

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3
4 IN THE MATTER OF E.S, A CHILD
5 THE STATE OF NEVADA,
6 Appellant,

7 vs.

8 E.S., A CHILD,
9 Respondent.

Docket No: 82614
Electronically Filed
Apr 15 2021 03:40 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**POINTS AND AUTHORITIES
OPPOSING GOOD CAUSE TO
APPEAL**

10
11 **ATTORNEY FOR APPELLANT**

12 STATE OF NEVADA
13 CHRISTOPHER ARABIA
14 Nye County District Attorney
15 P.O. Box 593 Tonopah, NV
16 Nevada Bar #9749

17 KIRK D. VITTO
18 Chief Criminal Deputy District Attorney
19 Nevada Bar #3885

20 AARON FORD
21 Nevada Attorney General
22 100 North Carson Street
23 Carson City, Nevada 89701-4717

ATTORNEY FOR RESPONDENT

DANIEL E. MARTINEZ, ESQ.
3199 E. Warm Springs Rd., Suite 400
Las Vegas, Nevada 89120
Nevada Bar #12035

DANIEL MARTINEZ LAW

1 COMES NOW a Child, E.S., and offers the attached court ordered Points and
2 Authorities in response and opposition to the State of Nevada's Points and Authorities in
3 Support of Good Cause showing as is required by NRS 177.015(2). The State cannot
4 make the required showing of good cause because, by their own admission, the
5 suppressed evidence is not of substantial importance to their case. As such, this Court
6 should decline to hear the merits of the State's appeal.
7
8

9
10 **POINTS AND AUTHORITIES**

11 **SYNOPSIS OF SUPPRESSED STATEMENTS**

12 The Respondent concurs with the Appellant's synopsis of suppressed statements.
13

14 **STATEMENT OF FACTS**

15 Respondent, E.S., filed a motion to suppress his statements on January 4, 2021.
16 Appellant, the State of Nevada, filed its opposition on January 28, 2021. On March 8,
17 2021, the parties convened for oral argument. Prior to that, at the request of the
18 Respondent through a discovery motion, the Court performed in-chambers review of
19 complaints against the law enforcement officers involved in this case. At the hearing on
20 March 8, 2021, the parties supplemented their briefs with oral argument, and the Court
21 granted the Respondent's motion to suppress in open court.
22

23
24 As soon as the Court announced its decision, the Appellant informed the Court
25 that it would be filing an appeal, even though the suppressed statements did not affect
26 their case in chief.
27
28

1 “Now here’s the conundrum I’m in. It doesn’t hurt our case. We can go
2 forward, we have the victim. We will appeal this decision, however.”

3 AA 72.

4 Appellant subsequently filed its appeal on March 20, 2021.

5 ARGUMENT IN OPPOSITION OF GOOD CAUSE

6 The plain language of NRS 177.015(2) requires the State to first show "good
7 cause" before this court will consider the merits of an appeal. *State v. Brown*, 134 Nev.
8 Adv. Op. 102, 432 P.3d 195, 197 (2018). As the statute later explains, "good cause"
9 means the State must make a preliminary showing of the "propriety of the appeal" and
10 that a "miscarriage of justice" would result if the appeal is not entertained. *Id.*

11 **A. Propriety of the Appeal**

12 The phrase "propriety of the appeal" is defined to mean that the appeal is not taken
13 for the purpose of delay. *Id.* at 198. Respondent concurs, as is detailed in the Appellant’s
14 Points and Authorities, that this appeal is not taken for the purpose of delay.

15 **B. Miscarriage of Justice**

16 This Court has defined the phrase "miscarriage of justice" as used in NRS
17 177.015(2) to mean that the suppressed evidence is of substantial importance such that
18 its suppression would significantly impair or terminate the State’s ability to prosecute
19 the case. *Id.* To make this showing, the State must do more than explain the importance
20 of the evidence or assert that the evidence proves certain elements of a charged offense.
21 *Id.* Rather, the State must explain how it will be substantially impaired in proving those
22 elements without the suppressed evidence. *Id.* This requires an explanation of what other
23
24
25
26
27
28

1 evidence is available to the State and how that admissible evidence may be inadequate
2 for conviction. *Id.*

3
4 In *Brown*, a suspect's admissions to police about drawing a loaded firearm on the
5 victim were suppressed due to *Miranda* violations. *Id.* at 196. The State asserted that it
6 would be impaired in its ability to prove the suspect's identity without the suppressed
7 evidence. *Id.* at 198. However, that was inconsistent with the record, as the suspect made
8 similar admissions in a jail telephone call, which was in the State's possession and had
9 not been suppressed. *Id.* Thus, the State did not establish that a miscarriage of justice
10 would result if the Court did not entertain the appeal, and the appeal was dismissed. *Id.*

