IN THE SUPREME COURT OF THE STATE OF NEVADA

LECORY L. GRACE

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, COUNTY OF CLARK, AND THE HONORABLE DOUGLAS HERNDON, DISTRICT COURT JUDGE

Respondents,

and

THE STATE OF NEVADA,

Real Party In Interest.

CASE NO: 68929

ANSWER TO PETITION FOR WRIT OF MANDAMUS

COMES NOW, the State of Nevada, Real Party In Interest, by STEVEN B. WOLFSON, District Attorney, through his Deputy, OFELIA L. MONJE, on behalf of the above-named respondents and submits this Answer to Petition for Writ of Mandamus in obedience to this Court's order filed November 12, 2015 in the above-captioned case. This Answer is based on the following memorandum and all papers and pleadings on file herein.

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Dated this 2nd day of December, 2015.

Respectfully submitted,

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

BY */s/ Ofelia L. Monje*
OFELIA L. MONJE
Deputy District Attorney
Nevada Bar #011663
Attorney for Respondent

SUMMARY OF THE ISSUE

Justice Courts only have authority conferred by statute. Nev. Const. art. VI, § 8; State v. Justice Court, 112 Nev. 803, 805, 919 P.2d 401, 402 (1996). There is no express statutory authority for Justice Courts to hear motions to suppress at the time of a preliminary hearing for a case involving a felony or a gross misdemeanor. Further, NRS 179.085 (3) requires a motion to suppress to be filed in the court where the trial is to be had. NRS 174.125 requires that any constitutional challenge to the search or seizure of evidence be presented to the District Court by written motion. Thus, the legislature clearly chose to require a motion to suppress to be filed in District Court on gross misdemeanor and felony cases. Additionally, the Nevada Supreme Court has held that the constitutionality of evidence cannot be attacked in a Pre-Trial Writ of Habeas Corpus because issues of constitutionality simply are not issues to be raised in Justice Courts. See Cook v. State, 85 Nev. 692, 694-95, 462 P.2d 523, 526 (1969) (superseded by statute NRS 117.015); see also Robertson v. Sheriff, Clark County, 88 Nev. 696, 504 P.2d 698 (1972).

Preliminary hearings are heard by a Justice of the Peace within 15 days for in-custody defendants, absent a showing of good-cause. NRS 171.196. Defendants are raising suppression issues in Justice Court, at the time of the preliminary hearing, without filing any written motion and without giving the State notice that they intend to raise any suppression issues. This often time blind-sides prosecutors who correctly

believe that their responsibility is to present slight or marginal evidence at the preliminary hearing to establish probable cause that the defendant committed the charged crime(s)[1]. However, instead, prosecutors are often ambushed with an oral motion to suppress evidence and have to respond without properly briefing the Justice Court in writing. Further, because the prosecutor prepared for a probable cause hearing as opposed to a suppression hearing, often times the prosecutor does not have the necessary witnesses in court, ready to testify at the preliminary hearing, to adequately present the requisite evidence to the Justice Court. This leaves prosecutors at a huge disadvantage. Preliminary hearings are intended to be a "quick and simple determination of probable cause," not a mini-trial. Parsons v. State, 116 Nev. 928, 937 n.8, 10 P.3d 836, 841, n.8 (2000). There is no provision expressly authorizing the Justice Courts to rule on suppression motions at the time of felony and gross misdemeanor preliminary hearings anywhere in the Nevada Constitution or the Nevada Revised Statutes. As such, any action by the Justice Courts in this regard exceeds the courts' limited grant of authority. Nev. Const. art. VI, § 8..

[1] This Court has held that a suspect may not be bound over for trial unless the State demonstrates probable cause that the suspect committed the charged crime. Sheriff v. Richardson, 103 Nev. 180, 734 P.2d 735 (1987). Probable cause to support a criminal charge "may be based on slight, even 'marginal' evidence . . . because it does not involve a determination of the guilt or innocence of an accused." Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980).

MEMORANDUM OF POINTS AND AUTHORITIES

I.
PROCEDURAL HISTORY

On April 14, 2014, Las Vegas Justice of the Peace Eric Goodman presided over Lecory Grace's ("Grace") preliminary hearing in State v. Lecory Grace, Justice Court Case No. 14F04566X. Petitioner's Appendix ("PA") 1-30. Grace was facing a sole charge of Possession of Controlled Substance (NRS 453.336). PA 46. At the preliminary hearing, Officer Allyn Goodrich testified on behalf of the State. PA 4-15.

Following Officer Goodrich's testimony, during argument, Grace, via his attorney, moved to suppress the evidence in the instant matter stating, "[T]here's no evidence that the item – that the substance that's tested is lawfully in the possession of the police, that it was subject to a lawful search." PA 16. Grace argued that the State failed to establish that Grace was lawfully in custody, thus, also failed to establish that the search incident to arrest was valid. PA 16-17.The State responded that suppression issues were not properly before the Justice Court and that the suppression issue needed to be raised before the District Court. PA 18. The State argued that it had established that there was slight or marginal evidence that Grace had committed the offense of Possession of Controlled Substance, which was relevant inquiry at a preliminary examination. PA 18. Following additional arguments from both Grace and the State, Justice of the Peace Goodman suppressed

the evidence and dismissed Grace's case. PA 16-29. Justice of the Peace Goodman stated, "The Court has no information that this was a legal search. Because the Court has no information that it's a legal search, at this point I'm going to go ahead and suppress the drugs that were found and I'm going to dismiss the case." PA 29.

The State appealed the Justice Court's decision, filing its Opening Brief in District Court on May 27, 2014. PA 47-56. Graced filed his Opposition to State's Opening Brief on June 4, 2014. PA 57-68. The State filed a Reply to Defendant's Opposition to State's Opening Brief on June 5, 2014. RA163-67. On July 17, 2014, the District Court heard the matter. PA 39. On July 31, 2015, the District Court filed its Findings of Fact, Conclusions of Law and Order Granting Appeal. PA 37-45. The District Court granted the State's appeal, reversed the Justice Court's decision to suppress the evidence and dismiss the case, and remanded the matter back to the Justice Court for the Justice of the Peace to reinstate the case and proceed forward in compliance with the District Court's order. Id.

On August 21, 2015, Grace filed an Emergency Motion for Stay. PA 168-74. The State filed its Opposition to Defendant's Emergency Motion for Stay. PA 175-80. On September 1, 2015, the District Court denied Grace's Motion. Thereafter the Justice Court stayed the matter pending the result of the Instant Petition for a Writ of Mandamus.

