

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**
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3
4 DIPAK KANTILAL DESAI,)

5 Petitioner,)

6 vs.)

7)

8 THE EIGHTH JUDICIAL DISTRICT)

9 COURT OF THE STATE OF NEVADA,)

10 COUNTY OF CLARK, DEPARTMENT 21)

11 Respondent.)

12 and)

13)

14 THE STATE OF NEVADA,)

15 Real Party In Interest.)

16 _____

Electronically Filed
Apr 22 2013 08:06 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

No.

District Court No. 10C265107

17 **EMERGENCY MOTION UNDER NRAP 27(e)**
18 **TO STAY PROCEEDINGS IN DISTRICT COURT**
19 **FOR TRIAL COMMENCING APRIL 22, 2013**

20 COMES NOW, the Petitioner, DIPAK KANTILAL DESAI, by and through his
21 attorney, Richard A. Wright, WRIGHT STANISH & WINCKLER, respectfully
22 moves this Honorable Court, pursuant to NRAP8(a) and NRS 34.160, for an Order
23 granting a stay of trial proceedings in district court while this Court issues a ruling
24 in the Petition for Writ of Mandamus to Compel Competency Determination Or,
25 Alternatively, an Evidentiary Hearing on the Existence of Doubt as to Competency,
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1 which is filed simultaneously with this emergency motion for stay.

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3 On April 16, 2013, the district court verbally denied Petitioner's motion to stay
4 the trial while Petitioner sought extraordinary relieve for the district court's ruling.

5 This motion is based upon the attached affidavit of counsel. Attachment A.
6
7 The NRAP 27(e) certificate and proof of service are attached, respectively, as
8 Attachments B and C.

9
10 DATED this 22d day of April 2013.

11 **WRIGHT STANISH & WINCKLER**

12
13
14 BY 

15 Richard A. Wright, Esq.

16 Nevada Bar No.: 0886

17 300 South Fourth Street, Suite 701

18 Las Vegas, NV 89101

19 P. (702) 382-4004

20 F. (702) 382-4800

21 wsw@wswlawlv.com

22 Attorneys for Petitioner Dipak K. Desai
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[illegible]

COUNTY OF CLARK)

I, Richard A. Wright, being first duly sworn, deposes and says:

1. I am an attorney licensed to practice law in the State of Nevada. I am retained to represent Petitioner Dipak Desai in State v. Dipak Kantilal Desai, Case No. 10C265107 (8th Jud. Dist. Ct., Clark Cty. Nev.).

2. Acting pursuant to Nevada Supreme Court Rule 1.14, I am filing this emergency motion for stay of trial proceedings in district court simultaneously with a Petition for Writ of Mandamus to Compel Competency Determination Or, Alternatively, an Evidentiary Hearing on the Existence of Doubt as to Competency.

3. Trial in this matter begins on April 22, 2013. Jury selection is expected to take at least seven full judicial days since this is a high-profile case and the district court has directed individual voir dire. Trial is anticipated to be six to eight weeks.

4. The foregoing motion to stay the trial and accompanying petitioner for extraordinary relief have been filed as soon as practical taking into account the circumstances of the case. On February 24, 2013, Petitioner suffered a stroke. Upon his release from the hospital on March 1, 2013, counsel informed the district court of the stroke and expressed doubt as to Petitioner's competency. On March 7, 2013, the

1 district court declined to stay the trial until it could verify the occurrence and extent
2 of the stroke. It, therefore, appointed an independent medical evaluator ("IME") to
3 review Petitioner's medical records and confirm the occurrence and extent of the new
4 stroke.
5

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7 5. The IME report was not completed and distributed to the parties until
8 late in the afternoon on April 15, 2013. At the calender call on April 16, 2013, the
9 district court stated that, upon review of the IME report, it believed that Petitioner
10 suffered only a minor stroke and had some difficulty speaking. It, therefore, denied
11 Petitioner's verbal motions to stay the trial pending a competency evaluation under
12 NRS 178.405, and 178.415, or, alternatively, hold an evidentiary hearing. The
13
14 Petition for Writ of Mandamus seeks extraordinary relief from this ruling.
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17 6. By way of overview, the Petitioner argues that the district court abused
18 its discretion in refusing to suspend trial and initiate competency proceedings in
19 disregard of reliable evidence of doubt as to competency under NRS 178.405.
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21 Therefore, Petitioner seeks a writ of mandate to compel the district court to suspend
22 all proceedings and order a competency evaluation under NRS 178.415.
23
24 Alternatively, it seeks an evidentiary hearing on the issue of whether a doubt as to
25 competency exists.

