17 the case in front of Judge Adair as it relates to the criminal neglect. That issue is
18 currently up in front of the Nevada Supreme Court as it's challenging the legality
19 of that indictment and how that indictment was pled.

20 So depending on what the Nevada Supreme Court does in that case, meaning if
21 they decide that we are correct and that the indictment is flawed inherently and
22 instruct the State accordingly and dismiss that indictment or force the State to go
23 back before the grand jury and present evidence and get an indictment returned
24 according to the instructions of the Nevada Supreme Court, that directly affects
25 the indictment in this case.

26 I don't see any argument that alters that theory as to how this case will play out.
27 So it's our request because of the way that this indictment is pled, identical to the
28 one that's pled in front of Judge Adair that's currently pending up in front of the
Nevada Supreme Court, which ultimately will be influenced by the determination
of the Supremes, that these proceedings be stayed.

Once there's a determination by the Nevada Supreme Court as it relates to that
indictment, those issues and that directive will also influence this Court's
determination on the indictment that's currently pending before Your Honor.

So for those reasons, we're asking that all proceedings be stayed until after there's
been a determination on the issue currently before the Nevada Supreme Court on
the writ of mandamus.

27 See Exhibit C, pp. 2-4.

28 Counsel continued:

1 The First Indictment alleges that Defendants are liable, in part, for “criminal
2 negligence” under NRS 200.495 as a result of the events at ECSN, and further
3 states the purported victims, including Mr. Meana.

4 NRS 200.495(2)(a) includes a penalty if the “criminal neglect” results in
5 death. Specifically, NRS 200.495(2)(a) states, in relevant part, “If the neglect
6 results in death, is guilty of a category B felony and shall be punished by
7 imprisonment in the state prison for a minimum term of not less than 1 year and a
8 maximum term of not more than 20 years.”

9 Prior to counsel for Mr. Mathahs receiving the Grand Jury transcripts in the
10 Second Indictment Matter, on or about August 24, 2012, Mr. Mathahs had no

11 _____ (continued)

12 [T]o say these two cases are unrelated is just denying the realities of the current
13 situation. All I can do is encourage the Court to compare the two indictments.
14 The language contained in those indictments as far as the theory of liability are
15 identical. It is very unusual for the State to do procedurally what they did. . . .
[C]ertainly, the normal procedure for them would have been to get a superseding
indictment. . . and amend it to include a charge of second-degree murder.

16 See Exhibit C, pp. 7-8.

17 Counsel for Dr. Desai argued:

18 This is a de facto superseding indictment. We know in the law that we look at
19 facts, not labels to determine what something is. Mr. Staudaher can call a dog a
20 pig, and we can look and see what it is. This is truly a superseding indictment.
21 This went back to the same grand jury and they only heard two witnesses for the
22 indictment before this Court, and I am presuming without having seen the
23 transcript that the only additional fact that was presented to the same grand jury
24 was the fact that Mr. Meana, who previously had substantial bodily injury from
having hepatitis C virus, died in the interim; so therefore, they put on proof of Mr.
Meana’s death and both probable evidence that it was caused by hepatitis C. Two
witnesses in, I think, an hour or so and they returned an indictment.

25 It should have been what we call a superseding indictment in the same case before
26 the same judge. It’s the same facts, circumstances, transaction. The only addition
is the patient died. . . .

27 See Exhibit C, pp. 15-16.

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1 knowledge that witnesses who appeared before the Grand Jury in the Second
2 Indictment Matter would provide any testimony whatsoever linking the events that
3 took place at ECSN to the death of Mr. Meana, and their specific testimony that led
4 to the charges of second-degree murder.

5 Although the State attempts to argue that the Second Indictment is a “new”
6 case, the testimony and/or evidence provided to the Grand Jury, leading to the
7 return of the Second Indictment may be utilized in the trial of the First Indictment
8 to support a violation of NRS 200.495(2), which carries a 1-20 penalty for
9 “criminal neglect resulting in death”.

10 Until recently, the possibility of Mr. Mathahs facing an enhanced penalty
11 (from a 1-6 prison term to a 1-20 prison term) was nonexistent. Defendants now
12 have additional causation issues to argue, i.e., that Mr. Meana did not die as a
13 result of Hepatitis-C.

14 Counsel needs as much time as possible to prepare the defense of Mr.
15 Mathahs, which is why Mr. Mathahs filed emergency motions to stay both the First
16 Indictment Matter and the Second Indictment Matter before this Court.

17 On September 12, 2012, when this Court denied Mr. Mathahs’ emergency
18 motions, the rationale was that because the State would file its answer by
19 September 17, 2012, this Court would have sufficient time to decide the Writ
20 issues and still allow counsel to prepare for the October 22, 2012, trial date.

21 However, trial is rapidly approaching and instead of filing its answer, the
22 State has blithely requested a second extension for “more time” due to the
23 “complexity of the case”. If the State needs more time simply to file an answer,
24 this Court can imagine how much trial preparation and time will go into actually
25 preparing for a trial, which is approximately only a month away.

26 To date, Mr. Mathahs is unsure of what exactly he is defending himself
27 against, due to the defects in the First Indictment. Although it is imperative that
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1 Mr. Mathahs receive resolution from this Court as soon as possible so that counsel
2 can prepare for his defense, the State, rather than timely filing its response to the
3 Writ, instead just repeatedly asks for more time.

4 The State's actions are deliberately interfering with the time counsel has to
5 prepare for trial. It is not until this Court resolves the Writ issues that counsel can
6 understand exactly what Mr. Mathahs is defending himself against, at the October
7 22, 2012, trial.

8 III.

9 CHRONOLOGY OF RECENT EVENTS

- 10 • On July 27, 2012, Mr. Mathahs filed the Writ.
- 11 • On August 10, 2012, the State filed the Second Indictment, charging
12 Defendants with second-degree murder for the death of Mr. Meana.
- 13 • Although the State argues the second-degree murder is a separate case, there
14 can be no dispute that the "criminal neglect" charge in the First Indictment
15 Matter now carries a penalty of 1-20 prison term, as opposed to 1-6 prison
16 term, due to the death of Mr. Meana. Mr. Mathahs needs adequate time to
17 prepare a defense to this enhanced penalty by arguing causation issues as to
18 death.
- 19 • On August 24, 2012, counsel for Mr. Mathahs received the Grand Jury
20 Transcripts in the Second Indictment Matter, which is the date Mr. Mathahs
21 first learned about the specific testimony against him purportedly supporting
22 his liability for the death of Mr. Meana.
- 23 • On September 12, 2012, this Court determined that should the State file its
24 answer to the Writ by September 17, 2012, this Court would have sufficient
25 time to address whether the First Indictment is fatally defective, in order for
26 the parties to proceed to trial by October 22, 2012.
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- Counsel for Mr. Mathahs has filed an emergency motion to continue trial in the First Indictment Matter based on the circumstances that have just now arisen (as described above).
- On September 17, 2012, the State (instead of filing the answer on its due date) requested yet another extension of time in which to respond to the Writ. There is no way of knowing, if the State’s Motion for Enlargement of Time is granted, whether the State will ask for yet another extension after September 21, 2012, given its argument that there are 2600 pages of “complicated grand jury testimony”.
- Expert disclosures are due 21 days before trial (October 1, 2012). It is still not known which experts are necessary as the Writ issues have not been decided. Although counsel has been trying to adequately prepare for every possible outcome of the Writ, it is inherently unfair for counsel to lose even more time in learning the outcome of the Writ due to the State’s dilatory actions, which has most likely pushed back resolution of the Writ issues until after the October 1, 2012, expert disclosure date. It is violative of Mr. Mathahs’ constitutional right to a fair trial for his counsel to be prejudiced in trial preparation by not being able to adequately undergo expert preparation prior to understanding whether the Indictment is able to stand as is, despite its fatal defects.
- Trial is set for October 22, 2012.

