

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 DORIE REGINA HENLEY,

4 Petitioner,

5 v.

6 THE EIGHTH JUDICIAL DISTRICT
7 COURT OF THE STATE OF
8 NEVADA, COUNTY OF CLARK,
9 THE HONORABLE VALERIE
10 ADAIR, DISTRICT COURT JUDGE,

11 Respondents,

12 THE STATE OF NEVADA,

13 Real Party in Interest.

Supreme Court No. 74723

District Court No: C-19-2738-1

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Elizabeth A. Brown
Clerk of Supreme Court

14 **EMERGENCY MOTION UNDER NRAP 27(E)**

15
16 **MOTION FOR STAY OF DISTRICT COURT PROCEEDINGS PENDING
17 RESOLUTION OF PETITION FOR EXTRAORDINARY RELIEF**

18 **[Action Required Before: January 2, 2018]**

19 MARY D. BROWN, ESQ
20 BROWN LAW OFFICES, CHTD.
21 Nevada Bar No. 6240
22 200 Hoover Ave., Suite 130
23 Las Vegas, Nevada 89101
24 Telephone: (702) 405-0505
 Facsimile: (866) 215-8145
 Mary@thelasvegasdefender.com

Attorney for Petitioner,
DORIE REGINA HENLEY

ADAM P. LAXALT
NEVADA ATTORNEY GENERAL
Nevada Bar No. 12426
100 North Carson Street
Carson City, Nevada 98701-4717
(775) 684-1100

Counsel for Respondents

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 DORIE REGINA HENLEY,

3 Petitioner,

4 v.

5 THE EIGHTH JUDICIAL DISTRICT
6 COURT OF THE STATE OF
7 NEVADA, COUNTY OF CLARK,
8 THE HONORABLE VALERIE
9 ADAIR, DISTRICT COURT JUDGE,

10 Respondents,

11 THE STATE OF NEVADA,

 Real Party in Interest.

Supreme Court No. 74723

District Court No: C-17-327585-1

12 **EMERGENCY MOTION UNDER NRAP 27(E)**

13 **MOTION FOR STAY OF DISTRICT COURT PROCEEDINGS PENDING**
14 **RESOLUTION OF PETITION FOR EXTRAORDINARY RELIEF**

15 **[Action Required Before: January 2, 2018]**

16 COMES NOW Petitioner, DORIE REGINA HENLEY, by and through his
17 counsel, MARY D. BROWN, ESQ., and hereby moves this Honorable Court
18 pursuant to NRAP 27(e) to issue an Order staying the proceedings in District Court
19 pending the resolution of the Petitioners' Petition for Writ of
20 Prohibition/Mandamus.

21 Action by this Honorable Court is necessary before the grand jury is
22 scheduled to convene on January 2, 2018.

23 ///

1 This Motion is made based on the pleadings and papers on file herein, and
2 any argument that may be heard, if so scheduled. A copy of this Motion will be
3 served on all parties on today's date.

4 Dated this 26th day of December 2017.

5
6 By: /s/ Mary D. Brown
7 MARY D. BROWN, ESQ.
8 Nevada Bar No. 6947
9 BROWN LAW OFFICES
10 200 Hoover Ave., Suite 130
11 Las Vegas, Nevada 89101
12 Telephone: (702) 405-0505
13 Attorney for Petitioner

14 MEMORANDUM OF POINTS AND AUTHORITIES

15 Factual and Procedural Background

16 Petitioner, Dorie Henley is charged by way of Indictment with Murder with
17 use of a Deadly Weapon, Conspiracy to Commit Murder, Third Degree Arson,
18 Conspiracy to Commit Arson, First Degree Kidnapping, Conspiracy to Commit
19 Kidnapping, Robbery with Use of a Deadly Weapon, Conspiracy to Commit
20 Robbery, Grand Larceny Auto and Conspiracy to Commit Larceny – Counts One
21 through Ten.¹ On October 15, 2017, Petitioner, Dorie Henley was arrested on the
22 said charges. On October 18, 2017, the undersigned counsel was appointed to
23 represent Ms. Henley and a preliminary hearing was set for November 1, 2017. On
24 October 23, 2017, the District Attorney's Office served a Notice of Intent to Seek

¹ Movant's Appendix (MA), 001-005

1 Indictment on defense counsel by e-mail.² On the afternoon of October 24, 2017,
2 the State presented its case to the grand jury. However, the State stayed
3 deliberations to allow defense counsel time to respond to its Marcum Notice.

