IN THE SUPREME COURT OF THE STATE OF NEVADA

SEAN RODNEY ORTH,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Docket No.: 85229

Electronically Filed
Aug 31 2023 01:54 PM
Elizabeth A. Brown
Clerk of Supreme Court

(Appeal From A Final Judgment Of The Eighth Judicial District Court, In And For The County Of Clark, State Of Nevada)

APPELLANT'S OPENING BRIEF
Volume XI
Bates Nos.:
AA001850 – AA001898

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Attorney for Appellant,
SEAN RODNEY ORTH

IN THE SUPREME COURT OF THE STATE OF NEVADA

SEAN RODNEY ORTH, Appellant, vs. THE STATE OF NEVADA, Respondent.	Docket No.: 85229

APPELLANT'S APPENDIX
ALPHABETICAL INDEX

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c)(1)(E) I certify that I served the foregoing Appellant's Appendix by causing it to be served by electronic means to the registered users of the Court's electronic filing system consistent with NEFCR 9 to the following:

Aaron Ford
Alexander Chen

CERTIFIED this 21st day of August, 2023.

KELLY JARVI, Legal Assistant to
THE LAW FIRM OF
C. BENJAMIN SCROGGINS, CHTD.

So I'll also set a status check appointment as stand-by counsel for March 30th at 8:30 since you'll already be here for your motion.

MS. GASTON: And then if --

THE DEFENDANT: Thank you, ma'am.

MS. GASTON: -- if they want to contact me I can get all, it's a lot of discovery. But I can provide them with the information.

THE COURT: Okay. If I know who it is --

MS. GASTON: -- if it's possible.

THE COURT: -- a lot of times when I contact Drew I don't know who it is. Until they walk through in the door in the court date.

MS. GASTON: Okay.

THE COURT: Okay?

MS. GASTON: All right. Thank you.

THE COURT: Thank you, Ms. Gaston.

THE DEFENDANT: Thank you.

MS. MENDOZA: Thank you.

[Proceeding concluded at 8:56 a.m.

* * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Connie Coll

Connie Coll
Court Recorder/Transcriber

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12/1/2022 2:40 PM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. SEAN RODNEY ORTH, Defendant.	CASE NO. C-20-352701-1 DEPT. NO. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

WEDNESDAY, MARCH 30, 2022

RECORDER'S TRANSCRIPT OF PROCEEDING:

ALL PENDING MOTIONS

APPEARANCES:

For the State: ERIKA MENDOZA, ESQ.
Chief Deputy District Attorney

For the Defendant: PRO-SE
Stand-by Counsel KENT M. KOZAL, ESQ.,

RECORDED BY: VICTORIA BOYD, COURT RECORDER

Las Vegas, Nevada; Wednesday, March 30, 2022

[Proceeding commenced at 8:40 a.m.]

THE COURT: Let's go to page 9, C352701, State of Nevada versus Sean Orth. May the record reflect that Mr. Orth is present in custody. Mr. Orth is pro se. The Public Defender's Office was previously representing him. Ms. Mendoza is here on behalf of the State. Ms. Mendoza, can we get your bar number?

MS. MENDOZA: 2520.

THE COURT: Okay. That's not your bar number.

MS. MENDOZA: 12520.

THE COURT: Oh, I thought you said 2520. I'm like, you're not that old.

MS. MENDOZA: No.

THE COURT: All right. This is on for the defendant's pro se motion to withdraw his guilty plea and also a status check on appointment of stand-by counsel. I do have Mr. Kozal here. Mr. Kozal, are you prepared to accept the appointment as stand-by counsel?

MR. KOZAL: I am, Your Honor.

THE COURT: Okay. Mr. Orth, Mr. Kozal is going to accept the appointment as stand-by counsel. Would you like to speak to Mr. Kozal before we go forward and argue the motion?

MR. KOZAL: I have --

THE DEFENDANT: I would, Your Honor.

MR. KOZAL: I have not received the motion --

1 THE DEFENDANT: Thank you. I would appreciate it.
2 MR. KOZAL: -- I can tell you that. I wouldn't be prepared to
3 argue the motion today.
4 THE COURT: Well, he's pro se. You're just going to be
5 stand-by counsel.
6 MR. KOZAL: Okay.
7 THE COURT: That's why I'm inquiring of him. And he is
8 requesting to speak with you. Which I think it would probably be best,
9 Mr. Kozal.
10 MR. KOZAL: Okay.
11 THE COURT: So, Mr. Kozal, you're going to need to get into
12 NDOC to see him. So how long do you need?
13 MR. KOZAL: I do --
14 THE DEFENDANT: Oh, Your Honor. I'm sorry. I thought you
15 meant did I want to talk to him on the telephone. I can argue the motion
16 today, Your Honor.
17 THE COURT: Okay. Well I want you to have an opportunity
18 to speak with him before we argue the motion to determine -- I need to
19 determine whether or not we're going to need to set it down for a
20 hearing.
21 THE DEFENDANT: Okay.
22 THE COURT: Okay.
23 THE DEFENDANT: Yes, ma'am.
24 THE COURT: I'm going to continue it for two weeks.
25 MR. KOZAL: I'm just told is at least two weeks for a phone

call. And about four weeks for an in-person. So --

THE COURT: Okay. Well you can talk to him over the phone because he already filed the motion. And he's prepared to argue it today.

MR. KOZAL: Okay.

THE COURT: But I'm going to give you time to speak to him over the phone.

MR. KOZAL: Sure.

THE COURT: All right. So we'll continue this matter for two weeks that will be April 13th at 8:30. And State, I need another order to transport.

MS. MENDOZA: Yes, of course, Your Honor. Thank you.

THE COURT: All right. Thank you.

THE DEFENDANT: And so. He's going to call me? Is that how -- can I just get his number?

THE COURT: Yes. He's going to call you at the prison, though, sir. He's not going to call you today because he hasn't seen the motion. So he can't talk to you about it today.

THE DEFENDANT: No, I understand, ma'am I was just going to get his number I can call him at his office.

MR. KOZAL: I'll be happy to give him mine. If you have something to write with its 3 8 5 7 2 2 7.

///

///

///

THE DEFENDANT: Thank you.

THE COURT: All right. Thank you, sir.

MR. KOZAL: Thank you.

MS. MENDOZA: Thank you.

THE COURT: All right.

[Proceeding concluded at 8:43 a.m.]

* * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Connie Coll
Court Recorder/Transcriber

STEAN RODNEY ORTH #96773
P.O. BOX 650
INDIAN SPRINGS, NEVADA 89070
PRO SE

FILED
APR - 2 2022
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,
PLAINTIFF,
VS.
STEAN RODNEY ORTH,
DEFENDANT.

CASE NO. C-20-352701-1
DEPT NO. X

DEFENDANT'S REPLY TO STATE'S OPPOSITION TO DEFENDANT'S MOTION TO WITHDRAW PLEA AND MOTION TO DISMISS CHARGES.

COMES NOW, STEAN ORTH, DEFENDANT PRO SE, WHO RESPECTFULLY REPLIES TO STATE'S OPPOSITION TO DEFENDANT'S MOTION TO WITHDRAW PLEA MOTION TO DISMISS CHARGES FILED MARCH 16, 2022.

THIS REPLY IS BASED UPON ALL PAPERS, PLEADINGS, AND DOCUMENTS ON FILE, THE ATTACHED POINTS AND AUTHORITIES AND EXHIBITS.

A. INTRODUCTION.

DEFENDANT HAS FILED A MOTION TO WITHDRAW THE PLEA OF GUILTY TO A VIOLATION OF 484B.550 REQUIRED AT SIGNAL OF POLICE, NRS 484B.550(3)(b) AND MOVES TO DISMISS THE CHARGES AS VIOLATIVE OF DOUBLE JEOPARDY PROHIBITION UNDER THE DUE PROCESS CLAUSE OF U.S. CONST. AMEND. V. PLAINTIFF HAS OPPOSED THE MOTION. DEFENDANT ADDRESSED THE PLAINTIFF'S ARGUMENTS IN ORDER.

B. LEGAL ARGUMENTS.

I. PLAINTIFF'S ARGUMENT "IT WOULD NOT BE FAIR TO ALLOW HIM TO JUST WITHDRAW HIS PLEA" MUST FAIL.

DEFENDANT HAS NO GRIEVANCE UPON THE PRESENT HONORABLE JUDGE PRESIDING OVER THE CASE.

