

**CASE NO.  
IN THE SUPREME COURT OF THE STATE OF NEVADA**

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**ARLEO EARL DAVIS**

PETITIONER,

vs.

**THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF CLARK, AND THE  
HONORABLE MICHAEL VILLANI, DISTRICT JUDGE,**

RESPONDENT,

AND

**STATE OF NEVADA,**

REAL PARTY IN INTEREST.

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**PETITION FOR WRIT OF MANDAMUS**

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PETITION FROM THE EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY, NEVADA  
DISTRICT COURT CASE NO. C-20-346920-3  
THE HONORABLE MICHAEL VILLANI

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Petitioner, Arleo Earl Davis, petitions this Court for a writ of mandamus. Petitioner is entitled to a writ relating to the Eighth Judicial District Court's ("District Court") erroneous decision denying Mr. Davis' Petition for Writ of Habeas Corpus. The District Court's decision was in error because there was legally insufficient evidence to support Counts 1, 2, 3, and 4 of the Superseding Indictment against Petitioner.

The Grand Jury found probable cause to indict Petitioner based in large part on testimony of a witness named Mackeshia Murphy. When denying the Petition for Writ of Habeas Corpus, the District Court incorrectly held that Ms. Murphy was not an accomplice under NRS 175.291. Petitioner seeks a Writ of Mandamus from this Court directing the District Court to issue an order stating that Ms. Murphy is an accomplice as a matter of law and/or as defined by the facts presented to the Grand Jury.

This petition is based on the attached Points and Authorities, the affidavit of Joshua Tomsheck, Esq., and the arguments of counsel at the oral argument in this matter, if oral arguments are conducted by this Court.

DATED this 4th day of January, 2021.

HOFLAND & TOMSHECK

/s/ J. Tomsheck  
JOSHUA TOMSHECK, ESQ.  
Counsel for Petitioner

[illegible]

JOSHUA TOMSHECK, being first duly sworn, deposes and says:

1. That affiant is an attorney duly licensed to practice law in the State of Nevada and is the Attorney representing the Defendant, ARLEO EARL DAVIS, in this matter.
2. That ARLEO EARL DAVIS authorized affiant to file the instant Petition for Writ of Mandamus.
3. I am more than 18 years of age and am competent to testify as to the matters stated herein. I am familiar with the procedural history of the case and the substantive allegations made by the State of Nevada. I also have personal knowledge of the facts stated herein or have been informed of these facts and believe them to be true.

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4. That the instant petition arises from the District Court's denial of Petitioner's pre-trial Petition for Writ of Habeas Corpus. On May 5, 2020 Petitioner filed his Petition for Writ of Habeas Corpus. The State filed a Return on May 19, 2020. The Court issued an Order denying the Petition on July 30, 2020.

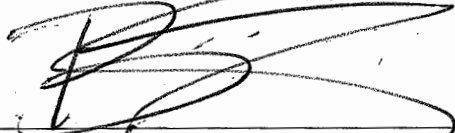
I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

DATED this 4th day of January, 2021.

By:

  
JOSHUA TOMSHECK, #9210  
Attorney at Law

SUBSCRIBED and SWORN to before me  
This 4th day of January, 2021.



NOTARY PUBLIC in and for said  
County and State



## **POINTS AND AUTHORITIES**

### **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)(13). Although this matter arises from a pre-trial writ, it does not involve a discovery order or motion in limine. Accordingly, this case is not presumptively assigned to the Court of Appeals.

Nevada Supreme Court should decide this pre-trial writ as a principle of statewide importance. NRAP 17(a)(12).

### **JURISDICTION**

Pursuant to Nevada Revised Statute (“NRS”) 34.170, a writ of mandamus shall issue in all cases where this is not a plain, speedy and adequate remedy in the ordinary course of law.” A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station or to control an arbitrary or capricious exercise of discretion. See NRS 34.160; *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 603 (1981). Extraordinary intervention by this Honorable Court is the only means whereby Mr. Davis can avail himself of

this Court's authority to compel adherence to U.S. and Nevada law governing the testimony of an accomplice.

### **RELIEF SOUGHT**

That this Court direct the District Court to issue an order stating that Mackeshia Murphy is an accomplice as a matter of law and/or as defined by the facts presented to the Grand Jury.

### **ISSUE PRESENTED**

Whether Mackeshia Murphy is an accomplice as defined in NRS 175.292, requiring sufficient corroboration of her testimony.

### **STATEMENT OF FACTS**

Grand Jury proceedings were held on February 13, 2020 related to the following facts and circumstances as outlined herein below. At those proceedings, two (2) witnesses testified for the State, namely Arturo Alvarado of the San Bernadino County Sheriff's Department and Mitchell Dosch of the Las Vegas Metropolitan Police Department. Following the testimony of those two (2) witnesses, an Indictment was issued against co-Defendants Jecory Kemp and Tyeshia James. Mr. Davis was not indicted at that time.

