IN THE COURT OF APPEALS OF THE STATE OF NEVADA

* * * *

THE STATE OF NEVADA,

Plaintiff/Movee,

vs.

THOMAS WILLIAM RANDOLPH

Defendant/Movant

CA No.:

District Court Case No.: 09C250966

EMERGENCY MOTION UNDER NRAP 27(e) AND REQUEST FOR WRIT OF MANDAMUS

(Decision Needed Before Closing Arguments of a Trial Now in Progress- Estimated Date to Completion is August 22-23, 2023)

From the Eighth Judicial District Court, Clark County
Honorable Tierra Jones, District Court Judge, Dept. 10

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NRAP 27(e) Certificate

Pursuant to Nevada Rule of Appellate Procedure 27(e)(3), counsel for defendant and movant Randolph provide the following information.

A. The Addresses of The Parties to This Litigation

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There are no pro se parties to this litigation.

B. The Facts Showing the Nature of the Claimed Emergency

This matter involves a retrial after the Nevada Supreme Court reversed and remanded defendant Thomas Randolph's original jury conviction and death sentence. *See Randolph v. State*, 136 Nev. Adv. Rep. 78, 477 P.3d 342 (2020) (en banc). The instant motion concerns Mr. Randolph's post-remand trial which began on August 7, 2023. As of August 10, 2023, the trial court has just finished the process of selecting a jury and litigating pretrial matters. The trial is anticipated to last approximately two-three weeks.

The question at issue in this Motion is whether both appointed attorneys for Mr. Randolph will be allowed to argue during closing statements pursuant to Nevada Revised Statute (NRS) 175.151. It is anticipated that closing arguments will occur on or about August 25 or 28, 2023.

Defendant Randolph maintains that NRS 175.151 allows both appointed counsel to argue during summation. *See Butler v. State*, 120 Nev. 879, 892, 102 P.3d 71, 81 (2004) (en banc), *overruled in part on other grounds by Lisle v. State*, 131 Nev. 356, 370, 351 P.3d 725, 735 (2015) (en banc). The plain language of the statute, as interpreted in *Butler*, confers that right on anyone charged in an indictment or information "for an offense punishable by death." NRS 175.151. The

complication in this case is that the State has, relatively recently, elected not to seek the death penalty against Randolph, because of, *inter alia*, his advanced age.[1]

On August 9, 2023, during an afternoon pretrial conference, Mr. Randolph's counsel requested, citing NRS 175.151, that both be allowed to argue during summation. Counsel for Randolph centered their argument on the plain language of NRS 175.151, as interpreted in *Butler*, and submitted a brief bench brief in support of that argument. The district court orally denied the request that same day. The grounds for that decision are that Mr. Randolph is no longer entitled to the rights conferred by NRS 175.151 because the State is no longer seeking to execute Mr. Randolph. (*See* August 8, 2023 Minutes (Appendix).)

Pursuant to Nevada Rule of Appellate Procedure 27(e)(3)(B), defendant Randolph submits that an expedited ruling of this issue is necessary before closing arguments begin in the current trial because he will suffer irreparable harm, that cannot be adequately addressed in a standard direct appeal, if the trial court ruling stands. Time is of the essence because this Court's prompt intervention will restore that right in time for it to be exercised. Further, clarifying Mr. Randolph's rights at this stage of the litigation will prevent further, more complicated, litigation in the future.

[1] Defendant Randolph was born on February 2, 1955.

C. Notification to Opposing Counsel

During the morning of August 10, 2023, counsel for Mr. Randolph sent an email notification to Chief Deputy District Attorney (DDA) Pamela Weckerly notifying her of Mr. Randolph's intent to file a FRAP 27(e) motion concerning the trial court's denial of Mr. Randolph's request to have both counsel argue during summation. DDA Weckerly acknowledged receipt and forwarded the email to her co-counsel, Chief DDA Christopher S. Hamner.