JUST PRIOR TO CALENDAR CALL THE PREVIOUS JUDGE AND PROSECUTOR CONDUCTED A VERY ILLEGAL EX PARTE HEARING WITH UNAPPOINTED STANDBY COUNSEL ON SEPTEMBER 7, 2021 AND ENTERTAINED EX PARTE PLEADINGS FROM BOTH PROSECUTOR AND STANDBY COUNSEL ARGUING DEFENDANT SHOULD RECEIVE NO ASSISTANCE FROM STANDBY COUNSEL WHICH RESULTED IN THE COURT ORDERING STANDBY COUNSEL TO NOT ASSIST ME OR SIT AT THE DEFENSE TABLE AT TRIAL OR IN HEARINGS. EXHIBIT 1 (MINUTE ORDER, SEPTEMBER 7, 2021). MY OWN STANDBY COUNSEL WAS THEN APPOINTED AND THE COURT ORDERED SHE COULD RECEIVE DISCOVERY BUT NOT ASSIST ME. id. SURE ENOUGH, SHE REFUSED TO ASSIST.

ONE OF THE ARGUMENTS THE THE MOTION THAT IS AT BAR IS THAT THE PROSECUTOR DID NOT DISCLOSE BODYCAM & DASHCAM OF THE EVENTS TO THE DEFENSE. THIS HONORABLE COURT WILL NOTE THERE IS NO DISAGREEMENTS BY PLAINTIFF TO THIS NONDISCLOSURE CLAIM THAT VIOLATES BRADY V. MARYLAND, 373 U.S. 83 (1963) AND MAZZAN V. WARDEN, ___ NEV. ___ (___).[1]

SECOND, DEFENDANT PRESENTED THIS HONORABLE COURT WITH HPD COMMUNICATIONS THAT EVIDENCED HPD ALEX HELSON LIED WHEN HE TESTIFIED THAT HPD MANGAN WAS NOT PRESENT WHILE THE STOP WAS INITIATED. THE COMMUNICATIONS TELL PARTY HPD MANGAN WAS THE OFFICER WHO BLOCKED THE GATE THAT HPD HELSON CLAIMED HE BLOCKED WHEN TESTIFYING HPD MANGAN WAS NOWHERE IN SIGHT. AN IMPOSSIBILITY. I PROVED C.D.D.A. MENDOZA USED THIS FALSE TESTIMONY TO TRICK THE JUSTICE COURT INTO SIDING WITH HER THAT RESIST PUBLIC OFFICER WAS A SEPERATE ACT FROM EVADE. THIS HONORABLE COURT CAN NOTE THAT PLAINTIFF HAS NOTHING TO SAY UPON THIS PRO PER REPRESENTATIVE OVERNIGHT CAMING AND PROVING THE STATE'S WITNESS TO BE A PERJURER AND C.D.D.A. MENDOZA USING PRO FALSE TESTIMONY IN HER FRAUD UPON THE COURT. DEFENDANT DID NOT "SAY" IT, DEFENDANT SHOWED IT. IN A SHAMEFUL PLEA THAT HAS NO ANSWER FOR SUCH A SHOWING THE PROSECUTOR PLEAS TO THIS COURT DEFENDANTS MOTION IF GRANTED "IS NOT FAIR". HAD THE PROSECUTOR PRESENTED THE TRUTH AND APPLICABLE LAW AS REQUIRED UNDER NEVADA'S RULES OF PROFESSIONAL CONDUCT 3.3(A)(1) A LAWYER SHALL NOT KNOWINGLY MAKE A FALSE STATEMENT OF FACT OR LAW TO A TRIBUNAL OR FAIL TO CORRECT A FALSE STATEM-

1. DEFENDANT IS WITHOUT ACCESS TO A LAW LIBRARY BUT IS EXTREMELY FAMILIAR WITH MAZZAN V. WARDEN, ___ NEV. ___ (___) AND BRADY MATERIALITY REQUIREMENTS. PLAINTIFF DISREGARDS ALL CONSTITUTIONAL REQUIREMENTS IN THIS PROSECUTION AND SEEKS SUCCESS IN PRESENTING VERDAGE CONTRARY TO OUR CONSTITUTIONS.

1 EIT OF FACT OR LAW PREVIOUSLY MADE BY THE LAWYER) WE WOULD NOT BE HERE.
2 HAD THE PROSECUTOR TURNED OVER THE BODYCAM / DASHCAM OF THE OFFICERS AT PRELIM
3 AS REQUIRED BY NRS 171.196 5(1)(A)-(D) IT WOULD HAVE DISASSEMBLED THE FALLACY
4 THAT HPD MORGAN WAS NOT PRESENT AT THAT TIME. THE ALLEGATION OF USING FALSE
5 TESTIMONY TO MANIPULATE THE OUTCOME OF LITIGATION DID NOT GIVE RISE TO ANY
6 DEFENSE TO THAT ALLEGATION WHICH DEFENDANT WILL NOT SPEAK FOR ITSELF.
7
8 IT IS TRUE, PLAINTIFF APLOGIZES THIS HONORABLE COURT THAT I DID REPRESENT
9 MYSELF (15) YEARS AGO WHEN MY LAST FELONY ARREST WAS. I WAS DISASSEMBLING
10 THAT FRAUD AT TRIAL WHEN THE PROSECUTOR GOT RID OF HIS WITNESS WHICH THIS
11 COURT CAN READ IS ORDER REVIEW BY THE U.S. DISTRICT COURT OF NEVADA WHO
12 HAS EXPLAINED SUCH VIA HIS RECENT ORDER DENYING STATE'S MOTION TO DISMISS
13 MY FEDERAL PETITION THAT HAS DNA TO IMPEACH THE CLAIM I AM THE
14 ASSAILANT - EXHIBIT 2 (ORDER).
15
16 LASTLY, DEFENDANT FILED A MOTION ON SEPTEMBER 21, 2021 TO THIS HONORABLE
17 COURT SEEKING TO DISMISS THE CASE FOR NON DISCLOSURE OF DISCOVERY, DENYING
18 PLAINTIFF ACCESS TO A LAW LIBRARY AND EQUIPMENT TO WATCH BODYCAM / DASHCAM.
19 PLAINTIFF OPPOSED THAT MOTION SIMPLY ARGUING PRIVATE DEFENDANT SHOULD COMPLAIN
20 TO INDIANA ATTORNEY GENERAL. PLAINTIFF DID NOT DENY ANY OF THESE HINDERANCES
21 TO DEFENDANTS RIGHT TO REPRESENT HIMSELF EFFECTIVELY.
22 A "PRO SE DEFENDANT MUST BE ALLOWED TO CONTROL THE ORGANIZATION AND CONTENT
23 OF HIS OWN DEFENSE, TO MAKE MOTIONS AND ARGUE POINTS OF LAW" McKASKLE
24 V. WIGGINS, 465 U.S. 168, 174 (1984). A PRISONER HAS A RIGHT TO MEANINGFUL
25 ACCESS TO LEGAL RESEARCH MATERIALS OR PERSONS TRAINED IN LAW AS AN
26 ALTERNATIVE. BOUNDS V. SMITH, 430 U.S. 817, 821-28 (1977), OVERRULED ON
27 OTHER GROUNDS BY LEWIS V. CASEY, 518 U.S. 343, 354 (1996). A PRETRIAL DETAINEE

HAS AT LEAST THOSE RIGHTS SECURED TO A PRISONER. BELL V. WOLFISH, 441 U.S. 520, 545 (1979). See also RIGGINS V. NEVADA, 504 U.S. 127, 135 (1992) (PRETRIAL DETAINEES ENJOY SOME LIBERTY INTEREST IN FREEDOM FROM UNWANTED ANTI-PSYCHOTROPIC DRUGS AS PRISONERS). PLAINTIFF HAS DENIED PLAINTIFF DUE PROCESS AND EFFECTIVE REDE-FENSE OF HIMSELF BY DENYING ACCESS TO A LAW LIBRARY OR PERSONS TRAINED IN LAW. MITCHELL V. MOORE, 767 F.2d 1443, 1446-1447 (9th CIR. 1985) (DUE PROCESS VIOLATED WHEN STATE UNJUSTIFIABLY HINDERED SELF-REPRESENTATION BY DENYING DEFENDANT MEANINGFUL ACCESS TO ~~THE~~ CURRENT RESEARCH MATERIALS).