Thereafter, on March 19, 2020, two (2) additional witnesses were called to testify before the Grand Jury, namely Mackeshia Murphy and Las Vegas Metropolitan Police Department Homicide Detective Breck Hodson.

### **Grand Jury Presentation 1:**

Evidence was presented to the Clark County Grand Jury on February 13, 2020. The first witness called to the stand was San Bernardino County Sheriff's Department (SNCSD) Homicide Detective Arturo Alvarado ("Alvarado"). The second and last witness called to the stand was Las Vegas Metropolitan Police Detective Mitchell Dosch. ("Dosch").

Alvarado testified that on December 30, 2019, he was called out to the scene of an alleged homicide near Interstate 15 between Baker and Barstow California. Grand Jury Presentation 1 ("GJ1"), at 9. Once on scene, Det. Alvarado discovered a vehicle practically burned to the ground and a deceased body near the trunk area of the vehicle. *Id.* at 13-15.

When the coroner responded to the scene, a body roll of the deceased was conducted. *Id.* at 16. The body roll revealed a key card on a lanyard around the victim's neck. *Id.* The information from the burned vehicle, along with the information from the key card, lead SBCSD Homicide Detectives to contact the Las Vegas Metropolitan Police Department (LVMPD) and eventually to speak to Homicide Detectives Hodson and Dosch (who testified before the Grand Jury). *Id.* at 17.

Once Detectives Hodson and Dosch became involved in the investigation, the main crime scene was determined to be located at 6555 Boulder Highway, building

11, apartment 309, in Las Vegas. *Id.* at 22-23. When detectives responded to the apartment complex, Det. Dosch discovered a trail of blood leading from the third-floor apartment to the ground floor and around to the parking lot. *Id.* at 23. Based on this blood trail, Det. Hodson obtained a search warrant for the apartment. *Id.* at 27.

Once inside the apartment, the investigation team noticed the odor of cleaning material. *Id.* at 30. Det. Dosch also noted that the tile floors were so clean that a white residue was visible. *Id.* Despite the apparent cleaning efforts, blood splatter was found on the kitchen cabinets and appliances. *Id.* Cleaning materials were found in the apartment as well. *Id.* at 31.

Based on the investigation, Tyeshia James (“James”) and Jecory Kemp (“Kemp”) were developed as suspects. *Id.* James and Kemp were apprehended and interviewed regarding their alleged involvement in the homicide. *Id.* at 32. During her interview, James told detectives that she had been present when the robbery of Marion Jabbar Anderson (“Anderson”) was planned. *Id.* at 40. At the time the robbery was supposed to happen, James and another female were asked to leave the apartment. *Id.* Later, after Anderson’s body had been removed from the apartment, James and the other female began to clean up the blood inside and outside the apartment. *Id.*

Following the presentation of this evidence, the members of the Grand Jury found that, “by a vote of 12 or more Grand Jurors a true bill has been returned against



the defendants Jecory Eles Kemp and Tyeshia Evan James charging the crimes of conspiracy to commit robbery, murder with use of a deadly weapon, first degree kidnapping with use of a deadly weapon resulting in substantial bodily harm and robbery with use of a deadly weapon.” An Indictment was *not* returned against Mr. Davis following this presentation.

### **Grand Jury Presentation 2**

On March 19, 2020, the Grand Jury reconvened and heard additional and different evidence from two (2) witnesses. The first witness for the State was Mackeshia Murphy (“Murphy”). The second witness for the State was Las Vegas Metropolitan Police Department Homicide Detective Breck Hodson (“Hodson”).

Murphy testified that she is the sister of co-Defendant Tyeshia James<sup>1</sup>. Grand Jury Presentation 2 (“GJ2”) at 9. At the end of 2019, Murphy was living in the apartment at 6555 South Boulder Highway with her boyfriend, Davon Hickman (“Hickman”), James, and Kemp. *Id.* at 10.

Prior to December 30, 2019, Murphy claims she was present for a conversation between her sister (James), Hickman, Kemp, “Sayso” and Sayso’s brother, detailing a plan to rob Anderson of marijuana. *Id.* at 11-12. On the day of the planned robbery, Murphy *and* James left their apartment, before Anderson

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<sup>1</sup> Who had been indicted for the homicide and related counts following the previous presentation of evidence to the Grand Jury on February 13, 2020.

arrived, to visit their friend Mariah. *Id.* at 13-15. 15-20 minutes later, Murphy and James were outside smoking a cigarette when Hickman came running down the stairs saying he shot Anderson. *Id.* at 15. After the body was moved, Murphy cleaned up blood *outside* the apartment and James cleaned up blood *inside* the apartment. *Id.* at 17.