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IV.

MR. MATHAHS IS EXTREMELY PREJUDICED IN PREPARING FOR HIS DEFENSE SHOULD THE STATE BE GIVEN ADDITIONAL TIME TO RESPOND TO THE WRIT

Until the Writ is decided, Mr. Mathahs has no adequate method of preparing for his defense because, to date, due to the vagueness of the Indictment, he does not know what charges he is defending himself against.

It is violative of Mr. Mathahs' constitutional Due Process right that he is unable to prepare a competent defense due to the Writ issues not having been decided, and which cannot be decided until the State decides to file its answer to the Writ (unless this Court denies the State's Motion for Enlargement of Time (Second Request)). Even though the answer to the Writ is due today, the State has apparently chosen to ignore the due date and file yet another request for an extension, thus severely interfering with the amount of time Mr. Mathahs has left to prepare for trial.

There can be no dispute that should this Court determine that the First Indictment, as originally filed, is fatally defective, trial preparation for all parties will be seriously affected. As such, it is imperative that all parties have as much time as possible after the Writ is decided, to prepare for trial. With every day the State waits to file its answer to the Writ, Mr. Mathahs loses another day to learn the outcome of his Writ, which materially affects Mr. Mathahs' counsel's ability to competently prepare for trial.

Additionally, as of the time of the filing of this Opposition, Mr. Mathahs does not know whether he has to defend himself against an enhanced penalty as a result of discovering the State's theory of the case is (as of August 10, 2012) that his alleged "criminal negligence" resulted in the death of Mr. Meana, and his penalty (if found guilty) could jump from a 1-6 prison term, to a 1-20 prison term

1 and how to even defend against this issue, given that the wording of the “criminal
2 negligence” charge against Mr. Meana (in the First Indictment) is so vague it is
3 unsupportable and leaves Mr. Mathahs guessing as to the State’s theory of liability.

4 Clearly, should this Court determine the First Indictment is fatally defective,
5 at the very least, trial would have to be continued to determine the next course of
6 action to take. However, until that determination is made, counsel for Mr. Mathahs
7 is struggling to competently prepare a defense for Mr. Mathahs, given that the Writ
8 issues are still “up in the air”.

9 The State’s request should be denied because, at this point, the State is
10 deliberately taking days away from Mr. Mathahs’ counsel’s defense preparation by
11 refusing to timely respond to the Writ, the outcome of which could seriously affect
12 trial preparation. The State’s dilatory actions are jeopardizing Mr. Mathahs’
13 constitutional right to a fair trial by hindering his counsel’s ability to competently
14 prepare for trial.

15 V.

16 **CONCLUSION**

17 Based on the foregoing, it is requested that the State’s motion for an
18 enlargement of time be denied.

19 Alternatively, it is requested that should the State be given more time to
20 respond, that this Court order that the proceedings be stayed pending resolution of
21 the Writ so as not to prejudice Mr. Mathahs further as he cannot currently
22 competently prepare for trial given that he does not know: 1) what he is defending
23 himself against; 2) whether he needs to retain experts to argue the causation issues
24 surrounding Mr. Meana’s death, which will impact him in the First Indictment
25 Matter, regardless of what the State attempts to argue, because the penalty for
26 criminal neglect resulting in death jumps from a 1-6 prison term, to a 1-20 prison
27 term; and 3) which experts are necessary pending the outcome of the Writ.

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Mr. Mathahs must be given adequate time to prepare for all of these recent changes in circumstance. Thus, if this Court is inclined to allow the State more time to answer, it is requested that all proceedings be stayed pending the outcome of the Writ to give counsel for Mr. Mathahs adequate time to prepare for trial, which preparation is directly affected by the outcome of the Writ issues.

Dated this 17 day of September, 2012.

GORDON SILVER



GORDON SILVER
Michael V. Cristalli
Nevada Bar No. 6266
Eunice M. Morgan
Nevada Bar No. 10382
3960 Howard Hughes Pkwy., 9th Floor
Las Vegas, Nevada 89169
Attorneys for Petitioner/Defendant

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Mr. Mathahs must be given adequate time to prepare for all of these recent changes in circumstance. Thus, if this Court is inclined to allow the State more time to answer, it is requested that all proceedings be stayed pending the outcome of the Writ to give counsel for Mr. Mathahs adequate time to prepare for trial, which preparation is directly affected by the outcome of the Writ issues.

Dated this 17 day of September, 2012.

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Michael V. Cristalli
Nevada Bar No. 6266
Eunice M. Morgan
Nevada Bar No. 10382
3960 Howard Hughes Pkwy., 9th Floor
Las Vegas, Nevada 89169
Attorneys for Petitioner/Defendant

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this documents was filed electronically with the Nevada Supreme Court on September 17, 2012. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ MASTO
Nevada Attorney General

RYAN J. MACDONALD
Deputy District Attorney

BY: 
An employee of Gordon Silver

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEITH MATHAHS,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
VALERIE ADAIR, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 61359

FILED

SEP 12 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Malone*
DEPUTY CLERK

ORDER DENYING MOTIONS

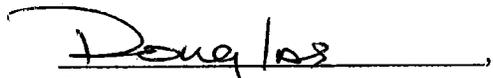
Petitioner has filed two motions to stay proceedings in the district court pending resolution of this original writ petition. The State has opposed both motions.¹

The first motion seeks a stay of the trial scheduled in the underlying criminal prosecution, docketed in the Eighth Judicial District Court as 10C265107 and assigned to Department 21. The trial currently is scheduled for October 22, 2012. Although the real party's answer to the petition is not due until September 17, 2012, there currently is sufficient time for this court to resolve this original proceeding before the scheduled trial date. Accordingly, we deny the motion filed on August 21, 2012, without prejudice.

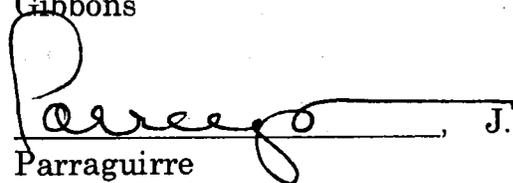
¹The State's opposition to the first motion was included in the motion for an extension of time that was filed on August 21, 2012.

The second motion seeks a stay of the proceedings in a separate criminal prosecution, docketed in the Eighth Judicial District Court as C-12-283381 and assigned to Department 23. That proceeding is not the subject of this original proceeding. Additionally, petitioner was only recently arraigned on the indictment in that case and no trial date has been set. Under the circumstances, there is no reason for this court to stay the proceedings in that case at this time. Accordingly, the motion filed on September 10, 2012, is denied without prejudice.

It is so ORDERED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Valerie Adair, District Judge
Hon. Stefany Miley, District Judge
Gordon & Silver, Ltd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

Anna Dang

From: efilings@nvcourts.nv.gov
Sent: Wednesday, September 12, 2012 1:18 PM
To: Litigationnotices
Subject: Notification of Electronic Filing in MATHAHS (KEITH) VS. DIST. CT. (STATE), No. 61359

Supreme Court of Nevada

NOTICE OF ELECTRONIC FILING

Notice is given of the following activity:

Date and Time of Notice: Sep 12 2012 01:16 p.m.

Case Title: MATHAHS (KEITH) VS. DIST. CT. (STATE)
Docket Number: 61359
Case Category: Original Proceeding

Document Category: Filed Order Denying Motions.
Submitted by: Issued by Court
Official File Stamp: Sep 12 2012 12:23 p.m.
Filing Status: Accepted and Filed

Docket Text: Filed Order Denying Motions.

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Ryan MacDonald
Michael Cristalli
Catherine Cortez Masto
Steven Owens

No notice was electronically mailed to those listed below; counsel filing the document must serve a copy of the document on the following:

Eunice Morgan
Michael Staudaer

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EXHIBIT B

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

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4 KEITH MATHAHS,
5 Petitioner,
6 vs.
7 THE EIGHTH JUDICIAL DISTRICT
8 COURT OF THE STATE OF
9 NEVADA, IN AND FOR THE
10 COUNTY OF CLARK, AND THE
11 HONORABLE VALERIE ADAIR,
12 DISTRICT JUDGE
13 Respondent,
14 and
15 THE STATE OF NEVADA,
16 Real Party in Interest.

CASE NO:
D.C. NO:

Electronically Filed
Sep 17, 2012 09:26 a.m.
61359
Tracie K. Lindeman
Clerk of Supreme Court

17 **MOTION FOR ENLARGEMENT OF TIME**
18 **(Second Request)**

19 COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark
20 County District Attorney, through his Deputy, RYAN J. MACDONALD, and
21 moves this Court for an enlargement of time within which to file Answer to
22 Petition for Writ of Mandamus or Prohibition. This motion is based on the
23 following memorandum, declaration of counsel and all papers and pleadings on
24 file herein.

25 Dated this 17th day of September, 2012.

26 Respectfully submitted,

27 STEVEN B. WOLFSON
28 Clark County District Attorney
Nevada Bar # 001565

BY */s/ Ryan J. MacDonald*

RYAN J. MACDONALD
Deputy District Attorney
Nevada Bar #12615
Office of the Clark County District Attorney

1 **MEMORANDUM**

2 I, RYAN J. MACDONALD, am the supervising attorney in the above-
3 captioned case. This Court may extend the time to file an Answer to Petition for
4 Writ of Mandamus or Prohibition upon a showing of good cause. NRAP 26(b)(1).

5 The State's Answer on the instant matter is currently due on September 14,
6 2012. This petition challenges the sufficiency of a 40-page Indictment in a
7 complex, important, and constantly-evolving case. Despite this, Petitioner asserts
8 that this Court need not consider any of the grand jury proceedings below when
9 assessing whether extraordinary intervention in this matter is warranted. The State
10 strongly disagrees and asserts that the appendix Petitioner has submitted is
11 woefully insufficient. Accordingly, the State was compelled to assemble and
12 review a Respondent's Appendix that consists of approximately 2,600 pages of
13 complicated grand jury testimony.

14 Due to the above-described circumstances, the State submits that good cause
15 exists to extend the filing due date and respectfully requests this Court's
16 permission for an extension of time of FIVE (5) days to file its Answer to Petition
17 for Writ of Mandamus or Prohibition, making the Answer due to be filed on or
18 before September 21, 2012. This motion is made in good faith and not for
19 purposes of undue delay.

20 Dated this 17th day of September, 2012.

21 Respectfully submitted,

22 **STEVEN B. WOLFSON**
23 Clark County District Attorney

24 BY */s/ Ryan J. MacDonald*
25 RYAN J. MACDONALD
26 Deputy District Attorney
27 Nevada Bar #12615
28 Office of the Clark County District Attorney

Sandra E. Gordon

From: efileing@nvcourts.nv.gov
Sent: Monday, September 17, 2012 9:28 AM
To: Litigationnotices
Subject: Notification of Electronic Filing in MATHAHS (KEITH) VS. DIST. CT. (STATE), No. 61359

Supreme Court of Nevada

NOTICE OF ELECTRONIC FILING

Notice is given of the following activity:

Date and Time of Notice: Sep 17 2012 09:27 a.m.

Case Title: MATHAHS (KEITH) VS. DIST. CT. (STATE)
Docket Number: 61359
Case Category: Original Proceeding

Document Category: Motion to Extend Time
Submitted by: Ryan James MacDonald
Official File Stamp: Sep 17 2012 09:26 a.m.
Filing Status: Accepted and Filed

Docket Text: Filed Motion to Extend Time to File Answer to Petition for Writ (Second Request).

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Electronic service of this document is complete at the time of transmission of this notice. The time to respond to the document, if required, is computed from the date and time of this notice. Refer to NEFR 9(f) for further details.

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EXHIBIT C



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C283381-3
)	C283381-1
vs.)	
)	DEPT NO. XXIII
KEITH H. MATHAHS,)	
)	TRANSCRIPT OF
Defendant.)	PROCEEDINGS
_____)	

BEFORE THE HONORABLE STEFANY MILEY, DISTRICT COURT JUDGE

ARRAIGNMENT (ALL)
DEFENDANT'S MOTION FOR BAIL ON ORDER SHORTENING TIME (MATHAHS)
DEFT'S MOTION TO STAY PROCEEDINGS PENDING RESOLUTION OF WRIT
PROCEEDINGS PURSUANT TO NRAP 8 (A)

WEDNESDAY, AUGUST 22, 2012

APPEARANCES:

For the State:	PAMELA WECKERLY, ESQ. MICHAEL V. STAUDAHER, ESQ. Chief Deputy District Attorneys
For Defendant Lakeman:	FREDERICK A. SANTACROCE, ESQ.
For Defendant Mathahs:	MICHAEL V. CRISTALLI, ESQ.
For Defendant Desai:	RICHARD A. WRIGHT, ESQ. MARGARET M. STANISH, ESQ.

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1 **LAS VEGAS, NEVADA, WEDNESDAY, AUGUST 22, 2012, 9:59 A.M.**

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3 MR. CRISTALLI: Good morning, Your Honor. Attorney
4 Michael Cristalli appearing on behalf of Keith Mathahs.

5 MR. SANTACROCE: Frederick Santacroce for defendant
6 Ronald Lakeman.

7 MR. WRIGHT: Richard Wright and Margaret Stanish for
8 Dr. Dipak Desai.

9 THE COURT: All right. Good morning, counsel.

10 MR. STAUDAHER: Michael Staudaher and Pam Weckerly on
11 behalf of State, Your Honor.

12 THE COURT: Good morning. All right. So I have
13 several things on calendar this morning. Would you like to
14 address the motions first, because the one thing that is on
15 calendar is the district court arraignment; however, one of
16 the motions filed has to do with postponing the arraignment,
17 and, Mr. Cristalli, that is your motion?

18 MR. CRISTALLI: Your Honor, thank you. I did file a
19 motion to stay the proceedings and I appreciate the Court's
20 consideration. I know it was at the last minute, and the
21 State also was considerate enough to allow us to argue this
22 prior to the bail motion and going forward with the
23 arraignment.

24 As this Court understands, there is another matter
25 currently pending in front of Judge Adair. That has to do

1 with criminal neglect as well as -- an allegation of criminal
2 neglect as well as allegations of fraud and racketeering
3 amongst a few of the charges that are contained within that
4 indictment.

5 The defense filed both myself, Mr. Santacroce in
6 joining, and Mr. Wright filed petitions attacking the
7 sufficiency or the specificity and legality of the indictment,
8 and ultimately, have those issues currently pending in the
9 Nevada Supreme Court on a writ of mandamus.

10 The Supreme Court has instructed the State to answer
11 that writ and the State has just asked for an enlargement of
12 time to file the response. So that's kind of the procedural
13 posture in front of Judge Adair currently on that indictment.

14 The charge for which we're before Your Honor is a
15 charge of second-degree murder arising out of the death of Mr.
16 Meana who is charged in -- who is one of the named victims --
17 alleged named victims in the criminal complaint -- or criminal
18 indictment, I'm sorry, that is pending before Judge Adair.

19 He is contained in one of the indictments which is
20 the criminal neglect. In that charge as that particular
21 charge statutorily has a provision which increases the penalty
22 if death occurs subsequent to the allegations of neglect.

23 The indictment, the way it's pled in this case, is
24 identical to the way it's pled in the case in front of Judge
25 Adair as it relates to the criminal neglect. That issue is

1 currently up in front of the Nevada Supreme Court as it's
2 challenging the legality of that indictment and how that
3 indictment was pled.

4 So depending on what the Nevada Supreme Court does in
5 that case, meaning if they decide that we are correct and that
6 the indictment is flawed inherently and instruct the State
7 accordingly and dismiss that indictment or force the State to
8 go back before the grand jury and present evidence and get an
9 indictment returned according to the instructions of the
10 Nevada Supreme Court, that directly affects the indictment in
11 this case.

12 I don't see any argument that alters that theory as
13 to how this case will play out. So it's our request because
14 of the way that this indictment is pled, identical to the one
15 that's pled in front of Judge Adair that's currently pending
16 up in front of the Nevada Supreme Court, which ultimately will
17 be influenced by the determination of the Supremes, that these
18 proceedings be stayed.

19 Once there's a determination by the Nevada Supreme
20 Court as it relates to that indictment, those issues and that
21 directive will also influence this Court's determination on
22 the indictment that's currently pending before Your Honor.

23 So for those reasons, we're asking that all
24 proceedings be stayed until after there's been a determination
25 on the issue currently before the Nevada Supreme Court on the

1 writ of mandamus.

2 THE COURT: Okay. Anything else, Counsel?

3 MR. CRISTALLI: No, Your Honor.

4 THE COURT: Anything else by Mr. Wright or Mr.
5 Santacroce?

6 MR. WRIGHT: I would just join in it.

7 THE COURT: All right. By the State?

8 MR. STAUDAHER: Yes, Your Honor. May we be allowed
9 to respond orally since the untimely motions?

10 THE COURT: Yes. And it was -- it was -- it was only
11 placed on calendar with the understanding the State would be
12 allowed to respond orally because it was not timely. All
13 right.

14 MR. STAUDAHER: That being said, a couple of things
15 from the outset. First of all, we're here at initial
16 arraignment. There have -- the indictment as it's standing
17 here stands alone. It's not tied to the other case in the
18 sense that it is a superseding indictment or anything like
19 that. That's why it tracked to a different department, your
20 department.

21 The wording of the actual pleading within this
22 indictment, it's a completely different charge. There is no
23 similarity in actually how this is actually pled in comparison
24 with the indictment from the other case. So however the
25 Supreme Court makes the determination as to the

1 sufficiency/insufficiency of any particular count or counts
2 within that indictment in that case really does not affect
3 this particular matter.

4 This particular case here is, again, a second-degree
5 murder case. It is based on the way its pled the theories of
6 liability that the defendants are basically being charged
7 with, or at least under. As far as this case is concerned,
8 there is no basis or reason legally or otherwise to stay any
9 proceeding in this case, especially since there has been no
10 proceeding in this case to even appeal at this stage.

11 There has not been a writ brought the -- or sort of
12 challenging the sufficiency of either the charging document
13 itself or the probable cause that went into the grand jury's
14 determination in this particular matter. That would be
15 essentially the first step, depending on how the Court would
16 rule on that. There may be an appellate reason to go forward
17 to the Supreme Court at that point. So at this stage, there
18 is nothing right before the Court to allow the Court even, I
19 would submit, to stay the proceedings based on what may or may
20 not happen in a separate and unrelated case from this
21 particular matter.

22 Now, it is true that the victim in this case was a
23 victim in the other case, but there's no indication that the
24 State, even if we -- if we needed to, could not proceed on
25 dual prosecutions. Different cases, different charges up

1 until the time that jeopardy attaches.

2 So as far as that's concerned there is no basis at
3 this point for a stay in this matter because there's no matter
4 that could be appealed at this stage because the defendant
5 hasn't even been arraigned. And there's no stay -- and
6 actually -- and my counsel pointed out in the underlying case
7 which is before Judge Adair, the district court case that Mr.
8 Cristalli was referring to, he raised a motion or brought a
9 motion before the Court to stay those proceedings and that was
10 denied, so there's not even a stay in that district court
11 case.

12 I know that he has raised that with the Supreme Court
13 and asked for them to stay the district court proceedings in
14 that matter, but again, as of the present time, there's no
15 stay in either one of these cases.

16 THE COURT: Anything else?

17 MR. CRISTALLI: Yes, Your Honor. I mean, to say that
18 these two cases are unrelated is just denying the realities of
19 the current situation. All I can do is encourage the Court to
20 compare the two indictments. The language contained in those
21 indictments as far as the theory of liability are identical.
22 It is very unusual for the State to do procedurally what they
23 did. Do they have a right to do it? I don't know yet. We'll
24 have an opportunity to challenge that. But certainly, the
25 normal procedure for them would have been to get a superseding

1 indictment, supersede on the original indictment and amend it
2 to include a charge of second-degree murder.

3 They chose not to do that for reasons, I assume,
4 they're trying to push that first case along and to push --
5 put leverage on the defendants in this case. So be it. But
6 to deny the reality that they are identical and that the only
7 difference is the death of one of the alleged victims in a
8 particular count, of which, Your Honor, the statutory
9 provision of a criminal neglect has a provision if a defendant
10 -- if an alleged victim passes on. So there is no new
11 evidence associated with this case. The only difference is
12 the charging -- the charging offense.

13 The fact that Judge Adair denied a stay in the
14 district court is procedure. Obviously, Judge Adair believed
15 her determination on the petition or motion to dismiss was a
16 valid determination. The Nevada Supreme Court ultimately is
17 going to be the determining body to make a decision as far as
18 legitimacy of that particular indictment. Why is it
19 concerning right now? Well, for a number of reasons. We're
20 going to go forward with bail today. Right now, Mr. Mathahs
21 is out on half a million dollar bail. Once a bail setting is
22 made in this particular case, he will then have to post
23 another bail, okay, which is pretty onerous in terms of his
24 financial ability to do so.

25 Why am I raising that? Because if this indictment is

1 inherently flawed and is -- and the other one is dismissed,
2 which makes this one inherently flawed, and dismisses it, then
3 they're back to square one. They have to present the evidence
4 again to the grand jury. So my position is let's wait to see
5 what the Nevada Supreme Court does and see what ruling comes
6 down and then go forward with it. What harm is it to wait at
7 this particular point in time? There is none.

8 So you -- the Court certainly has the discretion to
9 stay these proceedings upon the determination by the Nevada
10 Supreme Court. I think the State's own concession is that
11 they believe that the Supremes are going to come back
12 relatively quickly on that determination. Whether or not
13 that's true or not, I don't know. But certainly, there is no
14 harm, no foul in continuing this, at the very least, matter to
15 wait to see what the Supreme Court does on the petition.

16 THE COURT: All right. I'm going to deny the request
17 for a stay. I believe with the State's position that there is
18 no legal basis for a stay in this particular case. So what
19 that means is today we're going to arraign these three
20 gentlemen, and also, we will discuss the issue of bail. I
21 know, Mr. Cristalli, I believe you also -- you're also the one
22 who filed a motion discussing bail, asking that no additional
23 bail be set.

24 MR. CRISTALLI: Yes, Your Honor. And just so the
25 Court is aware, so the record is clear, we're objecting to

1 going forward on the arraignment as well as on the bail. I
2 understand and certainly respect the Court's ruling, but we
3 believe that procedurally it's flawed to go forward with those
4 proceedings today.

5 THE COURT: Okay. You made your record, Counsel.
6 Would you like to argue bail before we arraign him, or do you
7 want to arraign him first? What would you like to do?

8 MR. CRISTALLI: Yes, Your Honor. I can go -- I can
9 go forward with the bail. I know the Court has had an
10 opportunity to read the bail motion. Mr. Mathahs sits before
11 you as a 76-year-old male, somebody who has had no criminal
12 history in his entire life, somebody who has been a caretaker
13 in this community and other communities for the last 40 years.
14 I don't think Mr. Mathahs even has a traffic ticket to be
15 perfectly honest with you, Your Honor.