Counsel for Mr. Randolph will serve both DDA Weckerly and Hamner electronically when filing the instant Motion and will ensure that copies of the Motion are immediately emailed to the aforementioned counsel.

DATED this 14th day of August, 2022.

/s/ Joshua Tomsheck
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Attorney of Record for **Thomas Randolph**

NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities are described in NRAP 26.1(a), and must be disclosed in order that the justices of this court may evaluate possible disqualification or recusal.

1. Parent corporations and publicly-held companies: None

2. Names of all law firms that have appeared for the party post-remand: Hofland & Tomsheck, Christopher Oram Law Office.

3. If litigant is using a pseudonym, the litigant's true name: None

DATED this 14th day of August, 2022.

/s/ Joshua Tomsheck

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Attorney of Record for **Thomas Randolph**

RELIEF SOUGHT

Defendant Thomas Randolph requests an Order from this Court directing the trial court to allow both appointed counsel to provide closing arguments on his behalf pursuant to Nevada Revised Statute 175.151. Alternatively, this Court should clarify that the statute does not allow the State to utilize two attorneys for summation if the defense is not afforded that opportunity.

ROUTING STATEMENT

Pursuant to Nevada Rule of Appellate Procedure 17(b)(14), this Motion and Writ is presumptively routed to the Court of Appeals because the issue involves, or is at least analogous to, a pretrial order resolving a motion in limine.

ISSUE PRESENTED

Whether a defendant charged in an indictment or information with an offense punishable by death is still entitled to have both appointed attorneys argue on that individual's behalf if the State elects before the trial to no longer seek the death penalty?

STATEMENT OF FACTS

A jury convicted defendant Thomas Randolph of staging the death of his wife, then killing the hitman, during a staged burglary. That same jury sentenced Mr. Randolph to death. This Court reversed that conviction and sentence because the State impermissibly introduced evidence under Nevada Revised Statute

48.045(2) implicating Mr. Randolph in the death of a prior wife. A Utah jury acquitted Mr. Randolph of that allegation. *See Randolph v. State*, 136 Nev. Adv. Rep. 78, 477 P.3d 342 (2020) (en banc).

The facts of the instant offense are as follows. On the evening of May 8, 2008, Mr. Randolph called 911 to report than an intruder shot his wife in their shared home and that Mr. Randolph, in turn, shot and killed that intruder. *See Randolph*, 477 P.3d at 345. The intruder was Michael Miller, a friend of Mr. Randolph. *See id.*

A law enforcement investigation raised a number of questions about Mr. Randolph's version of the events. *See id.* Law enforcement began to suspect Mr. Randolph and uncovered evidence that he had taken out multiple life insurance polies on his wife before the killings. *See id.* Law enforcement also believed that Mr. Randolph and decedent Miller had "an extensive, secretive relationship." *Id.*

The State charged Mr. Randolph with conspiracy to commit murder and two counts of murder with the use of a deadly weapon. *See id.* at 346. The State sought the death penalty for both murders. *See id.* The State's theory was that Mr. Randolph enlisted Mr. Miller to kill Mr. Randolph's wife Sharon during a staged burglary of Mr. Randolph's residence. After Mr. Miller killed Sharon, Mr. Randolph killed Mr. Miller in that same house. *See id.* A jury convicted Mr. Randolph and sentence him to death.

This Court reversed Mr. Randolph's conviction and sentence because the State impermissibly introduced evidence that Mr. Randolph had conspired to kill his former wife in Utah. The complication was that Mr. Randolph had been acquitted by a Utah jury of the same alleged conduct. This unduly "inundated" the jury with evidence of Randolph's bad character. *See id.* at 350. Further, the fact that Mr. Randolph had acquitted cast "additional doubt on the district court's finding that the State had proved the Utah acts by clear and convincing evidence." *Id.* at 347.

