

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,  
Petitioner,  
vs.  
THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
MICHELLE LEAVITT, DISTRICT  
JUDGE,  
Respondents,  
and  
JASON DUVAL MCCARTY,  
Real Party in Interest.

No. 85284

FILED

SEP 08 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Youney  
DEPUTY CLERK

*ORDER DENYING EMERGENCY  
PETITION FOR WRIT OF MANDAMUS*

This original, emergency petition for a writ of mandamus challenges a district court decision on the basis the district court manifestly abused its discretion when it refused to grant a mistrial based upon clear juror misconduct. Petitioner, the State, has also filed an emergency motion for stay.

Having considered the petition and the transcripts of proceedings provided by the State, we are not persuaded that the State has demonstrated that our discretionary, extraordinary intervention is warranted. *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991) (providing that this court has sole discretion in determining if a writ petition will be considered); *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004) (explaining that petitioner bears the burden of demonstrating that extraordinary relief is

warranted). To the contrary, we conclude that writ relief is not justified because the district court did not abuse its considerable discretion in finding that manifest necessity did not warrant granting the State's motion for a mistrial over the defendant's objection. *Rudin v. State*, 120 Nev. 121, 142, 86 P.3d 572, 586 (2004) ("Where the State moves for a mistrial or the court declares a mistrial on its own motion, double jeopardy bars retrial unless the declaration of the mistrial was dictated by manifest necessity or the ends of justice." (internal quotation marks omitted)); *see also Jeffries v. State*, 133 Nev. 331, 333, 397 P.3d 21, 25 (2017). Accordingly, we

ORDER the petition DENIED.<sup>1</sup>

  
\_\_\_\_\_, J.  
Silver

  
\_\_\_\_\_, J.  
Cadish

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Michelle Leavitt, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Law Office of Christopher R. Oram  
Hofland & Tomsheck  
Eighth District Court Clerk

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<sup>1</sup>Given our disposition, we deny as moot the State's emergency motion for stay of the district court proceedings.