IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Petitioner,
vs.
THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WHITE PINE; THE HONORABLE STEVE L. DOBRESCU, DISTRICT JUDGE,
Respondents,
and
MARRITTE FUNCHES,
Real Party in Interest.

No. 48982

FILED

MAR 16 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING PETITION

This original petition for a writ of mandamus or prohibition challenges an order of the district court compelling the real party in interest, Marritte Funches, to be physically restrained during his forthcoming criminal trial.

Having considered the petition, the response, and the oral argument presented by the parties, we conclude that this court's

intervention by way of extraordinary writ is not warranted at this time. Accordingly, we

ORDER the petition DENIED.[1]

Maupin, C.J.
Maupin

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

Cherry, J.
Cherry

cc: Hon. Steve L. Dobrescu, District Judge
Attorney General Catherine Cortez Masto/Reno
State Public Defender/Carson City
White Pine County Clerk

[1]The Honorable Mark Gibbons, Justice, and the Honorable Nancy Saitta, Justice, did not participate in the decision of this matter.

HARDESTY, J., concurring:

While public policy relating to issues of courtroom security might well be served by this court's exercise of its discretionary original jurisdiction in this case,[1] the State has failed to demonstrate that it is aggrieved by the district court's order. The district court has conducted a case specific analysis that reflects particular concerns and specific needs requiring the use of shackles to protect the courtroom and its occupants.[2] Therefore, I concur that the petition should be denied.

I write separately to suggest that district courts may, in their consideration of less restrictive measures to satisfy safety concerns, consider a change of venue to a more secure facility in another county. This consideration is uniquely appropriate for White Pine County. As the district court concluded in this case, the substantial security risks inherent in the White Pine County courthouse are well documented. In certain cases, court occupants cannot be provided a sufficient level of protection and security. Further, these defendants may be subjected to inhumane confinement conditions during trial and placed in visible physical restraints, which raises the specter of due process violations. As the State suggests in its petition, appellate review of a conviction of a physically restrained defendant may require another trial; the expense and time of repeated trials does not promote judicial economy.

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[1]Walker v. Dist. Ct., 120 Nev. 815, 819, 101 P.3d 787, 790 (2004).

[2]See Deck v. Missouri, 544 U.S. 622 (2005).

Deck v. Missouri held that "the Constitution forbids the use of visible shackles . . . unless that use is 'justified by an essential state interest.'"[3] Deck further "permits a judge in the exercise of his or her discretion, to take account of special circumstances, including security concerns, that may call for shackling." An alternative to shackling a defendant is to change venue.

This court's recent decision in Hymon v. State observed that, as part of the determination respecting the use of restraints on the defendant, the district court must consider less restrictive means of restraint.[4] Arguably, a less restrictive means of restraint might be moving the trial to a more secure facility.

Although this court has never specifically addressed whether it or the district courts possess the inherent authority to order a trial to be removed to another venue, we have concluded that a court possesses inherent power to control the proceedings before it.[5] Other courts have concluded specifically that a court may order a trial moved. For example, the Colorado Supreme Court held that although rules of criminal procedure did not authorize the trial court to change venue in the absence of a motion, the trial court has inherent power to order a change of venue

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[3]Id. at 624.

[4]121 Nev. 200,209 n.20, 111 P.3 1092, 1099 n.20 (2005) (citing Gonzalez v. Pliler, 341 F.3d 897, 901 (9th Cir. 2003)).

[5]Young v. District Court, 107 Nev. 642, 646, 818 P.2d 844, 846 (1991)

at its own instance when necessary to assure the defendant a trial by an impartial jury.[6]

Article 6 section 7 of the Nevada Constitution provides: "The terms of the district courts shall be held at the County seats of their respective counties unless the Legislature otherwise provides by law." NRS 174.455(1) provides that a criminal action may be removed to another venue "on application of the defendant or state, on the ground a fair and impartial trial cannot be had in the county where the indictment, information, or complaint is pending." Subsection 2 of this provision requires that such application "shall not be granted . . . until after the voir dire examination has been conducted and it is apparent to the court that the selection of a fair and impartial jury cannot be had in the county where the [action] is pending."

However, under the unique circumstances existing in White Pine County, and perhaps other courtrooms in this state, the trial judge should not have to attempt to impanel a jury whose security is at risk before changing venue. While changing venue to another courthouse may create serious financial circumstances and may cause a serious fiscal impact to White Pine County in cases like this one, perpetual retrials of a defendant who is placed in visible physical restraints creates a greater fiscal impact.

I would recognize the inherent authority of the district court to change venue in those specific cases where the circumstances require a sufficient level of protection and security for court occupants, while

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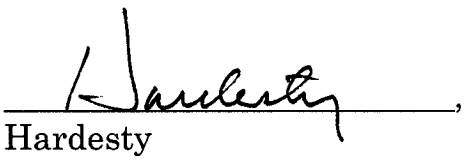
[6]Wafai v. People 750 P.2d 37, 44 (Colo. 1988).

allowing the defendant the opportunity to be tried without the indignity and possible Constitutional prejudice of having to appear in shackles.



_____, J.
Hardesty