TO BE CLEAR ABOUT WHAT WE ARE TALKING ABOUT HERE, DEFENDANT WAS ACCOSTED FROM MY HOME BASED ON A FAKE ROBBERY CALL AND RELOCATED TO A CELL OUT IN THE DESERT FOR (17) MONTHS AND COUNTING WHILE THE PROSECUTOR WITHHOLDS DISCOVERY, MAKES FALSE ARGUMENT TO THE COURT SUPPORTED BY TESTIMONY NOW UNIMPEACHED BY COMMUNICATIONS THAT ARE RECORDED AND WOULD ALSO HAVE BEEN IMPEACHED BY THE TURBINE WITNESS (THAT'S WHY SHE IS WITHHOLDING IT) AND HER BEST ARGUMENT TO THIS IS NOT FAIR TO THE STATE TO ALLOW ME TO WITHDRAW AND RECEIVE A LEGITIMATE RULING BY THE COURT NOW THAT HER FRAUD IS EXPOSED. SUCH ARGUMENT IS NONSENSICAL AND NON RESPONSIVE. IT MUST FAIL. THE COURT SHOULD BE OFFENDED. ~~THE PROSECUTOR~~

II. THE CHARGES SHOULD BE DISMISSED FOR VIOLATION OF DOUBLE JEOPARDY.

EVEN MORE OFFENSIVE, UPON A SHOWING THAT HER MEMBER AND THE PROSECUTOR FRAUDED THE JUSTICE COURT BY ARGUING THAT HER MANGAN WAS NOT PRESENT WHEN THE STOP WAS INITIATED AND THEREFOR HER RESIST CHARGE WAS A SEPERATE ACT ~~[illegible]~~ FROM ~~EVADE~~ THE

PLAINTIFF ASKS THIS HONORABLE COURT TO DISREGARD THE MOTION BECAUSE DOUBLE JEOPARDY WAS PREVIOUSLY LITIGATED. Id. AT 6. THE INSTANT MOTION IS UNDENIABLE IN SHOWING THAT HPD MANGAN RADIOED THAT SHE BLOCKED THE EXIT GATE AT 7:18:18 AND HPD BOWLER JOINED HER AT 7:18:27 AFTER A STOP WAS ANNOUNCED AT 7:18:14. MOTION AT 2-4. THE PROSECUTOR STILL MAINTAINS "OFFICER MANGAN WAS NOT EVEN PRESENT FOR THE INITIAL VEHICLE PURSUIT", REPLY AT 7. RECORDED COMMUNICATIONS OF HPD SAY OTHERWISE. HPD MANGAN DID NOT RADIO SHE WAS BLOCKING THE EXIT AND HPD BOWLER DID NOT RADIO HE WAS FOLLOWING HER IF HE WASN'T. THE "NEW OR SUBSTANTIALLY DIFFERENT EVIDENCE" ALLOWS DEFENDANT TO OVERCOME LAW OF THE CASE DOCTRINE. HSU V. COUNTY OF CLARK, ___ NEV. ___ (___).

REGARDLESS, THEFT OBVIOUSLY IS A SEPARATE CRIME FROM DESTRUCTION OF PRIVATE PROPERTY. IN WALKER V. FLA., 397 U.S. 387, 394-395 (1970) THE UNITED STATES SUPREME COURT HELD BECAUSE DEFENDANT WAS CONVICTED IN MUNICIPAL COURT OF DESTRUCTION OF CITY PROPERTY AND DISORDERLY BREACH OF PEACE HE COULD NOT BE LATER PROSECUTED FOR GRAND LARCENY FROM THE SAME FACTS IN STATE COURT. Id. IN THIS CASE IT IS THE SAME. THE PROHIBITED PERSON W/GUN (CHARGED IN THE CAR) AND STOP REQUIRED ARE GREATER OFFENSES TO THE RESIST PUBLIC OFFICER AND BARRED FOR THE SAME REASONING IN WALKER.

ADDITIONALLY, SINGLE-TRANSACTION CRIMINAL CONDUCT CAN BE THE BASIS FOR LATER PROSECUTION IF NOT COMPLETE AT THE TIME OF THE FIRST PROSECUTION. BLOCKBURGER V. OHIO, 432 U.S. 161, 169 n.7 (1977). THE SAME GOES FOR MULTI-TRANSACTION CRIMINAL CONDUCT. GARRETT V. U.S., 471 U.S. 773, 790-792 (1985). THE GREATER OFFENSE CAN BE PROSECUTED IF IT OCCURRED AFTER THE LESSER OFFENSE. JEFFERS V. U.S., 432 U.S. 137, 152 (1977). THE PLAINTIFF HAS NOT MADE COGENT ARGUMENT SUPPORTED BY AUTHORITY TO OVERCOME THIS TRUE APPLICATION OF LAW.

1 BROWN, GARRETT AND JEFFERS ALL EXPLAIN THAT IF THE CONDUCT WAS COMPLETE
2 BEFORE THE FIRST PROSECUTION WAS COMPLETE IT CANNOT BE THE BASIS FOR
3 PROSECUTION EVEN IF ITS A GREATER OFFENSE. IN THIS CASE ALL CHARGES ARISE
4 OUT OF THE SAME STOP. HPD NELSON GAVE TESTIMONY THAT HPD MANGAN WAS
5 NOT PRESENT (PHT AT 49-50) WHICH WE KNOW TO BE A LIE BY HPD COMMUNICATIONS
6 THAT SHOW SHE WAS PRESENT. THE PROSECUTOR EITHER IS NOT READING THE
7 MOTION OR HAS JUST DECIDED TO CONTINUE WITH THE SAME LIE IN THE PROSE
8 SO THEY FILED A FAST ONE AND BECAUSE I DID NOT HAVE ACCESS TO A
9 LAW LIBRARY I COULD NOT PRESENT WARNER, BROWN, GARRETT AND JEFFERS.
10 THIS PROSECUTION IS UNCONSTITUTIONAL FROM ITS INITIATION AFTER THE
11 RESIST PROSECUTION WENT FINAL ON OCTOBER 30, 2020 (THIS PROSECUTION
12 INITIATED NOVEMBER 30, 2020).
13
14 DEFENDANT IS PRO SE. TO EMPHASIZE THE NONSENSICALNESS OF THIS
15 PROSECUTOR'S INFORMATION THE PROSECUTOR ARGUES "DEFENDANT'S CASE
16 IS UNLIKE BROWN AS THE STOP REQUIRED WAS NOT CONTINUING AT THE
17 TIME OF THE RESISTING OFFENSE" Id. AT 7. THE PROSECUTOR MISSES
18 THE POINT. THE POINT WAS THAT ALTHOUGH THE DEFENDANT'S ARREST
19 FOR THEFT WAS A WEEK AFTER THE STOP REQUIRED IT WAS STILL CONSIDERED
20 A SINGLE-TRANSACTION. Id. IN THIS CASE THE RESIST PUBLIC OFFICER
21 CHARGE WAS INTIMATELY INTERTWINED WITH THE NON STOP REQUIRED
22 FELONY DRUG CHARGES AS EVIDENCED BY THE DECLARATION OF ARREST
23 IN MUNICIPAL COURT WHICH READS "[DEFENDANT] FAILED TO YIELD TO PATROL
24 OFFICERS WHO INITIATED A LAWFUL STOP" EX. 4 (DECLARATION OF ARREST).
25 HPD NELSON IS A LIAR. I WAS NEVER ARRESTED FOR FELONY EVADE BY
26 ANY OFFICER ON SCENE. THE STATE IS ON NOTICE THEIR PROSECUTION IS
27 ILLEGAL AND BEGS THIS HONORABLE COURT TO CONTINUE ON IN THE
28 FACE OF MY SHOWING RECORDED COMMUNICATIONS PROVING THEY LIED.

~~BUT COMMITTED AMONG OF THE SAME TRANSACTION AND WAS COMPLETE BEFORE RESISTING OFFICER.~~

NEVADA ADOPTS THE TEST UNDER BLOCKBURGER V. U.S., 284 U.S. 299 (1932).

"THE BLOCKBURGER TEST ASKS WHETHER THE OFFENSE IN QUESTION CANNOT BE COMMITTED WITHOUT COMMITTING THE LESSER OFFENSE. A PERSON CANNOT BE PUNISHED FOR A GREATER AND LESSER OFFENSE" LAHANCE V. STATE, 139 NEV. 263, 273 (2014). AS SIXH, STOP REQUIRED AT SIGNAL OF POLICE UNDER NRS 484B.550 (3)(b) CANNOT BE COMMITTED WITHOUT COMMITTING RESIST PUBLIC OFFICER UNDER NRS 199.280(3).

NRS 484B.550 (1)(3)(b) PROVIDES:

EXCEPT AS OTHERWISE PROVIDED FOR IN THIS SECTION, THE DRIVER OF A MOTOR VEHICLE ON A HIGHWAY OR PREMISES TO WHICH THE PUBLIC HAS ACCESS WHO WILLINGLY FAILS OR REFUSES TO BRING HIS VEHICLE TO A STOP OR WHO OTHERWISE FLEES OR ATTEMPTS TO ELUDE A PEACE OFFICER IN A READILY IDENTIFIABLE POLICE VEHICLE OF ANY POLICE OR REGULATORY AGENCY IS GUILTY OF A MISDEMEANOR. 3. UNLESS THE PROVISIONS OF NRS 484B.653 APPLY, IF WHILE VIOLATING THE PROVISIONS OF SUBSECTION 1, THE DRIVER OF A MOTOR VEHICLE: (b) OPERATES THE VEHICLE IN A MANNER WHICH ENDANGERED OR IS LIKELY TO ENDANGER ANY OTHER PERSON OR THE PROPERTY OF ANOTHER PERSON IS GUILTY OF A CATAGORY B FELONY.