At the time of her testimony, Murphy was in custody for a probation violation, open murder, conspiracy to commit robbery and robbery. *Id.* at 8. The morning of Murphy's testimony, she received immunity from any crimes associated with the events she was testifying about. *Id.* at 9.<sup>2</sup>

Detectives identified Sayso's brother as Anthony Woods and "Sayso" as Petitioner Arleo Earl Davis. *Id.* at 26. Following the presentation of evidence at this second convening of the Grand Jury, a Superseding Indictment was returned charging Petitioner Arleo Davis with the same crimes as co Defendants Kemp *and* James, namely Conspiracy to Commit Robbery, Murder with use of a Deadly Weapon, First Degree Kidnapping resulting in Substantial Bodily Harm and Robbery with use of a Deadly Weapon. On October 9, 2020, a Second Superseding Indictment was returned charging Petitioner's brother, Anthony Woods with the

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<sup>2</sup> Her sister, James, who participated in the conversation and clean up in precisely the same capacity as Murphy, was indicted for Murder and related charges and later entered into a negotiation with the State of Nevada via Guilty Plea.

same charges as Petitioner. Mr. Davis was arraigned on the Second Superseding Indictment on October 16, 2020. On November 6, 2020, a Third Superseding Indictment was returned charging Davon Hickman with the same crimes as co Defendants Kemp, Woods and Petitioner Davis. The arraignment for the Third Superseding Indictment occurred on November 20, 2020.

## **ARGUMENT**

### **I. Mackeshia Murphy is an accomplice as defined by Nevada law.**

When a witness's own testimony leaves no doubt that the witness was an accomplice, he is an accomplice as a matter of law. *See Rowland v. State*, 118 Nev. 31 (2002). "An accomplice is one who is liable to prosecution for the identical offense charged against the defendant, or who is culpably implicated in, or unlawfully cooperates, aids or abets in the commission of the crime charged." *Potter v. State*, 96 Nev. 875, 876 (1980).

The District Court incorrectly found that Mackeshia Murphy is not an accomplice.

NRS 175.291 (2) states:

An accomplice is hereby defined as one who is liable to prosecution, for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given.

At the time of her testimony, Murphy was in custody *for* open murder, conspiracy to commit robbery and robbery. GJ2 at 8. She was in custody for the exact same circumstances as Petitioner Davis. She was in custody based precisely on the same factual allegations as her sister, James, who was Indicted for the same offenses as Petitioner Davis. Furthermore, in exchange for testifying, Murphy was given immunity for the crimes for which she was in custody (and with which her sister had been charged based on the same alleged facts) and would not be charged with any crime associated with her testimony. *Id.* at 9.

The State attempts to argue that Murphy's role in the alleged crime(s) was minimal, however, this argument clearly falls short when considered against the role of Tyeshia Evan James in the alleged crime(s). As she testified to, Murphy participated in the alleged crimes to the same extent that James did. Murphy and James lived together, with their boyfriends, in the apartment where Marion Jabbar Anderson was killed. *Id.* at 10. Additionally, both Murphy and James were present for a conversation detailing the plan to rob Anderson of marijuana. *Id.* at 11. On December 31, 2019, the women left their apartment together to visit a friend while the robbery was supposed to take place. *Id.* at 15. After the body was moved from the apartment, both women began cleaning up blood; Murphy outside the apartment and James inside the apartment. These factors are important because James is indicted for the same charges as Petitioner. There is no question that James is

considered Mr. Davis' alleged accomplice, there should be no question that Murphy is also an accomplice. *See Rowland*, 118 Nev. at 41.

Murphy participated in the alleged crime(s) to the same extent that an indicted accomplice did and further, was liable to prosecution for the same exact charges as Petitioner before being granted immunity for her testimony. It is abundantly evident that Mackeshia Murphy is an accomplice under NRS 175.291.

**II. The testimony from Mackeshia Murphy cannot be used against Petitioner because it is not corroborated.**

NRS 175.291 (1) states:

A conviction shall not be had on the testimony of an accomplice unless the accomplice is corroborated by other evidence which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense; and the corroboration shall not be sufficient if it merely shows the commission of the offense or the circumstances thereof.

This requirement has been mandated by the Nevada Legislature because an individual who has “participated criminally in a given criminal venture shall be deemed to have such character, and such motives, that his testimony alone shall not rise to the dignity of proof beyond a reasonable doubt.” *Austin v. State*, 87 Nev. 578, 588 (1971). The purpose behind the statutory requirement of corroborative evidence is to prevent false accusations and false convictions. *State v. Wyatt*, 84 Nev. 731 (1968); *Eckert v. State*, 91 Nev. 183 (1975).