16 We have continuously fought the allegations by the
17 State as it is alleged against Mr. Mathahs. He was an
18 employee of the centers and the -- associated with Dr. Desai.
19 There are a myriad of other employees associated with this
20 investigation and indictment of which a slew of were doctors
21 who profited from their association as owners in this
22 organization. You're charging Mr. Mathahs as a racketeer who
23 was an employee following directions of the centers. The
24 reason why he sits, I think, before Your Honor instead of
25 anybody else who are witnesses who presented testimony before

1 the grand jury is probably he didn't get to the table quick
2 enough, number one; and number two, it is alleged that Mr.
3 Mathahs treated one of the source patients.

4 Your Honor, another consideration is that Mr. Mathahs
5 has been out on half a million dollar bond for how long now?

6 MR. SANTACROCE: Over two years.

7 MR. CRISTALLI: Over two years with no incident. He
8 continuously comes before Judge Adair on all of the status
9 check hearings. He works with me directly on a daily basis in
10 my office. His wife and family are supporting him. His wife
11 of how many years?

12 MR. SANTACROCE: 53.

13 MR. CRISTALLI: 53 years is a caretaker as well in
14 this community, is a -- is a nurse in the community. He
15 remains out on half a million dollar bail. When this case was
16 -- well, not this case. When the -- when the other case was
17 before Judge Mosley, bail was set at a half million dollars.
18 Ultimately, Mr. Lakeman, who was represented by Mr.
19 Santacroce, petitioned the Court for a reduction of that bail.
20 They were successful. Rightfully so in our opinion, and that
21 bail was reduced to \$50,000.

22 When we petitioned the Court, we petitioned it when
23 the case was transferred from Judge Mosley to Judge Adair, and
24 we asked for a reduction consistent with the reduction that
25 Mr. Lakeman received, for which both defendants are placed in

1 identical situations in terms of the theory of liability
2 alleged by the State.

3 We were unsuccessful. Judge Adair said, well, I
4 don't feel that I need to do that right now. Revisit it at
5 the appropriate time. So not only do you have Mr. Mathahs out
6 on a half million dollar bail, who has complied completely
7 over the last two and a half years with all of courts -- all
8 of the court's directives, but also, you have a
9 disproportionate situation between codefendants, which is
10 inherently unfair. So that's one of the reasons why we ask
11 the Court to keep bail the way it is. It can --

12 THE COURT: Meaning no additional bail?

13 MR. CRISTALLI: Correct, no additional bail. I mean,
14 to ignore the fact that there is a half a million dollar bail
15 still pending against Mr. Mathahs, you know, is to ignore the
16 pink elephant in the room.

17 THE COURT: So you're saying Lakeman was originally
18 half a million as well and was reduced to 50,000 by Judge
19 Mosley?

20 MR. CRISTALLI: Yes, Your Honor.

21 THE COURT: All right.

22 MR. CRISTALLI: You know, and so we have a situation
23 where there's, you know, disproportionate bail settings, and
24 the fact that, you know, Mr. Mathahs is fighting for his life.
25 I mean, he is a nurse necessitatis. He certainly was not --

1 he was an employee of the organization, somebody who was not
2 benefiting from the profits associated with the organization
3 as the physicians were, as partners or owners of the
4 organization, so financially, he does not have the ability to
5 put the type of money up that he has previously put up, which
6 is a half a million dollars, unfortunately.

7 We do not want bail to be a punitive measure. That's
8 not what it's for. It's to secure the defendant's appearance
9 and to protect the community from harm. Certainly, the
10 community is protected as Mr. Mathahs no longer is in the
11 medical field. He doesn't have his licenses to do that and
12 he's no longer performing any services related to his
13 profession.

14 Certainly, we deny any allegations associated with
15 that, but if that was a concern, it shouldn't be one. As far
16 as flight, I don't know that Mr. Mathahs has -- he doesn't
17 have a passport. His family is here supporting him. They
18 continue to support him. He has made every court appearance
19 ordered by Judge Mosley and Judge Adair. He meets with me on
20 a weekly basis, so as far as those conditions are concerned,
21 the existing amount of half a million, I think, certainly
22 secures those two considerations, Your Honor.

23 So for all of those reasons, in addition to
24 acknowledging that we have attached I don't know how many
25 character letters on behalf of Mr. Mathahs from individuals

1 within the community, both in the professional community and
2 the community -- his church community and just friends and
3 acquaintances and family as well, that can attest for Mr.
4 Mathahs' character as an individual; so for all of those
5 reasons, we would ask that the Court not set a bail and
6 consider what has been posted in the case that currently is in
7 front of Judge Adair.

8 THE COURT: All right. We're kind of just holding
9 out of order, but we started on the bail issue so why don't I
10 just hear from Mr. Santacroce now.

11 MR. SANTACROCE: Yes, Your Honor. Thank you. The
12 Court's in a unique position here today because it has a track
13 record to go by. These defendants have been out on bail for
14 over two years. They have been model citizens during that
15 time period. They have made all of the required court
16 appearances. They haven't posed a flight risk. They're not a
17 danger to the community because, as Mr. Cristalli said, my
18 client as well has tendered his license and no longer
19 practices anywhere.

20 So those -- the Court is on some safe ground because
21 we have this track record, and I think the Court should take
22 that into consideration. With regard to my client, again,
23 65-year-old nurse with impeccable record all of his career, an
24 impeccable military career, practiced medicine for many, many
25 years without incident, until this incident where he finds

1 himself in a situation which he basically has no control over.
2 Unfortunately, he's charged in this case when we feel he
3 shouldn't be in the first place; and secondly, he's charged in
4 another indictment before this Court, which we feel is
5 completely improper, manipulative by the State, and forum
6 shopping based -- by the State. They already have these
7 charges pending in another court. I can't understand why
8 we're filing a new indictment in a different court when the
9 same charges are pending in another court.

10 Having said that, I think the Court should take that
11 into consideration because bail has been posted in that
12 previous case. As Mr. Cristalli said, my client was out on
13 half a million dollar bail for better than a year and a half.
14 Judge Mosley revisited that issue and thought that was absurd
15 and reduced the bail to \$50,000. And I'm asking you to not
16 increase his bail at this time, but if the Court decides to
17 increase that, to increase it marginally and allow him to post
18 a reasonable bail pursuant to the Eighth Amendment in the
19 United States Constitution.

20 THE COURT: All right. Mr. Wright, sir.

21 MR. WRIGHT: Yes, Your Honor. I agree with Mr.
22 Santacrose in the sense that it's my position that we are
23 already on bail on this charge. This is a de facto
24 superseding indictment. We know in the law that we look at
25 facts, not labels to determine what something is. Mr.

1 Staudaher can call a dog a pig, and we can look and see what
2 it is. This is truly a superseding indictment. This went
3 back to the same grand jury and they only heard two witnesses
4 for the indictment before this Court, and I am presuming
5 without having seen the transcript that the only additional
6 fact that was presented to the same grand jury was the fact
7 that Mr. Meana, who previously had substantial bodily injury
8 from having hepatitis C virus, died in the interim; so
9 therefore, they put on proof of Mr. Meana's death and both
10 probable evidence that it was caused by hepatitis C. Two
11 witnesses in, I think, an hour or so and they returned an
12 indictment.

13 It should have been what we call a superseding
14 indictment in the same case before the same judge. It's the
15 same facts, circumstances, transaction. The only addition is
16 the patient died, and when it's superseding, by statute the
17 bail applies to it. NRS 178.502, extension of bond or
18 undertaking to other proceedings, "Any bond or undertaking
19 must provide the bond or undertaking, extends to" -- and we go
20 down to (a)(2), "extends to any action or proceeding in
21 justice court, municipal court or district court arising from
22 a later charge which is substantially similar to the charge
23 upon which bail was given and is based upon the same act or
24 omission as the charge."