Post-remand, Mr. Randolph elected to again proceed to trial. At a hearing that occurred on or about June 1, 2023, the State informed the trial court that it no longer was seeking the death penalty.

Mr. Randolph's second trial began on August 7, 2023, beginning with pretrial proceedings including, *inter alia*, litigation on the admissibility of expert testimony and the admissibility of prior bad acts under NRS 48.045. (*See* August 7, 2023 Minutes.) During the afternoon of August 9, 2023, the trial court orally denied Mr. Randolph's request to have both attorneys argue during summation pursuant to NRS 175.151. (*See* August 9, 2023 Minutes (Appendix).) The court found that, since the State withdrew its death penalty notice, the case was no longer a "capital" case and therefore it had the discretion to not allow both defense attorneys to argue. Conversely, the State could have separate attorneys argue during summation—one conducting the initial closing and the other rebuttal. (*See id*.)

Mr. Randolph respectfully submits that the trial court is incorrect. Nevada Revised Statute 175.151 does not speak to the actual penalty sought by the State but the maximum penalty attendant to the crime. *See* NRS 175.151 ("If the indictment or information be for an offense punishable with death, two counsel on each side may argue the case to the jury. . . "). It is the nature of the crime charged, not the penalty sought, that controls. Mr. Randolph is permitted by the statute to have both appointed counsel argue during summation.

Because this question is one of first impression to the Court, and irreparable harm that will occur should Mr. Randolph be forced to finish his trial under the trial court's current order, Mr. Randolph files this Emergency Motion and Writ.

POINTS AND AUTHORITIES

A. This Court's Expedited Intervention is Necessary to Preserve Mr. Randolph's Statutory and Constitutional Right to have both Counsel Argue on his Behalf

1). The Requirements for Granting this Emergency Motion and Writ

Nevada courts of appeals have jurisdiction to issue writs of mandamus under Article 6, section 4 of the Nevada Constitution. *See, e.g., Employers Ins. Co. of Nevada v. State Bd. of Examiners*, 117 Nev. 249, 252, 21 P.3d 628, 630 (2001). Writ relief is an extraordinary remedy, and therefore, the decision to entertain a writ petition lies with this Court. *See, e.g., Cheung v. Dist. Ct.*, 121 Nev. 867, 869, 124 P.3d 550, 552 (2005).

A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust, or station, or to control an arbitrary or capricious exercise of discretion. *See Borger v. District Court*, 120 Nev. 1021, 1025, 102 P.3d 600, 603 (2004); *see also* NRS 34.160 (providing statutory authority for when a writ may issue). Mandamus relief is appropriate where a petition raises important legal issues that are likely to be the subject of litigation within the Nevada district court system.[2] *See Borger*, 102 P.3d at 603. "A writ of mandamus is not available where the petitioner has a plain, speedy, and adequate remedy at law." *Id*. (citing *Widdis v. Dist. Ct*., 114 Nev. 1224, 1227, 968 P.2d 1165, 1167 (1998); NRS 34.170 & 34.330).

A district court's failure to apply, or adhere to, controlling legal authority "is a classic example of a manifest abuse of discretion that may be controlled through a writ of mandamus." *Gonzalez v. Dist. Ct.*, 129 Nev. 215, 217, 298 P.3d 448, 450 (2013). A manifest abuse of discretion can consist of "a clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule," for which mandamus relief is appropriate. *Gonzalez*, 298 P.3d at 450.

[2] A writ of prohibition is available when proceedings are without or in excess of the jurisdiction of the tribunal and to ensure that a district court operates within its jurisdiction. *See State v. District Court (Anzalone)*, 118 Nev. 140, 146-47, 42 P.3d 233, 237 (2002); *accord* NRS 34.320. The issue raised in this Motion falls within under the of a writ of mandamus, as opposed to prohibition, framework.