4 On October 25, 2017, counsel for Ms. Henley specifically informed counsel
5 that Ms. Henley was considering whether to testify and was also in the process of
6 identifying exculpatory evidence to be presented. Defense counsel specifically
7 noted that the time to provide notice and present evidence did not run until the end
8 of the day October 31, 2017 due to the court holiday on October 27, 2017.³ At
9 1:59 p.m. on October 31, 2017, the State allowed the Grand Jury to deliberate on
10 the instant indictment.⁴ Less than an hour later on October 31, 2017 at 2:47 p.m.,
11 defense counsel timely provided formal notice to the State that Ms. Henley
12 intended to testify.⁵ Ms. Henley also submitted specific requests that certain
13 exculpatory information be provided to the Grand Jury.⁶ At 2:59 p.m., after the
14 grand jury already returned its true bill, the prosecutor coyly responded: “She will
15 need to endorse the written waiver of rights per the statute.”⁷ Counsel for Ms.
16 Henley (who had not been advised that the True Bill had already been returned)
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21 ² MA, p. 017

22 ³ MA, p. 015-016

23 ⁴ MA, p. 120

24 ⁵ MA p. 027

⁶ MA, p. 029

⁷ MA, p. 069

1 responded that she would timely provide a waiver. Further, counsel indicated that
2 Ms. Henley, who was still in custody, was ready to proceed with the Preliminary
3 Hearing still scheduled for November 1, 2017.⁸

4 Ms. Henley was not provided an opportunity to testify. The requested
5 exculpatory evidence was not presented. Instead, the indictment was returned on
6 November 1, 2017. The state's actions reflect a clear intent to rush a grand jury
7 indictment for the purposes of avoiding the preliminary hearing that was set for
8 November 1, 2017, while blind-siding Ms. Henley and her counsel, who was never
9 given any indication to the contrary. All available evidence, particularly the e-mail
10 sent from undersigned counsel to the state on October 31, 2017 indicating that the
11 defense was ready to proceed with the preliminary hearing, establish that the state
12 not only failed to inform counsel that the grand jury had been convened, but also
13 failed to give counsel any indication that it did not intend on putting on a
14 preliminary hearing the following morning.

15 The state intentionally denied Ms. Henley of her statutory right to testify at a
16 grand jury, the statutory right to have a preliminary hearing within 15 days, and the
17 constitutional right of due process, all without any consequence from the court. It
18 is clear that counsel for the state counted on the assumption that the state can act
19 with such hubris and suffer no consequence. If this Court fails to intervene, it not
20 only reinforces this way of thinking, but it encourages the state to continue
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⁸ MA, p. 029

1 violating the rights of criminal defendant's in the belief that there will be no
2 consequences for their improper actions.

3 On November 2, 2017, Ms. Henley filed a Motion to Dismiss Indictment or,
4 in the Alternative, for Own Recognizance Release Pending Writ due to the State's
5 Knowing and Intentional Deprivation of Defendant's Rights.⁹ Ms. Henley argued
6 she was being illegally detained due to the State's violation of her rights and
7 requested the Court dismiss the indictment or grant an own recognizance release
8 pending further litigation.¹⁰

9
10 The Court heard arguments on Ms. Henley's Motion to Dismiss Indictment
11 on December 4, 2017 and December 12, 2017. Ultimately, the Court denied Ms.
12 Henley's Motion to Dismiss, but ordered Ms. Henley be allowed to testify at the
13 next grand jury proceedings. It was determined between the parties that the
14 testimony would be scheduled for January 2, 2018. Undersigned counsel for Ms.
15 Henley requested a stay of proceedings pending a Writ of Mandamus, which was
16 also denied. The Court issued written orders for both decisions on December 20,
17 2017.¹¹

18
19 Pursuant to the District Court's order, the petitioner will be given the
20 opportunity to testify before the Grand Jury on January 2, 2018. Petitioner, Dorie
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23 ⁹ MA, p. 006-029

24 ¹⁰ MA, p. 010

¹¹ MA, p. 077-082

1 Henley, now files the instant Emergency Motion for Stay of Proceedings seeking
2 extraordinary relief from this Honorable Court. The request for stay is based on
3 the lack of appropriate resolution of this issue in district court.

