

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Appellant,

v.

ARTHUR LEE SEWALL, JR.,

Respondent.

Electronically Filed
Oct 04 2019 03:09 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

CASE NO: 79437

**APPELLANT'S POINTS AND AUTHORITIES
IN SUPPORT OF PROPRIETY OF APPEAL**

PRELIMINARY STATEMENT

This is a State's appeal from an order of the district court granting in part Sewall's pretrial motion to suppress evidence. By Order of this Court filed on September 23, 2019, the State submits the following points and authorities as a preliminary showing of the propriety of the appeal and arguing there will be a miscarriage of justice if the appeal is not entertained. See NRS 177.015(2).

STATEMENT OF THE ISSUE

Whether good cause exists to allow an appeal from the suppression order.

STATEMENT OF THE CASE

The State charged Arthur Sewall ("Respondent" or "Sewall" hereinafter) with Murder with Use of a Deadly Weapon by way of Indictment on March 16, 2018. I Appellant's Appendix (AA) 1-3. Sewall moved to suppress his confession on October 19, 2018. I AA 67-88. The State opposed on November 21, 2018. I AA

89-175. Sewall replied on December 21, 2018. I AA 176-99. District Court held a Jackson v. Deno, 378 U.S. 368, 84 S. Ct. 1774 (1964), on January 18, 2019, and March 8, 2019. I AA 197 – II AA 343. Sewall supplemented his motion to suppress on May 21, 2019. II AA 344-66. The State opposed on June 10, 2019. II AA 367-83. District Court held hearings on June 13, 2019, July 11, 2019, and August 20, 2019, related to Sewall's request to suppress his statement. II AA 384-402. District Court verbally ruled on Sewall's motion on August 20, 2019. II AA 398. The State filed notices of appeal with District Court and this Court on August 20, 2019. District Court issued an order suppressing much of Sewall's statement on September 16, 2019. II AA 403-10.

STATEMENT OF THE FACTS

The State's opposition to the motion to suppress summarized the largely undisputed facts of the case as follows:

On May 8, 1997, at approximately 9:42 am, Nadia Lynn Iverson was discovered on the cement floor of a duplex unit under major renovation at 1226 Reed Place, Las Vegas. The unit's walls had been stripped down to the framing studs and openings for doors and windows were not entirely covered, leaving the unit unsecured. The majority of the other duplexes in the Marble Manor complex were in much the same state. Homicide Detectives Chandler and Hardy responded to the scene, as well as Crime Scene Analyst Yolanda McClary.

A spent .357 projectile was recovered on the floor in the unit. However, no cartridge case was found, suggesting that the murder weapon could have been a revolver.

It appeared that Nadia had been shot at that location as there was a large amount of blood pooled under her body and the bottoms of her bare feet were covered in the fine, gray dust and no blood. Nadia's

pants had the same dust on both knees. She also had abrasions to her forehead and nose.

On May 9, 1997, Deputy Medical Examiner Dr. R. Bucklin performed the autopsy on the body of Nadia Iverson and determined the cause of death to be a gunshot wound to the back of her head. Dr. Bucklin indicated that the shot in the back of Nadia's head was a contact wound with the bullet traveling upward toward the front of the head and exiting in the vicinity of the left eyebrow. Dr. Bucklin determined the manner of death to be homicide. A sexual assault kit was administered by Crime Scene Analyst McClary during the autopsy.

During the initial investigative stages, detectives learned Iverson had been in Las Vegas for only a few months. She drove out from Pennsylvania with her boyfriend Gregory Viaslisin in late January or early February 1997. Once here, they both fell into using drugs. When Viaslisin went to jail, Iverson had to fend for herself, resorting to prostitution to acquire drugs. It appears all of her time in Las Vegas was spent in and around the area of Downtown/Fremont Street.

In March 1997, Las Vegas Metropolitan Police Officer Arthur Sewall resigned from the police department as criminal charges against him were imminent. Sewall was accused of coercing downtown area prostitutes into having sex with him in exchange for his overlooking drug or paraphernalia issues and not taking his victims to jail in exchange. Some of the sexual encounters occurred after Sewall's shift had ended and he was in his own clothes and vehicle. He also was caught on video extorting sex after being set up by internal affairs.

Sewall was originally charged with First Degree Kidnapping, Sexual Assault, and Oppression Under Color of Law. After a preliminary hearing, Sewall ultimately pled guilty to two counts of Oppression Under the Color of Law, received five years of probation and a short jail sentence. As part of his probation intake, Sewall provided Parole & Probation officials with a DNA sample.

On July 28, 1999, Sewall was arrested by the San Diego Police Department after soliciting an undercover female detective on the street for sex. Impounded from Sewall's vehicle upon his arrest was a Ruger .357 revolver with serial number 571-87579. Sewall also had his Metro gun registration card for this same weapon which contained additional descriptive information that the gun was a model SP-101, chrome in color with a 3 inch barrel. This gun was destroyed by the San Diego Police Department years later. This same revolver had been impounded from Sewall for safekeeping in 1995 when Metro responded to a domestic disturbance call involving Sewall. It was later released back

to him. Sewall's 1999 San Diego arrest resulted in his probation being revoked. He was sent to prison to serve out the remainder of his sentence.

