

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,
Respondents,
and
BRANDON ALEXANDER MCGUIRE,
Real Party in Interest.

No. 83269

FILED

AUG 27 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

JUSTICE HERNDON'S RESPONSE TO MOTION TO DISQUALIFY

This matter is currently before this court on petitioner's petition for a writ of mandamus or prohibition filed on July 26, 2021, in which petitioner challenges a district court order precluding the alleged victim from testifying at trial in the underlying criminal case. Petitioner included an emergency motion for stay with its writ filing, and on July 27, 2021, this court imposed a temporary stay and ordered that an answer be filed in regard to the petition. Real party in interest, Brandon McGuire, subsequently filed a motion to disqualify me based on my having presided over a separate criminal homicide case involving him while I was a district court judge in the Eighth Judicial District Court. Real party in interest's motion expresses concern with my participation in this matter because the separate homicide case is, per the real party in interest, linked to the underlying case in which the real party in interest is charged with sexual assault. Real party in interest has therefore moved for my disqualification,

citing to NRS 1.225 and the Nevada Code of Judicial Conduct, Rule 2.11(A)(6)(d), while alleging that my “impartiality might reasonably be questioned” and that my continued involvement in this case would create an “appearance of impropriety.”

Real party in interest does not allege any facts involving any biases or prejudices that he believes exist, nor does he make any allegation that I somehow have knowledge about the facts of the underlying sexual assault case. He likewise does not allege that I presided over the underlying sexual assault case in any fashion while I was a district court judge or that I was ever asked to involve myself in the sexual assault case in any way or review, or rule on, anything related to the sexual assault case. Rather, real party in interest mentions only that the sexual assault case is listed as an aggravating factor in the State’s notice of intent to seek the death penalty filed in the homicide case. It should also be noted that the homicide case never proceeded to trial during my time presiding over the case and that, other than regularly set status checks, there was only limited motion practice in the homicide case during my time presiding over it, none of which, to the best of my recollection, dealt with the underlying sexual assault case.

With that context in mind, I believe that any concerns related to my participation in this matter based on NRS 1.225 and the Nevada Code of Judicial Conduct, Rule 2.11, are unfounded. Regarding NRS 1.225, real party in interest simply references an “appearance of impropriety” without further explanation. NRS 1.225 lists grounds for disqualifying a supreme court justice, and I can attest that none of the factors mentioned in NRS 1.225 apply here, as I have no biases or prejudices against any of the parties and I do not believe any implied bias is present, either. I have no interest in

the underlying action, was not an attorney involved in the underlying action, and am not related to any parties or attorneys involved in the underlying action. Regarding real party in interest's reference to Rule 2.11(A)(6)(d), I did not preside over the underlying sexual assault case while I was a district court judge, so this reference is misplaced.

From a general perspective, however, I also do not believe that the fact that real party in interest had a separate sexual assault case pending in the Eighth Judicial District Court during the time that I was presiding over his homicide case is the type of situation that would call for my recusal under Rule 2.11. I have no bias or prejudices as to any of the parties or issues in this matter and have no personal knowledge of any facts involved, nor have I prejudged any issues in this case. I do not believe that my impartiality could reasonably be questioned, however, I make this disclosure in response to real party in interest's motion for disqualification per NRAP 35(b)(2).

Dated this 27th day of August, 2021.

A handwritten signature in black ink, appearing to be 'D. Herndon', written over a horizontal line.

Justice Douglas W. Herndon
Supreme Court of Nevada