

IN THE SUPREME COURT OF THE STATE OF NEVADA

JONATHAN LOPEZ,  
Petitioner,  
vs.  
THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
DOUGLAS SMITH, DISTRICT JUDGE,  
Respondents,  
and  
THE STATE OF NEVADA,  
Real Party in Interest.

No. 64285

**FILED**

OCT 31 2013

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *R. Malone*  
DEPUTY CLERK

*ORDER DENYING PETITION*

This original petition for a writ of mandamus challenges a district court decision granting a pretrial motion to strike expert witness.

The petition challenges a pretrial evidentiary decision. Because petitioner has a plain, speedy, and adequate remedy in the ordinary course of law by way of an appeal if he is convicted, *see* NRS 177.015(3), we decline to exercise our original jurisdiction.<sup>1</sup> NRS 34.170; *see Poulos v. Eighth Judicial Dist. Court*, 98 Nev. 453, 455, 652 P.2d 1177,

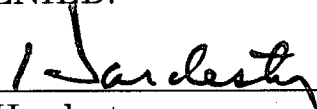
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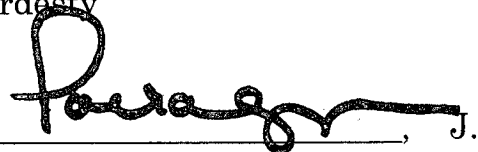
<sup>1</sup>Contrary to petitioner's suggestion, our order granting in part a prior writ petition in this matter did not determine the admissibility of any expert testimony. We merely directed the district court to vacate its order denying petitioner's motion to employ an expert at public expense, hold a hearing on the motion, and make the findings on the two considerations set forth in *Widdis v. Second Judicial Dist. Court*, 114 Nev. 1224, 968 P.2d 1165 (1998). *Lopez v. Eighth Judicial Dist. Court*, Docket No. 62754 (Order Granting Petition in Part, May 14, 2013).

1178 (1982); *see also State ex rel. Dep't Transp. v. Thompson*, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983).<sup>2</sup>

Accordingly, we

ORDER the petition DENIED.<sup>3</sup>

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

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

CHERRY, J., dissenting:

Because I would grant a short stay and direct the State to file an answer to the petition, I dissent. In particular, I am concerned that the

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<sup>2</sup>Although we are not inclined to intervene in this evidentiary matter pretrial, we remind the district court of the need to make a complete record of its decision so that the parties are aware of the scope and basis of its decision and there is a sufficient record for appellate review, should it be necessary. At this point, there is no written order. The petition filed with this court suggests that the district court's pretrial decision has "forc[ed] the Defense to abort its only defense to the State's primary theory of prosecution," but it appears that the State's motion sought to preclude the defense expert from testifying on one subject identified in the notice of expert witnesses—the defendant's state of mind during police interrogation—and did not seek to preclude the expert from testifying on a more general subject identified in the notice—"general concepts of interrogations taken under unusual and/or stressful circumstances." Striking the entirety of the defense expert's opinion would appear to exceed the relief sought by the State. A written order, entered before the trial begins, would avoid confusion.

<sup>3</sup>We therefore also deny the motion to stay the trial pending our resolution of this petition.

district court may have precluded the defense expert from testifying as to any of the subjects set forth in the notice of expert witnesses. If that is the case, I would be inclined to grant the petition.

Cherry, J.  
Cherry

cc: Hon. Douglas Smith, District Judge  
Law Office of Kristina Wildeveld  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk