

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN KERRY O'KEEFE,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
MICHAEL VILLANI, DISTRICT
JUDGE,

Respondents,

and


THE STATE OF NEVADA,

Real Party in Interest.

No. 58109

FILED

MAY 10 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK


ORDER DENYING PETITION

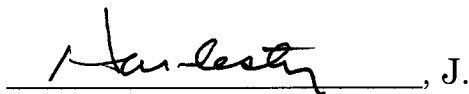
This original petition for a writ of prohibition or mandamus challenges an order of the district court denying petitioner Brian O'Keefe's motion to dismiss a criminal charge on double jeopardy grounds. O'Keefe is facing his third trial on charges of murdering his girlfriend. O'Keefe's first trial resulted in a conviction that was reversed by this court because of prejudicial jury instruction error. O'Keefe v. State, Docket No. 53859 (Order of Reversal and Remand, April 7, 2010). His second trial ended in a mistrial after the jury deadlocked on a verdict. O'Keefe claims that pervasive prosecutorial misconduct in the second trial and the State's efforts to call different witnesses in his upcoming trial operate as an exception to the well-settled proposition that double jeopardy poses no obstacle to a retrial following a hung jury. See Arizona v. Washington, 434 U.S. 497, 509 (1978). We disagree. First, the district court, in resolving O'Keefe's motion to dismiss, concluded that there was no

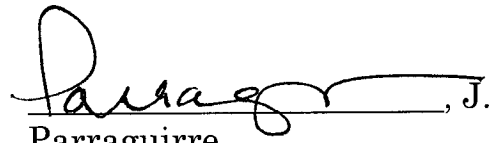
prejudicial misconduct by the State in the last trial. Moreover, the fact that the district court declared a mistrial because the jury was hopelessly deadlocked remains dispositive. See United States v. Perez, 22 U.S. 579, 580 (1824). We therefore conclude that double jeopardy poses no bar to O'Keefe's retrial and decline to intervene in this matter.¹

Accordingly, we

ORDER the petition DENIED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Michael Villani, District Judge
Palm Law Firm, Ltd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹In his petition, O'Keefe also argues that: (1) his speedy trial and due process rights have been violated; (2) the State should not be permitted to call an expert witness to testify about the effects of domestic violence; and (3) the district court erred in refusing his jury instruction on involuntary manslaughter. Because O'Keefe has an adequate remedy at law by way of direct appeal should he be convicted, we decline to consider these claims. See NRS 34.330.