

IN THE SUPREME COURT OF THE STATE OF NEVADA

PETER-DEXTER BERRY, JR.,  
Petitioner,  
vs.  
THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
LINDA M. BELL, DISTRICT JUDGE,  
Respondents,  
and  
THE STATE OF NEVADA,  
Real Party in Interest.

No. 56507

**FILED**

NOV 05 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER DENYING PETITION

This is an original petition for a writ of mandamus or prohibition. Petitioner Peter-Dexter Berry, Jr., is awaiting trial after the district court granted his motion for a mistrial. Berry seeks a writ of mandamus or prohibition barring his retrial in the district court. See NRS 34.160; NRS 34.320; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). Berry argues that the district court's decision granting his motion for a mistrial bars retrial because the State impermissibly provoked the motion.

While an extraordinary writ is an appropriate remedy to address this issue, see Hylton v. District Court, 103 Nev. 418, 427, 743 P.2d 622, 628 (1987) (granting a writ of prohibition after finding that the Double Jeopardy Clause precluded further prosecution of the defendant on the alleged offenses), we conclude that relief is not warranted in this case. Generally, the fact that Berry moved for the mistrial "removes any double jeopardy bar to reprosecution." Melchor-Gloria v. State, 99 Nev. 174, 178,

660 P.2d 109, 111 (1983). However, a subsequent prosecution may be barred if Berry can demonstrate that the prosecutor engaged in “overreaching or harassment” to provoke his motion with the intent to subvert double jeopardy protections. *Id.* at 178, 660 P.2d at 112 (internal quotations and citations omitted). Our review of the record does not indicate that the prosecution engaged in prohibited conduct with such intent. The evidence that Berry contends the State failed to provide to the defense, which related to investigations that yielded no evidence, was neither exculpatory nor incriminating. Further, it did not appear relevant until after the defense had made its opening remarks. While the State may have discovered more evidence against Berry since the mistrial, there is no indication from the record that it intended to cause the mistrial to bolster its investigation. Accordingly, we

ORDER the petition DENIED.

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Pickering, J.  
Pickering

cc: Hon. Linda Marie Bell, District Judge  
Eighth District Court Clerk  
Clark County District Attorney  
Clark County Public Defender