25 We are presently on Dr. Desai's \$1 million bail on

1 this same charge, and that bail in that court -- the other
2 court, it's my position which is where we should be, but that
3 bail by statute applies to these charges.

4 I presumed we were just having an arraignment. I
5 didn't receive any motion to increase bail on this case. Now,
6 whether this was motivated by forum shopping, as Mr.
7 Santacrocce suggested, or an effort to get out of the deficit
8 in the first pleading, which is up before the Supreme Court
9 now, I don't know why the State chose to pretend like this is
10 a brand new offense and case that these defendants committed
11 in the interim because it's purely a superseding indictment.

12 Dr. Desai, no record whatsoever charged in this case,
13 has posted his \$1 million bail a couple of years ago and then
14 was indicted federally for health care fraud arise -- it
15 actually duplicates the health care fraud already pled in this
16 case, but the feds indicted him. We appeared in -- they
17 indicted him in 2011 when he returned from Lakes Crossing. He
18 was arraigned in federal court. He was released on his own
19 recognizance, third-party custody because of his diminished
20 capacity.

21 His custodian, his wife, Dr. Kusum Desai, is by court
22 order the third-party custodian for pretrial services in the
23 federal system, and he is on federal pretrial services
24 supervision by which Dr. Desai and his custodian, Mrs. Desai,
25 appear once a month before a federal pretrial services

1 officer.

2 They -- I have informed the federal court and pre --
3 fed pretrial services of this superseding indictment and they
4 have no issue with his conditions of release because in the
5 federal system and in the state's system he has been
6 completely compliant, made all court appearances as requested,
7 and nothing has changed whatsoever in this case regarding
8 conditions of release other than Mr. Meana passed away. And
9 so I would ask that the bail remain as it is, and if the State
10 has some changed circumstances, they should file a motion to
11 increase bail and we can respond to it.

12 THE COURT: Okay. Anything else by defense counsel
13 and before the State responds to the bail issue?

14 MR. CRISTALLI: No, Your Honor.

15 THE COURT: Thank you. Mr. Staudaher, Ms. Weckerly?

16 MR. STAUDAHER: First of all, as far as forum
17 shopping is concerned, I think the Court's aware of how cases
18 are assigned in the Eighth Judicial District Court, that the
19 State doesn't have prior knowledge of nor any influence on how
20 that is done. That being said, this is not a superseding
21 indictment. This is a separate and distinct indictment before
22 a separate and distinct court beside whatever is [inaudible]
23 these defendants in another courtroom, Judge Adair's courtroom
24 specifically.

25 This is what we're here on. We're here on a murder

1 charge related to a single victim in this particular case
2 which all of the defendants are charged with. Now, Mr.
3 Cristalli indicated early on as to why they thought that their
4 clients were just kind of roped in, didn't get to the table
5 fast enough, why their clients were even part of this.

6 I mean, these are the two nurses that actually
7 infected the patients. That's why they're in part -- they're
8 involved with this. That's -- those are the allegations; the
9 reckless acts of all three defendants are what puts them here
10 in court today, and those reckless acts, those sort of taking
11 advantage of patients that essentially could not do for
12 themselves, what, they were putting their lives in the hands
13 of these individuals who then did what they did is why they're
14 here on this case.

15 The other case is separate and distinct as far as the
16 charges are concerned in that case. This particular matter,
17 the Court has one charge, one charge only, one victim, one
18 victim only at that point and that's what we're here to
19 decide. A murder case, we did give them the courtesy of a
20 summons, but when we come to court today, this is the time to
21 set bail in this particular matter. We are going to be asking
22 for a half a million dollars bail on Mr. Desai -- Dr. Desai.
23 We're going to be asking for a hundred thousand dollars each
24 on Mr. Lakeman and Mr. Mathahs, and the reasons behind the
25 disparity in those are twofold.

1 First of all, they do stand in a little bit different
2 position. Without relying on the other case, some information
3 from the other case and how bail was produced and so forth is
4 probably important for this Court's determination. In the
5 underlying case before Judge Adair, when Judge Mosley had that
6 matter before him -- he was the one who set the bail for all
7 defendants, by the way, the half a million for each one of the
8 defendants, nurses, and the million dollars for defendant
9 Desai.

10 In the -- in Desai's case, defendant Desai was able
11 to post a half -- or a million dollars cash over the weekend.
12 That's how he has access to funds and large quantities of
13 funds. That money is not even his. It is his sister's money
14 that was placed in bond for -- or not bond, but put -- was
15 posted for him.

16 So right now, he has no dog in the race as far as
17 money goes. He is -- has -- he's a physician. He has assets.
18 His wife is a physician and they have income. They have a
19 significantly different financial setting and situation than
20 do the other two, and the reason that we're asking for a
21 reduced bail amount for the other two is reflective of that
22 situation.

23 Now, whether or not Mr. Mathahs has a certain bail
24 and Mr. Lakeman has a different bail in a separate case is not
25 really an issue before this Court. It's whether or not

1 there's an appropriate amount of bail in this particular
2 matter for this particular charge is what this Court needs to
3 decide. If the defendants wish to have Judge Adair or --
4 bring this matter before Judge Adair based on what this Court
5 may have done in this particular charge or based on other
6 factors, that's for Judge Adair to determine and for them to
7 litigate that.

8 Mr. Cristalli brought a motion before Judge Adair for
9 a reduction in bail like Mr. Santacroce had. She denied that.
10 His bail remained at the half a million dollar amount. They
11 may revisit that down the road, but that doesn't affect what
12 this Court does as far as bail is concerned.

13 If, theoretically, that whole case for some reason
14 went away and this Court had set no bail, all three of these
15 individuals would be on no bail for a murder charge because
16 that case would certainly be before this Court still. That's
17 why we're here. We're here to set a reasonable bail based on
18 the nature of the charge and what they did.

19 This is not something where they're charged with
20 involuntary manslaughter or something where a person just died
21 as a result of some action that they did that they didn't have
22 some foreseeable way of seeing it would cause harm to a
23 patient. These people actually engaged in practices, which
24 they knowingly engaged in, and which resulted in an infection
25 of a patient which resulted in his death, and that's why we're

1 here today to argue this issue.

2 As far as the differences between the two, again, I
3 would just say that those are issues that they need to raise
4 with the District Court 21, department -- or rather, Judge
5 Adair, and it should not really factor into this Court's
6 calculus as to what is reasonable or not reasonable for bail.
7 We do know that they stand in different positions. That's why
8 we have asked for the different amounts. We feel that that's
9 a fair and reasonable amount for a murder case, and we feel
10 that that's what they should be posting.

11 THE COURT: Okay. We did this kind of out of order
12 in that we argued bail first. Let me go ahead -- unless you
13 want to say something --

14 MR. CRISTALLI: I do, Your Honor. I mean, I just
15 want to be able to respond just quickly. I mean, first of
16 all, to argue that this is a separate and distinct case is
17 just -- you know, you got to kind of throw away your reason.
18 I mean, these cases are the same case. They have the same
19 facts. There has been no new evidence presented before the
20 grand jury other than the fact the medical evidence associated
21 with the cause and more than of Mr. Meana's death. They are
22 identical, so for Mr. Staudaher to say that they are for some
23 reason separate and distinct is disingenuous. It is. It
24 doesn't pass the smell test.

25 As far as his statement that this is a murder case,

1 it's not an involuntary manslaughter case, well, factually,
2 you know, if you're going to make the allegations as it
3 relates to somebody passing on on a criminal neglect --
4 medical criminal neglect case as articulated statutorily in
5 the criminal neglect statute which increases the penalties
6 from a 1 to 6 to a 1 to 20 if death occurs, they shouldn't be
7 charged with anything more than an involuntary manslaughter
8 just based on the allegations. Second-degree murder is an
9 inflated charge, so if he wants to start debating the
10 sufficiency of the State's allegations as they relate to this
11 particular case, we certainly can do that.