26 The district court's ruling is contrary to substantial evidence of doubt from
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1 reliable sources. First, the court-appointed IME, David Palestrant, M.D., raised
2 doubt as to Petitioner's competency by confirming that Petitioner suffered a series of
3 small strokes on February 24, 2013, which resulted in both receptive and expressive
4 aphasia. The IME opined that he should recover his neurologic functioning within
5 the first nine months following the stroke, with full recovery taking up to 18 months.
6 The IME further opined that an earlier stroke occurring on July 13, 2008, likely
7 resulted in some degree of retrograde amnesia and anterograde amnesia and
8 difficulties with comprehending and contextualizing speech.
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12 Second, a board-certified forensic psychiatrist, Thomas E. Bittker, M.D., raised
13 doubt as to Petitioner's competency based on neuropsychiatric assessments, dated
14 November 1, 2012, and December 5, 2012, which determined that Petitioner was then
15 incompetent to assist counsel under the constitutional standard established in Dusky
16 v. United States, 362 U.S. 402 (1960).
17

18
19 Third, defense counsel, as an officer of the court for over 41 years, raised doubt
20 as to Petitioner's competency because Petitioner's present ability to receive, process,
21 and express speech and recall pertinent facts is impaired to such a degree that he
22 cannot sufficiently function during trial.
23

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25 7. Extraordinary relief is sought because the district court failed to provide
26 adequate procedural safeguards to determine Petitioner's current ability to assist
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1 counsel in the trial of a complex prosecution. If trial proceeds, the purpose of the
2 Petition for Writ of Mandamus would be frustrated and Petitioner's fair trial rights
3 will be substantially impaired. Accordingly, Petitioner has no other legal remedy in
4 this case.
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7 8. To avoid irreparable harm relief is needed in less than 14 days. The
8 NRAP 27(e) Certificate is attached hereto.

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10 9. The trial of an accused who is incompetent violates fundamental
11 principals of due process and outweigh any prejudice to the State. An accurate
12 competency evaluation is essential to protect Petitioner's fair trial rights.
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14 10. Petitioner respectfully requests the trial commencing on April 22, 2013,
15 in the Eighth Judicial District Court, Department 21, be stayed while this Supreme
16 Court rules on the Petition for Writ of Mandamus.
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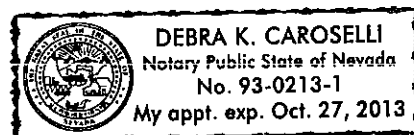
18 I declare under penalty of perjury that the foregoing is true and correct. (NRS
19 53.045).
20

21 
22 Richard A. Wright

23 SUBSCRIBED and SWORN to before me

24 This 22d day of April 2013.

25 
26 NOTARY PUBLIC



27 **Attachment A**

1 **NRAP 27(e) CERTIFICATE**

2 I, Richard A. Wright, certify the following:

3 **Office Addresses and Telephone numbers for Attorneys for the Parties**

4
5 Honorable Valerie Adair Michael V. Staudaher / Pamela Weckerly
6 District Court Judge Chief Deputy District Attorney
7 Eighth Judicial District Court 200 Lewis Ave., Third Floor
8 Department 21 Las Vegas, NV 89101
9 200 Lewis Ave. (702) 671-2830
10 Las Vegas, NV 89155
(702) 671-0850

11 Catherine Cortez Masto Frederick Santacroce
12 Attorney General 5440 W. Sahara, 3d Fl.
13 100 North Carson Street Las Vegas, NV 89146
14 Carson City, NV 89701-4717 (702)218-3360
(775) 684-1100 Counsel for Ronald Lakeman

15 Richard A. Wright / Margaret M. Stanish
16 WRIGHT STANISH & WINCKLER
17 300 South Fourth Street, Suite 701
18 Las Vegas, NV 89101
19 (702) 382-4004
Counsel for Dipak Desai