On October 6, 2015, Grace filed the instant Petition for Writ of Mandamus.

On November 12, 2015, the Supreme Court of Nevada ordered the State to file an answer to the Writ by December 2, 2015. The State answers as follows.

II.
JURISDICTION

"[M]andamus and prohibition are extraordinary remedies, and the decision of whether a petition will be entertained lies within the discretion of this court." Hickey v. Eighth Jud. Dist. Court, 105 Nev. 729, 731, 782 P.2d 1336, 1338 (1989). This Court may issue a writ of mandamus "to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station." NRS 34.160. Further, a writ may also be appropriate "to control an arbitrary or capricious exercise of discretion." Hickey, 105 Nev. at 731, 782 P.2d at 1337. The petitioner carries "the burden of demonstrating that extraordinary relief is warranted." Pan v. Eighth Jud. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004); see also NRAP 21(a). The State agrees that this matter sounds in mandamus. However, for the forgoing reasons, the petition should be denied.

III.
PROCEDURAL FACTS

On March 20, 2014, Officer Goodrich, while on duty, was dispatched to Planet Hollywood in Clark County, Nevada. PA 5. Officer Goodrich testified he was working at Planet Hollywood in a plain clothes capacity. PA 6. There had been several arrests that night and Officer Goodrich helped supervise as prisoners were being transported from the security office to the prisoner transport vehicle. Id.

Officer Goodrich identified Grace as one of the prisoners that was being transported. PA 5-6. Grace was in custody for a probation violation. PA 6. Officer Goodrich was not the arresting officer for Grace's probation violation. PA 10.

Officer Goodrich took Grace to the prisoner transport wagon and Officer Calvin Wandick conducted a search incident to arrest. PA 6, 11. Officer Goodrich observed the search of Grace as he was present when the search was conducted. PA 7. The searching officer located a while baggie of substance in Grace's shoe or sock on his foot. Id. Based on Officer Goodrich's training and experience, he suspected the substance might be cocaine. Id. Officer Goodrich tested the substance and the presumptive test came back positive for .4 grams gross of cocaine. PA 8-9.

Following Officer Goodrich's testimony, the State rested. PA 15. Grace then raised a suppression issue arguing that the State failed to present evidence that the Grace's arrest itself had been lawful. PA 16. The State noted that this was an oral motion and that the State had received no notice that the defense intended to raise this issue. PA 19. Notably, throughout argument, the defense never contested that the State had not presented slight or marginal evidence as is necessary in a preliminary hearing. PA 16-29. In fact, the sole issue Grace raised was the suppression issue. Id. Following arguments by both sides, the Justice Court suppressed the evidence and dismissed the case. PA 29.

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IV.
ARGUMENT

1. Justice Court Do Not Have Authority to Consider a Motion to Suppress as part of a Preliminary Hearing as Case Law Does Not Support It

In Nevada, the Justice Courts are courts of limited jurisdiction. Article 6 of the Nevada Constitution governs the judiciary and provides that, "the judicial power of this State shall be vested in a court system, comprising a Supreme Court, district courts, and justices of the peace." Nev. Const. art. VI, § 1. The Nevada Constitution vests the District Courts with original jurisdiction in all cases, except where original jurisdiction is expressly granted to the Justice Courts:

> The District Courts in the several Judicial Districts of this State have original jurisdiction in all cases excluded by law from the original jurisdiction of justices' courts. They also have final appellate jurisdiction in cases arising in Justices Courts and such other inferior tribunals as may be established by law. The District Courts and the Judges thereof have power to issue writs of Mandamus, Prohibition, Injunction, Quo-Warranto, Certiorari, and all other writs proper and necessary to the complete exercise of their jurisdiction. The District Courts and the Judges thereof shall also have power to issue writs of Habeas Corpus on petition by, or on behalf of any person who is held in actual custody in their respective districts, or who has suffered a criminal conviction in their respective districts and has not completed the sentence imposed pursuant to the judgment of conviction.

Nev. Const. art. VI, § 6.

Justice Courts may only act based on authority specifically derived from the state constitution and from statute. Nev. Const. art. VI, § 8; Justice Court, 112 Nev. at 805, 919 P.2d at 402 (stating that a justice court must have "express [or] inherent authority" in order to act). The Nevada Legislature has limited original justice court

jurisdiction to "all misdemeanors and no other criminal offenses except as otherwise provided by specific statute." NRS 4.370(3)[2].

Although the Legislature has also given Justice Courts authority to conduct preliminary hearings in felony and gross misdemeanor cases, their function is limited in this regard. NRS 171.206 provides the following procedure after a preliminary hearing:

> If from the evidence it appears to the magistrate that there is probable cause to believe that an offense has been committed and that the defendant has committed it, the magistrate shall forthwith hold the defendant to answer in the district court; otherwise the magistrate shall discharge the defendant. The magistrate shall admit the defendant to bail as provided in this title. After concluding the proceeding the magistrate shall transmit forthwith to the clerk of the district court all papers in the proceeding and any bail.

As described in NRS 171.206, the Justice Court's sole purpose at the time of the preliminary hearing is to determine whether there is probable cause to bind the matter over to District Court. Justice Court, 112 Nev. at 806, 919 P.2d at 402. At the time of the preliminary hearing, the defendant's guilt or innocence is not at issue. Id.

[2] The respective criminal jurisdictions in Nevada's various courts are clearly delineated and they do not overlap. Municipal Courts have original jurisdiction over violations of city ordinances. See NRS 5.050(2). Justice Courts have original jurisdiction over misdemeanors and "no other criminal offenses except as otherwise provided by specific statute." NRS 4.370(3). The District Court has jurisdiction "in all cases excluded by law from the original jurisdiction of Justices' Courts," i.e., all gross misdemeanor and felony cases. Nev. Const. art. VI, § 6. The District Courts and Justice Courts cannot exercise concurrent jurisdiction over any offenses. See State v. Kopp, 118 Nev. 199, 202, 43 P.3d 340, 342 (2002).

Beyond making inquiry into the existence of probable cause at the preliminary hearing as authorized by NRS 171.176-171.206, no further power has been conferred by statute upon Justice Courts with respect to gross misdemeanor or felony cases.

