

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEANDRE GATHRITE_,

Petitioner,

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

Respondent,

THE STATE OF NEVADA,

Real Party in Interest.

) No. 77081

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) (Dist Ct. No. C18-334135-1)

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Oct 02 2018 11:14 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

EMERGENCY MOTION UNDER NRAP 27(e)
PETITIONER GATHRITE'S MOTION FOR STAY OF PROCEEDINGS
PENDING RESOLUTION OF CONTEMPORANEOUS PETITIONS FOR WRIT
OF PROHIBITION

ACTION NECESSARY BY OCTOBER 5, 2018

(A)The telephone numbers and office addresses of the attorneys for the parties:

Counsel for Petitioner:
Adrian M. Lobo, Esq.
Nevada Bar #10919
LOBO LAW PLLC
400 S. 4th St., Ste. 500
Las Vegas, NV 89101
Phone: 702.290.8998

Respondents:
The Honorable Douglas W. Herndon
Eighth Judicial District Court,
Dept. III
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89155
702.671.4312

(B) Facts showing the existence and nature of the claimed emergency:

The district court has ordered an evidentiary hearing on a matter previously adjudicated by the justice court. The State did not challenge the justice court's ruling in any way, either by appeal or a motion to reconsider (or any other procedural avenue). The State instead dismissed its case and ignored the justice court's ruling with regard to the suppression of certain evidence. Upon the return of the indictment, the Petitioner challenged the State's action in district court as a violation of due process.

The district court denied the Petitioner's request for a stay so that this matter could be raised on appeal and decided before proceedings are undertaken that not only prejudice the Petitioner (the re-litigating of a prior issue that was dispositive in justice court, and led to the Petitioner's release). Accordingly, the Petitioner has been afforded only twelve days (from September 26, 2018 to October 8, 2018) to prepare for the evidentiary hearing when it is not clear what the exact scope of the evidentiary hearing will be, what witnesses to call, what matters will be explored, etc. Nevertheless, as the evidentiary hearing may result in foreclosing additional avenues of defense (in the event this case proceeds to trial), it is the Petitioner's position that allowing such a hearing to proceed would work an irreparable harm and extreme prejudice to him.

(C) *When and how counsel for the other parties were notified and whether they have been served with the motion; or, if not notified and served, why that was not done.*

The Respondents will be served with this Emergency Motion, and the contemporaneous writ petition, upon filing. Furthermore, the State should be on notice that it was the Petitioner's intention to file this Emergency Motion and seek writ relief on this issue. At the time set for oral argument on the Petitioner's motion practice with regard to the indictment, wherein the district court ordered an evidentiary hearing, defense counsel requested a stay from the district court. That request was denied, and defense counsel stated on the record that the Petitioner would be seeking a stay and writ relief following the district court's order.

COMES NOW, the Petitioner DEANDRE GATHRITE aka DEANDRE TERELLE GATHRITE, by and through his counsel of record, Adrian M. Lobo, Esq. of Lobo Law, and hereby moves this Honorable Supreme Court for a stay of the proceedings in the District Court under Case No. C-18-334135-1, The State of Nevada vs. Deandre Gathrite aka Deandre Terelle Gathrite, #2592432.

This Motion for Stay is made pursuant to the Nevada Rules of Appellate Procedure, Rule 8(a)(1)-(2), the attached Memorandum of Points and Authorities, and the attached exhibits.

DATED this 2nd day of October, 2018.

By: /s/ Adrian M. Lobo
Adrian M. Lobo, Esq. (#10919)
LOBO LAW PLLC
400 S. 4th St., Ste. 500
Las Vegas, NV 89101
Phone: 702.290.8998
Fax: 702.442.2626
Email: adrianlobo@lobolaw.net

Rule 27(e) Certificate:

Ruling Required By: Monday, October 1, 2018, 2:11 p.m.

Clerk of the Supreme Court Notified by Telephone:

(Linda, October 1, 2018, 2:11 p.m.)

District Attorney Notified by Telephone: (Nicole Cannizzaro,
October 1, 2018, 4:23 p.m.)

Motion Served Via Email: Nicole Cannizzaro –
Nicole.Cannizzaro@clarkcountyda.com.

Addresses of Attorneys & Courts: District Attorney, Nicole
Cannizzaro, 200 Lewis Avenue, Las Vegas, NV 89155, (702) 671-2750;
Petitioner's Attorney, Adrian M. Lobo, 400 S. Fourth Street, Suite 500, Las
Vegas, Nevada 89101, (702) 290-8998.

ROUTING STATEMENT

“Rule 17: Division of Cases Between the Supreme Court and the Court of Appeals.” Subsection (b) of Rule 17 provides that certain cases shall “presumptively” be heard and decided by the court of appeals. “Pretrial writ proceedings challenging discovery orders or orders resolving motions in limine are presumptively assigned to the court of appeals.” NRAP 17(b)(14). Although this matter arises from a pre-trial writ, it does not involve a discovery order or a motion in limine. Accordingly, this case is not presumptively assigned to the Court of Appeals.

Nevada Supreme Court should decide this pre-trial writ based on an illegal detention because it raises “as a principle issue of statewide importance”..... NRAP 17 (a)(11).