Id.

NRS 199.280(3) PROVIDES:

A PERSON WHO UNDER ANY CIRCUMSTANCE OTHERWISE PROVIDED FOR, WILLINGLY RESISTS, DELAYS OR OBSTRUCTS A PEACE OFFICER IN DISCHARGING OR ATTEMPTING TO DISCHARGE ANY LEGAL DUTY OF HIS OR HER OFFICE IS GUILTY OF RESIST PUBLIC OFFICER.

Id.

A PERSON CANNOT "WILLINGLY FAILS OR REFUSES TO BRING HIS VEHICLE

TO A STOP.. WHERE GIVEN A SIGNAL TO STOP" UNDER NRS 484B.550(1) WITHOUT "WILLFULLY RESIST, DELAY OR OBSTRUCT AN OFFICER IN DISCHARGING OR ATTEMPTING TO DISCHARGE A LEGAL DUTY OF HIS OR HER OFFICE" UNDER NRS 199.280(3). THE TAYLOR CASE SAID LEGAL DUTY BEING AN INVESTIGATORY STOP UNDER NRS 171.123 (REASONABLE SUSPICION STATUTE). DOUBLE JEOPARDY IS VIOLATED.

AS EXPLAINED IN MY MOTION THE GUN WAS STAGED IN THE CAR AND IS INADMISSIBLE BY A FALLACY. MOTION AT 2-4. I HAVE NOW SHOWN HPD NELSON IS LYING BY SHOWING HPD COMMUNICATIONS THAT SHOW HPD MANGAN WAS PRESENT. Id. A FACT ACTUALLY RELEVANT UNDER BROWN, GARNETT, STEFFENS, WARDEN AND BLACKBURGER/LACHANCE, BUT IT EVIDENCES ANY FRAUD COULD BE PRESENTED TO CONTINUE AN ILLEGAL PROSECUTION IN VIOLATION OF DOUBLE JEOPARDY.

HPD NELSON INITIALLY TESTIFIED I JUMPED OUT OF THE CAR AS SOON AS IT WAS MOVING. PHT AT 46, 55. THEN I ASKED IF HE WORE BODYCAM, HE SAID HE DID. Id. AT 56. HE THEN CHANGED HIS STORY AND ADMITTED I EXITED THE VEHICLE WHEN IT WAS STOPPED AND NO ONE WAS IN DANGER. Id. AT 60-61. THAT IS OUTRAGEOUS AND IS THE REASON THE PROSECUTOR NEVER TURNED OVER BODYCAM/DASHCAM. THE OTHER REASON IS BECAUSE IT WOULD SHOW HPD MANGAN WAS AT THE GATE WITH HPD BOWER AS THEY RADIOED IN WHICH IS WHERE THE STOP OCURRED. HPD NELSON'S CREDIBILITY WILL BE DISASSEMBLED IN A HEARING IF THE COURT SO REQUIRES. AND EVERY CASE HE TESTIFIED IN SHOULD BE REOPENED UPON THE NEW IMPEACHMENT EVIDENCE. THE KEY IS THE STATE WITHHOLDS THE EVIDENCE FOR A REASON. ~~[illegible]~~

1 C. Conclusion.

2

3 WHEREFORE, DEFENDANT PRAYS THAT HONORABLE COURT VACATES

4 ANY PLEA AND DISMISSES THE CHARGES OR IF THE HONORABLE

5 COURT SO REQUIRES ALLOWS AN EVIDENTIARY HEARING AFTER

6 DISCLOSURE OF ALL EVIDENCE IS MADE.

7

8

9 RESPECTFULLY SUBMITTED, MARCH 26, 2012.

10

11 Sean Orth

12 SEAN ORTH.

13

14 THIS REPLY DOES NOT CONTAIN A SOCIAL SECURITY NUMBER.

15 Sean Orth

16

17 CERTIFICATE OF SERVICE

18

19 I, SEAN ORTH, DO HEREBY CERTIFY THAT ON MARCH 26, 2012

20 I DID MAIL A TRUE AND CORRECT COPY OF THE FOREGOING REPLY

21 AND EXHIBITS TO ERIKA MENDOZA, C.D.D.A., 200 LEWIS AVE.

22 , LAS VEGAS, NEVADA 89155.

23 Sean Orth

24

25

26

27

28

EXHIBIT 7

C-20-352701-1

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor | COURT MINUTES | September 07, 2021

C-20-352701-1 State of Nevada
vs
Sean Orth

September 07, 2021 11:00 AM Status Check: Arguments to Determine if Standby Counsel Needs Appointing

HEARD BY: Holthus, Mary Kay COURTROOM: RJC Courtroom 03F

COURT CLERK: Boyle, Shelley; Burnett, Erin; Guerra, Valeria; Quamina, Jessica

RECORDER: Sison, Yvette G.

REPORTER:

PARTIES PRESENT:

Kara M. Simmons	Attorney for Defendant
Noreen C. Demonte	Attorney for Plaintiff
State of Nevada	Plaintiff

JOURNAL ENTRIES

Deft. not present, not transported. Counsel present via Bluejeans.

Ms. Simmons-Gaston noted Deft. is in custody in the Nevada Department of Corrections; Deft. was sentenced on another case while the instant matter is pending. Court allowed Deft. to proceed Pro Se. Ms. Demonte argued nobody is required to be appointed as Stand-by Counsel. COURT ADVISED, It will rely on the Briefs. COURT STATED, Stand-by Counsel will be APPOINTED. They are strictly there to stay informed of the case in the event Deft. chooses to abandons their self representation. Stand-by Counsel will not sit at the defense table, they don't advise Deft; they may be called upon to facilitate discovery or deliberations. There are no legal obligations. They will not advise Deft.

Colloquy regarding Deft. potentially filing an Ineffective Assistance of Counsel Motion. COURT STATED It is just ruling on what is in front of It, the Motion regarding Stand-by Counsel.

CUSTODY (COC-NDC)

EXHIBIT Z

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

Sean Rodney Orth, Petitioner v. Warden, N.D.O.C, et al., Respondent	Case No.: 2:17-cv-02047-JAD-BNW **Order Denying Motion to Dismiss** [ECF No. 65]

Sean Rodney Orth brings this counseled amended habeas corpus petition under 28 U.S.C. § 2254 to challenge his 2007 Nevada state-court convictions for robbery with the use of a deadly weapon, conspiracy to commit robbery with the use of a deadly weapon, and eluding a police officer.[1] Respondents move to dismiss his petition, arguing that his claims are untimely or unexhausted.[2] Having carefully reviewed the record, I deny the motion because the one ground ultimately at issue is both exhausted and timely.

Procedural History and Background

A. State-court proceedings

After a jury trial in which Orth represented himself, the state district court convicted him of robbery with the use of a deadly weapon, conspiracy to commit robbery with the use of a deadly weapon, and eluding a police officer.[3] The state district court adjudged Orth to be a habitual criminal and imposed three concurrent sentences of life imprisonment with eligibility

[1] ECF No. 57.
[2] ECF No. 65.
[3] ECF No. 27-9.

for parole beginning after a minimum of ten years.[4] Orth appealed, and the Nevada Supreme Court affirmed.[5] Orth filed a proper-person post-conviction habeas corpus petition in the state district court.[6] Orth then filed a counseled first amended petition and supplemental petition.[7] The state district court denied the petition.[8] Orth appealed, and the Nevada Supreme Court affirmed.[9]

B. Summary of issues

Orth then commenced this action with a proper-person petition.[10] I appointed counsel, who filed a counseled amended petition.[11] Respondents filed a motion to dismiss,[12] petitioner filed an opposition,[13] and respondents filed a reply.[14] After full briefing, the two remaining arguments in the motion to dismiss are that Ground Two (A) is both unexhausted and untimely.

Underlying Ground Two (A) is Orth's inability to recall Zachary Zafranovich[15] as a witness for the defense. Orth was accused of robbing Zafranovich. After the robbery, Zafranovich gave detectives a watch, said that the watch came off of Orth in the struggle, and

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[4] *Id.*

[5] ECF No. 28-4.

[6] ECF No. 28-6.

[7] ECF No. 28-7 and 29-1.

[8] ECF No. 32-2.