4 If relief is not granted, petitioner will have to remain in custody and face
5 trial on the instant, unlawful indictment, including Murder and First-Degree
6 Kidnapping, which are life offenses. She will be forced to endure this hardship as
7 a direct result of the State's willful and intentional violation of Ms. Henley's rights.
8 If Ms. Henley remains in custody and is forced to face trial because the indictment
9 is not dismissed as a result of the State's violations, the State would be obtaining a
10 direct benefit from its misconduct. This cannot and should not be the law.
11

12 Furthermore, extraordinary relief is warranted on the ground that this type
13 error is capable of repetition yet evading review. As such, an emergency exists
14 that requires this Court to stay the proceedings pending the resolution of the
15 Petition for Writ of Prohibition/Mandamus.
16

17 **Legal Argument**

18 Nevada Rule of Appellate Procedure 8, in pertinent part, provides:
19

20 **(a) Motion for Stay.**

21 **(1) Initial Motion in the District Court.** A party must
22 ordinarily move first in the district court for the following
relief:

23 (A) a stay of the judgment or order of, or proceedings in,
24 a district court pending appeal or resolution of a petition
to the Supreme Court for an extraordinary writ;

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(2) **Motion in the Supreme Court; Conditions on Relief.** A motion for the relief mentioned in Rule 8(a)(1) may be made to the Supreme Court or to one of its justices.

(A) The motion shall:

- (i) show that moving first in the district court would be impracticable; or
- (ii) state that, a motion having been made, the district court denied the motion or failed to afford the relief requested and state any reasons given by the district court for its action.

The Petitioner has met the requirement that she made the motion in the district court and the Motion for Stay of Proceedings was denied. The Petitioner respectfully requests that this Court issue an order staying the proceedings below in the district court before January 2, 2018, the day Ms. Henley is scheduled to testify before the grand jury. Absent a stay of proceedings to allow this Court to rule on the pending Petition for Writ of Prohibition/Mandamus, the Petitioner will be irreparably harmed if she is forced to remain in custody and proceed to trial on the defective indictment. Furthermore, it is essential for the Court to review this matter, as the issue at hand is capable of repetition, yet evading review. The evidence already suggests the state is comfortable acting without consideration of the defendant's rights and without concern of consequence from the court. A failure to intervene reinforces and encourages similar violates by the state in the future.

1 **CONCLUSION**

2 For all the foregoing reasons, the Petitioner respectfully requests this Court
3 issue an order granting a stay of all proceedings in the district court pending
4 resolution of the Petition for Writ of Prohibition/Mandamus pending before this
5 court.
6

7 DATED this 4th day of December 2017.

8 By: /s/ Mary D. Brown
9 MARY D. BROWN
10 Nevada Bar No. 6947
11 200 Hoover Ave., Suite 130
12 Las Vegas, Nevada 89101
13 Telephone: (702) 405-0505
14 Attorney for Petitioner
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1 **NRAP 27(e) CERTIFICATE**

2 The telephone numbers and office addresses of the attorneys for the parties
3 are as follows:

4 David Stanton
5 Office of the District Attorney
6 200 Lewis Ave.
7 Las Vegas, NV 89155
(702) 671-2826

Adam P. Laxalt
Nevada Attorney General
100 N. Carson St.
Carson City, NV 89701-4717
(775) 684-1100

8 Petitioner, Dorie Henley is charged by way of Indictment with Murder with
9 use of a Deadly Weapon, Conspiracy to Commit Murder, Third Degree Arson,
10 Conspiracy to Commit Arson, First Degree Kidnapping, Conspiracy to Commit
11 Kidnapping, Robbery with Use of a Deadly Weapon, Conspiracy to Commit
12 Robbery, Grand Larceny Auto and Conspiracy to Commit Larceny – Counts One
13 through Ten. On October 15, 2017, Petitioner, Dorie Henley was arrested on the
14 said charges. A preliminary hearing was scheduled for November 1, 2017.

15
16 On October 23, 2017, the District Attorney's Office served a Notice of
17 Intent to Seek Indictment on defense counsel by fax. On the afternoon of October
18 24, 2017, the State presented its case to the grand jury. However, the State stayed
19 deliberations to allow defense counsel time to respond to its Marcum Notice.

20
21 On October 25, 2017, counsel for Ms. Henley specifically informed counsel
22 that Ms. Henley was considering whether to testify and was also in the process of
23 identifying exculpatory evidence to be presented. Defense counsel specifically
24

1 noted that the time to provide notice and present evidence did not run until the end
2 of the day October 31, 2017 due to the court holiday on October 27, 2107.

