

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 77529

DEANDRE GATHRITE

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT COURT, et al.,

Respondent.

Electronically Filed
Dec 07 2018 01:52 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**MOTION OF NEVADA ATTORNEYS FOR CRIMINAL
JUSTICE (NACJ) FOR LEAVE TO FILE BRIEF OF
AMICUS CURIAE IN SUPPORT OF PETITIONER AND
DISMISSAL OF THE INDICTMENT AGAINST HIM**

COMES NOW, Nevada Attorneys for Criminal Justice (NACJ), by
and through the undersigned counsel of record, and hereby files this
motion for leave to file an amici curiae in support of Petitioner, Deandre
Gathrite, and dismissal of the indictment against him.

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This motion is based upon the following Points and Authorities,
Declaration of Counsel, and all pleadings and papers on file herein.

Dated this 7th day of December, 2018.

Respectfully submitted,

NEVADA ATTORNEYS FOR CRIMINAL JUSTICE

/s/ Sarah K. Hawkins

SARAH K. HAWKINS, Bar No. 13143

Chief Deputy Public Defender (CCPD)

Secretary, NACJ

Attorney of record for *Amicus*

POINTS AND AUTHORITIES

Nevada Attorneys for Criminal Justice hereby requests leave to appear and submit a brief as amici curiae in this matter. *See* NRAP 29(a). Petitioner, Deandre Gathrite, consents to the request. Respondents were informed about the amicus brief and no response was received. As such, pursuant to Rule 29(a), the undersigned counsel as filed the instant motion for this Court's consideration. *See* Declaration of Counsel (attached hereto). The proposed brief of amicus curiae is submitted along with this motion.

I. INTERESTS OF AMICUS

One of the issues presented in Mr. Gathrite's appeal is whether the State may exploit indictment procedure for the purpose of avoiding a justice court suppression ruling pursuant to this Court's decision in Grace v. Eighth Judicial District Court, 375 P.3d 1017, 132 Nev. Adv. Op. 51 (2016). Another issue presented by Mr. Gathrite's appeal is whether a justice court's antecedent suppression order is binding on the State through grand jury proceedings until jurisdiction properly resides with the district court.

The Nevada Attorneys for Criminal Justice, Inc. (“NACJ”), is a Nevada domestic non-profit corporation comprised of approximately 200 criminal defense attorneys who practice in both the public and private sectors. NACJ is a member affiliate of the National Association of Criminal Defense Attorneys. NACJ members represent defendants in criminal cases at all stages of litigation. It has a material interest in the outcome of the instant appeal.

II. DESIRABILITY OF AMICUS CURIAE PARTICIPATION

Once again, one of the issues in Sampson’s appeal is whether the State may exploit indictment procedure for the purpose of avoiding a justice court suppression ruling pursuant to this Court’s decision in Grace v. Eighth Judicial District Court. 375 P.3d 1017, 132 Nev. Adv. Op. 51 (2016).

The amicus brief submitted to this Court provides a unique perspective on how a decision in this case would have an impact on the criminal justice system. NACJ assert in the amicus brief that permitting the State to circumvent a lawful justice court order by manipulating procedural rules not only renders this Honorable Court’s

holding in Grace meaningless, it deprives Petitioner Gathrite of important procedural rights, compromises prosecutorial ethics, and jeopardizes the integrity of Nevada's criminal justice system. As such, a decision unfavorable to Deandre Gathrite would have a deleterious impact on the criminal justice system in general. This is not a perspective or argument presented in the Opening Brief and is one that NACJ is in a unique position to provide.

The issue here has general public interest and NACJ has an interest in the outcome. The "classic role of amicus curiae" is to assist in a case of "general public interest, supplementing the effort of counsel, and drawing attention to law that escaped consideration." *Miller-Wohl Co. v. Com'n of Labor and Industry*, 694 F.2d 203, 204 (9th Cir. 1992). An amicus brief should be allowed "when the amicus has an interest in some other case that may be affected by the decision in the present case . . . or when the amicus has unique information or perspective that can help the court beyond the role that the lawyers for the parties are able to provide. *Ryan v. Commodity Futures Trading Com'n*, 125 F.3d 1062, 1063 (7th Cir. 1997) (Posner, J., in chambers) (citations omitted).

The brief meets these purposes, and the issue will impact how defense attorneys perform their duties in both pending and future cases. NACJ in a unique position to provide that perspective.

III. CONCLUSION

For the reasons stated above, Nevada Attorneys for Criminal Justice (NACJ) requests leave to file the attached amicus brief in support of Petitioner.

Dated this 7th day of December, 2018.

Respectfully submitted,

NEVADA ATTORNEYS FOR CRIMINAL JUSTICE

/s/ Sarah K. Hawkins

SARAH K. HAWKINS, Bar No. 13143

Chief Deputy Public Defender (CCPD)

Secretary, NACJ

Attorney of record for *Amicus*

DECLARATION OF COUNSEL

1. My name is Sarah K. Hawkins. I am a member in good standing of Nevada Attorneys for Criminal Justice (NACJ). I serve on NACJ's Executive Board as Secretary, and I am counsel for amicus curiae.

2. I have spoken with Adrian Lobo, attorney for Petitioner Deandre Gathrite, and he consents to the amicus brief.

3. On December 4, 2018, I sent an email to counsel for Respondents, Sarah Overly, Deputy at the Clark County District Attorney's Office, asking her position on the amicus brief. She advised that the case is no longer assigned to her, and that Deputy District Attorney Dena Rinetti is currently assigned to the case.

4. Also on December 4, 2018, I sent an email to Dena Rinetti, Deputy at the Clark County District Attorney's Office, asking her position on the amicus brief. I received no response to my email.

5. In an abundance of caution, I sent a third email, on December 6, 2018 Deputy District Attorney Taleen Pandukht, who

conducted the district court suppression hearing, asking her position of the amicus brief. Again, I received no response to my email.

6. As I have been unable to determine the State's position on this amicus brief, I have filed this motion for leave to file amicus brief for this Court's consideration, as required by NRAP 29(a).

I declare under penalty of perjury that the factual representations set forth in the foregoing declaration are true and correct.

Dated this 7th day of December, 2018.

Respectfully submitted,

NEVADA ATTORNEYS FOR CRIMINAL JUSTICE

/s/ Sarah K. Hawkins

SARAH K. HAWKINS, Bar No. 13143

Chief Deputy Public Defender (CCPD)

Secretary, NACJ

Attorney of record for *Amicus*

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 7 day of December, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM LAXALT
STEVEN B. OWENS

SARAH HAWKINS

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

HONORABLE DOUGLAS HERNDON
District Court Judge
200 Lewis Ave., 16th Floor
Las Vegas, NV 89155

OFFICE OF THE ATTORNEY GENERAL
Grant Sawyer Building
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101

DENA RINETTI, Chief Deputy District Attorney
Clark County District Attorney's Office
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89155

TALEEN PANDUHKT, Chief Deputy District Attorney
Clark County District Attorney's Office
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89155

DEANDRE GATHRITE
c/o Adrian Lobo, Esq.
Lobo Law PLLC
400 S. 4th Street, Suite 500
Las Vegas, Nevada 89101

BY /s/ Carrie M. Connolly
Employee, Clark County Public
Defender's Office