Grace cites to NRS 48.025 for his proposition that evidence obtained in violation of the Fourth Amendment may not be considered by a Justice Court during a preliminary hearing because unlawful evidence is inadmissible. This is incorrect. NRS 48.025(1) provides that all relevant evidence is admissible, except among other enumerated circumstances, "[a]s limited by the Constitution of the United States or of the State of Nevada." This simply means that, if there is a constitutional bar to the admission of otherwise relevant evidence, it is inadmissible despite its relevance. However, the exclusionary right is a trial right that has no application at preliminary hearings[3]. In so much as Grace cites to NRS 47.020 for the same proposition, the State acknowledges that the rules of evidence embodied in Title 4 apply to preliminary hearings except "[t]o the extent its provisions are relaxed by a statue or procedural rule applicable to the specific situations." NRS 47.020(1)(a).

The Nevada Supreme Court has noted that, "[a] motion to suppress is the remedy normally used to preclude the introduction of evidence *at trial* which is claimed to be inadmissible for constitutional reasons[.]" Cook, 85 Nev. at 694–95,

[3] All pre-trial motions are regulated by NRS 174.015 to 174.145, which govern proceedings in the District Court, not Justice Court.

462 P.2d at 526 (emphasis added). The Court has also adopted the Black's Law Dictionary definition of a motion to suppress as follows:

> [A d]evice used to eliminate from the trial of a criminal case evidence which has been secured illegally, generally in violation of the Fourth Amendment (search and seizure), the Fifth Amendment (privilege against self incrimination), or the Sixth Amendment (right to assistance of counsel, right of confrontation etc.), of [the] U.S. Constitution.

State v. Shade, 110 Nev. 57, 63, 867 P.2d 393, 396 (1994) (quoting Black's Law Dictionary 914 (5th ed. 1979)). The Nevada Supreme Court has repeatedly referred to suppression motions as a trial right, rather than a right at a preliminary hearing, at which questions of the defendant's guilt or innocence are not proper. Justice Court, 112 Nev. at 806, 919 P.2d at 402; see also Parsons III, 116 Nev. at 936-37, 10 P.3d at 841 ("the preliminary examination is not intended to be a mini-trial."). "The exclusionary rule fashioned in Weeks v. United States, 232 U.S. 383, 34 S. Ct. 341, 58 L.Ed. 652 (1914), and Mapp v. Ohio, 367 U.S. 643, 81 S. Ct. 1684, 6 L.Ed.2d 1081 (1961), excludes from a *criminal trial* any evidence seized from the defendant in violation of his Fourth Amendment rights." Alderman v. United States, 394 U.S. 165, 171, 89 S. Ct. 961, 965 (1969) (emphasis added); see also Pennsylvania Bd. of Probation and Parole v. Scott, 524 U.S. 357, 363, 118 S. Ct. 2014, 2019 (1998) (recognizing that Supreme Court has "repeatedly declined to extend the exclusionary rule to proceedings other than criminal trials," and refusing to extend reach of exclusionary rule to parole revocation proceedings); United States v. Leon, 468 U.S.

897, 104 S. Ct. 3405 (1984) (noting that "[p]roposed extensions of the exclusionary rule to proceedings other than the criminal trial itself have been evaluated and rejected . . .").

Grace cites to Goldsmith v. Sheriff of Lyon County, 85 Nev. 295, 454 P.2d 86 (1969), for the proposition that when the Court stated, "Evidence received at a preliminary examination must be legal, competent evidence," this Court established that the Justice Courts have authority to consider motions to suppression. This is because, Grace argues, by extension, since the Justice Courts are only permitted to consider legal, competent evidence during preliminary hearings, they must also have inherent authority necessary to exclude incompetent evidence. However, "the jurisdictional boundaries of Nevada's justice courts are defined by the legislature." See Salaiscooper v. Eighth Judicial Dist. Court, 117 Nev. 892, 899, 34 P.3d 509, 514 (2001). The Goldsmith argument confuses and impermissibly extends the Justice Court's jurisdiction over felony and gross misdemeanor cases. Merely because the legislature empowered Justice Courts to make probable cause determinations in preliminary hearings does not mean that the legislature also intended to permit Justice Courts to rule on suppression motions.

This Court has also drawn a distinction between evidence which is excluded for evidentiary reasons and evidence which is suppressed for constitutional reasons. Shade, 110 Nev. at 63, 867 P.2d at 396 (finding that NRS 177.015, which allows the

State to appeal from a pretrial order granting suppression of evidence, does not permit the State to appeal from a court's order granting a motion in limine where such ruling is evidentiary, and not constitutional, in nature).

Thus, the proposition that, "Evidence received at a preliminary examination must be legal, competent evidence," is distinguishable from the rationale beyond the exclusionary rule. Goldsmith, 85 Nev. at 303, 454 P.2d at 91. Goldsmith goes on to cite a California case as follows:

> 'The proof which will authorize a magistrate in holding an accused person for trial must consist of legal, competent evidence. No other type of evidence may be considered by the magistrate. The rules of evidence require the 'production of legal evidence' and the exclusion of 'whatever is not legal.' The constitutional guarantee of due process of law requires adherence to the adopted and recognized rules of evidence. There cannot be one rule of evidence for the trial of cases and another rule of evidence for preliminary examinations. The rule for the admission or rejection of evidence is the same for both proceedings.

85 Nev. at 303, 454 P.2d at 92 (1969) (quoting People v. Schuber, 71 Cal.App.2d 773, 163 P.2d 498 (1945) (internal citations omitted)).

Goldsmith dealt with the admissibility of hearsay evidence and as such, was an evidentiary ruling, rather than a "constitutional" ruling on the substance of a motion to suppress. Id. Similarly, Schuber dealt with a *corpus delecti* issue where the defendant alleged that there was no external evidence of the cause of the laceration to the vagina of a nine-year-old child upon whom Schuber was charged

of committing lascivious conduct. Schuber, 71 Cal.App.2d at 774, 163 P.2d at 498.[4]

In both Schuber and Goldsmith, the "competent evidence" requirement went to the lower court's ability to make evidentiary rulings necessary to determine probable cause. However, in neither case did the necessity that the court rely upon legal, competent evidence require the lower court to inquire into the constitutionality of how the evidence was obtained. Indeed, the United States Supreme Court has long recognized that a reviewing court shall not inquire into the nature of the evidence relied upon during a probable cause inquiry, and will not disturb a federal indictment merely because it is based partly on "incompetent" evidence:

> Without considering how far, if at all, the court is warranted in inquiring into the nature of the evidence on which a grand jury has acted, and how far, in case of such an inquiry, the discretion of the trial court is subject to review, it is enough to say that there is no reason for reviewing it here. All that the affidavit disclosed was that evidence in its nature competent, but made incompetent by circumstances, had been considered along with the rest. The abuses of criminal practice would be enhanced if indictments could be upset on such a ground.