In April 2017, Metro Forensic Scientist Anya Lester examined the expended bullet recovered on the cement floor at the scene. She determined the bullet to be consistent with a .357 but not to the exclusion of a .38 or 9mm bullet. Other screening factors favor the bullet being a .357. The bullet passed through Iverson's head, which also suggests a powerful cartridge. Anya Lester was also able to provide a list of common firearms manufactured with rifling characteristics similar to those present on the bullet to include, but not limited to, INA, Ruger, Smith & Wesson and Taurus.

On April 4, 2017, detectives received a CODIS Hit Notification Report of a match between Sewall's DNA and the suspect DNA found on vaginal and rectal swabs taken at Nadia's autopsy and from the interior surface of the buttock area of Nadia's pants.

On April 12, 2017, detectives surveilled Sewall as he discarded some chewing tobacco from his mouth onto the ground. They recovered the chewing tobacco and it was later impounded to be used as the surreptitious standard for Sewall during later comparisons. On June 1, 2017, Forensic Scientist Cassandra Robertson examined the DNA evidence in this case. She identified Sewall's DNA found on the vaginal and rectal swabs taken from Iverson at autopsy. His DNA was also found in a stained area on the inside buttock area of Iverson's pants.

On January 11, 2018, Cold Case Detectives Hefner and O'Kelley interviewed Sewall in Reno, Nevada. During the interview, he admitted to engaging Iverson in sex for money. During their sexual encounter, Iverson was shot. Sewall could not account for why his gun was out or pointed at Iverson. He knew she was shot in the head and he immediately fled the scene. A buccal swab was obtained during the interview and a confirmatory DNA match was later found with the evidence from autopsy and Nadia's clothing.

I AA 90-92.

SUMMARY OF THE ARGUMENT

There is good cause to permit the appeal to go forward because without Sewall's confession the State has little or no case.

ARGUMENT

THERE IS GOOD CAUSE TO PERMIT THIS APPEAL TO PROCEED TO THE MERITS

The prosecution's case rests almost entirely upon Sewall's confession. As such, there is good cause to allow the State to appeal the suppression ruling.

The Legislature has authorized appeals from the grant of suppression motions upon a showing of good cause:

The State may, upon good cause shown, appeal to the appellate court of competent jurisdiction ... from a pretrial order of the district court granting or denying a motion to suppress evidence ... [.] The appellate court of competent jurisdiction may establish such procedures as it determines proper in requiring the appellant to make a preliminary showing of the propriety of the appeal and whether there may be a miscarriage of justice if the appeal is not entertained.

NRS 177.015(2).

"NRS 177.015(2) thus requires the State to first show 'good cause' before this court will consider the merits of an appeal." State v. Brown, 134 Nev. __, __, 432 P.3d 195, 197 (2018). Good cause mandates that "the State must make a preliminary showing of the 'propriety of the appeal' and that a 'miscarriage of justice' would result if the appeal is not entertained." Id. This Court has defined the "propriety of the appeal" to mean "that the appeal is not taken for the purpose of delay." Id. at __, 432 P.3d at 198. "Miscarriage of justice" under NRS 177.015(2) means "that the

suppressed evidence is of substantial importance such that its suppression would significantly impair or terminate the State's ability to prosecute the case." Id.¹

The State is not pursuing this appeal for the purpose of delay. As explained below, the State's case is primarily dependent upon Sewall's confession. Without it the prosecution has little or no case. The animating drive behind this request for appellate review is the need to preserve not just the strongest or primary evidence of Sewall's guilt but perhaps the sole evidence sufficient to support a finding of guilt beyond a reasonable doubt. Additional evidence that the State is not attempting to improperly delay this case can be found in the fact that the notices of appeal were filed well before the short deadlines of NRS 177.015(2). Indeed, they were filed on the very day that the lower court ruled. Further, the State filed this pleading without requesting any extensions of time.

The factual reality of the evidence against Sewall establishes a miscarriage of justice. The loss of Sewall's confession likely amounts to the death knell of the State's case. The evidence against Sewall without his confession is that his DNA was found on the interior buttocks area of pants the victim was wearing when her

¹ The State has not addressed the underlying erroneous nature of the suppression ruling because Brown does not endorse such an undertaking. Brown focuses the good cause analysis upon delay and the impact upon the State's case of the loss of the evidence. Whether the evidence should have been suppressed is an entirely different question. Brown renders arguments related to the merits of the appeal irrelevant for good cause purposes under NRS 177.015(2). However, if this Court desires to preview the State's arguments on the merits, the relevant arguments below can be found at I AA 92-101 and II AA 370-83.

body was discovered. I AA 14, 16-17, 18. But for the suppression ruling, the State could also share with jurors Sewall's admission that he shot the victim after having sex with her. I AA 157-59, 166, 168.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court find GOOD CAUSE to allow this appeal to proceed to the merits of the suppression order.

Dated this 4th day of October, 2019.

Respectfully submitted,

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

BY */s/ Jonathan E. VanBoskerck*

JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155
(702) 671-2750

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on October 4, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
Nevada Attorney General

CHRISTOPHER ORAM, ESQ.
JOEL MANN, ESQ.
Counsels for Appellant

JONATHAN E. VANBOSKERCK
Chief 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:

JUDGE VALERIE ADAIR
Eighth Judicial District Court, Dept. XXI
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89101

BY /s/ E. Davis
Employee, District Attorney's Office

JEV//ed