20 **Facts**

21 On this date, Petitioner Dipak K. Desai, through his attorney, Richard A.
22 Wright, filed with the Supreme Court a Petition for Writ of Mandamus to Compel
23 Competency Determination Or, Alternatively, an Evidentiary Hearing on the
24 Existence of Doubt as to Competency. The petition seeks relief from the district
25 court's oral ruling on April 16, 2013, which arbitrarily and capriciously denied
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1 Petitioner's motion for a stay of proceedings and competency evaluation pursuant to
2 NRS 178.405, and 178.415. The district court also denied Petitioner's alternative
3 motion for an evidentiary hearing on the issue of doubt as to competency under NRS
4 178.405.
5

6 The district court's ruling improperly disregarded substantial evidence of doubt
7 about Petitioner's present competency to assist in counsel in the defense of a complex
8 prosecution. The court-appointed independent medical evaluator; board certified
9 forensic psychiatrist, and defense counsel raised substantial doubt to trigger the
10 competency proceedings. Without emergency stay of trial, Petitioner's fair trial rights
11 will be violated in the absence of an accurate competency evaluation in accordance
12 with NRS 178.405 and 178.415.
13

14 The relief sought in the Petition for Writ of Mandamus is based upon the Due
15 Process clauses of the Fifth and Fourteenth Amendments and the Right to Counsel
16 clause in the Sixth Amendment to the United States Constitution and the similar
17 clauses in Article 1, Section 8 of the Nevada Constitution and related case law.
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19 Trial is set to begin on April 22, 2013. Jury voir dire is expected to take at least
20 seven full judicial days and trial is anticipated to last six to eight months.
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22 **Notice to the parties**

23 On April 22, 2013, the district court and parties were served by hand-delivery
24

1 or electronic mail the instant emergency motion and petition for writ of mandamus.

2 These documents were electronically filed with the Supreme Court on the same date.

3
4 **Relief Sought**

5 The relief sought here for Stay of District Court Proceedings while the Petition
6 for Writ of Mandamus is pending was available in the district court. The verbal
7 motion in the district court also sought to stay the trial while the Supreme Court
8 considers the Petition for Writ of Mandamus. The district court verbally denied relief
9 on April 16, 2013. The attorneys for the State and co-defendant Ronald Lakeman and
10 his counsel were present at the calender call in which the motion was made and
11 denied.
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15 Accordingly, this Emergency Motion for Stay of District Court Proceedings
16 being filed with the Supreme Court.
17

18 EXECUTED this 22d day of April 2013.

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20 
21 RICHARD A. WRIGHT
22 Nevada Bar. 0886
23 WRIGHT STANISH & WINCKLER
24 300 South Fourth Street, Suite 701
25 Las Vegas, NV 89101
26 (702) 382-4004

27 **Attachment B**

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DECLARATION OF SERVICE

DEBBIE CAROSELLI, an employee with WRIGHT STANISH &
WINCKLER, hereby declares that she is, and was when the herein described service
took place, a citizen of the United States, over 21 years of age, and not a party to, nor
interested in, the within action, that on the 22d day of April, 2013, declarant caused
a copy of the EMERGENCY MOTION UNDER NRAP 27(e) TO STAY
PROCEEDINGS IN DISTRICT COURT FOR TRIAL COMMENCING APRIL 22,
2013, Case No. C265107, to be enclosed in a sealed envelope upon which first class
postage was fully prepaid, hand-delivered, or e-filed addressed to:

Honorable Valerie Adair
District Court Judge
Eighth Judicial District Court
Department 21
200 Lewis Ave.
Las Vegas, NV 89155
(702) 671-0850

Michael V. Staudaher / Pamela Weckerly
Chief Deputy District Attorney
200 Lewis Ave., Third Floor
Las Vegas, NV 89101
(702) 671-2830

Catherine Cortez Masto
Attorney General
100 North Carson Street
Carson City, NV 89701-4717
(775) 684-1100

Frederick Santacroce
5440 W. Sahara, 3d Fl.
Las Vegas, NV 89146
(702)218-3360
Counsel for Ronald Lakeman

That there is a regular communication by mail between the place of mailing and the
place so addressed.

1 I declare under penalty of perjury that the foregoing is true and correct.

2 EXECUTED on the 22d day of April 2013.

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5 DEBBIE CAROSELLI
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