Writ relief is available where: 1) no factual dispute exists and the district court is obligated to take certain action; or 2) an important issue of law needs clarification, and considerations of sound judicial economy and administration militate in favor of granting the petition. *See Beazer Homes Nevada, Inc. v. District Court*, 120 Nev. 575, 579, 97 P.3d 1132 (2004). This Court has previously held it will also exercise its discretion to entertain a writ petition where an important issue of law needs to be decided or clarified, and where circumstances indicate an urgency or strong necessity. *See Cote H. v. District Court*, 124 Nev. 36, 39, 175 P.3d 906, 908 (2008); *accord Salaiscooper v. Eighth Judicial District Court*, 117 Nev. 892, 901, 34 P.3d 509 (2001) ("a writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station or to control an arbitrary or capricious exercise of discretion").

Defendant Randolph maintains that he meets the requirements for the issuance of a writ of mandamus. The trial court issued an order that prevents him from presenting closing argument from both of his appointed attorneys as is his right under NRS 175.151. Without this Court's intervention, he will forever lose this right. It would be difficult, if not impossible, to evaluate the prejudice imparted by this ruling on direct appeal.[3] While there isn't any Nevada precedent directly on-point,

[3] It is not dispositive, assuming *arguendo*, that this Court could examine the question on direct review, despite the fact it would be forced to evaluate the issue as something akin to structural error. The Court has exercised its discretion to entertain

the plain language of NRS 175.151 supports Mr. Randolph's contention. It would promote judicial economy to quickly decide Mr. Randolph's Writ request because granting him relief will promote judicial economy by eliminating a potential appeal or post-conviction issue that will be difficult to evaluate.

Mr. Randolph respectfully requests that this Court hear and grant this Motion and Request for a Writ of Mandamus.

B. The Plain Language of Nevada Revised Statute 175.151 Allows the Defense to Present Argument from both Assigned Attorneys Even if the State Withdraws its Intent to Seek the Death Penalty

The question as to whether a defendant may have two attorneys argue during closing argument is controlled by the language of Nevada Revised Statute (NRS) 175.151 which reads, in its entirety:

> If the indictment or information be for an offense punishable with death, two counsel on each side may argue the case to the jury, but in such case, as well as in all others, the counsel for the State must open and conclude the argument. If it be for any other offense, the court may, in its discretion, restrict the argument to one counsel on each side.

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a petition for mandamus under circumstances of urgency or strong necessity, or when an important issue of law needs clarification and sound judicial economy and administration favor the granting of the petition. *See State v. Second Judicial Dist. Court,* 118 Nev. 609, 614, 55 P.3d 420, 423 (2002). "[E]ven when an arguable adequate remedy exists, this court may exercise its discretion to entertain a petition for mandamus under circumstances of urgency or strong necessity, or when an important issue of law needs clarification and sound judicial economy and administration favor the granting of the petition." *Second Judicial Dist. Court*, 55 P.3d at 423.

The statute contains two provisions, each addressing separate and distinct grants of authority. *See Butler v. State*, 120 Nev. 879, 892-83, 102 P.3d 71, 81 (2004) (en banc), *overruled in part on other grounds by Lisle v. State*, 131 Nev. 356, 370, 351 P.3d 725, 735 (2015) (en banc). The first sentence of the statute apples to individual charged with a crime "punishable by death." The second applies in all other cases. *See Butler*, 102 P.3d at 81. "Both sentences must be read in conjunction with one another." *Id.*

The word "may" has significant in interpreting NRS 175.151 as it appears in the statute twice. *See id*. The term may, as used in legislative enactments, is often construed as a permissive grant of authority. *See id.* "However, the word 'may' as it is used in the first sentence of the statute gives the discretion in capital cases to the counsel for each party, not the trial court; whereas in the second sentence, the word 'may' gives the discretion in noncapital cases to the trial court." *Id.*