MEMORANDUM OF POINTS AND AUTHORITIES

1. Legal Standard

This Emergency Motion is made pursuant to NRAP Rule 8(a)(1)(A), which states that a stay or injunction pending resolution of original writ proceedings is appropriate where a party has ordinarily and first moved in the district court for “a stay of ... proceedings in, a district court pending ... a petition to the Supreme Court or Court of Appeals for an extraordinary writ.” NRAP Rule 8(a)(2)(A)(ii) requires a showing that such motion was denied by the district court, and the district court’s reasons for the denial. Lastly, NRAP Rule 8(a)(2)(B)(i)-(iii) requires “the reasons for granting the relief requested and the facts relied on”; “originals or copies of affidavits or other sworn statements supporting facts subject to dispute”; and relevant portions of the record.

2. Prior Motion for Stay

An oral Motion to Stay Proceedings was made in the district court, Dept. III, the Hon. Douglas Herndon presiding, on September 25, 2018. The Motion was denied by the district court at that hearing in open court, and an Order for the denial was signed and filed in open court on the same date. The denial of defense counsel’s oral motion for stay was predicated on the district

court's setting an evidentiary hearing to be held on October 8, 2018. This Emergency Motion, and the contemporaneous writ petition, followed.

3. The Stay is necessary to litigate the Petition for a Writ of Prohibition prior to trial

Trial is presently scheduled for November 13, 2018. The instant case comes before the district court by way of an Indictment returned on August 15, 2018. The validity of this indictment has been challenged on the basis that the District Attorney knowingly presented inadmissible evidence, and therefore not legal evidence, to the grand jury when securing its Indictment.

The District Attorney first filed a criminal complaint against the Petitioner in justice court, under case #18F03565X. To support its complaint, the State introduced the Petitioner's statement and a firearm that had been seized as a result of the Petitioner's statement. The Petitioner challenged the admissibility of this evidence as having been obtained in violation of the Petitioner's civil rights as set forth under *Miranda v. Arizona*, 384 U.S. 436 (1966). The suppression motion was argued, and the justice court agreed with the Petitioner's position. Accordingly, the justice court ordered both the Petitioner's statement and the firearm suppressed as inadmissible evidence. *See attached Exhibit A – Reporter's Transcript of Proceedings, Justice Court 18F03565X, May 25, 2018 at 12-13.*

The State voluntarily dismissed its complaint on June 29, 2018. The State represented that the dismissal was necessary due to the unavailability of a witness to testify for preliminary hearing. The State instead proceeded to the grand jury, and secured the instant Indictment on August 15, 2018. In reviewing the transcript of the grand jury proceedings, as well as other discovery provided to the defense, it became immediately apparent that the State had presented to the grand jury the same evidence that had been ordered suppressed in the justice court.

On September 25, 2018, the Petitioner filed contemporaneous to one another a Petition for a Writ of Habeas Corpus, and a Motion to Dismiss the Indictment for Prosecutorial Misconduct. *See attached Exhibit B – Petition for Writ of Habeas Corpus*; and *Exhibit C – Motion to Dismiss*. The State filed its Opposition to the Motion to Dismiss on September 20, 2018, and its Return to the Petition on September 21, 2018. *See attached Exhibit D – State’s Opposition to Motion to Dismiss*; and *Exhibit E – State’s Return to Writ of Habeas Corpus*. The Petitioner filed replies in support of both filings on September 24, 2018. *See attached Exhibit F – Reply in Support of Petition for Writ of Habeas Corpus*; and *Exhibit G – Reply in Support of Motion to Dismiss*. On September 25, 2018, both the Petition and the Motion to Dismiss came before the district court for argument and consideration. At that hearing,

the court declined to decide the matter, and instead *sua sponte* ordered an evidentiary hearing as to the suppression issue- despite no such motion or request having been made by either party. The hearing is presently set for October 8, 2018, at 1:00 p.m.

The Petitioner seeks a stay so that his contemporaneous Petition for a Writ of Prohibition may be considered by this Court. At issue is the durability of a justice court order, and whether the State may disregard a justice court's order and present previously suppressed evidence to a grand jury without any admonition as to the prior decision in justice court. The stay is necessary as trial is approaching, and the district court is attempting to compel an evidentiary hearing on a matter over which it has no jurisdiction (the State does not challenge the validity of the justice court's ruling, but the district court nevertheless has ordered an evidentiary hearing to re-litigate the issue).

Lastly, there is no prejudice to the State. In fact, resolution of this issue will serve several important policies in the Nevada judicial system at large. The controversy centers on the appropriate procedure the State must follow/adhere to when presenting a case for a probable cause determination; the impact, durability, and effect of justice court orders; and whether the proper procedure for reconsideration or appeal of a justice court determination has been followed. Lastly, the Petitioner's trial has been set in short course,

for November. Therefore a stay at this early stage of the proceedings would allow the State more time to prepare for this case (in the event one is still necessary).

CONCLUSION

Based on the foregoing, Petitioner humbly requests that this Court order that the lower court proceedings be stayed so that his Petition may be received, considered, and decided prior to trial.

DATED this 2nd day of October , 2018.

By: /s/ Adrian M. Lobo
Adrian M. Lobo, Esq. (#10919)
LOBO LAW PLLC
400 S. 4th St., Ste. 500
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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 2nd of October, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM LAXALT
Nevada Attorney General

STEVEN B. WOLFSON
Clark County 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 JUDGE DOUGLAS W. HERNDON
REGIONAL JUSTICE CENTER
200 LEWIS AVE
LAS VEGAS, NEVADA 89155

DATED this 2nd_ day of October, 2018.

By: /s/ Alejandra Romero
Alejandra Romero
Legal Assistant to Adrian M. Lobo, Esq.
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Phone: 702.290.8998
Fax: 702.442.2626

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HONORABLE DOUGLAS W. HERNDON,)	
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