In *Heglemeier v. State*, the Nevada Supreme Court held that evidence does not suffice as corroborative if it merely supports the accomplice's testimony. 111 Nev. 1244, 1250 (1995). "If there is no independent, inculpatory evidence... there is no corroboration." *Id.* Instead, corroborating evidence must independently connect the defendant with the offense. *Id.* In emphasizing this point, the Court held that "[w]here the connecting evidence shows no more than opportunity to commit a crime, simply proves suspicion, or is equally consonant with a reasonable explanation pointing toward innocent conduct on the part of the defendant, the evidence is deemed insufficient." *Id. citing State v. Dannels*, 226 Mont. 80 (1987).

In *Heglemeier*, the following evidence was introduced at trial: (1) cartridge cases recovered from the scene; (2) Heglemeier's close relationship with people involved (the owner of the gun used); (3) Heglemeier knew where the murder weapon was usually kept; (4) Independent witnesses believed that Heglemeier may have accompanied the owner of the gun to the place of purchase; (5) Heglemeier was acquainted with the witness for several years and was on his list of persons who could visit him in prison; and (6) the relative height of the suspects and that of the witness and Heglemeier. *Id.* at 1251. The Court held that this evidence was insufficient, as a matter of law, to corroborate the witness's testimony. *Id.*

In the present case, the government cannot come close to meeting this requirement of corroboration. Here, the State cannot present evidence to meet even

the small hurdle outlined in *Hegelmeier*. The *only* “corroborating” evidence the state offers are Mr. Davis’ cell phone records and his association with the alleged parties in this case. This evidence is insufficient to corroborate Ms. Murphy’s testimony.

Using Petitioner’s cell phone records, the State was able to determine a general area in which Mr. Davis’ phone was located near the time of the homicide; these records do not place Mr. Davis directly at the crime scene. These are not pinpoint GPS locations, but are rather the bare assertion that Petitioner was in the vicinity of where he lived and spent the majority of his time. Simply being in the general area of where a crime allegedly occurred does not amount to sufficient corroborating evidence. *See Heglemeier*, 111 Nev. at 1250. Similarly, just as Heglemeier’s association with the witness was not sufficient corroborating evidence, neither is the fact that Mr. Davis had an association with the alleged parties in this case.

It is important to recognize that the State could not and did not Indict Mr. Davis for any involvement in this alleged robbery/homicide *without* the testimony of Murphy. Thereafter, they took a suspect who was in custody for the robbery/homicide and placed her on the witness stand in exchange for a grant of immunity, despite the fact that they had indicted her sister for the same robbery/homicide involving the same factual predicate as Murphy. They now claim that Murphy is not an accomplice as a matter of law, or in fact. The real fact is that

Mr. Davis stands Indicted based on the testimony of Murphy alone, testimony which was bought with a grant of immunity for a crime she is, by the State's own recitation of facts, an accomplice.

Murphy is an accomplice in the clearest sense. Moreover, her testimony is not corroborated. Without Murphy's testimony there is clearly insufficient evidence which "tends to connect the defendant with the commission of the offense." *See* NRS 75.291. Any claim of corroboration by the state "*shall* not be sufficient" because "...it merely shows the commission of the offense or the circumstances thereof." *Id.*

The Government has not provided sufficient evidence to corroborate Murphy's accomplice testimony under Nevada law, therefore, the testimony must be excluded pursuant to NRS 175.291.

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## **CONCLUSION**

Under NRS 175.291, Mackeshia Murphy is an accomplice and the State did not offer sufficient corroborating evidence. Therefore, Petitioner respectfully requests a Writ of Mandamus from this Honorable Court directing the District Court to enter an order mandating the District Court exclude all testimony from Mackeshia Murphy as uncorroborated accomplice testimony.

DATED this 4th day of January, 2021.

### **HOFLAND & TOMSHECK**

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## **CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of HOFLAND & TOMSHECK and that on this day, the 4th day of January, 2021, I submitted for filing and service the foregoing **Petition for Writ of Mandamus** and **Petitioner's Appendix** via the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

The Honorable Michael Villani  
Regional Justice Center – Dept. 17  
200 Lewis Ave.,  
Las Vegas, NV 89155

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/s/ \_\_\_\_\_

Hofland & Tomscheck Employee

## Certificate of Compliance

1. 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:

[ X ] This brief has been prepared in a proportionally spaced typeface using **Microsoft Word 2010 Times New Roman 14—point font**.

2. I further certify that this brief *complies* with the page or type -volume limitations of NRAP 21(d). Excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is 13 pages containing 2690 words.

3. I hereby certify that I have read this Petition for Writ of Mandamus, 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 petition 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 petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 4th day of January, 2021.

*s/ Joshua Tomsheck, Esq.*

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Joshua Tomsheck, Esq.  
*Counsel for Petitioner*