Butler reached this conclusion by noting that the second sentence of NRS 175.151 expressly states that for any noncapital offense, "the court ***may***, in its discretion, restrict the argument to one counsel on each side." *See id.* (quoting NRS 175.151). The first part of the statute does not grant the court discretionary authority, but the second sentence does. *See id.* Hence, the first portion of the statute is mandatory. A capital defendant's request to have both appointed counsel argue must be honored. *See id.*

The *Butler* decision is clear enough but the complication in Mr. Randolph's case is that the State is no longer seeking the death penalty. While this appears to be an issue of first impression, NRS 175.151 is not ambiguous on this point. The statute does not reference the ultimate penalty a defendant faces but the maximum sentence available given the offense charged. *See* NRS 175.151 ("If the indictment or information be for an offense punishable with death . . ."). This plain language controls. *See, e.g., State v. Lucero*, 127 Ne.v 92, 249 P.3d 1226 (Nev. 2011) ("The starting point for determining legislative intent is the statute's plain meaning; when a statute 'is clear on its face, a court cannot go beyond the statute in determining legislative intent.'" (quoting *Robert E. v. Justice Court*, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983))).

Further support for this contention can be found in *St. Pierre v. Sheriff*, 90 Nev. 282, 524 P.2d 1278 (1974). At the time of the *St. Pierre* decision, application of the death penalty was temporarily halted by the U.S. Supreme Court's decision in *Furman v. Georgia*, 408 U.S. 238 (1972). Defendant St. Pierre argued that, since first degree murder could no longer be denominated as a capital offense, the court was "compelled to admit him to bail" pursuant to Article 1, section 7 of the Nevada Constitution.[4] *See St. Pierre*, 524 P.2d at 1278.

[4] This provision reads: "All persons shall be bailable by sufficient sureties; unless for Capital Offenses or murders punishable by life imprisonment without possibility

After the *Furman* decision, the courts were "soon flooded with applications for bail from those charged with crimes previously denominated 'capital offenses.'" *Id.* Some jurisdictions responded by concluding the abolition of the death penalty eliminated capital offenses thereby making "all offenses bailable." *See id.* (citations omitted). The Nevada Supreme Court, however, did not follow that path. Instead, citing and quoting *People v. Anderson*, 493 P.2d 880 (Cal. 1972), it found "the underlying gravity of capital offenses endures" and therefore, anyone charged with such offenses should be denied bail when the "proof of guilt is evident or the presumption thereof great." *Id.* at 1279 (citing *Jones v. Sheriff*, 89 Nev. 175, 509 P.2d 824 (1973) (cleaned up)).

In 1973, following the lead of other states, the Nevada legislature specifically enumerated particular homicides as capital offenses. *See id.* (citing Stats. of Nev. 1973, ch. 798, § 5, p. 1803, codified as a part of NRS 200.030). The legislature also amended the bail statute—NRS 178.484—to amend the definition of "capital offenses" to include "any murder" defined in NRS chapter 200.[5] *See id.* This created a conflict between the bail statute and the Article 1, section 7 of the Nevada

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of parole when the proof is evident or the presumption great." Nev. Const. art. 1, § 7.

[5] Today, NRS 178.484(4) allows for an individual "arrested" for first-degree murder to be admitted to bail "unless the proof is evident or the presumption great."

Constitution which allows for bail in any case except for capital offenses or murders punishable by a sentence of life without parole. *See id.*

The *St. Pierre* court found that it was not "constitutionally permissible" to render a non-capital offense, *i.e.*, any degree of murder, nonbailable. This would create an unwarranted dichotomy where a murder could be a capital offense for the purposes of bail, but not for the purposes of punishment. *See id.* "Only those persons charged with the newly designated capital offenses may now be denied bail." *Id.* at 1280.