Holt v. United States, 218 U.S. 245, 247-48, 31 S. Ct. 2, 4 (1910) (internal citations omitted).

[4] Abrogation of this principle in Schuber was later recognized People v. Scott, 76 Cal. App. 4th 411, 90 Cal. Rptr. 2d 435 (1999).

In Costello v. United States, 350 U.S. 359, 363, 76 S. Ct. 406, 408-09 (1956), the Supreme Court went further, and stated that the same is true where all the evidence relied upon by the grand jury is "incompetent" hearsay evidence:

> The same thing is true where as here all the evidence before the grand jury was in the nature of 'hearsay.' If indictments were to be held open to challenge on the ground that there was inadequate or incompetent evidence before the grand jury, the resulting delay would be great indeed. The result of such a rule would be that before trial on the merits a defendant could always insist on a kind of preliminary trial to determine the competency and adequacy of the evidence before the grand jury. This is not required by the Fifth Amendment. An indictment returned by a legally constituted and unbiased grand jury, like an information drawn by the prosecutor, if valid on its face, is enough to call for trial of the charge on the merits. The Fifth Amendment requires nothing more.

(internal citations omitted).

The same standard has long been held to apply in Nevada. Like federal jurisdictions, merely because a grand jury receives incompetent evidence does not mean that the indictment must be quashed. "'The grand jury can receive none but legal evidence, and best evidence in degree, to the exclusion of hearsay or secondary evidence.' However, regardless of the presentation of inadmissible evidence, the indictment will be sustained if there is the slightest sufficient legal evidence." Collins v. State, 113 Nev. 1177, 1182, 946 P.2d 1055, 1059 (1997) (quoting NRS 172.135(2)); see also Sheriff v. Frank, 103 Nev. 160, 165, 734 P.2d 1241, 1245 (1987).

Suppression issues should not be considered at the preliminary hearing because no statute expressly authorizes the Justice Court to make findings of fact thereon or to suppress evidence, and because consideration of the legality of evidence seized by police is outside the explicit bounds set by the legislature[5]. Express statutory authority only permits the Justice Courts to conduct probable cause hearings limited in scope and determinative only of whether the accused should be held to answer in District Court[6].

2. Justice Court Do Not Have Authority to Consider a Motion to Suppress as part of a Preliminary Hearing as there is No Statutory Authority

Contrary to Grace's assertion, NRS 189.120 merely provides a plain, speedy and adequate remedy to the State should a Justice Court exceed its jurisdiction in making a ruling upon a constitutional issue in a gross misdemeanor or felony case. NRS 189.120(1) gives the State the right to appeal to the District Court from an order of a Justice Court granting the motion of a defendant to suppress evidence. NRS

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[5] "The preliminary hearing takes place in a different context than a trial. There is no constitutional right to a preliminary hearing. It is a creature of statute, and as such, the proceedings are governed by statute." Azbill v. Fisher, 84 Nev. 414, 418, 442 P.2d 916, 918 (1968).

[6] The United States Supreme Court has similarly interpreted Fed.R.Crim.Proc.5(c), the federal analog of NRS 171.206. See Giordenello v. United States, 357 U.S. 480, 484, 78 S. Ct. 1245, 1249 (1958) (United States Commissioner conducting preliminary hearing determines only whether there is probable cause to believe defendant committed offense; admissibility of evidence claimed to be illegally seized by police is an issue for the trial court, and proper procedure is to move for suppression in the District Court). Note that interpretations of federal counterparts of Nevada Rules are persuasive. Dougan v. Gustaveson, 108 Nev. 417, 520-521, 835 P.2d 795, 797 (1992).

189.120 states:

> 1. The State may appeal to the district court from an order of a justice court granting the motion of a defendant to suppress evidence.
> 2. Such an appeal shall be taken:
>
> (a) Within 2 days after the rendition of such an order during a trial or preliminary examination.
>
> (b) Within 5 days after the rendition of such an order before a trial or preliminary examination.
>
> 3. Upon perfecting such an appeal:
>
> (a)After the commencement of a trial or preliminary examination, further proceedings in the trial shall be stayed pending the final determination of the appeal.
>
> (b) Before trial or preliminary examination, the time limitation within which a defendant shall be brought to trial shall be extended for the period necessary for the final determination of the appeal.

NRS 189.120 was enacted by AB 641 in 1969, as part of a joint bill with NRS 177.015(2), which allowed the State the automatic right to appeal to the Supreme Court from an intermediate order granting or denying suppression in district court. PA 182-99. NRS 189.120(2) states that the right to appeal applies "during a trial or preliminary examination" (emphasis added). In NRS 177.015(2), by contrast, the language states that the right to appeal applies only "during a trial."

"When the language of a statute is unambiguous, the courts are not permitted to look beyond the statute itself when determining its meaning. However, when a statute is susceptible to reasonable but inconsistent interpretations, the statute is ambiguous, and this court will resort to statutory interpretation in order to discern legislative intent." Kopp, 118 Nev. at 202, 43 P.3d at 342. The Nevada Supreme Court "resolves any doubt as to legislative intent in favor of what is reasonable, and

against what is unreasonable. A statute should be construed in light of the policy and the spirit of the law, and the interpretation should avoid absurd results." Hunt v. Warden, Nevada State Prison, 111 Nev. 1284, 1285, 903 P.2d 826, 827 (1995) (citing Oakley v. State, 105 Nev. 700, 702, 782 P.2d 1321, 1322 (1989)).

Here, the language of NRS 189.120 is unambiguous. There is no room for reasonable but inconsistent interpretations on the issue of whether the State is permitted to appeal from an order by the Justice Court suppressing evidence during a preliminary hearing. Kopp, 118 Nev. at 202, 43 P.3d at 342. However, even where the language of the statute is clear, NRS 189.120 is still at odds with the Nevada Constitution if the legislature did not intend to grant the Justice Courts authority to preside over suppression motions in felony and gross misdemeanor cases. The statute deals only with the State's right to appeal and in no way addresses the authority of the Justice Court to hear such motions to suppress. NRS 189.120 merely provides a plain, speedy and adequate remedy to the State should a Justice Court exceed its jurisdiction in making a ruling upon a constitutional issue in a gross misdemeanor or felony case. Nothing in NRS 189.120 provides "specific" or even "inferred" jurisdiction to the Justice Court to consider constitutional issues. Moreover, inference from statutes is not proper in determining the jurisdiction of justice court. See, e.g., Woerner v. Justice Court, 116 Nev. 518, 525, 1 P.3d 377, 381 (2000).