12 For him to then say that that case could somehow go
13 away and then we'll be stuck with a murder charge in this
14 case, is also laughable. If that case goes away, Judge, this
15 case goes away because they go away on the same premise and on
16 the same basis because they are identical.

17 They have done this in an effort to put leverage on
18 the defendants. This would never normally happen. They would
19 supersede their indictment. They would amend the indictment
20 and they would charge an additional charge of murder. For
21 whatever reason, they have chosen to put on the dog-and-pony
22 show and to charge this case separately.

23 So I'm going to be put in a situation now where my
24 bail is absolutely going to be disproportionate and it
25 shouldn't be. What we have posted in a half a million dollars

1 in this case originally was unreasonable based on Mr. Mathahs'
2 involvement as well as his history in this community and his
3 character.

4 THE COURT: Then that's something you need to take up
5 with Judge Adair. I can only deal with Meana's case.

6 Is there anything to add by counsel on the bail
7 issue? Mr. Wright, sir.

8 MR. WRIGHT: Yes. I just -- I can't pass up to say
9 this isn't the same case. I don't know why we sat in this
10 courthouse deposing Mr. Meana, Rodolfo Meana, in the other
11 case because the other case was -- Rodolfo Meana was one of
12 the seven patients, and we deposed him until he stopped it.
13 Mr. Meana happened to have died presumably due -- and I say
14 presumably from the accusations in the indictment because I
15 have not seen the evidence, but presumably, from the hepatitis
16 C virus.

17 Mr. Meana we were deposing for the other case to
18 preserve his testimony for that case for that trial. Mr.
19 Meana elected to forego treatment. He is the only patient of
20 the group who would not take hepatitis C virus treatment and
21 he ultimately died. Now, that is the only changed
22 circumstance, and to argue here this is some new murder case
23 that came up, the facts of the bail in this case, it was set
24 by Judge Caddish. She set the \$1 million bail when the first
25 indictment was returned. That amount that was posted was

1 posted by his sister because I was required to show to the
2 court the source of the funds, because Dr. Desai and his
3 practices were in federal bankruptcy court at the time and so
4 he could not post any bail out of bankruptcy; and since then,
5 the bankruptcy has gone forward and he is individually
6 bankrupt, and so that's the explanation of where this million
7 dollars cash that he was able to post.

8 If -- that was posted and I provided all of the
9 information to Judge Caddish and to Mr. Staudaher as to the
10 source of the funds and where it came from, so it's a
11 mischaracterization to talk about Dr. Desai being a wash in
12 cash and could come up with a million dollars or something.
13 Thank you.

14 THE COURT: All right. Like I said, we did this kind
15 of out of order. Let me proceed in arraigning the
16 individuals, then I'll address bail amounts, if any.

17 Mr. Cristalli, you have Mr. Mathahs?

18 MR. CRISTALLI: Yes, Your Honor. And once again,
19 Your Honor, just so we're clear, this is over my objection.

20 THE COURT: I understand it's over your objection.

21 MR. CRISTALLI: Thank you.

22 THE COURT: Thank you. All right. Mr. Mathahs, what
23 is your full legal name, sir?

24 DEFENDANT MATHAHS: Keith Harry Mathahs.

25 THE COURT: And how old are you, sir?

1 DEFENDANT MATHAHS: 76 and a half.

2 THE COURT: What's your education, sir?

3 DEFENDANT MATHAHS: Well, college degree and went
4 into nursing. Got a degree in nursing, and also, anesthesia.

5 THE COURT: All right. Is it fair to say you read,
6 write, understand the English language?

7 DEFENDANT MATHAHS: Yes, I do.

8 THE COURT: And I have a copy of the indictment. The
9 indictment charged you with the crime of second-degree murder,
10 a Category A felony. Did you review the indictment?

11 DEFENDANT MATHAHS: Yes.

12 THE COURT: All right. Did you discuss with your
13 lawyer?

14 DEFENDANT MATHAHS: Yes.

15 THE COURT: And how are you going to plea, sir, to
16 this charge, guilty or not guilty?

17 DEFENDANT MATHAHS: Not guilty.

18 THE COURT: Thank you. In a moment we'll set you
19 guys for trial.

20 Okay. We have Mr. Lakeman next. Good morning, Mr.
21 Lakeman. What is your full legal name?

22 DEFENDANT LAKEMAN: Ronald Ernest Lakeman.

23 THE COURT: And how old are you, Mr. Lakeman?

24 DEFENDANT LAKEMAN: 65.

25 THE COURT: And what is your education, sir?

1 DEFENDANT LAKEMAN: I have a degree from the
2 University of Alabama in nursing and a degree in anesthesia
3 from George Washington University in Washington, D.C.

4 THE COURT: Is it fair to say you read, write,
5 understand the English language?

6 DEFENDANT LAKEMAN: Yes.

7 THE COURT: I have a copy of the indictment. The
8 indictment charges you with the crime of murder, second
9 degree, Category A felony. Did you read the indictment?

10 DEFENDANT LAKEMAN: Yes. It was read to me by my
11 attorney.

12 THE COURT: All right. And I didn't ask this of the
13 other gentleman. Do you waive the reading of the indictment?

14 MR. SANTACROCE: We do waive --

15 DEFENDANT LAKEMAN: Yes.

16 MR. SANTACROCE: -- Your Honor.

17 THE COURT: All right. And sir, with respect to the
18 charge of murder, second degree, Category A felony, how do you
19 want to plead, guilty or not guilty?

20 DEFENDANT LAKEMAN: Not guilty.

21 THE COURT: All right. Thank you, sir. And Mr.
22 Wright, Mr. Desai?

23 MR. WRIGHT: Yes, Your Honor. The -- I will be
24 asking the Court to enter a plea of not guilty on behalf of
25 Dr. Desai. I have read the indictment to Dr. Desai. Dr.

1 Desai, because of organic brain injury from a stroke, is my
2 judgment operating under diminished capacity in his cognitive
3 ability; and therefore, pursuant to Rule of Professional
4 Conduct 1.14 I am acting in his behalf to protect his
5 interests. That is his true name in the indictment. He does
6 not factually or legally comprehend or understand an
7 indictment when he discussed it with me this past week or when
8 I attempted to discuss it with him and so I would ask the
9 Court to enter a plea of not guilty on his behalf.

10 THE COURT: All right. I will accept that plea.
11 Counsel, bail is going to be set in this matter.

12 I'm going to render the following amounts for bail.
13 This takes into consideration the facts of this particular
14 case, the charge of this case as well as their compliance in
15 their additional court proceedings. I am going to order bail
16 at \$50,000 for Mr. Lakeman and Mr. Mathahs. I'm ordering bail
17 of \$250,000 for Mr. Desai. At this time I am going to have
18 these gentlemen remanded into custody. They will have to post
19 bail.

20 MR. CRISTALLI: And Your Honor, we do have bond --
21 Mr. Mathahs' bond company here. They're prepared to post, and
22 I know that we routinely have walk through --

23 THE COURT: If they have the money --

24 MR. CRISTALLI: Yeah.

25 THE COURT: -- then they can do the walk through.

1 MR. CRISTALLI: Yeah.

2 THE COURT: If they do not, they're going to have to
3 be remanded --

4 MR. CRISTALLI: Right. And they -- they can do the
5 walk through and I would like them to have an opportunity, and
6 I don't know that the State has an objection to allow us to do
7 the walk through under these circumstances.