[9] ECF No. 32-8.

[10] ECF No. 6.

[11] ECF No. 57.

[12] ECF No. 65

[13] ECF No. 69.

[14] ECF No. 72.

[15] I use the spelling of Zafranovich's last name that he himself gave at trial. ECF No. 23-1 at 47.

suggested that the watch had Orth's DNA on it.[16] Zafranovich testified for the prosecution, and Orth cross-examined him. The trial court excused Zafranovich, but he was still under subpoena and subject to recall.[17]

After Zafranovich's testimony, three things related to his testimony occurred. First, a witness testified that he had performed DNA analysis on the watch and had determined that Orth's DNA was not on the watch.[18] Second, a police officer testified about another meeting with Zafranovich that Orth did not know about—one in which Zafranovich brought other property that Zafranovich claimed was related to the robbery. The officer thought otherwise and did not take the property into evidence. The officer did not write a report about this meeting.[19] Third, the casino's custodian of records showed that Zafranovich did not win $14,000, but rather just $1,500.[20]

Orth tried to recall Zafranovich as a witness. Orth wanted to ask Zafranovich about those three items of evidence to attack Zafranovich's credibility.[21] Zafranovich did not appear, citing medical reasons. The trial court did not allow a further attempt to recall Zafranovich.[22] The trial court denied Orth's request to read Zafranovich's statement to the police.[23] The trial court denied Orth's request to recall the police officers who interviewed Zafranovich.[24] On direct

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[16] ECF No. 57 at 14–15.

[17] *Id.*

[18] *Id.*

[19] *Id.* at 15–16.

[20] *Id.* at 16.

[21] *Id.*

[22] *Id.*

[23] *Id.* at 17.

[24] *Id.*

appeal, Orth argued that his inability to recall Zafranovich violated his right to confront the witnesses against him, guaranteed by the Sixth Amendment.[25] The Nevada Supreme Court rejected the argument.[26] Ground Four of the amended petition is this Confrontation Clause claim.[27]

Ground Two (A) is a claim that appellate counsel provided ineffective assistance because appellate counsel based the argument on the wrong legal theory. Orth argues that appellate counsel should have argued that the trial court's refusal to recall Zafranovich, refusal to allow Orth to read Zafranovich's statements to the jury, and refusal to recall the police officers who spoke to Zafranovich violated both Orth's right to compulsory process guaranteed by the Sixth Amendment and Orth's right to present a defense.[28]

Discussion

A. Legal standards

1. Exhaustion of state-court remedies

Before a federal court may consider a petition for a writ of habeas corpus, the petitioner must exhaust the remedies available in state court.[29] To exhaust a ground for relief, the petitioner must fairly present that ground to the state's highest court, describing the operative facts and legal theory, and give that court the opportunity to address and resolve the ground.[30]

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[25] ECF No. 28-2 at 38–40.

[26] ECF No. 28-4 at 15–16.

[27] ECF No. 57 at 30-33.

[28] *Id.* at 14–18.

[29] 28 U.S.C. § 2254(b).

[30] *See Duncan v. Henry*, 513 U.S. 364, 365 (1995) (*per curiam*); *Anderson v. Harless*, 459 U.S. 4, 6 (1982).

2. Timeliness and relation back

A petitioner has one year from the date of finality of the state-court judgment of conviction to file a federal habeas corpus petition under 28 U.S.C. § 2254.[31] The time that a state petition for post-conviction or other collateral review is pending does not count toward that one-year period.[32] An amended habeas corpus petition "does not relate back (and thereby escape [§ 2244(d)(1)(A)'s] one-year time limit) when it asserts a new ground for relief supported by facts that differ in both time and type from those the original pleading set forth."[33] Relation back is allowed "[s]o long as the original and amended petitions state claims that are tied to a common core of operative facts . . . ."[34]

B. Analysis

1. Respondents' state-court arguments about exhaustion

Respondents argue that Grounds One (A), One (B), Two (B), and Two (C) are exhausted as presented to the state courts.[35] If respondents are trying to argue that Orth has alleged facts or legal theories in the amended petition that he did not allege in the state courts, then respondents do not argue what facts or legal theories Orth has not presented to the state courts. I thus will not address these arguments further.

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[31] 28 U.S.C. § 2244(d)(1)(A).

[32] 28 U.S.C. § 2244(d)(2).

[33] *Mayle v. Felix*, 545 U.S. 644, 650 (2005).

[34] *Id.* at 664.

[35] ECF No. 65 at 9–10, 11.

2. Grounds Three and Four

Respondents initially argued that Grounds Three and Four are unexhausted in part.[36] Based upon Orth's statements in his opposition, respondents now acknowledge that these grounds are exhausted, and they withdraw those arguments.[37]

3. Ground Two (A) is exhausted

In Ground Two (A), Orth argues that appellate counsel provided ineffective assistance because appellate counsel did not raise the trial court's refusal to recall Zafranovich, refusal to allow Orth to read Zafranovich's statements to police into evidence, and refusal to recall police officers who interviewed Zafranovich as denials of compulsory process and the right to present a defense. Respondents argue that Orth did not present the issue of the right to present a defense to the Nevada Supreme Court.

Underlying this ineffective-assistance claim in Ground Two (A) are two legal theories.[38] First is the theory that the trial court denied Orth his right to compulsory process. Second is the theory that the trial court denied Orth his right to present a defense. Also underlying Ground Two (A) are three sets of facts: (1) the trial court's refusal to recall Zafranovich, (2) the trial court's refusal to let Orth read Zafranovich's statements to police officers into the record, and (3) the trial court's refusal to recall the police officers who interviewed Zafranovich so Orth could question them about Zafranovich's statements.

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[36] *Id.* at 12–13.

[37] ECF No. 72 at 5–6.

[38] Although Ground Two (A) is a claim of ineffective assistance of appellate counsel, I refer only to the underlying theories and facts. Otherwise, my descriptions of how all combinations of theories and facts are exhausted will be convoluted and confusing. Ultimately, Ground Two (A) is a claim of ineffective assistance of appellate counsel.

The compulsory-process claim regarding the refusal to recall Zafranovich definitely is exhausted. Respondents do not challenge this aspect of Ground Two (A).

The compulsory-process claim regarding the refusal to recall the police officers also is unexhausted. In Orth's brief on appeal from the denial of the post-conviction petition, he argued that trial court did not allow him "to bring in relevant portions of Zafranovich's earlier statements to law enforcement,"[39] That general statement encompasses both Orth's request to read Zafranovich's statements into the record and, failing that, his request to recall the officers who spoke to Zafranovich.

Turning to the denial-of-defense claim, I note that it has multiple constitutional underpinnings. "Whether rooted directly in the Due Process Clause of the Fourteenth Amendment, or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'"[40] Orth has exhausted his denial-of-defense claim with respect to recalling Zafranovich and the police officers as witnesses. In his brief, he wrote, "'The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies.'"[41] In other words, Orth's compulsory-process claim is a denial-of-defense claim. He alerted the Nevada Supreme Court to this, and he makes it explicit in the amended petition.

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[39] ECF No. 32-5 at 21.

[40] *Crane v. Kentucky*, 476 U.S. 683 (1986) (citations omitted).

[41] ECF No. 32-5 at 20 (quoting *Washington v. Texas*, 388 U.S. 14, 19 (1967)).

With respect to reading Zafranovich's statements into the record, Orth has exhausted the complete-defense claim. As noted above, he did argue in his appellate brief that he was not allowed to introduce Zafranovich's statements to the police: "'The due process clauses in our constitutions assure an accused the right to introduce into evidence any testimony or documentation which would tend to prove the defendant's theory of the case,'" he noted.[42] Orth thus alerted the Nevada Supreme Court about the due-process aspect of the denial-of-defense claim regarding his inability to read Zafranovich's statements into the record.

Because Orth has presented to the Nevada Supreme Court all the facts and legal theories, in all their combinations, that underly his claim of ineffective assistance of appellate counsel, Ground Two (A) is exhausted.

4. Ground Two (A) relates back to the initial petition

Orth filed his initial petition before the one-year limitation period expired. But he filed his counseled amended petition after the one-year limitation period expired, so the grounds in the amended petition thus must relate back to the grounds in the initial petition for them to be timely. Respondents argue that the denial-of-defense claim in ground Two (A) does not relate back to the initial petition.

Respondents' base their argument upon the lack of a denial-of-defense claim in the initial petition. That basis is incorrect. Ground Two (A) relates back if it shares a common core of operative *fact* with a ground in the initial petition; it matters not whether Ground Two (A) shares a common legal theory.[43] Respondents do not argue that Orth did not allege any facts in the amended petition that he did not allege in the initial petition, and such an argument would fail.

