IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Appellant,

vs.

WILLIAM GILMORE LACEY,

Respondent.

No. 35475

FILED

FEB 17 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an interlocutory appeal by the State from a pretrial order of the district court denying a motion that the State characterizes as a "motion to suppress evidence." See NRS 177.015(2)(upon good cause shown, the State may appeal "from a pretrial order of the district court granting or denying a motion to suppress evidence made pursuant to NRS 174.125"). On January 12, 2000, this court temporarily stayed the proceedings below pending receipt and consideration of a more detailed statement by appellant and opposition by respondent. The State has now supplemented its emergency motion for a stay, and respondent has filed an opposition.[1] For the reasons stated below, we dismiss this appeal.

Respondent Lacey is the subject of criminal proceedings below arising out of his alleged unlawful use of a corporate gasoline credit card. A jury trial was scheduled to commence on January 11, 2000. On December 30, 1999, and January 5, 2000, the State moved the district court to exclude the testimony of certain defense witnesses. The State alleged that defense counsel had not provided the State with timely

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notice of the defense witnesses pursuant to NRS 174.234(1)(a)(1); that the defense had otherwise not provided timely discovery to the State, and that defense counsel had improper contacts with potential witnesses in the case.

The district court agreed with the State that the notice of the defense witnesses was not timely provided to the State and that other discovery violations by the defense had occurred. The district court also determined, however, that the evidence did not establish improper contacts with potential witnesses by defense counsel. Further, the court ruled that in the absence of a showing of prejudice to the State, any discovery violations did not necessarily require exclusion of defense witnesses. Thus, the court indicated that it would reserve judgment on whether any particular witness should be excluded until it heard an offer of proof respecting the potential testimony and evaluated potential prejudice to the State, as well as other matters such as relevance and redundancy. This appeal followed.

We note initially that, contrary to the State's contention, the district court's rulings are not appealable determinations under NRS 177.015(2). NRS 177.015(2) authorizes the State to appeal from a pretrial order granting or denying a motion to suppress evidence. The statute, however, does not authorize the State to appeal from every pretrial ruling respecting the presentation of evidence. See State v. Shade, 110 Nev. 57, 867 P.2d 393 (1994). There is no allegation in this case that the testimony of any witness should be excluded because it was illegally obtained or constitutionally prohibited. The discretionary discovery

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[1]In the opposition, respondent requests this court to remand this matter to the district court with instructions to dismiss

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rulings of the district court at issue here are simply not the type of determinations respecting the suppression of evidence that are properly subject to the interlocutory, pretrial appeal provisions of NRS 177.015(2). Therefore, this court lacks jurisdiction to consider this appeal. See Shade, 110 Nev. at 63, 867 P.2d at 396-97.

Nonetheless, because it may affect the conduct of the trial below and the district court's exercise of its discretion respecting the testimony of certain witnesses at trial, we note that the witness list defense counsel provided to the State on January 4, 2000, was not untimely. NRS 174.234(1)(a)(1) requires the defendant in a criminal trial to provide the State with a witness list "not less than 5 judicial days before trial or at such other time as the court may direct." The defense notice was timely regardless of whether the five-day period commenced to run from the date the list was served on the State, see Sheriff v. Streight, 110 Nev. 1148, 881 P.2d 1337 (1994), or the five-day period is counted backward from the date the trial was set to commence, see Palace Station Hotel & Casino v. Jones, 115 Nev. ___, 978 P.2d 323 (1999). See also NRS 178.472 (in computing any period of time in a criminal case, the first day is not counted, but the last day is counted).[2]

Finally, we perceive no prejudicial error or abuse of discretion in the district court's ruling respecting defense counsel's alleged improper contacts with potential

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the criminal information. We deny this request.

[2]Here, respondent's trial was scheduled to commence on January 11, 2000. Counting the date notice was provided (January 4, 2000), and not counting that day, the fifth day was January 11, 2000, the day trial was scheduled to commence. Similarly, if the period is counted backward from the date the trial was

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witnesses. Thus, even assuming that this court has jurisdiction to consider this appeal, we conclude that the State has not demonstrated good cause for this court to do so. Accordingly, and for the reasons stated above, we hereby

ORDER this appeal dismissed.[3]

Maupin, J.

Shearing, J.

Becker, J.

cc: Hon. David A. Huff, District Judge
Attorney General
Lyon County District Attorney
Williams & Emm
Lyon County Clerk

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scheduled, that date (January 11, 2000) would not be counted, but the fifth day (January 4, 2000) would be counted.

[3]We vacate the temporary stay previously imposed on January 12, 2000.