8 THE COURT: So long as there's the money --

9 MR. CRISTALLI: Yeah.

10 THE COURT: -- you have all the money in court today
11 for all defendants.

12 MR. CRISTALLI: Well, the bondsman is here.

13 THE COURT: The bondsman's here, and what about --

14 MR. CRISTALLI: Yes.

15 THE COURT: -- for yours, Mr. Santacroce?

16 MR. SANTACROCE: My bondsman is right here and
17 they're prepared to --

18 MR. CRISTALLI: Yeah.

19 MR. SANTACROCE: -- write the bond.

20 MR. WRIGHT: I will get the funds.

21 THE COURT: All right. Then --

22 MR. CRISTALLI: Is there -- do we have to have them
23 in -- be shackled at this time. I'm not -- if we're prepared?
24 That's why we have them here today to post.

25 MR. WRIGHT: We will post it today.

1 MR. CRISTALLI: I mean, they're going to post right
2 now. I mean, I could -- you could put them under oath if you
3 would like and attest to that fact. I mean, they're on a half
4 a million dollars right now that they posted.

5 MR. WRIGHT: We are here on a summons and appeared, I
6 mean, as ordered, even last time before Judge Caddish. I
7 mean, we were allowed in that case four days, I mean, to post
8 the cash bail, but we will post the bail for a bond today and
9 so I would ask that we be given till 4:00 o'clock to do it or
10 turning themselves in at the jail.

11 THE COURT: I'll give you guys until -- your clients
12 until 4:00 o'clock today to post it; otherwise, they will be
13 remanded into custody and will have to bail --

14 MR. CRISTALLI: We'll have that taken care of, Your
15 Honor, and we could supply the Court with verification of that
16 once that process is completed. We'll certainly send it over
17 to Robert if you would like us to do that and we can handle
18 that immediately.

19 THE COURT: Yes. All right. Any questions, counsel?
20 And we're going to need to set you gentlemen for trial. Are
21 they going to invoke or are they going to waive?

22 MR. SANTACROCE: We're -- Lakeman is waiving.

23 MR. WRIGHT: I waive on behalf of Dr. Desai.

24 THE COURT: And Mr. Cristalli, are you waiving as
25 well?

1 MR. CRISTALLI: We do, Your Honor.

2 THE COURT: All right. We will give you a trial
3 date. Gentlemen and counsel, will -- counsel for the State,
4 have you discussed trial dates at this time? I understand
5 from Judge Adair, depending on what happens in the Supreme
6 Court, I know you're set for trial in October, but it could
7 possibly go later. Realistically in this case you're not
8 going to be until next year anyways, so did you discuss
9 possible dates?

10 MR. CRISTALLI: Your Honor, in light of the
11 circumstances associated with the other case, even though the
12 State denies the existence of one, I would like maybe to set a
13 status check to determine where we are at with that case
14 before setting trial on this case.

15 THE COURT: Okay. So last I read on the thing the
16 State had 30 days to file a response and I don't remember how
17 long -- or 20. I don't remember. I don't remember when that
18 response is due in Judge Adair's case.

19 MR. STAUDAHER: I know that there has been a request
20 for enlargement of time so I'm not sure how that affected that
21 date specifically or when the actual date for answer was.

22 THE COURT: The order directing answer, it looks
23 like --

24 MR. CRISTALLI: I have --

25 THE COURT: -- you had 20 days from August 6th. You

1 did an enlargement of time so you'll have additional time.
2 You want to set it on for a status in 45 days for the setting
3 of the trial date?

4 MR. STAUDAHER: Actually, the State, although I don't
5 have an issue with a specific date, we would like to have an
6 actual date set as soon as the Court can accommodate it on the
7 calendar.

8 THE COURT: Well, with that being said, you're
9 probably going to be -- well, as soon as possible is probably
10 going to be next year.

11 MR. STAUDAHER: That's fine.

12 THE COURT: Antoinette, what do you have?

13 MR. STAUDAHER: Just whenever the Court can --

14 THE CLERK: March --

15 MR. STAUDAHER: -- can do it.

16 THE CLERK: -- Your Honor.

17 THE COURT: March. March 2013, how is that for
18 defendants?

19 MR. SANTACROCE: I don't have my trial calendar in
20 front of me, Your Honor, unfortunately.

21 MR. CRISTALLI: Okay. I was just tapped and advised
22 I have a capital murder case going in March.

23 THE COURT: Okay. Then that puts where, Antoinette?

24 THE CLERK: That would be the end of May into early
25 June.

1 THE COURT: Thereafter it'd be August 2013.

2 MR. WRIGHT: Just for the record, I object to the
3 setting. I'm unclear where -- I will need to speak to Mr.
4 Pomerance in the federal court, with the prosecutor. We're
5 sort of by handshake --

6 THE COURT: Then why don't we do this.

7 MR. WRIGHT: -- implicitly awaiting the other case,
8 and then the federal case was going -- and of course, this
9 wasn't envisioned --

10 THE COURT: Okay.

11 MR. WRIGHT: -- and so he is awaiting trial in
12 federal court.

13 THE COURT: Why don't we do this. Why don't we set a
14 30-day status on trial setting. I need all counsel to please
15 look at their calendars between now and then, and when you
16 come in here, we will look at where we stand, or where you
17 guys stand with respect to what was the filings in Judge
18 Adair's department.

19 All right. 30-day date, please.

20 THE CLERK: September 19th, 9:30.

21 MR. SANTACROCE: September what?

22 THE CLERK: 19th.

23 MR. CRISTALLI: Thank you, Your Honor.

24 MR. SANTACROCE: And would you waive my client's
25 appearance, Your Honor, or does he need to be here for that?

1 THE COURT: I don't have any objections.

2 MR. STAUDAHER: There's only one person the State
3 has --

4 THE COURT: It's just a pretrial setting.

5 MR. STAUDAHER: -- an objection to not appearing at
6 every single hearing and that's Dr. Desai based on even the
7 representations in court today about his lack of capacity or
8 whatever. As the Court's probably aware, that was raised in
9 the underlying case that counsels were referring to in front
10 of Judge Adair. That defendant -- or Defendant Desai went up
11 to Lake's Crossing, was found to be malingering his symptoms
12 and because of that we feel it's important for the Court to
13 make its own assessment when he comes into court how he
14 handles himself, how he responds, things like that as we go
15 along. So he stands in a completely different position than
16 the others. We would submit it to the Court on Mr. Mathahs
17 and Mr. Lakeman.

18 THE COURT: Mr. Wright, are you asking to waive your
19 client's appearance at the next hearing or is he intending to
20 be present?

21 MR. WRIGHT: I would request to waive his appearance.
22 It creates a great imposition on his wife who is his custodian
23 who has to bring him here and she's a practicing physician.

24 THE COURT: All right. I waive the -- I'll waive the
25 appearances of the defendant since it is only going to be a

1 trial setting. All other substantive hearings their presence
2 will be required. Okay. We'll see you on the September date.

3 MR. SANTACROCE: One other issue, Your Honor, is that
4 I have not received discovery of the grand jury transcripts.
5 I'm asking for 21 days after I receive that information --

6 THE COURT: All right.

7 MR. SANTACROCE: -- to file a writ.

8 MR. CRISTALLI: We would join in that, Your Honor.

9 THE COURT: Okay. Anything by the State?

10 MR. WRIGHT: I join that.

11 MR. STAUDAHER: That's fine.

12 THE COURT: All right. That'll be granted. All
13 right. Any other additional matters?

14 MR. SANTACROCE: Not from Mr. Lakeman, Your Honor.
15 Thank you for your consideration.

16 THE COURT: All right. Thank you.

17 MR. WRIGHT: Thank you, Your Honor.

18 MR. CRISTALLI: Thank you, Your Honor.

19 THE COURT: Thank you.

20 (Court recessed at 10:46 a.m.)

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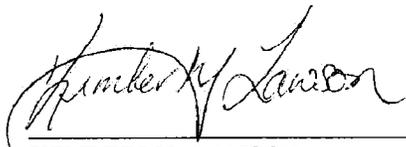
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I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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