

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; AND THE HONORABLE
STEVEN R. KOSACH, DISTRICT
JUDGE,

Respondents,

and

KEVIN ANTHONY HUNT,
Real Party in Interest.

No. 58758

FILED

NOV 18 2011

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

ORDER GRANTING PETITION

This original petition for a writ of mandamus challenges a district court order excluding evidence against the real party in interest in a murder prosecution. Petitioner argues that extraordinary relief is warranted because the district court manifestly abused its discretion by excluding evidence that was not the subject of the real party in interest's motion in limine. Petitioner further argues that it has no plain, speedy, and adequate remedy in the ordinary course of the law. NRS 34.170; Hickey v. District Court, 105 Nev. 729, 731, 782 P.2d 1336, 1337-38 (1989). We agree and grant the petition for a writ of mandamus. See NRS 34.160; State v. Dist. Ct. (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005) ("This court may issue a writ of mandamus to compel the performance of an act which the law requires as a duty resulting from an office, trust, or station or to control a manifest abuse of or arbitrary or capricious exercise of discretion."); Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981).

Real party in interest, Kevin Anthony Hunt, is awaiting trial on charges of child abuse causing substantial bodily harm and murder in connection with the death of his fiancé's two-year-old son. Hunt provided two recorded statements to Sparks Police Department Detective Jason Woodard in which he explained that he had taken the boy to the park one afternoon and the boy fell off of a slide. The child died approximately seven hours later from blunt force trauma to his abdomen and head. During his second interview with Detective Woodard, Hunt drew a map of and described the route he took to the park that day, all of which was captured on the recording. After Detective Woodard prepared his report, he destroyed his notes and the map.

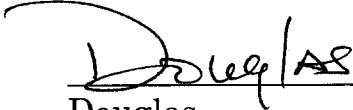
Hunt subsequently filed a motion in limine to preclude the State from making any references to the map due to its unavailability. After an evidentiary hearing, the district court ruled in petitioner's favor respecting the map. However, the district court also ruled sua sponte on the admissibility of two pieces of evidence petitioner intended to introduce at trial that were not the subject of Hunt's motion in limine. That evidence is the subject of this original writ petition.

Detective Woodard testified at the evidentiary hearing that during the course of the investigation, police detectives canvassed the neighborhood around the park area. The neighborhood canvass revealed two things. First, the police recovered a surveillance tape from a dentist's office that captured footage of the streets near and around the park. The video did not show Hunt's car traveling the route he told Detective Woodard that he took on the relevant date, suggesting that Hunt was not at the park, as he indicated in his police interview. Second, police detectives found a witness, Michael Richardson, who told them that he was at the park on the day the victim died and did not see a man and child matching Hunt's and the victim's descriptions, again suggesting that Hunt

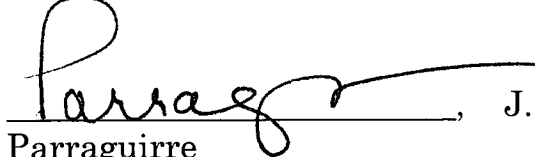
was not in the park as he told Detective Woodard. Although this evidence was elicited during the hearing and was mentioned in the pleadings, it was not the subject of Hunt's motion in limine but rather peripherally related to subject of the motion—Hunt's hand-drawn map.

After ruling on the map issue, the district court announced that it would not allow admission of the surveillance tape or the park witness's testimony. Having considered the petition, answer and the submissions before us, we conclude that the district court manifestly abused its discretion by sua sponte excluding evidence that was not the subject of Hunt's motion in limine or not otherwise allowing petitioner to demonstrate the relevance and admissibility of the evidence before excluding it. Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to vacate its order excluding the surveillance tape and Michael Richardson's testimony.

 J.
Douglas

 J.
Hardesty

 J.
Parraguirre

cc: Hon. Steven R. Kosach, District Judge
Washoe County District Attorney
Law Office of David R. Houston
Washoe District Court Clerk