The Nevada Supreme Court has previously recognized that merely because the legislature establishes a procedure in Justice Court does not automatically mean that the Justice Court is authorized to carry out that procedure. For example, in State v. Smith, 99 Nev. 806, 808, 672 P.2d 631, 632 (1983), the Nevada Supreme Court reviewed a statute stating, "In a justice's court, *a case shall be tried by jury only if the defendant so demands* in writing not less than 5 days prior to trial. Where a case is tried by jury, a reporter must be present who is an official reporter for a district court of this state, and shall report the trial." (quoting former NRS 175.011(2) (emphasis in original)). The Nevada Supreme Court held that the statute in question did not create a statutory right to a jury trial in all justice court cases, but only created a procedure for justice courts to follow where the right to trial was otherwise statutorily mandated or appropriate. Id. at 808-09, 672 P.2d at 633 ("[W]e believe that NRS 175.011(2) is intended to have only a procedural impact, and that if the Legislature intended to grant a substantive right to jury trial in every case, it would have said so in plain, explicit language. As the Legislature has not clearly expressed an intention in NRS 175.011(2) to grant a statutory right to jury trial, we decline to read such a right into the statute.").

A more recent analog is State v. Frederick, 129 Nev. __, 299 P.3d 372 (2013). At issue in Frederick was NRS 3.245, which provides that:

> In any county in which the appointment of masters for criminal proceedings by a district court is authorized by the board of county

> commissioners, the local rules of practice adopted in a judicial district within the county may authorize the Chief Judge of a district court to appoint one or more masters for criminal proceedings to perform certain subordinate or administrative duties that the Nevada Supreme Court has approved to be assigned to such a master.

Consistent with NRS 3.245, the Eighth Judicial District Court presented local rule 1.48 to the Nevada Supreme Court for approval. Frederick, 299 P.3d at 374. EDCR 1.48 provided that certain qualified individuals, including Justices of the Peace, could be appointed to serve as masters and conduct various administrative proceedings on behalf of the district court judges, including, "Conducting arraignments and *accepting pleas of guilty, nolo contendere, and not guilty,* including ascertaining whether the defendant will invoke or waive speedy trial rights." Frederick, 299 P.3d at 374 (quoting EDCR 1.48(k)(2) (emphasis in original)).

In Frederick, the Nevada Supreme Court found that EDCR 1.48 was proper and did not constitute an illegal expansion of the jurisdiction of Justice Courts because justices of the peace would not be called on to accept felony pleas within the scope of their duties as justice court judges. Id. at 376. Contra Hernandez v. Bennett-Haron, 128 Nev. __, 287 P.3d 305, 316 (2012) (county ordinance requiring Justices of the Peace to preside over coroner's inquest violated legislature's exclusive right to establish jurisdiction of justice courts). Rather, EDCR 1.48 merely allowed Justices of the Peace qualified to serve as District Court hearing masters to

be appointed to this position. Frederick, 299 P.3d at 374. However, when a Justice of the Peace accepts a felony plea, it is in the separate capacity as a District Court hearing master and *not* as a District Court judge. Id. The Nevada Supreme Court held that even though NRS 3.245 permitted the judiciary to delegate certain duties to hearing masters, the legislature did not intend NRS 3.425 to expand the jurisdiction of the Justice Court and as such, NRS 171.196(1) still prohibits Justice Courts from accepting felony pleas. Id.

In both Smith and Frederick, the legislature approved a procedure that was implemented in a way impacting the Justice Courts. However, the Nevada Supreme Court determined that absent express authority from the legislature, merely approving a procedure bearing on the Justice Courts' functioning did not implicitly expand the Justice Courts' jurisdiction.

Here, there was never an explicit grant of power to the Justice Courts. Grace argues that by including "preliminary examination" in NRS 189.120(2), the legislature was recognizing that Justice Courts routinely rule on suppression motions during preliminary examinations and thus the legislature implicitly conferred jurisdiction to Justice Courts to continue engaging in the practice. This tacit acknowledgement is insufficient to vest jurisdiction in the Justice Courts because a court of limited jurisdiction is a creation of statute and "possesses only the

jurisdiction expressly provided for it in the statute." State v. Barren, 128 Nev. __, 279 P.3d 182, 184 (2012) (jurisdiction of juvenile courts).

Indeed, "[j]urisdiction is not given by implication" to courts of limited jurisdiction. McKay v. City of Las Vegas, 106 Nev. 203, 205, 789 P.2d 584, 585 (1990), overruled on other grounds by Salaiscooper v. Eighth Judicial Dist. Court, 117 Nev. 892, 34 P.3d 509 (2001); see also State v. Sargent, 122 Nev. 210, 128 P.3d 1052 (2006) (although empowered to conduct preliminary hearings, Justice Court lacks authority to compel defendant's presence); Woerner, 116 Nev. at 525-526, 1 P.3d at 382 (2000) (Justice Court does not have jurisdiction to address competency because statute expressly grants competency rulings to the trial court); Justice Court, 112 Nev. at 805-06, 919 P.2d at 402 ("justice courts have *neither express nor inherent authority* to order criminal discovery prior to a preliminary hearing" because"[t]here is nothing in the criminal discovery provisions of the Nevada Revised Statutes giving justice courts *express* authority to order criminal discovery prior to a preliminary hearing" (emphasis added)); State v. Justice Court of Reno Twp., 48 Nev. 425, 233 P. 40, 40 (1925) ("nothing is presumed in favor of the jurisdiction of courts of limited jurisdiction . . . it must . . . appear affirmatively that such a court has jurisdiction before it can render a valid judgment"). But cf. Blackjack Bonding v. City of Las Vegas Mun. Court, 116 Nev. 1213, 1218-19, 14 P.3d 1275, 1279 (2000) ("when a constitution or statute gives a general power, it

also grants by implication every particular power necessary for the exercise of that power.").

The legislative history evinces that when NRS 189.120 was enacted, the legislature's main concern was creating an avenue for the State to appeal the erroneous suppression of evidence, particularly by Justices of the Peace who were not attorneys. It is clear that the legislature was aware that it was a common practice for Justice Courts to rule on suppression motions.

