

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 LEE
A. GATES, DISTRICT JUDGE,
Respondents,
and
SHANNON WARR,
Real Party in Interest.

No. 45370

FILED

SEP 09 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER GRANTING PETITION

This is an original petition for a writ of mandamus challenging a pretrial order of the district court directing the disclosure of the identity of a confidential informant. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

Petitioner, the State of Nevada, argues that the district court acted arbitrarily and capriciously by ordering the disclosure of the confidential informant's identity because he is not a material witness. Specifically, the State notes that it does not intend to call the confidential informant as a witness at trial because he was not at the crime scene, did not participate in the search and had no information relevant to the charged offense. In response, real party in interest, Shannon Warr, argues that the confidential informant's identity should be disclosed because he may have information relevant for Warr to rebut the intent to sell element of the charged offense or to establish a mere presence or procuring agent defense.

NRS 49.335 permits the State to refuse to disclose the identity of a confidential informant. However, the statutory right to refuse disclosure is not unlimited, and the district court shall order the State to disclose the identity of a confidential informant where there is "a reasonable probability that the informer can give testimony necessary to a fair determination of the issue of guilt or innocence."¹ In considering whether a confidential informant's identity should be revealed, this court has recognized that "[t]he identity of an informant need not be disclosed where he is not a material witness, because he can neither supply information constituting a defense nor rebut a necessary element of an offense."² Whether a district court erred in ordering disclosure requires this court to balance "protecting the necessary flow of information against the accused's right to prepare his defense," and depends upon the specific factual circumstances of each case.³

In this case, we conclude that the district court erred in ordering disclosure of the informant's identity because he was not a material witness. The confidential informant was not an active participant in the events giving rise to the criminal charge, and it is not reasonably likely that he had information in support of a defense theory of the case. Because we have concluded that the district court erred and the State has no adequate remedy at law, this court's intervention by way of extraordinary relief is warranted at this time.⁴ Accordingly, we

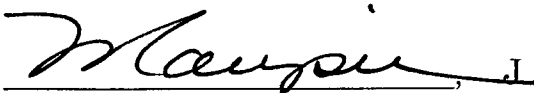
¹NRS 49.365.

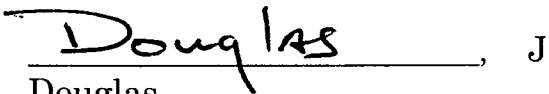
²Sheriff v. Vasile, 96 Nev. 5, 8, 604 P.2d 809, 810 (1980).

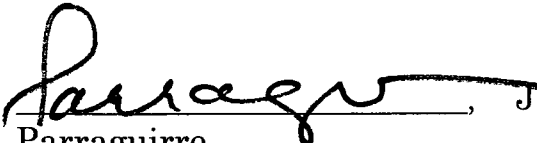
³Miller v. State, 86 Nev. 503, 506, 471 P.2d 213, 215 (1970).

⁴See NRS 34.160.

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to VACATE THE MAY 13, 2005, ORDER COMPELLING THE STATE TO DISCLOSE THE IDENTITY OF THE CONFIDENTIAL INFORMANT.


Maupin


Douglas


Parraguirre

cc: Hon. Lee A. Gates, District Judge
Clark County District Attorney David J. Roger
Clark County Public Defender Philip J. Kohn
Clark County Clerk