

IN THE SUPREME COURT OF THE STATE OF NEVADA

V.

Case No. 82640

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 Respondent's pretrial motion to suppress evidence. By Order of this Court, filed May 3, 2021, the State submits the following points and authorities as a preliminary showing of the propriety of the appeal and that 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

On September 20, 2020, the State charged Charles McCall (Respondent) by way of Information with one count of ESTABLISHING OR POSSESSING A FINANCIAL FORGERY LABORATORY (Category B Felony), three counts of OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON

(Category B Felony), and five counts of POSSESSION OF DOCUMENT OR PERSONAL IDENTIFYING INFORMATION (Category C Felony). I Appellant's Appendix (AA) 1-6.

On February 22, 2021, Respondent filed a Motion to Suppress. I AA 7-72. On March 5, 2021, the State's Opposition to Defendant's Motion to Suppress was filed. I AA 73-87. The Court held an evidentiary hearing on March 15, 2021. I AA 88-234. The Court entertained argument on March 16, 2021. I AA 244 – II AA 275. An Order Granting Defendant's Motion to Suppress was filed on April 28, 2021. II AA 276-78.

STATEMENT OF THE FACTS

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

On June 25, 2020, Parole and Probation Officer Wilson conducted a status check with Colette Winn, who was on probation. Officer Wilson evoked the search clause on Winn's residence located at 1209 Ingraham St., Las Vegas, NV 89101. Parole and Probation Officer Crowe, along with Parole and Probation Officer Conroy and Parole and Probation Officer Glen conducted a safety walkthrough of the residence. A secondary occupant who was later identified as Charles McCall was also located in the residence. When Parole and Probation did a safety sweep of McCall's bedroom, they saw shot gun shells in plain view.

With Parole and Probation having knowledge that McCall was a convicted felon and recently released from probation status, Officer Crowe read McCall his Miranda rights. During the interview with McCall, McCall explained to Officer Crowe that he "fucked up." He told Officer Crowe that he would find multiple firearms (one shotgun, two handguns), narcotics in the top desk drawer, and multiple pieces of

financial paperwork that didn't belong to him inside of his bedroom. While conducting a search of Winn's bedroom during the invocation of the search clause contained within her probation agreement, Officer Glenn located profiles in other people's names, ID cards, check stock and 3 laptops. In McCall's bedroom, Officer Glenn located an embosser, blank credit card stock, a reader/writer, large amounts of US currency and illegal narcotics.

Parole and Probation Officer Crowe contacted LVMPD Detective J. Purcell and advised him of their findings. Detective Rosas, along with Detective Brown and Detective R. Balint responded to assist. A record check of McCall revealed he has been convicted of a felony four (4) times in Nevada. Detective Rosas requested and obtained a telephonic search warrant to search the residence and the vehicles outside the residence. The search warrant was obtained to retrieve all financial crimes related items, documents, narcotics and narcotic paraphernalia, and firearms found inside the residence. The search warrant included a request for buccal swab for DNA to be taken from the cheek of both McCall and Winn. During the execution of the search warrant, on top of McCall's bedroom bed, Detective Balint recovered two firearms, a Ruger .380 caliber, serial# 372212462, Smith and Wesson .32 caliber, serial# 241401, and a shotgun, Maverick Mossberg, model 88, 12 gauge, serial# MV35108S. The firearms were placed on the bed by Officer Comoy after locating them throughout McCall's room. Officer Conroy stated he located the Ruger under the pillow on top McCall's bedroom bed. The Smith and Wesson was inside McCall's dresser drawer, and the Maverick shotgun was located inside McCall's bedroom closet. Detective Balint also located unspent ammunition shells on the floor.

Detective Brown and Detective Balint recovered a credit card embosser, blank credit card stock, notebooks, personal profiles and a Magtek card/check reader inside McCall's Bedroom. In Winn's bedroom, Detectives recovered personal and private profiles, ID's in other people names, blank check stock, and three laptops. Detective Brown also located in Winn's bedroom multiple credit cards that appeared to be tampered with, and that were not in Winn's name. Detective Brown located a stack of fraudulent DMV tempt tags inside Winn's bedroom. He also located a fraudulent OMV tempt tag inside McCall's bedroom and in McCall's vehicle, which was parked in the driveway. Post Miranda, McCall told Detective Brown that he had signed the tempt tag located in his car. In

the family room, Detective Brown and Detective Balint recovered laminate sheets and a card laminator.

...

Narcotics detectives also responded and took into the custody the large amounts of narcotics, narcotics paraphernalia, and the majority of the U.S. Currency.

I AA 74-77.

SUMMARY OF THE ARGUMENT

There is good cause to permit the appeal to go forward because without the suppressed evidence 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 entirely on the suppressed evidence. 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. 837, 838, 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 839, 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. at 840, 432 P.3d at 198.¹

The State is not pursuing this appeal for the purpose of delay. The State’s case is entirely dependent upon the suppressed evidence. Without it the prosecution has little or no case. The animating drive behind this request for appellate review is the need to preserve the evidence sufficient to support a finding of guilt beyond a reasonable doubt. Additional proof that the State is not attempting to improperly

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 case on the merits, the relevant arguments below can be found at I AA 77-85, 236-48; II AA 264-69.

delay this case can be found in the fact that the Notice of Appeal was filed well before the short deadlines of NRS 177.015(2). Further, the State filed this pleading without requesting any extensions of time.

The loss of the suppressed evidence establishes a miscarriage of justice because “the suppressed evidence is of substantial importance such that its suppression would significantly impair or terminate the State’s ability to prosecute the case.” Brown. 134 Nev. at 840, 432 P.3d at 198. The Court suppressed all the evidence against Respondent. II AA 277. Ultimately, good cause to allow this appeal to proceed flows from the reality that every significant piece of evidence has been suppressed and the State would be left with nothing more than an empty shell of a case without the intervention of this Court.

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 5th day of May, 2021.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on May 5, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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JEV//ed