The legislative minutes state as follows:

AB 641:	Allows State to appeal court orders suppressing evidence in criminal cases.
MR. TORVINEN:	This is one the district attorneys want very badly. At the preliminary hearing they produce evidence and the court moves [sic] to suppress it because it was taken without a warrant or something. The case is dismissed and they turn the guy loose and that is the end of it. With this, the State can appeal the case. Then they can go back and continue the preliminary hearing, etc. Now the district attorney has no remedy.
MR. REID:	Another thing: Many of our Justice Courts have people that are not attorneys and they don't really understand the law. Sometimes they make terrible mistakes.

Assembly Committee on Judiciary, Meeting Minutes, 55th Legislative Session, March 19, 1969, at 2; see PA 188.

Generally, "[i]t is presumed that in enacting a statute the legislature acts with full knowledge of existing statutes relating to the same subject." City of Boulder City v. Gen. Sales Drivers, 101 Nev. 117, 118-19, 694 P.2d 498, 500 (1985). However, the mere fact that the legislature was aware of the Justice Court's practice is insufficient to constitute tacit approval or an implicit grant of authority. Instead, if the legislature had intended to allow Justice Courts to rule on suppression motions during preliminary hearings, the legislature should have expressly stated as much. See Smith, 99 Nev. at 808, 672 P.2d at 633 (noting that an expansion in justice courts' jurisdiction should not be presumed and that "if the Legislature intended to grant a substantive right…it would have said so in plain, explicit language").

Thus, NRS 189.120 does not give Justice Courts the authority to hear motions to suppress. It provides a remedy for the State to appeal when the Justice Court has exceeded its jurisdiction in making a ruling upon a constitutional issue in a felony case.

3. Legislative History Related to Proposed Legislation That Never Passed and is Not Law, Does Not Support the Contention that Justice Courts Have Jurisdiction to Hear Motions to Suppress

Proposed legislation that never passed does not negate the fact that there is no statutory authority for Justice Courts to hear motions to suppress during a preliminary hearing. In 2007, the Nevada District Attorneys Association, through representatives from the Washoe County DA's Office, proposed a bill that would add a section to NRS 174.125 stating:

> In a criminal prosecution of an offense that is:
> (a) A gross misdemeanor or felony, a motion to suppress evidence may be made only in the district court.
> (b) A misdemeanor, a motion to suppress evidence may be made only in the justice court.

A.B. 65, 74th Leg. Sess. (Nev. 2007). The bill would also have removed from NRS 189.120 any reference to the State's right to appeal a suppression ruling occurring during a preliminary hearing. Id.

The bill was heard in committee on one date and then tabled without further action. Although several assembly members raised their concerns about the due process implications of the bill, former Justice of the Peace, Stephen Dahl's testimony in opposition to the bill is particularly telling. Judge Dahl did not provide any statutory authority directly granting Justice Courts the authority to rule on suppression motions during preliminary hearings, but rather stated that it was a longstanding practice in the state and was consistent with the rule that Justice Courts could only hear legal evidence:

> I am here to testify against the bill. I want to make it clear that this would not just be a procedural change, it would be a substantive change in what has been a long practice in Nevada. There has never been a suggestion from the Nevada Supreme Court or in statute that says it is improper to raise suppression motions at the justice court level. The statute on preliminary hearings, NRS 171.206, states, 'if from the evidence it appears to the magistrate that there is probable cause to believe that an offense has been committed and that the defendant has committed it, they will be bound up to district court.' Until today, everybody believed that when the law said the court should consider evidence it meant the court should consider legal

> evidence. The proposition today is that you consider all kinds of evidence. That would be a change.

Assembly Committee on Judiciary, Meeting Minutes, 74th Legislative Session, February 21, 2007, at 16; see PA 135.

As is set forth supra, Section IV(1) merely because the legislature empowered Justice Courts to make probable cause determinations in preliminary hearings does not mean that the legislature also intended to permit Justice Courts to rule on suppression motions. Judge Dahl's testimony again illustrates the common mistake made by many proponents—that Justice Courts have authority to rule on a motion to suppress at the preliminary hearing—that "legal evidence" as is stated in Goldsmith, 85 Nev. at 303, 454 P.2d at 92, gives Justice Courts this authority. However, again, as is set forth in Section IV(1), Goldsmith dealt with the admissibility of hearsay evidence and as such, was an evidentiary ruling, rather than a "constitutional" ruling on the substance of a motion to suppress.

Notably, Grace cites to entire portions of the legislative history for both A.B. 65 in 2007 and A.B. 193 in 2015; however, Grace fails to cite to any authority that this somehow grants Justice Courts authority to rule on suppression motions. "The Justice Courts are Courts of limited jurisdiction and have only the authority granted by statute." Justice Court, 112 Nev. at 806, 919 P.2d at 402. There is no statutory authority for Justice Courts to hear a motion to suppress.

/ / /

4. Salaiscooper v. Eighth Judicial Dist. Court is Applicable to *Misdemeanor* Cases, not Felony or Gross Misdemeanor Cases

The Nevada Supreme Court has recognized that Justice Courts necessarily have authority to rule on constitutional issues in some cases. Salaiscooper v. Eighth Judicial Dist. Court, 117 Nev. 892, 900, 34 P.3d 509, 514-15 (2001) ("The legislature has necessarily empowered justice courts with authority to resolve constitutional issues arising in *criminal misdemeanor cases*. For example, the justice courts are often called upon to resolve constitutional issues in ruling on motions to suppress evidence or in ruling upon the constitutionality of prior convictions where a defendant is charged with a second misdemeanor violation of driving under the influence." (emphasis added)). However, this grant of authority is specific to misdemeanor cases, which are within the original jurisdiction of the Justice Court. There is no such clear statutory language permitting Justice Courts to rule on suppression motions in felony and gross misdemeanor cases.

Even in cases where the Nevada Supreme Court has found that the Justice Court had jurisdiction over aspects of a felony proceeding, that ruling has been couched in reference to concerns of judicial efficiency. In Koller v. State, 122 Nev. 223, 228-29, 130 P.3d 653, 656 (2006), the Nevada Supreme Court determined that Justice Courts had jurisdiction to entertain motions to dismiss felony complaints for violations of the Interstate Agreement on Detainers and NRS 171.070. In so ruling,

the Court noted that the statute was silent on the appropriate venue for motions to dismiss and stated,

> Although we generally interpret justice court jurisdiction over most aspects of felony cases as limited, our limitation has historically been based on the fact that the challenges involved various evidentiary issues better reserved for the trial court. We have also interpreted jurisdiction as limited where there is an express statutory committal of jurisdiction to the trial court. Those situations are not present in the instant case.