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[42] ECF No. 32-5 at 21–22 (quoting *Vipperman v. State*, 614 P.2d 532, 534 (Nev. 1980)).

[43] *See Nguyen v. Curry*, 736 F.3d 1287, 1296–97 (9th Cir. 2013), *abrogated on other grounds by Davila v. Davis*, 137 S. Ct. 2058 (2017).

Ground Two of the initial petition was a claim that appellate counsel provided ineffective assistance by not raising a compulsory-process claim. In addition to arguing that the trial court did not allow him to recall Zafranovich, Orth argued that the trial court refused to admit into evidence Zafranovich's recorded statements to the police.[44] Ground Two (A) of the amended petition thus shares a common core of operative fact with Ground Two of the initial petition, making it timely.

Conclusion

IT IS THEREFORE ORDERED that respondents' motion to dismiss **[ECF No. 65] is DENIED.**

IT FURTHER IS ORDERED that respondents have until October 27, 2021, to file and serve an answer, which must comply with Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts. Petitioner will then have 30 days from service to file a reply.

Dated: August 27, 2021

U.S. District Judge Jennifer A. Dorsey

[44] ECF No. 6 at 22–38.

Scott Williams

PO Box 650

Indian Springs, NV

89070

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Clerk of the Court

Eighth Judicial District Court

Clark County, Nevada

200 Lewis Ave 3rd Floor

LV, NV 89155

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Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. SEAN ORTH, Defendant.	CASE NO. C-20-352701-1 DEPT. NO. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

WEDNESDAY, APRIL 13, 2022

RECORDER'S TRANSCRIPT OF PROCEEDING: DEFENDANT'S PRO SE MOTION TO WITHDRAW PLEA OF GUILTY/MOTION TO DISMISS CHARGES AS VIOLATIVE OF BROWN V. OHIO, 432 U.S. 161 (1977)

APPEARANCES:

For the State: ERIKA MENDOZA, ESQ., Chief Deputy District Attorney

For the Defendant: Pro Per

MARCUS K. KOZAL, ESQ., (Stand-by counsel)

RECORDED BY: VICTORIA BOYD, COURT RECORDER

Las Vegas, Nevada; Wednesday, April 13, 2022

[Proceeding commenced at 8:52 a.m.]

THE COURT: Let's go to page 19, C352701, State of Nevada versus Sean Orth. May the record reflect that Mr. Orth is present in custody. He is pro se. Mr. Kozal is here as stand-by counsel. Ms. Mendoza is here on behalf of the State.

All right. So this is on because the last time we were here Mr. Kozal gave you an opportunity to speak with Mr. Orth. Mr. Orth, have you had an opportunity to speak with Mr. Kozal?

THE DEFENDANT: I have, Your Honor.

THE COURT: Okay. And what is your request today, sir?

THE DEFENDANT: I'm still seeking to withdraw the plea and I'm still moving on the motion to dismiss based on the double jeopardy violation.

THE COURT: Okay. I had the motion to withdraw. Did you file a motion to dismiss?

THE DEFENDANT: It's with -- it's a -- it's joined with the motion to withdraw.

THE COURT: Okay. All right. All right.

Ms. Mendoza, are you prepared to argue that motion today?

MS. MENDOZA: Yes, Your Honor. I filed an opposition on March 16th.

THE COURT: I have. I've seen the opposition.

All right. Mr. Orth, you have anything you would like to add to

your motion?

THE DEFENDANT: I do. Just briefly, Your Honor.

I know that you have -- I know that you've read the motions and pay attention to yourself. I know you're familiar with what's going on. I'd like to include in the motion to [indiscernible] I'd like to address the motion to withdraw first.

THE COURT: Okay.

THE DEFENDANT: As you know, I litigated it. I litigated in my motion that when I was taken from my residence and put into a cell at High Desert, I was not granted access to a law library. I cited to the Court *Bounds versus Smith*. I also cited the *Bell versus Wolfish* and the due process violation associated with that.

On September 7th, 2021, the Court held an ex parte hearing. It wasn't Your Honor. This was before you took the case. There was an ex parte hearing. I submitted the minute order as a exhibit. And in that ex parte hearing was [indiscernible] DA Demonte and stand-by counsel who had submitted briefs on my not being entitled to the assistance of stand-by counsel. I would just like to briefly comment on that for a moment.

Stand-by counsel and in terms of everything's that litigated in the cases that I've submitted to you has to be understood that if you want to invoke pro se in society, you have the ability to access your laptop, walk down to the law library, hire your own experts, eccetera. It's a different obligation when they've taken me from the streets, from my home and they put me in a cell. They have an obligation to provide that

law library access. And I cited to you circuit case law, Nevada 9th Circuit as referenced *Milton versus Morris* just in reference to that.

So I had no law library access and Ms. Demonte who is allowed to argue ex parte that I had no rights to stand-by counsel as an assistant. She is absolutely correct. I did not have that, but in terms of being in custody, usually stand-by counsel's appointed to help the State what it is -- I mean, just so that we abide by due process principle of being allowed access to law.

So not being allowed access to the law and my stand-by counsel being specifically ordered to not assist me on -- in the September 7th order based on an ex parte hearing attributed to the plea that was entered. So I don't have access to the law, my stand-by counsel appointed not to assist me and we're coming up on calendar call and I have no way basically to litigate other than out of my Georgetown lodginal that I personally bought and a couple case laws that I bought from my County.

So in terms of the double jeopardy violation that we're getting to litigate, I don't have access to a lot of state law -- a lot of state case law. So now that I have the assistance of stand-by counsel, for example, he's explained to me that there is a statute that prohibits one case being litigated in two separate courts. Usually if there's a municipal court case and an associated justice court or district court case, then there only could be litigation in one court.

That parallels the United State's Supreme Court present that I presented to you on double jeopardy in the *Brown versus Ohio*, *Waller*

1 *versus Florida*. And in both of those cases you have municipal court
2 convictions, one is for joy riding and they try to -- in *Brown* they try to
3 prosecute later for the greater offense of auto theft. And the United
4 States Supreme Court held it was barred by double jeopardy because
5 the first prosecution went final and that prohibited the greater offense for
6 be prosecuted.
7 Having presented that to you, what happened in justice court
8 that the prosecutor keeps referring to saying, hey, you know, this is
9 litigated in justice court, you know, eccetera, eccetera, as shown there
10 was no presentation of case law when she made her argument in justice
11 court that the resist was a separate offense from the failing to yield.
12 And as I explained to you, she misrepresented to the Court
13 that the resist had nothing to do with being in the vehicle when the
14 declaration of arrest actually accused that I failed to yield. So the
15 municipal court prosecution was intriquely intertwined with it now being
16 prosecuted evade charge. I was never even charged with evade. The
17 prosecutor charged me with evade.
18 And I presented to you in the motion that in the justice court
19 proceedings, she put on Henderson Police Officer Alex Nelson who
20 testified that Henderson Patrol Officer Ashley Mangon [phonetic] was
21 not at the gate where the stop allegedly occurred. He specifically
22 testified to that and then she argued to the justice court that because
23 Mangon [phonetic] was not present at the gate when the stop occurred,
24 then the resist would have pertain to what occurred when I stepped out
25 of the vehicle.

8:59:12

[Proceeding concluded at **time**]

* * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Michelle Ramsey

Michelle Ramsey
Senior Court Recorder/Transcriber

IN THE SUPREME COURT OF THE STATE OF NEVADA

SEAN RODNEY ORTH,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK,
Respondent,
and
THE STATE OF NEVADA,
Real Party in Interest.

No. 84180

FILED

APR 14 2022

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

ORDER DENYING PETITION FOR A WRIT OF MANDAMUS

This pro se petition for a writ of mandamus challenges actions of the district court in continuing petitioner's preliminary hearing, denying petitioner's motion to suppress evidence, and violating double jeopardy. Petitioner also alleges the State manipulated the suppression proceedings by withholding material information.

This court has original jurisdiction to issue writs of mandamus, and the issuance of such extraordinary relief is within this court's sole discretion. *See* Nev. Const. art. 6, § 4; *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 474-75, 168 P.3d 731, 736-37 (2007). Petitioner bears the burden to show that extraordinary relief is warranted. *See Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 841 (2004). A writ of mandamus is not available when the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. *Williams v. Eighth Judicial Dist. Court*, 127 Nev. 518, 524, 262 P.3d 360, 364 (2011); *see also Pan*, 120 Nev. at 224, 88 P.3d at 841. The opportunity to appeal a final judgment typically provides an adequate legal remedy. *Williams* 127

Nev. at 524, 262 P.3d at 364 (2011); *see also Pan*, 120 Nev. at 228, 88 P.3d at 844 ("[An] appeal is generally an adequate remedy precluding writ relief.") Even when an appeal is not immediately available because the challenged order is interlocutory in nature, the fact that the order may ultimately be challenged on appeal from a final judgment generally precludes writ relief. *Pan*, 120 Nev. at 225, 88 P.3d at 841. Having considered the petition, we are not persuaded that our extraordinary intervention is warranted because petitioner has not demonstrated that an appeal from a final judgment below would not be a plain, speedy, and adequate legal remedy.

