

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,  
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
WASHOE, THE HONORABLE JEROME  
M. POLAHA, DISTRICT JUDGE,  
Respondents,  
and  
CATHERINE WYMAN,  
Real Party in Interest.

No. 50246

**FILED**

JUN 13 2008

TRACIE LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

ORDER DENYING PETITION

This is an original petition for a writ of prohibition seeking to restrain the district court from issuing a certificate of materiality pursuant to NRS 174.425 for the prescription drug records of a State witness who testified in the murder trial of real party in interest Catherine Wyman. The witness, Julie Baden-Dunn, is Wyman's daughter and apparently the State's only percipient witness to the murder of Wyman's four-year-old son in 1974.

Wyman filed a pretrial motion for a certificate of materiality to secure Dunn's mental health records, which are located in California. The district court denied the motion. Wyman filed a post-trial motion for a certificate of materiality seeking to obtain Dunn's mental health and prescription drug records to support her motion for new trial based on

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newly discovered evidence.<sup>1</sup> The district court denied the motion for a certificate of materiality. However, upon reconsideration of Wyman's motion, the district court indicated that it would grant the motion respecting Dunn's prescription drug records, but reaffirmed its decision denying a certificate of materiality concerning Dunn's mental health records. The district court stayed issuance of the certificate of materiality to allow the State an opportunity to file a petition for extraordinary relief with this court.

A writ of prohibition may issue to arrest the proceedings of a district court exercising its judicial functions when such proceedings are in excess of the jurisdiction of the district court.<sup>2</sup> A writ of prohibition will not issue, however, if a petitioner has a plain, speedy, and adequate remedy in the ordinary course of law.<sup>3</sup> Further, a writ of prohibition is an extraordinary remedy, and it is within the discretion of this court to determine if a petition will be considered.<sup>4</sup>

Considering the petition and the answer, we conclude that the State has not demonstrated that the district court exceeded its jurisdiction in entertaining the certificate of materiality respecting Dunn's prescription drug records nor has the State shown that the district court

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<sup>1</sup>See NRS 176.515.


<sup>2</sup>NRS 34.320.

<sup>3</sup>NRS 34.330; State v. Dist. Ct. (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005).

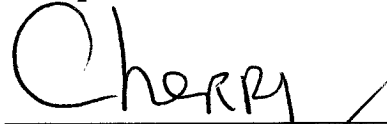
<sup>4</sup>Riker, 121 Nev. at 231, 112 P.3d at 1074.

manifestly abused its discretion in determining that the subject records were material to the case.<sup>5</sup> Accordingly, we

ORDER the petition DENIED.

 \_\_\_\_\_, J.

Maupin

 \_\_\_\_\_, J.

Cherry

 \_\_\_\_\_, J.

Saitta

cc: Hon. Jerome Polaha, District Judge  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Dennis E. Widdis  
Martin H. Wiener  
Washoe District Court Clerk

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<sup>5</sup>We note that the district court has not issued a certificate of materiality in this case. Prior to issuing such a certificate, the district court may need to consider any privilege attendant to the release of Dunn's prescription drug records. We are confident that the district will sufficiently address matters respecting any applicable privilege.