Koller, 122 Nev. at 229, 130 P.3d at 656-57.

By contrast, in the Parsons line of cases, the Nevada Supreme Court recognized that allowing Justice Courts to rule on the constitutional validity of misdemeanor cases during a preliminary hearing was inconsistent with the limited scope of Justice Courts' authority in felony cases. Parsons III was the third of three cases discussing the issue of whether or not it was appropriate for a justice court to consider the constitutionality of a defendant's two prior DUI misdemeanor convictions in a criminal compliant alleging a third-offense felony DUI. See Parsons v. Fifth Judicial Dist. Court, 110 Nev. 1239, 885 p.2d 1316 (1994) (Parsons I); Parsons v. State, 115 Nev. 91, 978 P.2d 963 (1999) (Parsons II); Parsons v. State, 116 Nev. 928, 10 P.3d 836 (2000) (Parsons III). The Court ultimately held that because preliminary hearings should be heard within 15 days, unless good cause is shown, "the constitutional validity of the prior DUI convictions is best dealt with at or before sentencing rather than delaying the preliminary examination and possibly extending the accused's pre-trial confinement unnecessarily." Parsons III, 116 Nev.

at 936, 10 P.3d at 841. The Court went on to note that "the preliminary examination is not intended to be a mini-trial," and that "making this an issue at the preliminary examination stage of the proceedings on a felony DUI charge would unduly confuse and complicate the proceedings in the justice's court." Id. at 936-937, 10 P.3d at 841. In a footnote, the Court noted that, "Our concern, however, is that this issue unduly complicates the preliminary examination, which is otherwise meant to be a *quick and simple* determination of probable cause." See id. at n.8 (emphasis added). The Parsons III Court also discussed Justice Court, 112 Nev. at 803, 919 P.2d at 401, in which the Nevada Supreme Court concluded that the Justice Court had no jurisdiction to order discovery because "[t]o conclude otherwise would turn the preliminary hearing into a trial, resulting in significant delays and an increased burden on the judicial system." Id. at 805, 919 P.2d at 402. Just because the Justice Courts have statutory authority to decide constitutional issues related to misdemeanor cases does not mean that they have authority to decide issues related to felony and gross misdemeanors.

5. Federal Law Supports the Proposition that the Exclusionary Rule is a Trial Right

In federal court, a magistrate judge may not address suppression issues at the time of a preliminary hearing. Rather, as suppression is a trial issue, the suppression issue must be addressed in the court of competent jurisdiction to hear the full trial. Similarly, although a district court judge may have a magistrate preside over an

evidentiary hearing on a suppression motion in a felony case and issue proposed findings of fact and conclusions of law, the district court with competent jurisdiction to preside over the trial must make the final determination on a motion to suppress. Campbell v. U.S. Dist. Court for N. Dist. of California, 501 F.2d 196, 206 (9th Cir. 1974).

Federal Rule of Criminal Procedure 5.1 governs preliminary hearings in federal cases. The rule states, in relevant part:

> **(a) In General.** If a defendant is charged with an offense other than a petty offense, a magistrate judge must conduct a preliminary hearing unless:
> **(1)** the defendant waives the hearing;
> **(2)** the defendant is indicted;
> **(3)** the government files an information under Rule 7(b) charging the defendant with a felony;
> **(4)** the government files an information charging the defendant with a misdemeanor; or
> **(5)** the defendant is charged with a misdemeanor and consents to trial before a magistrate judge.
> …
> **(e) Hearing and Finding.** *At the preliminary hearing, the defendant may cross-examine adverse witnesses and may introduce evidence but may not object to evidence on the ground that it was unlawfully acquired*. If the magistrate judge finds probable cause to believe an offense has been committed and the defendant committed it, the magistrate judge must promptly require the defendant to appear for further proceedings.

Fed. R. Crim. P. 5.1 (emphasis added); see also Fed. R. Crim. P. 41(h) ("A defendant may move to suppress evidence in the court where the *trial* will occur.");

Giordenello v. United States, 357 U.S. 480, 484, 78 S. Ct. 1245, 1249 (1958) (emphasis added).

The advisory committee notes explain that relaxed evidentiary rules and the inapplicability of suppression motions are necessary during preliminary hearings because such procedures are impermissible in grand jury proceedings. Fed. R. Crim. P. 5.1 advisory committee notes 1972. The advisory committee expressed concern that creating a higher evidentiary burden at preliminary hearings would only serve to push federal prosecutors away from the preliminary hearing process and into closed grand jury proceedings.

The advisory committee similarly expressed concern that allowing magistrate judges to address suppression issues during preliminary hearings would be inefficient:

> It has been urged that the rules of evidence at the preliminary examination should be those applicable at the trial because the purpose of the preliminary examination should be, not to review the propriety of the arrest or prior detention, but rather to determine whether there is evidence sufficient to justify subjecting the defendant to the expense and inconvenience of trial. The rule rejects this view for reasons largely of administrative necessity and the efficient administration of justice. The Congress has decided that a preliminary examination shall not be required when there is a grand jury indictment. Increasing the procedural and evidentiary requirements applicable to the preliminary examination will therefore add to the administrative pressure to avoid the preliminary examination. Allowing objections to evidence on the ground that evidence has been illegally obtained would require two determinations of admissibility, one before the United States magistrate and one in the district court. The objective is to reduce, not increase, the number of preliminary motions.

> . . . . The fact that a defendant is not entitled to object to evidence alleged to have been illegally obtained does not deprive him of an opportunity for a pretrial determination of the admissibility of evidence. He can raise such an objection prior to trial . . . .

Fed. R. Crim. P. 5.1 advisory committee notes 1972 (internal citations omitted). Although not binding, interpretations of federal procedural rules are persuasive in Nevada. See Dougan v. Gustaveson, 108 Nev. 517, 520-521, 835 P.2d 795, 797 (1992).

In addition to the federal rule, a number of states also limit a lower court's ability to hear suppression motions during a preliminary hearing held to establish probable cause. Like the federal advisory committee notes, most states cite to the limited authority of inferior courts to determine probable cause and expediency and efficiency concerns. For example, the Colorado Supreme Court sua sponte addressed the propriety of handling suppression motions during preliminary hearings, holding:

> Because of the limited purpose for which a preliminary hearing is intended, we believe that extending the exclusionary rule to this phase of the criminal process would precipitate a vast array of constitutional issues normally reserved for resolution by the trial court and would thus disrupt the expeditious resolution of the probable cause issue. Furthermore, given the rigid time restrictions for setting a preliminary hearing after a request is made, it is quite obvious that both the defense and the prosecution would be somewhat hard put to fully litigate suppression issues at this early phase of the criminal process. Requiring suppression motions to be resolved by the court with trial jurisdiction only after probable cause has been determined enhances the orderly processing of cases without in any manner depriving the defendant of a full and fair opportunity to assert issues that relate to the constitutional admissibility of evidence at trial.

