

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK,
AND THE HONORABLE MONICA
TRUJILLO, DISTRICT JUDGE,

Respondent,

and

BRANDON ALEXANDER MCGUIRE

Real Party in Interest.

Electronically Filed
Jul 26 2021 04:05 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

CASE NO: _____

(D.C. NO: C-16-319756-1)

**EMERGENCY MOTION FOR STAY OF DISTRICT COURT ORDER
UNDER NRAP 8(a) FOR JURY TRIAL COMMENCING JULY 27, 2021**

Date by which action is necessary: July 27, 2021

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Chief Deputy, ALEXANDER CHEN, and submits this Motion for Stay of District Court Proceedings Under NRAP 8(a)

This motion is based on the following memorandum, declaration, and all papers and pleadings on file herein.

///

///

///

Dated this 26th day of July, 2021.

Respectfully submitted,

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

BY */s/ Alexander Chen*

ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #010539
Office of the Clark County District Attorney

MEMORANDUM

Pursuant to NRAP Rule 8(a)(2), (d), the State seeks a stay of the district court proceedings below pending the filing of the petition for a writ of prohibition and/or mandamus. A petition for a writ of prohibition and/or mandamus is necessary because ordinarily there would be no mechanism to appeal an order striking the prosecution's witness from testifying. In this case, the State wishes to challenge a district court order granting a motion to strike the victim, Evelyn Hicks, from testifying at trial on the charges of two counts of Sexual Assault with Use of a Deadly Weapon.

On July 19, 2021, Defendant Brandon McGuire and the State announced ready for trial with eight to ten witnesses that would testify. A central calendar call took place on July 21, 2021. At the central calendar call, trial was scheduled to commence on Tuesday, July 26, 2021.

Following the calendar call, Defendant McGuire filed a Motion to Strike Witnesses for Failure to Comply with NRS 174.234. The crux of Defendant McGuire's argument was the State had not listed an address for the victim, Evelyn Hicks.

The State filed a written response by informing the district court that it could not provide an address for the victim because it is unaware of any address that exists for the victim. The State in its response included an affidavit from its investigator indicating the multiple addresses and efforts that were made to secure the victim's presence. The investigator noted the processes she went through to eventually communicate with the victim, and that she was finally able to gain acknowledgement of the subpoena through text messaging. The investigator's affidavit noted that "[T]o date, I do not have a complete address for the victim."

On July 26, 2021, the district court granted Defendant McGuire's motion to have the victim stricken from testifying. Following the district court's ruling, the State requested a stay of the trial, but the district court denied the request for a stay.

Given that the District Court has denied that this matter be stayed, the State is now making a request pursuant to NRAP 8(2) that this Court stays the effect of the district court's Order so that the State may file a petition for writ of prohibition and/or mandamus seeking relief in this matter.

The district court's arbitrary exercise of power in striking a witness, who

has no stable residence, is an issue of widespread importance. NRAP 8 provides that a party may move to stay a district court proceeding pending resolution of a petition for extraordinary relief. NRAP 8(a)(1)(A). Stay relief is conditioned under this rule upon the moving party requesting relief from the district court in the first instance. The State has done so, and that request was denied. Having satisfied the procedural predicate for an application of relief, this Court then considers the following factors upon the State's motion for a stay of lower-court proceedings:

- (1) Whether the object of the writ petition will be defeated if the stay is denied;
- (2) Whether petitioner will suffer irreparable or serious injury if the stay is denied;
- (3) Whether real party in interest will suffer irreparable or serious injury if the stay is granted; and
- (4) Whether petitioner is likely to prevail on the merits in the writ petition. *State v. Robles-Nieves*, 129 Nev. 537 (2013).

In the instant case, consideration of these four factors weigh in favor of the imposition of a stay. The first factor must true. If a stay is not granted, and the trial were to go forward without the victim's testimony, the object of the petition (for the victim to testify at a trial) would be defeated.

Considering that the victim's testimony is necessary, the State and justice for the victim would suffer irreparable injury if the trial proceeded without the

victim's testimony. Moreover, the real party in interest cannot articulate that he would suffer irreparable or serious injury. This case has been continued multiple times, including during the Covid-19 pandemic. Defendant also has a murder case where he is currently in custody awaiting trial (C-17-327272-1). Thus, Defendant has less of a liberty interest than if this were his only case and his liberty depended on it.

Finally, the State is confident in the merits of winning this petition. Striking the victim in a case is an extreme punishment, especially when the exact address of a victim is unknown. Allowing district courts to strike testimony in this manner would potentially jeopardize any victim or witness that is experiencing homelessness. Certainly the notice requirements of NRS 174.234 were not meant to input draconian punishments from individuals that lack a physical and stable address.

Therefore, Petitioner is requesting that the effect of the district court's order striking the victim from testifying be stayed so that his matter may be fully briefed by way of petition before this Court.

///

///

///

///

Dated this 26th day of July, 2021.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney

BY */s/ Alexander Chen*

ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #010539
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
P O Box 552212
Las Vegas, NV 89155-2212
(702) 671-2750

NRAP 27(e) CERTIFICATE

- | | |
|---|--|
| 1. ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #010539
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155
(702) 671-2750 | KATHLEEN HAMERS
Deputy Public Defender
Nevada Bar #009049
309 South Third Street, #226
Las Vegas, Nevada 89155
(702) 455-3375 |
| AARON D. FORD
Nevada Attorney General
Nevada Bar #007704
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1265 | JUDGE MONICA TRUJILLO
Eight Judicial District Court
Department III
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155
(702) 671-4312 |
2. Facts showing the existence and nature of the claimed emergency are set forth in the preceding memorandum.
3. I HEREBY CERTIFY AND AFFIRM that this Emergency Motion Under NRAP 27(e) was filed electronically with the Nevada Supreme Court on July 26, 2019 in accordance with the Master Service List Below. Kathleen Hamers, counsel to Brandon Alexander McGuire, was telephonically notified July 26, 2019 at 12:31 P.M. and respectively emailed the same on July 26, 2019 at approximately 2:59 P.M. that this emergency motion would be filed. The Nevada Supreme Court Clerks were also notified on July 26, 2019 at 2:37 P.M. that this emergency motion would be filed. Finally the Honorable Monica Trujillo's chambers were notified at 2:43 P.M. that this emergency motion would be filed.

Dated this 26th day of July, 2021.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney

BY */s/ Alexander Chen*

ALEXANDER CHEN
Chief Deputy District Attorney
Nevada Bar #010539
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 July 26, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON FORD
Nevada Attorney General

KATHLEEN HAMERS
Deputy Public Defender
Counsel for Real Party in Interest

ALEXANDER CHEN
Chief Deputy District Attorney

I further certify that service of the above and foregoing was made this 26th day of July, 2021, by electronic email to:

JUDGE MONICA TRUJILLO
Email: ElliottT@clarkcountycourts.us

BY /s/ E. Davis
Employee, District Attorney's Office

AC//ed