Additionally, we note that petitioner has not provided this court with all the necessary exhibits or documentation that would support his claims for relief. *See* NRAP 21(a)(4) (providing the petitioner shall submit an appendix containing all documents "essential to understand the matters set forth in the petition"). Therefore, without deciding the merits of the claims raised, we decline to exercise our original jurisdiction in this matter. *See* NRAP 21(b). Accordingly, we

ORDER the petition DENIED.

_____, C.J.
Parraguirre

_____, J.
Hardesty

_____, J.
Stiglich

cc: Sean Rodney Orth
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

SEAN RODNEY ORTH #96723
P.O. BOX 650
INDIAN SPRINGS, NEVADA 89070
PRO SE

FILED
APR 27 2022
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,
PLAINTIFF,
VS.
SEAN RODNEY ORTH,
DEFENDANT

C-20-352701-1
CASE NO. 20-CH-352701-1
DEPT NO. X

NOTICE OF MOTION / REQUEST TO SUBMIT SUPPLEMENT TO DEFENDANT'S MOTION TO WITHDRAW PLEA / MOTION TO DISMISS CHARGES FOR VIOLATION TO DOUBLE JEOPARDY PROHIBITION.

COMES NOW, SEAN RODNEY ORTH, DEFENDANT HEREIN, WHO RESPECTFULLY REQUESTS TO SUBMIT ADDITIONAL WRITTEN SUPPLEMENTAL ARGUMENTS IN SUPPORT OF THE PENDING MOTION TO WITHDRAW PLEA / MOTION TO DISMISS FOR VIOLATION OF DOUBLE JEOPARDY PROHIBITION.

THIS MOTION IS MADE BASED ON ALL DOCUMENTS IN THE RECORD, THE ATTACHED POINTS AND AUTHORITIES AND EXHIBITS.

RECEIVED
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CLERK OF THE COURT

POINTS AND AUTHORITIES.

A. INTRODUCTION.

DEFENDANT HAS ASKED THIS HONORABLE COURT TO ALLOW HIM TO WITHDRAW THE PLEA OF GUILTY TO STOP REQUIRED, NRS 484B.550(3)(b). HEARING IS SET FOR APRIL 13, 2022. DEFENDANT MOVES TO DISMISS FOR DOUBLE JEOPARDY. DEFENDANT IS IN A PRISON LOCKDOWN AND PRO SE. IT IS BEST TO PRESENT THIS HONORABLE COURT WITH RELEVANT POINTS AND AUTHORITIES PRIOR TO THE HEARING.

B. LEGAL ARGUMENTS.

I. ADDITIONAL WRITTEN ARGUMENTS SHOULD BE ALLOWED FOR CAUSE.

DEFENDANT HAS NO MEANINGFUL ACCESS TO A PHONE OR LAW LIBRARY WHILE IN CUSTODY WHICH IS A GOVERNMENTAL INTERFERENCE WHICH DENIES DUE PROCESS. MILTON V. MORRIS, 767 F.2d 1443, 1446-1447 (8th CIR. 1985). THE STATE WILL NOT BE PREJUDICED BY THE ILLEGAL POSITION IT HAS PUT ME IN FOR THE POINTS AND AUTHORITIES TO BE ENTERTAINED. THE POINTS AND AUTHORITIES ASSIST IN CLARIFYING THE ILLEGALITY OF THE PLEA AND PROSECUTION. I'D RATHER GET IT RIGHT NOW THAN HAVE THE COURT WASTE RESOURCES FOR LENGTHY LITIGATION WHILE I REMAIN ILLEGALLY IN CUSTODY. I AM IN CUSTODY ONLY BECAUSE OF THIS PROSECUTION.

CAUSE SHOULD BE FOUND TO HEAR THE FOLLOWING.

II. THE PLEA WAS ILLEGALLY ACCEPTED. TRICKERY AND INCOMPETENCE GOT THIS CASE TO A PLEA AGREEMENT IN AN UNCONSTITUTIONAL PROSECUTION.

FIRST, STANDBY COUNSEL SIGNED ALL OF THE PLEA AGREEMENT DOCUMENTS, ONE

OF WHICH STATED THAT I ADMITTED COUNSEL HAD GONE OVER ALL DEFENSES WITH ME. AT THE TIME OF ENTERING MY PLEA I EXPLAINED COUNSEL NEVER SPOKE TO ME ABOUT DEFENSES. I AM REPRESENTATIVE OF THIS CASE. THIS COURT WAS APPRISED OF DEFENDANT'S SITUATION OF HAVING NO LAW LIBRARY ACCESS BEFORE THE PLEA COLLOQUY BY MY MOTION TO DISMISS OR IN THE ALTERNATIVE MOTION FOR ORDER SEEKING ACCESS FILED SEPTEMBER 21 2021. THIS COURT ALSO KNEW STANDBY COUNSEL WAS ORDERED NOT TO ASSIST ME SEPTEMBER 7, 2021 AT ITS ORDER.

TO MAKE THE PLEA BINDING WOULD BE ERROR BECAUSE DUE PROCESS AND RIGHT TO EFFECTIVE SELF-REPRESENTATION UNDER U.S. CONST. AMENDS. VI AND XIV WERE BEING VIOLATED BY LACK OF LAW LIBRARY ACCESS AT TIME OF ENTRY OF PLEA. MILTON, 767 F.2d AT 1446-1447. HAD I HAD MEANINGFUL ACCESS TO LAW I WOULD HAVE MADE THE ARGUMENTS I NOW MAKE AND WOULD NOT HAVE PLED TO AN UNCONSTITUTIONALLY PROSECUTED CHARGE.

THAT BEING SAID, WE ARE HERE BECAUSE THE PROSECUTOR INITIATED A PROSECUTION VIOLATIVE OF DOUBLE JEOPARDY PROHIBITION AS CLEARLY SHOWN HEREIN.

THE PROSECUTOR WENT TO THE JUSTICE COURT PRELIM AND USED HER STATUS AGAINST THE PRO SE DEFENDANT WHO DID NOT EVEN KNOW A HEARING WAS TO BE HELD THAT DAY.[1] THE PROSECUTOR MADE A FRAUDULENT ARGUMENT THAT THE RESIST CHARGE WAS FOR A SEPARATE ACT FROM HER NOW PROSECUTION OF STOP

---

1. THE PRELIM WAS SET FOR FOR DECEMBER 3, 2020. THE PROSECUTOR AND STANDBY COUNSEL CONVERTED AN EX PARTE HEARING WITH THE COURT AND THE CASE WAS CONTINUED TO DECEMBER 9, 2020 WITHOUT MY KNOWLEDGE. I ARRIVED DECEMBER 3, 2020 THE SUPPOSE WITHOUT DISCOVERY (SEE EX.6 (PHT) AT 19-24, 31-32).

REQUIRED AT SIGNAL OF POLICE. EX. 6 (PHT.) AT 133-135. THE PROSECUTOR PROVIDED NO LEGAL CITATION TO SUPPORT THIS ARGUMENT. Id.

DEFENDANT NOW PRESENTS BROWN V. OHIO, 432 U.S. 161 (1977) THAT INVALIDATES THE JUSTICE COURT RULING THAT RESIST IS A SEPARATE ACT FROM BURGLARY. IN BROWN DEFENDANT WAS CHARGED IN ONE JURISDICTION WITH JOYRIDING FOR A VEHICLE STOLEN NOVEMBER 29, 1973 THAT WAS STILL IN HIS POSSESSION WHEN ARRESTED DECEMBER 8, 1973. SUBSEQUENTLY DEFENDANT WAS CHARGED IN A DIFFERENT JURISDICTION WITH AUTO THEFT AND JOYRIDING WHICH THE UNITED STATES SUPREME COURT FOUND VIOLATING DOUBLE JEOPARDY BECAUSE IT WAS A CONTINUOUS CRIME OVER THE COURSE OF A WEEK. Id. THE STATE LITIGATED THESE FACTS IN BROWN. OPPOSITION AT 6.