St. Pierre affirms that offenses are defined by statutory label based on the maximum sentences allowed for conviction. *See also* NRS 193.130(2)(a) (defining any felony which a sentence of death or life imprisonment "may be imposed" as a category A felony). NRS 175.151's reference to "an offense punishable by death" cannot be construed to mean only an offense where death is actively sought by the prosecution at the time of trial since the maximum penalty attendant to a conviction is a legislative construct. In *St. Pierre*, for example, no one could receive the death penalty at all because, at that time, the U.S. Supreme Court had halted application of the death penalty. Yet the *St. Pierre* court recognized the Nevada legislature was

free to designate offenses as "capital offenses" despite the impossibility at that time of imposing a death sentence.[6]

Mr. Randolph's contention that only the maximum penalty for the offense governs the inquiry is supported by the language of NRS 175.151. The statute does not refer to the ultimate punishment a defendant might receive. It applies when a defendant is charged with an offense "for an offense punishable with death." NRS 175.151. The statute does not speak to the ultimate punishment imposed for the crime of conviction but the degree of punishment allowed by statute.[7]

In this case, there is no question that Mr. Randolph has been charged with an offense punishable by death—first-degree murder. *See* NRS 200.030(4)(a). Mr. Randolph received that penalty after his first trial. The fact the State is not seeking death at this time does not, and cannot, change the category or nature of the felony charged.

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[6] Labelling an offense as capital or not is not relevant to a determination of Mr. Randolph's assignment of error as NRS 175.151 does not utilize or otherwise rely upon the term "capital offense."

[7] Contrast this with the language of Nevada Supreme Court Rule 250 which explicitly states that the enhanced protections it supplies defendants facing a death sentence "will no longer apply" if the State withdraws its notice of intent to seek the death penalty. *See* Nev. Sup. Ct. R 250(4)(e).

C. If the Trial Court is Correct and the Second, Permissive, Sentence of Nevada Revised Statute 175.151 Controls, that Court Erred in Allowing the Prosecution to Have Two Attorneys Argue on the State's Behalf

The trial court's order regarding NRS 175.151 is erroneous even it that court is correct and the second, discretionary portion of statute applies.

As set forth in *Butler*, NRS 175.151 contains two sentences. The first sentence applies to those charged with a capital offense while the second applies to other defendants. *See Butler v. State*, 120 Nev. 879, 893, 102 P.3d 71, 81 (2004) (en banc), *overruled in part on other grounds by Lisle v. State*, 131 Nev. 356, 370, 351 P.3d 725, 735 (2015) (en banc). The first sentence, allowing two counsel on each side to argue a case to the jury, is mandatory. The second sentence is permissive. *See Butler*, 102 P.3d at 81.

Mr. Randolph submits only the first, mandatory, provision of NRS 175.151 applies because the State charged Mr. Randolph by "indictment or information [] for an offense punishable by death." If this Court disagrees and finds that, because the State is no longer seeking the death penalty, only the permissible portion of NRS 175.151 applies, the lower court's order is still *ultra vires*.

As stressed in *Butler*, statutes should be given their plain meaning and "must be construed as a whole and not be read in a way that would render words or phrases superfluous or make a provision nugatory." *Id.* at 81. "Further, every word, phrase, and provision of a statute is presumed to have meaning." *Id.*

The second, permissive, sentence of NRS 175.151 reads: "If it be for any other offense, the court may, in its discretion, restrict the argument to one counsel on each side." The statute gives the Court discretion to either: 1) allow two counsel from each party to argue; or 2) "restrict the argument to one counsel on each side." NRS 175.151. The statute does not allow for the third option picked by the trial court—to restrict the defense to one counsel for argument but to allow the State to argue with two attorneys.

If this Court disagrees with Mr. Randolph and finds that only the permissive sentence of NRS 175.151 is applicable, the trial court must be directed to restrict the argument to one counsel on each side or allow two attorneys on each side to argue. These are the only two options supported by the plain language of the statute.

CONCLUSION

The district court erred when it found the first provision of NRS 175.151, which requires trial courts to allow two counsel to argue on behalf of a defendant, inapplicable because the State is no longer seeking the death penalty. The statute's plain language centers on the nature of the charges filed, not the prosecutor's ultimate sentencing determination. This plain language controls.

