

IN THE SUPREME COURT OF THE STATE OF NEVADA

---

THE STATE OF NEVADA,

Appellant,

v.

ARTHUR LEE SEWALL, JR.,

Respondent/Cross-Appellant.

Electronically Filed  
Oct 17 2019 10:26 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

CASE NO: 79437

**RESPONDENT'S OPPOSITION TO  
APPELLANT'S BRIEF IN SUPPORT OF PROPRIETY OF APPEAL**

CHRISTOPHER R. ORAM, ESQ.  
Nevada State Bar No. 004349  
520 S. Fourth Street, 2<sup>nd</sup> Floor  
Las Vegas, Nevada 89101  
(702) 384-5563

JOEL M. MANN, ESQ.  
Nevada State Bar No. 008174  
601 South 7th Street  
Las Vegas, Nevada 89101  
(702) 474-6266

Attorneys for Respondent  
ARTHUR SEWALL

## **TABLE OF CONTENTS**

<b>TABLE OF AUTHORITIES .....</b>	<b>ii</b>
<b>POINTS AND AUTHORITIES IN OPPOSITION TO APPELLANT’S BRIEF IN SUPPORT OF PROPRIETY OF APPEAL .....</b>	<b>1</b>
<b>INTRODUCTION.....</b>	<b>1</b>
<b>STATEMENT OF THE ISSUE. ....</b>	<b>1</b>
<b>STATEMENT OF THE CASE. ....</b>	<b>1</b>
<b>SUMMARY OF THE ARGUMENT.....</b>	<b>1</b>
<b>ARGUMENT.....</b>	<b>2</b>
<b>CONCLUSION.....</b>	<b>8</b>
<b>CERTIFICATE OF COMPLIANCE .....</b>	<b>9</b>
<b>CERTIFICATE OF SERVICE .....</b>	<b>11</b>

## **TABLE OF AUTHORITIES**

### **CASES**

<u>State v. Brown</u> , 134 Nev. Adv. Op. 102, ___, 432 P2d. 195, 197 (2018) .....	2,3,6
<u>Detloff v. State</u> , 120 Nev. 588, 97 P.3d 586 (2004) .....	7

### **STATUTES**

NRS 177.015(2) .....	<i>passim</i>
----------------------	---------------

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

**INTRODUCTION**

NRS 177.015(2) allows the State to seek appellate review of a district court's order granting a motion to suppress evidence in a criminal case. But pursuant to legislative authority, the review is not automatic. The State must first make a good cause showing of the propriety of the appeal and whether there would be a miscarriage of justice should the appeal not be entertained.

**STATEMENT OF THE ISSUE**

Good cause does not exist to allow an appeal of the suppression order as there is no miscarriage of justice should the State's appeal not be entertained by this Court.

**STATEMENT OF THE CASE**

Respondent adopts the Appellant's Statement of the case.

**SUMMARY OF THE ARGUMENT**

The State fails to establish good cause to properly demonstrate the propriety of the appeal, pursuant to NRS 177.015(2), as the State still has a substantial case against Mr. Sewall which the mounting evidence includes scientific evidence of DNA and firearms experts.

## ARGUMENT

The State has failed to demonstrate good cause for the propriety of this appeal during pre-trial proceedings as the State has not demonstrated a “miscarriage of justice” should this Court not step in and help the State in pre-trial proceedings.

The Nevada legislature allowed for there to be a mechanism for the State to obtain some relief should a district court make a finding on a suppression hearing that a “miscarriage of justice would result if the appeal is not entertained.” NRS 177.015(2). However, that relief was not absolute, and the legislature made this appellate opportunity to only be available in the most of dire circumstances. The NRS 177.015(2) Statute authorizes the court to “establish such procedures as it determines proper” to perform its gatekeeping function, i.e. requiring the State 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.” The purpose was that the Nevada Supreme Court, by requiring a good cause showing, contemplates that this Court will impose a screening process when the State is seeking interlocutory appellate review of a district court’s pretrial order suppressing evidence.

The burden lies directly on the State’s lap to demonstrate that a miscarriage of justice would result should this appeal not be entertained. State v. Brown, 134 Nev. Adv. Op. 102, \_\_\_, 432 P2d. 195, 197 (2018). This Court defined what a miscarriage of justice to mean stating, “the suppressed evidence is of substantial

importance such that its suppressing would significantly impair or terminate the State's ability to prosecute the case.” Id., 432 P2d. at 198.

The State, in their Points and Authorities in Support of the Propriety of the Appeal, states that the “prosecution’s case rest almost entirely upon Sewall’s confession.” (State’s Brief, pg. 5). The State further offers conjecture that “the loss of Sewall’s confession likely amounts to the death knell of the State’s case.” (State’s Brief, pg. 6). However, these bare-naked statements do not satisfy the burden that this Court requires in order to demonstrate whether there is in fact good cause to have the Nevada Supreme Court interject itself in pretrial proceedings. “Though we are mindful that the State is in the best position to evaluate the strength of its evidence and the chances of success at trial, we will not rely solely on the State’s own assessment of the evidence when evaluating good cause under NRS 177.015(2).” Id., 432 P2d. at 198.

The State’s implication that without Sewall’s statement their case would no longer be prosecutable is wholly and flatly without any basis. It is common knowledge that a prosecutor would much rather have inculpatory statements from a defendant when they prosecute a case rather than the alternative. What the State does not tell this Court is the relative strength of its case through other evidence including scientific evidence, that is not impacted by the district court’s ruling. In the States own statement of facts, which was taken directly from the Detectives

affidavit for a search warrant, they provide 11 paragraphs of facts involved in this case, and the reliance of Mr. Sewall's statement is only 1 paragraph.

