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### Summary of State v. Gamos-Perez

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## ***State v. Gameros-Perez*, 78 P.3d 511 (Nov. 2003).<sup>1</sup>**

### **CRIMINAL PROCEDURE - EVIDENCE**

#### **Summary**

Jose Simon Gameros-Perez and Isidro Benitez-Medina, Respondents, were believed to be in possession of illegal narcotics and paraphernalia in their apartment. The Washoe County Sheriff telephonically applied for and obtained a warrant to search the respondents' apartment pursuant to NRS 179.045(2). The magistrate issued the warrant based on sworn oral statements that were later transcribed.

The warrant contained a statement that probable cause existed to believe the respondents were in possession of illegal narcotics and paraphernalia. It did not, however, contain an actual recitation of the probable cause for the search.

Upon execution of the warrant, heroin was found in the apartment. The respondents were then arrested. The district court granted respondents motion to suppress the evidence because the warrant did not contain a statement of probable cause. The State appealed.

The Nevada Supreme Court reversed the district court's order suppressing the evidence and remanded the issue of whether the transcribed oral statement established sufficient probable cause.

#### **Issue and Disposition**

##### **Issue**

Does a warrant issued pursuant to NRS 179.045(2) require a statement of probable cause on the face of the warrant?

##### **Disposition**

No, a warrant issued pursuant to NRS 179.045(2) does not require a statement of probable cause on the face of the warrant. However, the transcribed oral statement made under NRS 179.045(2) must establish sufficient probable cause to justify issuance of the warrant.

#### **Commentary**

##### **State of the law before *Gameros-Perez***

In *State v. Allen*<sup>2</sup> (*Allen I*), the court held that a warrant issued pursuant to NRS 179.045 may incorporate by reference an affidavit under NRS 179.045(5)(b).<sup>3</sup> However, the warrant itself must contain a statement of probable cause.

The holding in *Allen I* created uncertainty as to the proper application of NRS 179.045, therefore the court, in *State v. Allen*<sup>4</sup> (*Allen II*), clarified its interpretation of

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<sup>1</sup> By Mike Feliciano

<sup>2</sup> *State v. Allen*, 60 P.3d 475 (Nev. 2002).

<sup>3</sup> *Id.* at 478-79.

<sup>4</sup> *State v. Allen*, 69 P.3d 232 (Nev. 2003).

NRS 179.045. In that case, the court held that the incorporation by reference provision in NRS 179.045(5)(b) does not eliminate the requirement that the warrant contain a statement of probable cause “if the affidavit is not sealed or issued upon a recorded oral statement pursuant to section (2) of NRS 179.045.”<sup>5</sup> The court also stated that the opinion was not meant to apply to warrants issued under NRS 179.045(2).<sup>6</sup>

The ambiguities of *Allen I* and *Allen II* created uncertainty as to the proper application of NRS 179.045, therefore the court clarified the statute in *Gameros-Perez*.

### **The Holding in *Gameros-Perez***

The court held that a warrant issued under NRS 179.045(2) does not require a statement of probable cause on the face of the warrant. The court then clarified the options to obtain a warrant under NRS 179.045 as follows:

First, it is unnecessary for police authorities and judicial officers to recite a statement of probable cause on the face of search warrants issued pursuant to NRS 179.045(3), upon sealed affidavits and warrants issued pursuant to NRS 179.045(2)...Second, warrants issued upon unsealed affidavits must either state the probable cause for issuance and the names of persons whose affidavits support the application for the warrant on the face thereof, or the affidavit must be incorporated into the warrant by reference, physically attached to the warrant and left at the premises where the warrant is served.<sup>7</sup>

The district court incorrectly applied the *Allen* standards to the current case because those cases were not meant to apply to NRS 179.045(2). Therefore, the court reversed the district court’s holding that suppressed the evidence and remanded the case to determine if the transcribed statement established sufficient probable cause to justify issuance of a search warrant.

### **The Impact of *Gameros-Perez* on Nevada Law**

The holding in *Gameros-Perez* will result in clarity in the law regarding telephonic search warrants. This is because it explicates the ambiguities in the *Allen* decisions that caused uncertainty in the law.

The decision will also benefit the police because the precise procedures for obtaining a telephonic warrant are now explained. Hence, this will eliminate any doubts for police seeking a telephonic warrant as to the proper procedure.

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<sup>5</sup> *Id.* at 235.

<sup>6</sup> *Id.* at 235 n.16.

<sup>7</sup> *State v. Gameros-Perez*, 78 P.3d 511, 514 (Nov. 2003).

## **Conclusion**

*Gameros-Perez* definitively held that a warrant issued pursuant to NRS 179.045(2) does not require a statement of probable cause on the face of the warrant. Therefore, challenges to admissibility of evidence on the theory that a telephonic warrant does not contain a statement of probable cause on the face of the warrant is likely to be unsuccessful.