11
12
13 In its Points and Authorities, the Appellant goes to great lengths to explain all of
14 the evidence still available and admissible, or at least arguably admissible, at the
15 evidentiary hearing on this matter. In the Petition, the Respondent is charged with a
16 single count of Sexual Assault. AA 92-94. The State has the alleged victim available to
17 testify, as well as at least one percipient witness to the alleged incident, and other
18 witnesses to later conversations. Testimony of a sexual assault victim alone is sufficient
19 to uphold a conviction. *See e.g., Deeds v. State*, 97 Nev. 216, 217, 626 P.2d 271, 272
20 (1981); *Henderson v. State*, 95 Nev. 324, 326, 594 P.2d 712, 713 (1979). The Appellant
21 concedes that in addition to the testimony of the alleged victim, they have corroborating
22 evidence in the form of text messages, social media accounts, and other witness
23 testimony. In fact, the State has already conceded that the suppression of E.S.'s
24 statements does *not* impair or terminate their ability to prosecute the case, stating to the
25
26
27
28

1 District Court after its suppression decision, **"It doesn't hurt our case. We can go**
2 **forward, we have the victim.**" AA 72.

3
4 Finally, the Appellant makes a last-ditch effort and argues that it would be a
5 manifest injustice for this Court not to entertain its appeal because the District Court's
6 ruling would create poor precedent. This position is based on the District Court's Order,
7 where it did not reach a finding on whether E.S. knowingly, voluntarily, and intelligently
8 waived his *Miranda* rights. AA 89-91. There is no legal authority, and the Appellant
9 does not cite to any, to support the position that this establishes a miscarriage of justice
10 necessary for this Court to entertain the appeal. This argument is without merit, as
11 "miscarriage of justice" is specifically defined to mean that the suppressed evidence is
12 of substantial importance such that its suppression would significantly impair or
13 terminate the State's ability to prosecute the case. *Brown* at 198. The Appellant has not,
14 and cannot, make such a showing.

15
16
17
18 //

19
20 //

21
22
23
24
25
26
27
28 //

CERTIFICATE OF COMPLIANCE

1
2 1. I hereby certify that this court ordered Points and Authorities complies with
3
4 the formatting requirements in NRAP 32(a)(4), the typeface requirements of NRAP
5 32(a)(5) and the type style requirements of NRAP 32(a)(6) because

6 This Points and Authorities has been prepared in a monospaced typeface using
7
8 Microsoft Word in Times New Roman 14;

9 2. I further certify that this court ordered Points and Authorities complies with
10 page- or type-volume limitations of NRAP 32 (a)(7) because it is either:

11 [] Proportionally spaced, has a typeface of 14 points or more, and contains
12
13 ____ words; or


14 [] Monospaced, has 10.5 or fewer characters per inch, and contains ____ words
15
16 or ____ lines of text; or

17 [X] Does not exceed 30 pages.

18 3. Finally, I certify that I have read this court ordered Points and Authorities,
19
20 and to the best of my knowledge, information and belief, it is not frivolous or
21 interposed for any improper purpose. I further certify that this brief complies with all
22 applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which
23 requires that every assertion in the brief regarding matters in the record to be supported
24 by a reference to the page and volume number, if any, of the transcript or appendix
25 where the matter relied on is to be found.
26
27
28

1 I understand that I may be subject to sanctions in the event that the
2 accompanying brief is not in conformity with the requirements of the Nevada Rules of
3 Appellate Procedure.
4

5 DATED this 15th day of April, 2021

6
7
8 
9 **DANIEL E. MARTINEZ, ESQ.**
10 Nevada Bar # 12035
11 3199 E. Warm Spring Rd., Ste 100
12 Las Vegas, Nevada 89120
13 Telephone: 702-625-0610
14 *Attorney for Respondent*
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 IN THE MATTER OF E.S, A CHILD

Docket No: 82614

4 THE STATE OF NEVADA,

5 Appellant,

6 vs.

**POINTS AND AUTHORITIES
OPPOSING GOOD CAUSE TO
APPEAL**

7
8 E.S., A CHILD,

9 Respondent.

10 **CERTIFICATE OF SERVICE**

11
12 I hereby certify and affirm that the Points and Authorities Opposing Good Cause
13 to Appeal was electronically filed with the Nevada Supreme Court on April ____, 2021.
14 Electronic service of the foregoing document shall be made in accordance with the
15 Master Service List as follows:
16

17
18 **ATTORNEY FOR APPELLANT**
19 KIRK D. VITTO, ESQ.
20 Chief Criminal Deputy District Attorney
21 P.O. Box 593 Tonopah, NV
22 Nevada Bar #3885

ATTORNEY FOR RESPONDENT
DANIEL E. MARTINEZ, ESQ.
3199 E. Warm Springs Rd., Suite 400
Las Vegas, Nevada 89120
Nevada Bar #12035

23 AARON FORD
24 Nevada Attorney General
25 100 North Carson Street
26 Carson City, Nevada 89701-4717

27 
28 DANIEL E. MARTINEZ, ESQ.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28