According to the State's own statement of facts, the State has plenty of evidence to mount a substantial case against Mr. Sewall at trial. The State has the body and autopsy of Nadia Lynn Iverson. The State is able to state that Ms. Iverson had become addicted to drugs and resorted to working as a prostitute. The State is able to allege that Ms. Iverson died in the location where sexual intercourse occurred. "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. Ms. Iverson's pants had the same dust on both knees. She also had abrasions to her forehead and nose." (State's Brief, pg. 2-3). The State can further allege that upon investigation through an expert witness that they found the DNA of Mr. Sewall on the body of Ms. Iverson from vaginal and rectal swabs taken at the time of her autopsy. (State's Brief, pg. 4).

In addition, the State would allege that they recovered a .357 projectile from the floor of the unit where Ms. Iverson's body was found. That the Deputy Medical Examiner determined the cause of death to be a gunshot wound to the back of her head. That the wound in the back of Ms. Iverson'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. That the Medical Examiner determined the cause of death to be homicide. (State's Brief, pg. 3).

The State can further allege that they believe the weapon used in the homicide is a .357 revolver. The State can allege that they believe it to be a .357 revolver for several reasons: One, they believe it to be a revolver because no spent shell casing was found at the crime scene which would indicate that weapon used would be a revolver that maintains its spent shell casing; two, the fact that the bullet traveled through Ms. Iverson's head would indicate that the bullet was from a powerful weapon like a .357 revolver; and three the size of the projectile would further indicate that the weapon used was a .357 bullet. The State would be able to utilize their Metro Forensic Scientist to confirm these basic facts as well "provide a list of common characteristics similar to those present on the bullet to include, but not limited to, INA, Ruger, Smith & Wesson and Taurus." (State's Brief, pg. 4).

As is indicated in the State's statement of facts the State would further allege that "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." (State's Brief, pg. 3). The State would further allege that this weapon fits within the parameters of the weapon used to kill Ms. Iverson.



Based on the statement of facts the State would further allege at trial that Mr. Sewall has a history of coercing prostitutes to have sexual relations with Mr. Sewall. As is stated in the statement of facts, “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.” (State’s Brief, pg. 3). The State would further allege that Ms. Iverson died in May of 1997, which is right around the time that Mr. Sewall was going through significant legal troubles involving prostitutes.

Similar to this Court’s finding in Brown, the State’s assertion that the suppressed evidence has caused the “death knell” of its case and its ability to prove the case against Mr. Sewall without the suppressed evidence is inconsistent with the record before this Court. The assertion by the State that they are unable to proceed to trial with the remaining evidence after the Defendant’s statement is suppressed is a baseless assertion as the State has prosecuted cases with much less evidence. The State has prosecuted cases with evidence that was “slight or marginal”. Detloff v. State, 120 Nev. 588, 595, 97 P.3d 586, 590 (2004). The State has prosecuted cases

that have only circumstantial evidence. This case has scientific DNA evidence that places Mr. Sewall in direct contact with the named victim. Despite all of this the State tries to convince this Court that the suppression is the death of its case. This is just fundamentally untrue.

Due to the State's failure to discuss the strength of the available evidence in this case, by making a showing of a miscarriage of justice, this Court should reject the State's request to entertain this appeal. Furthermore, the State has significant amounts of evidence, including scientific evidence, that they are able to rely on if this Court determined to not intervene in a pretrial ruling made by the district court.

///

///

///

///

///

///

///

///

///

///

///

## **CONCLUSION**

To clear the hurdle set forth by NRS 177.015(2), the State has failed to demonstrate good cause as to why this Court should disrupt an on-going district court proceeding and entertain an appeal from the district court's pretrial order granting a motion to suppress. The State has failed to demonstrate, other than baseless conjecture, that this Court's intervention is necessary. Therefore, the State's appeal should be dismissed, and the district court order should be allowed to stand.

Dated this 17<sup>th</sup> day of October 2019.

/S/ Joel Mann  
JOEL M. MANN, ESQ.  
Law Office of Joel M. Mann, Chtd.  
Nevada Bar #008174  
601 South 7th Street  
Las Vegas, Nevada 89101  
(702) 474-6266

/S/ Christopher Oram  
CHRISTOPHER R. ORAM, ESQ.  
Nevada State Bar No. 004349  
520 S. Fourth Street, 2<sup>nd</sup> Floor  
Las Vegas, Nevada 89101  
(702) 384-5563

## **ATTORNEY’S CERTIFICATE OF COMPLIANCE**

**I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using **Microsoft Word 2016** in **14-point font** of the **Times New Roman** style.

**I further certify** that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains **2,299** words.

///

///

///

///

///

///

///

///

///

///

**Finally, I hereby certify** that I have read this Respondent's Opposition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. 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.

Dated this 17<sup>th</sup> day of October 2019.

/S/ Joel Mann  
JOEL M. MANN, ESQ.  
Law Office of Joel M. Mann, Chtd.  
Nevada Bar #008174  
601 South 7th Street  
Las Vegas, Nevada 89101  
(702) 474-6266

/S/ Christopher Oram  
CHRISTOPHER R. ORAM, ESQ.  
Nevada State Bar No. 004349  
520 S. Fourth Street, 2<sup>nd</sup> Floor  
Las Vegas, Nevada 89101  
(702) 384-5563

**PROOF OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on the 17<sup>th</sup> day of October 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

JONATHAN VANBOSKERK  
Chief Deputy District Attorney  
Office of the Clark County Deputy District Attorney

BY           /S/ Maria Moas          

Employee of Law Office of Joel M. Mann