

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Tracie K. Lindeman
Clerk of Supreme Court

LACY L. THOMAS,)
)
 Petitioner-Defendant,) CASE NO. 69074
)
vs.)
)
EIGHTH JUDICIAL DISTRICT COURT)
of the State of Nevada, in and for Clark)
County; THE HONORABLE MICHAEL)
VILLANI, DISTRICT JUDGE, DEPT. 17,)
)
 Respondents,)
)
and)
)
THE STATE OF NEVADA,)
)
 Real Party in Interest.)

REQUEST FOR PERMISSION TO FILE A REPLY
IN SUPPORT OF THE PETITION FOR EXTRAORDINARY RELIEF

Petitioner Lacy Thomas, by and through counsel, Franny A. Forsman and Daniel J. Albrechts, moves the court to permit the filing of Points and Authorities in response to the State’s Answer filed on January 11, 2016. The basis for this Request is: 1) an important issue has been raised as to the standard to be applied in Nevada when a prosecutor fails to turn over material and a mistrial is declared as a

result; 2) confusion which has resulted from the silence in this court's previous opinion on an important federal constitutional issue could deprive Petitioner of the right to a ruling, inhibit federal review and protract the proceedings if the State's misunderstanding of the issue is adopted.

The Petition in this case challenges the trial court's determination that a defendant's right not to be placed in jeopardy twice can be separated by count in the indictment. In other words, even though the defendant was placed in jeopardy on all counts in the indictment, when a prosecutor causes a mistrial of the trial on the entire indictment, only the counts affected by the misconduct are subject to the double jeopardy analysis. Additionally, the Petition clearly sets forth the difference between the law in Nevada and federal law on the standard to be applied when prosecutorial conduct causes a mistrial. These issues are important issues for Nevada jurisprudence particularly in light of the number of cases in Nevada in which failure to disclose exculpatory material by the prosecutor have resulted in postconviction relief, either in federal or state court. See discussion at p. 20 of Petition regarding the failures of the Clark County District Attorney's to disclose Kyles evidence.

The second issue raised in the Petition involves the trial court's denial of a Motion to Dismiss based on the constitutional flaws in the applicable statute or in

the application of the statute to the facts in this case. The trial court determined that the issue had already been determined by this court although this court's prior opinion did not address the issue at all. The State's position in its Answer, if adopted, would deprive the Petitioner of any opportunity to have the issue resolved and accordingly, would protract any postconviction proceedings, if such were necessary, because the reviewing court would have no ruling to review.

A Reply is warranted in this case because of the complexity of the issues, the disparate understanding of the applicable standards and the danger that the law on the issues will not be clarified or will be drawn into confusion.

Dated this 12th day of January, 2016.

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 January 12, 2016. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT
Nevada Attorney General

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

The Honorable Michael Villani
Eighth Judicial District Court, Dept. XVII
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

/s/ Kimberly LaPointe
An Employee of Daniel J. Albregts