

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

THE STATE OF NEVADA,

Real Party in Interest.

Electronically Filed
Apr 16 2021 06:11 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

CASE NO: 82271

D.C. NO: C-20-346920-3

**REPLY TO PETITIONER'S OPPOSITION TO STATE'S MOTION TO
DISMISS APPEAL**

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Deputy, JOHN NIMAN, and submits this Motion to Dismiss Appeal pursuant to NRAP 27. This motion is based on the following memorandum, declaration, and all papers and pleadings on file herein.

Dated this 16th day of April, 2021.

Respectfully submitted,

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

BY */s/ John T. Niman*

JOHN T. NIMAN
Deputy District Attorney
Nevada Bar #014408
Office of the Clark County District Attorney

ARGUMENT

Davis alleges that his Writ is ripe for review because the State returning to the jury on October 8, 2020, had “no bearing on the charges against Mr. Davis.” Opposition, at 7. However, the Petition is moot because Davis is not being held on that Indictment and has been arraigned on the Second Superseding Indictment after a new vote by the Grand Jury. I RA 001-027, 033.

Davis overlooks the incriminating evidence presented against him in front of the Grand Jury at the Second Superseding Indictment on October 8, 2020. The State presented the testimony of Detective Mitchell Dosch, introduced a surveillance video of a convenience store/liquor store, and introduced the transcript of an interview with Davis’s co-defendant, Anthony Woods. I RA 001-027. Detective Dosch testified that he was the lead homicide detective investigating the murder of Marion B. Jabbar Anderson, the victim in this case. I RA 008. Detective Dosch investigated the fact that Davis and his co-defendant and brother, Anthony Woods, were together near the area of the crime scene around the time of the murder. I RA 010. The surveillance video from the convenience store/liquor store, Breeze Rite Inn, shows that Woods and Davis were together immediately after the homicide at the Breeze Rite Inn and that Woods was carrying a backpack—the type of bag the

victim brought to the robbery.¹ I RA 011-013. The surveillance video clearly shows Davis and Woods together shortly after the murder in the area where the murder occurred. I RA 013. Detective Dosch also discussed a Facebook video of Davis and Woods at the Sienna Suites apartments where the instant murder occurred. I RA 015-016.

The State presented new evidence at the Second Superseding Indictment, and the Second Superseding Indictment is not based solely on the testimony of Mackiesha Murphy. The Writ only alleges that the district court erred by denying the pretrial Petition because the Superseding Indictment was solely based on uncorroborated testimony of “co-conspirator” Mackeisha Murphy. Opposition, at 6-7. Davis claims the original Superseding Indictment is based solely on Mackeisha Murphy’s testimony as a co-conspirator that is “insufficiently corroborated accomplice testimony against Mr. Davis.” Opposition, at 7. However, because the State presented the additional testimony from Detective Dosch incriminating Davis, as well as the surveillance video suggesting his criminal culpability, the Second Superseding Indictment is based on additional evidence and not solely Mackeisha Murphy’s testimony.

¹ The State has filed a Motion to Transmit Grand Jury Exhibit 43, the surveillance video of the Breeze Rite Inn, contemporaneously with the instant Reply so this Court may reference the video.

Therefore, the Writ based on the original Superseding Indictment is moot because the district court rearraigned Davis on the Second Superseding Indictment that was supported by more evidence than just the testimony of Mackeisha Murphy. Davis has not demonstrated that this Court can, in a matter of a petition for writ of mandamus, determine in the first instance that the Second Superseding Indictment is *also* insufficient. Davis did not file a pretrial Petition challenging the Second Superseding Indictment below, and the district court has not ruled on the merits of the Second Superseding Indictment. As Davis is not being held on the Superseding Indictment, and has been arraigned on the Second Superseding Indictment after a new vote by the Grand Jury, the Writ is moot. As such, the pretrial Petition is moot, and the instant Writ of Mandamus is moot. Because the writ is moot, it should be dismissed.

Dated this 16th day of April, 2021.

Respectfully submitted,

STEVEN B. WOLFSON

Clark County District Attorney

BY */s/ John T. Niman*

JOHN T. NIMAN

Deputy District Attorney

Nevada Bar #014408

Office of the Clark County District Attorney

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 16th day of April, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
Nevada Attorney General

JOSHUA L. TOMSHECK, ESQ.
Counsel for Appellant

JOHN T. NIMAN
Deputy District Attorney

I, further certify that on April 16, 2021, a copy was sent via email to District Court, Department 17's JEA for Judge Villani:

OLIVIA BLACK – JEA
blacko@clarkcountycourts.us

BY /s/ J. Garcia
Employee, District Attorney's Office

JEV/Brianna Stutz/jg