IN MY CASE THE RESIST CHARGE IS INTIMATELY INTERTWINED WITH THE NOW PROSECUTED STOP REQUIRED VIOLATION AS THEY ARE ALLEGED TO HAVE OCCURRED AT THE SAME TIME AND FOR THE SAME ACTS. THE MUNICIPAL COURT DECLARATION OF ARREST ACCUSED "I FAILED TO YIELD TO HPD PATROL OFFICERS WHO INITIATED A LAWFUL STOP ON A SUSPECT IN A FELONY CRIME" EX. 4 (DECLARATION, MUNICIPAL COURT).[2]. THE PROSECUTOR VIOLATED NRPC RULE 3.3(A)(1) (A LAWYER SHALL NOT KNOWINGLY MAKE A FALSE STATEMENT OF FACT OR LAW TO A TRIBUNAL OR FAIL TO CORRECT A FALSE STATEMENT OF FACT OR LAW PREVIOUSLY MADE TO THE TRIBUNAL) WHEN SHE ALLEGED IN JUSTICE COURT "IT SAYS NOTHING ABOUT FLEEING IN A VEHICLE WITH LIGHTS AND SIRENS IN THE MUNICIPAL COURT COMPLAINT" EX. 6 (PHT.) AT 135. THE PROSECUTOR AND THIS COURT NOW IGNORES FULL WEIGHT THE RESIST WAS FOR "FAILED TO YIELD TO HPD PATROL OFFICER WHO INITIATED A LAWFUL STOP ON" EX. 4.[2]. AGAIN, IT IS FACT THAT RESIST IS CHARGED FOR THE SAME REASON AS THE NOW PROSECUTED STOP REQUIRED VIOLATION.

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2. THE MUNICIPAL COURT DECLARATION IS AGAIN ATTACHED HERETO.

DEFENDANTS OTHER CITATIONS FIT SQUARELY WITH BROWN.

I LITIGATED IN MY MOTION THE OVERLAP IN ELEMENTS OF RESIST AND EVADE UNDER THE TEST OF BLACKBURGER V. U.S., 284 U.S. 299 (1932) AND LACHANCE V. STATE, 130 NEV. 263, 273 (2014). I NEED NOT REPEAT IT HERE. THE PROSECUTOR DID NOT COUNTER THIS ARGUMENT.

A MAJOR POINT IS THAT THE RESIST CONVICTION OCCURED OCTOBER 29, 2020 AND I RECEIVED A JAIL SENTENCE. CITY OF HENDERSON V. SEANCRAFT, CASE NO. 20CRH001366 (PCN1).

THE ALLEGED RESIST, PROHIBITED GUN POSSESSION CHARGE AND STOP REQUIRED ALLEGATIONS ALL ARISE OUT OF ONE STOP BY POLICE ON OCTOBER 28, 2020. THE GUN CHARGE AND STOP REQUIRED WERE NOT INITIATED UNTIL NOVEMBER 3 AND 16, 2020 IN JUSTICE COURT. STATE V. CRAFT, CASE NO. 20CRH001757. PLEASE COMPARE TO MORRIS V. REYNOLDS, 264 F.3d 38, 50-51 (2d CIR. 2001) (DOUBLE JEOPARDY BARS PROSECUTION FOR GREATER OFFENSE BECAUSE GUILTY PLEA TO LESSER INCLUDED OFFENSE CONSTITUTED CONVICTION, PLEA NOT OBJECTED TO BY PROSECUTION AND NO GREATER OFFENSE PENDING AT TIME PLEA ENTERED)

DECIDED THE SAME YEAR AS BROWN IN 1977 IS JEFFERS V. U.S., 432 U.S. 137, 152 (1977) WHERE THE UNITED STATES SUPREME COURT DISAGREED THAT DOUBLE JEOPARDY APPLIED FOR PROSECUTION OF A GREATER OFFENSE BECAUSE THE ACTS THAT CONSTITUTE THE GREATER ACT WERE NOT COMPLETE AT TIME OF FIRST PROSECUTION. Id. THIS IS CONSISTENT WITH BROWN THAT HELD THAT SINGLE-TRANSACTION CRIMINAL CONDUCT CAN BE THE BASIS FOR LATER PROSECUTION IF INCOMPLETE AT TIME OF FIRST PROSECUTION. 432 U.S. AT 169 N.7. ALL ACTS IN THIS CASE WERE COMPLETE UPON MY BEING TAKEN INTO CUSTODY ON OCTOBER 28, 2020. TO NOW RAISE GREATER OFFENSES FROM THE SINGLE-TRANSACTION IN A SECOND PROSECUTION AFTER THE FIRST PROSECUTION BEING COMPLETE OCTOBER 29, 2020 IS BARRED. THE NEW PROSECUTION WAS INITIATED NOVEMBER 3, 2020.

WALLER V. FLA., 397 U.S. U.S. 387, 394-95 (1970) FITS SQUARELY WITH BROWN AND THIS CASE. WALLER WAS CONVICTED IN MUNICIPAL COURT FOR DESTRUCTION OF PROPERTY AND DISORDERLY BREACH OF PEACE WHICH BARRED PROSECUTION FOR GRAND LARCENY LATER IN STATE COURT ON THE SAME FACTS. Id.

THE PROSECUTOR CONFESSES ERROR, RATHER THAN PRESENTING COUNTER LITIGATION SHE HANGS ON TO THE FRAUD SUBMITTED IN JUSTICE COURT WITHOUT CITATION TO LAW IN HER OPPOSITION AND ATTACHES THE MUNICIPAL COURT COMPLAINT AND NOT THE MUNICIPAL COURT DECLARATION OF ARREST THAT ACCUSES RESIST FOR A "FAILED TO YIELD." (EX. Y)[2]. STATES OPPOSITION AT 6-7. THE PROSECUTOR HAD A DUTY TO CORRECT A PREVIOUSLY MADE FALSE STATEMENT OF FACT OR LAW. NRCP RULE 3.3(A)(1). INSTEAD SHE SELLS THE SAME FALLACY SHE SUCCEEDED UPON BELOW.

DEFENDANT PRAYS THIS HONORABLE COURT WILL FIND THE PLEA INDUCED BY MISCONDUCT, IN VIOLATION OF DUE PROCESS AND RIGHT OF EFFECTIVE SELF REPRESENTATION AND DISMISS THE PROSECUTION ENFORCING DOUBLE JEOPARDY PROTECTIONS GUARANTEED BY U.S. CONST. AMEND. V, VI AND XIV.

C. Conclusion.

Defendants Prayer is this Prosecution will be terminated.

Respectfully submitted, April 5, 2022.

Sean Orth

This document does not contain a Social Security number.

Sean Orth

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b) I did mail a true and correct copy of the foregoing Supplement to Pending Motion to Erika Mendoza, C.D.D.A. 200 Lewis Ave., LV, NV. 89155 on April 5, 2022.

Sean Orth

SEAN ORTH

Petitioner provides handwritten copies to plaintiff.

Sean Orkbeta
Inmate 650
Florence Mcy Prison
P.O. Box 7500

Clerk of the Court
Eighth Judicial District Court
of Nevada
200 Lewis Ave 3rd Floor
Las Vegas Nevada 89155

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Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. SEAN ORTH, Defendant.	CASE NO. C-20-352701-1 DEPT. NO. X

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

MONDAY, MAY 2, 2022

RECORDER'S TRANSCRIPT OF PROCEEDING:

STATUS CHECK

APPEARANCES:

For the State: ERIKA MENDOZA, ESQ., Chief Deputy District Attorney

For the Defendant: Pro Per

MARCUS K. KOZAL, ESQ., (Stand-by counsel)

RECORDED BY: VICTORIA BOYD, COURT RECORDER

Las Vegas, Nevada; Monday, May 2, 2022

[Proceeding commenced at 8:40 a.m.]

THE COURT: State, this was vacated for today and I have no idea why. So let me tell you what day it's on calendar. I apologize that you, Mr. Orth, you had to come down here because this was vacated.

MR. KOZAL: Are we resetting it? We all received your written decision.

THE COURT: Right. So we need to reset it for sentencing. So while you guys are here, when do you want to set the sentencing?

THE DEFENDANT: Can we do 60 days, Your Honor?

THE COURT: Okay. Any objection to 60 days, Ms. Mendoza?

MS. MENDOZA: No.

THE COURT: All right. Sixty day sentencing date; that date is?

THE CLERK: June 27th at 8:30.

THE COURT: Okay. We'll put that date in Odyssey because there's no date in Odyssey yet.

MR. KOZAL: June 27th?

THE COURT: June 27th at 8:30 a.m. And, State, I'll need you to do an order to transport.

MS. MENDOZA: Yes. Of course.

THE COURT: All right.

MS. MENDOZA: Thank you.

THE COURT: Thank you.

MR. KOZAL: Thank you.

[Proceeding concluded at 8:41 a.m.]

* * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Michelle Ramsey

Michelle Ramsey
Court Recorder/Transcriber