People v. Connelly, 702 P.2d 722, 726-27 (Colo. 1985) rev'd sub nom. on other grounds Colorado v. Connelly, 479 U.S. 157, 107 S. Ct. 515, 93 (1986).

The Florida court of appeals has also determined that a Justice Court's ruling on a motion to suppress for purposes of a felony preliminary hearing is duplicative and not dispositive of the issue at trial:

> A justice of the peace's jurisdiction and authority is limited to determining misdemeanors, however, he may issue a search warrant and as a committing magistrate conduct preliminary hearings on felonies. During such he determines whether or not there is probable cause to hold an accused for trial.
>
> The procedure for challenging a search warrant and seized evidence is substantially set forth in our criminal rules under the heading, 'Pre-Trial Motions and Defenses'. Essentially the aggrieved party moves 'the court' to suppress the evidence.
>
> We construe 'the court' to mean the court of competent trial jurisdiction which in this case is the criminal court of record. This conclusion receives support from federal authority whose criminal rules are strikingly similar to ours.
>
> Assuming arguendo we could conclude that a justice of the peace can hear and determine the sufficiency of a search warrant and evidence seized thereunder in a felony charge, appellees still cannot prevail at this juncture.
>
> Repeatedly, opinions have decreed that prosecution may be instituted and maintained irrespective of whether a preliminary hearing is held and regardless of whether probable cause exists to bind the accused over for trial.
>
> It therefore logically follows and we conclude that a justice of the peace's determination during a preliminary hearing that evidence was illegally seized as the result of an improper search is not res judicata on

> the issue of its admissibility when an information or indictment charging a felony is later filed in a court of competent trial jurisdiction.

State v. Everly, 228 So. 2d 923, 924 (Fla. Dist. Ct. App. 1969). Thus, federal authority supports the notion that Justice Courts do not have authority to hear motions to suppress.

6. Should this Court determine that Justice Courts Have Authority to Hear a Motion to Suppress, Such Motions Must be Made in Writing and Provide the State with Notice and an Opportunity to Prepare for the Hearing

NRS 174.125 provides that all motions to suppress evidence in criminal cases be made in writing "before trial, unless an opportunity to make such a motion before trial did not exist or the moving party was not aware of the grounds for the motion before trial." A motion to suppress must be made "not less than 15 days before the date set for trial" in judicial district that have two or more judges. NRS 174.125(3). The Nevada Supreme Court has held, based upon NRS 174.125(3), that "the motion to suppress is the remedy normally used to preclude the introduction of evidence at trial which is claimed to be inadmissible for constitutional reasons, and is the remedy contemplated by our criminal code . . . . This is the procedure to be utilized when an accused wishes to challenge the admissibility of evidence on constitutional grounds." Cook, 85 Nev. at 693–94, 462 P.2d at 525. NRS 174.125 therefore requires, in gross misdemeanor and felony cases, that "a challenge to the admissibility of evidence secured by an alleged illegal search must be presented to the district court by appropriate motion. Id. Any challenge to the admissibility of

evidence in this case based not upon NRS Title 4, but instead upon an alleged illegal search should be made and heard in District Court before trial, not raised in Justice Court at the preliminary hearing.

However, in the event that this Court believes that Justice Courts do have this authority, the State submits that defendants should have to raise the issue in writing and the State should have notice in order to prepare for the hearing and not be unfairly surprised. See Sampson v. State, 121 Nev. 820, 828, 122 P.3d 1255, 1260 (2005) (allowing a defendant to introduce a witness on the eighth day of trial would unfairly surprise the State, particularly where the defendant could have discovered the witness earlier). Even Judge Dahl in his testimony in favor of A.B. 65 stated:

> I have suggested a procedural change that I think is worth thinking about. It would require that motions to suppress actually in writing and filed at least a few days prior to the preliminary hearing. That would give the district attorney's office the notice they need and the chance to respond. Many concerns could be addressed if the motion was filed at least five days before a hearing in writing.

PA 138.

Thus, to the extent that this Court finds Judge Dahl's testimony persuasive in regards to supra Section IV(3), the Court should also find his testimony persuasive in that he supports the idea of providing the State notice and a chance to respond. The Nevada Supreme Court has held the statutory deadlines outlined in NRS 174.125 must be adhered to and are not discretionary. Hernandez v. State, 124 Nev. 639, 647-48, 188 P.3d 1126 (2008). A failure to file a motion to suppress within the

statutory requirements generally results in waiver of the issue. Howard v. State, 102 Nev. 572, 575-76, 729 P.2d 1341 (1986); See also, Wilkins v. State, 96 Nev. 367, 372, 609 P.2d 309 (1980) (finding the failure to comply with statutory requirements regarding pretrial motions precluded appellate review); Cortes v. State, 260 P.3d 184, 187-188 (2011) (finding a defendant was not entitled to an evidentiary hearing on a suppression motion raised later than the 15 days before trial required by NRS 174.125). Should defendants learn of a basis for filing a motion at the preliminary hearing[7], they should raise it then, but the State should have ample opportunity to address it and provide the Justice Court with the necessary witnesses to adequately apprise the Court.

V.
CONCLUSION

WHEREFORE, the State respectfully requests that the instant Petition for Writ of Mandamus be DISMISSED, or, alternatively, that mandamus be DENIED.

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[7] NRS 179.085(4) allows a motion to suppress evidence "in the court where the trial is to be had." Further, it states that, "The motion must be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing." However, it still requires a motion to be made.

Dated this 2nd day of December, 2015.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY AND AFFIRM that this document was filed electronically with the Nevada Supreme Court on December 2, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT
Nevada Attorney General

ROBERT E. O'BRIEN
Deputy Public Defender

OFELIA L. MONJE
Deputy District Attorney

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

JUDGE DOUGLAS HERNDON
Eighth Judicial District Court, Dept. III
Regional Justice Center, 16th Fl.
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BY */s/ j. garcia*
Employee, District Attorney's Office

OLM/jg