A writ of mandamus is appropriate when a district court issues "a clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule." *State v. Dist. Ct. (Armstrong)*, 127 Nev. 927, 932, 267 P.3d 777, 780 (2011) (quotation citation omitted). In the case at bar, the trial court misread the plain language of NRS 175.151 which only requires the defendant be charged with an offense which carries the death penalty. Mr. Randolph's request for relief is strong, the constitutional issues in play weighty, and this Court's intervention at this time will prevent needless and costly litigation in the future. *Cf. Redeker v. Dist. Ct.*, 122 Nev. 164, 167, 127 P.3d 520, 522 (2006), *limited on other grounds by Hidalgo v. Dist. Ct.*, 124 Nev. 330, 341, 184 P.3d 369, 377 (2008) (explaining the court considers "whether judicial economy and sound judicial administration militate for or against issuing the writ").

Mr. Randolph seeks only modest relief. This filing asks only that the district court be directed to follow the strictures of NRS 175.151 by allowing both of his defense attorneys to argue during closing argument. Because the law is clear that Mr. Randolph is right, and the potential prejudice he could suffer if the trial court's ruling stands apparent, he respectfully requests that this Court issue an order directing the trial court to allow both of Mr. Randolph's attorneys to argue in summation.

In the alternative, if this Court rejects Mr. Randolph's interpretation of NRS 175.151, the lower court should be directed to either allow one counsel for each side to argue or allow two for each side to argue. It is not tenable to restrict the defense, but not the State, as the trial court did in the case *sub judice*.

DATED this 14th Day of August 2023.

RESPECTFULLY SUBMITTED

/s/ Joshua Tomsheck
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Attorney of Record for **Thomas Randolph**

AFFIDAVIT OF COUNSEL

STATE OF NEVADA)
)
COUNTY OF CLARK)

I, Joshua Tomsheck, Esq., being first duly sworn, deposes and says:

1. I am an attorney license to practice law in the State of Nevada, and the United States District Court, State of Nevada, am a member of the firm of Hofland & Tomsheck and represent defendant Thomas Randolph pursuant to court appointment.

2. I have read the above and **foregoing *Petition for Writ of Mandamus or Prohibition,*** know the contents thereof, and that the same is true of my own knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

DATED this 14th day of August 2023.

JOSHUA TOMSHECK, ESQ.

SIGNED and **SWORN** to before me this 14th day of August, 2023.

NOTARY PUBLIC in and for said County and State

SARAH DANIELS
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 11-17-25
Certificate No: 21-3299-01

CERTIFICATE OF COMPLIANCE

1. I am an attorney duly license to practice law in the State of Nevada.

2. There is no plain, speedy, and adequate remedy in the ordinary course of law available to the defendant Thomas Randolph

3. I hereby certify that I have read the preceding and to the best of my knowledge, information, and belief, it is not frivolous, or interposed for any improper purpose.

4. I further certify that this Application for a Writ of Mandamus is on 8 1/2 inch by 11-inch paper and uses a proportionally spaced typeface that is 14-point. The total number of words, after accounting for excludable content, is **3,353.**

DATED this 14th day of August, 2022.

/s/ Joshua Tomsheck

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Attorney for Defendant Randolph

CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Appellate Procedure 25(c), that I am an employee of Hofland & Tomsheck, and that on this day, the 14th day of August, 2023, I filed the foregoing EMERGENCY MOTION UNDER NRAP 27(e) AND REQUEST FOR WRIT OF MANDAMUS with the Clerk of the Nevada Supreme Court and served same by personal service upon the following:

The Hon. Tierra Jones
Department 10
Clark County District Court
Las Vegas, Nevada 89101

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/s/ Sarah Daniels
An employee of Hofland & Tomsheck