

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK, AND
THE HONORABLE JENNIFER
TOGLIATTI, DISTRICT JUDGE

Respondents,

And

JEFFREY LYNN BAKER,

Real Party in Interest.

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Elizabeth A. Brown
Clerk of Supreme Court

CASE NO:

D.C. NO: C-14-303315-1

MOTION FOR STAY OF PROCEEDINGS IN THE DISTRICT COURT

COMES NOW, the State of Nevada, Petitioner, by STEVEN B. WOLFSON, District Attorney, through his deputy, RYAN J. MACDONALD, and submits this Motion for Stay of Proceedings in the District Court and supporting points and authorities. This opposition is based on the following memorandum and all papers and pleadings on file herein.

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Dated this 2nd day of November, 2016.

Respectfully submitted,

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

BY */s/ Ryan J. MacDonald*

RYAN J. MACDONALD
Deputy District Attorney
Nevada Bar #012615
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
P.O. Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500

MEMORANDUM OF POINTS AND AUTHORITIES

This Court should stay the proceedings below because the State has pursued a stay before the Eighth Judicial District Court (District Court), will be harmed if a stay is denied, and is likely to prevail on the merits since this Court has jurisdiction over this matter.

“[A] party must ordinarily move first in the district court for ... a stay[.]” Nevada Rules of Appellate Procedure (NRAP) Rule 8(a)(1)(a). On July 28, 2016, the State orally requested that the District Court stay its proceedings so it could pursue an extraordinary writ before this Court. (Odyssey Register of Actions, Minutes of July 28, 2016, attached as Exhibit A). The District Court agreed and stayed the proceedings. (Order Granting State’s Request for Stay of Proceedings, attached as Exhibit B). The district court later dissolved the stay and set a January 2017 trial date. Accordingly, the State is in compliance with NRAP 8(a)(1)(a).

Moreover, the request for a stay should be granted as the State is likely to succeed on the merits and will be harmed if a stay is denied. In determining whether to grant a stay of a criminal matter this Court considers “(1) whether the object of the appeal will be defeated if the stay is denied, (2) whether the appellant will suffer irreparable or serious injury if the stay is denied, (3) whether the respondent will suffer irreparable or serious injury if the stay is granted, and (4) whether the appellant

is likely to prevail on the merits in the appeal.” State v. Robles-Nieves, 129 Nev. ___, ___, 306 P.3d 399, 402-03 (2013) (citing, NRAP Rule 8(c)).

The object of the State’s request for extraordinary relief will be defeated and irreparable harm will suffer if a stay is denied at this point. The State’s request for a stay is ripe since this matter is scheduled for trial on January 17, 2017. (Odyssey Register of Actions, Events and Orders of the Court, attached as Exhibit C). Thus, it is uncertain whether this Court will have adjudicated the State’s request for extraordinary relief in advance of Petitioner’s trial date. Due to Double Jeopardy concerns, however, the State will be irreparably harmed if it is forced to go to trial prior to the resolution of its request for extraordinary relief.

Respondent, however, will not suffer harm if a stay of the proceedings is granted. If the extraordinary relief is granted, Respondent could request a continuance of the trial date to prepare for the trial based upon the newly admitted evidence.

Ultimately, it is likely that the State will prevail in its pursuit of extraordinary relief since this Court has jurisdiction over this matter and the District Court’s order was based on an arbitrary and capricious exercise of discretion. In State v. Dist. Court (Armstrong), 127 Nev. 927, 931, 267 P.3d 777, 780 (2011), this Court stated that mandamus is the appropriate vehicle for challenging evidentiary rulings for which the State has no other remedy. As argued in the concomitant mandamus

petition, the State is likely to prevail on the merits and a stay should be granted to prevent the irreparable harm to the State that will inevitably follow.

CONCLUSION

Based on the foregoing arguments as set forth above, the State respectfully requests that this Court grant its request for a stay of the proceedings below.

Dated this 2nd day of November, 2016.

Respectfully submitted,

STEVEN B. WOLFSON

Clark County District Attorney

BY */s/ Ryan J. MacDonald*

RYAN J. MACDONALD

Deputy District Attorney

Nevada Bar #012615

Office of the Clark County District Attorney

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on November 2, 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

MIKE FELICIANO
Deputy Public Defender

RYAN J. MACDONALD
Deputy District Attorney

I further certify that service of the above and foregoing was made this 2nd day of November, 2016, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

JUDGE JENNIFER TOGLIATTI
Eighth Judicial District Court, Dept. IX
Regional Justice Center, 10th Floor
200 Lewis Avenue
Las Vegas, Nevada 89101

BY /s/ j. garcia
Employee, District Attorney's Office

RJM/Michael Schwartz/jg