3 At 1:59 p.m. on October 31, 2017, the State allowed the Grand Jury to
4 deliberate on the instant indictment. Less than an hour later on October 31, 2017 at
5 2:47 p.m., defense counsel timely provided formal notice to the State that Ms.
6 Henley intended to testify and submitted requests that certain exculpatory
7 information be provided to the Grand Jury. At 2:59 p.m., after the grand jury
8 already returned its True Bill, the prosecutor coyly respondent: "She will need to
9 endorse the written waiver of rights per the statute." Counsel for Ms. Henley (who
10 had not been advised that the True Bill had already been returned) responded that
11 she would timely provide a waiver.
12

13
14 Ms. Henley was not provided an opportunity to testify and the requested
15 exculpatory evidence was not presented. Instead, the indictment was returned on
16 November 1, 2017, the of Ms. Henley's scheduled preliminary hearing. The
17 state's conduct is a clear attempt to avoid putting on a preliminary hearing by
18 rushing to a grand jury indictment, violating Ms. Henley's rights in the process and
19 doing so without consequence.
20

21 Defendant was arraigned on November 7, 2017. A not guilty plea was
22 entered, and the matter was transferred to Department XXI of the Eighth Judicial
23 District Court for trial setting.
24

1 On November 2, 2017, Ms. Henley filed a Motion to Dismiss Indictment or,
2 in the Alternative, for Own Recognizance Release Pending Writ due to the State's
3 Knowing and Intentional Deprivation of Defendant's Rights. Ms. Henley argued
4 she was being illegally detained due to the State's violation of her rights and
5 requested the Court dismiss the indictment or grant petitioner's release pending
6 further litigation. As such, Ms. Henley argued for dismissal of the November 1,
7 2017 Indictment.
8

9 On December 4, 2017 and December 12, 2017. the Court heard Ms.
10 Henley's Motion to Dismiss Indictment. Ultimately, the court rendered a decision
11 denying Ms. Henley's motion and undersigned counsel's subsequent request for a
12 stay of proceedings pending a Writ to the Nevada Supreme Court. The Court
13 issued written orders for both decisions on December 20, 2017.
14

15 Petitioner submits that the relief sought in the instant motion was available
16 in the district court and that all grounds in support of the instant motion were
17 submitted to the district court.
18

19 The pending Petition for Writ of Prohibition/Mandamus outlines the
20 compelling issues that exist in the instant case. The State engaged in egregious
21 misconduct and intentionally violated petitioner's rights by allowing the Grand
22 Jury to deliberate without providing petitioner a full opportunity to testify and
23 present exculpatory evidence before the grand jury. The State then benefitted from
24

1 its own misconduct because it was allowed to continue to detain petitioner pending
2 her testimony in front of the Grand Jury and avoid the preliminary hearing already
3 scheduled for November 1, 2017.

4 The district court below abused its discretion by denying Petitioner's Motion
5 to Dismiss Indictment or, in the Alternative for Own Recognizance Release
6 Pending Writ Due to the State's Knowing and Intentional Deprivation of
7 Defendant's Rights.

8 On December 26, 2017, the Respondent and Real Party in Interest were
9 served with the instant Emergency Motion Under NRAP 27(e) For Stay of
10 Proceedings
11

12 DATED this 26th day of December 2017.

13 By: /s/ Mary D. Brown
14 MARY D. BROWN
15 Nevada Bar No. 6947
16 200 Hoover Ave., Suite 130
17 Las Vegas, Nevada 89101
18 Telephone: (702) 405-0505
19 Attorney for Petitioner
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I further certify that this Petition complies with the page limitations of NRAP 27(d)(2) because it contains 8 pages, not including certificates which may be excluded pursuant to NRAP 32(a)(7)(C). I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Respectfully submitted,

By: /s/ Mary D. Brown
 MARY D. BROWN, ESQ.
 Nevada Bar No. 6947
 200 Hoover Ave., Suite 130
 Las Vegas, Nevada 89101
 Telephone: (702) 405-0505
Attorney for Petitioner

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I further certify that a true and correct copy of this Emergency Motion Under NRAP 27(e) For Stay of Proceedings was served on Respondent, the Honorable Valerie Adair, District Court Judge, on this 26th day of December 2017.

ADAM P. LAXALT
Nevada Attorney General

DAVID STANTON
Chief Deputy District Attorney

MARY D. BROWN
Counsel for Petitioner

By: /s/ Mary D. Brown
An employee of Brown Law Offices, Chtd.