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### Gathrite v. Eighth Jud. Dist. Ct., 135 Nev. Adv. Op. 54 (Nov. 7, 2019)

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#### Recommended Citation

Arakawa-Pamphilon, Skylar, "Gathrite v. Eighth Jud. Dist. Ct., 135 Nev. Adv. Op. 54 (Nov. 7, 2019)" (2019). *Nevada Supreme Court Summaries*. 1272.  
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STATUTORY INTERPRETATION: PRESENTING SUPPRESSED EVIDENCE TO A  
GRAND JURY

**Summary**

For purposes of NRS 172.135(2), evidence that has been suppressed in justice court proceedings on a felony complaint is not “legal evidence,” and therefore, may not be presented to a grand jury. The Court will grant an exception to this rule if the suppression was reversed before the grand jury proceedings.

**Backgrounds**

In the justice court, the State charged Deandre Gathrite (“Gathrite”) with murder with a deadly weapon and possession of a firearm by a prohibited person. Before his preliminary hearing, Gathrite filed, and the justice court granted, a motion to suppress a gun and statements Gathrite made to the police. The State neither objected to the suppression nor appealed it, and instead dismissed the criminal charges without prejudice. The State then took the possession charge to the grand jury, presenting only the suppressed evidence. The grand jury indicted Gathrite for possession of a firearm by a prohibited person.

Following his indictment, Gathrite filed a pretrial petition for a writ of habeas corpus. The writ primarily alleged that the State erred by presenting suppressed evidence to the grand jury. The district court disagreed and denied the petition. Gathrite then petitioned the Court for a writ of mandamus, asking it to compel the district court to grant his petition.

**Discussion**

To begin, the Court stated that it normally does not issue writs of mandamus to “review pretrial challenges to the sufficiency of an indictment,” but has made exceptions for purely legal questions.<sup>2</sup> This case was a purely legal question. Therefore, the Court concluded, it would consider the petition on the merits.

First, the Court addressed Gathrite’s principal argument: that the State erred by presenting suppressed evidence to the grand jury. Pursuant to NRS § 172.135(2), “the grand jury can receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence.”<sup>3</sup> The Court had never analyzed the phrase “legal evidence” for purposes of NRS § 172.135(2).

The Court proceeded to interpret the statutory phrase for the first time, acknowledging that “when a statute’s language is plain and its meaning clear, the courts will apply that plain language.”<sup>4</sup> Referring back to the year the Legislature enacted NRS § 172.135(2), the Court considered how *Black’s Law Dictionary* defined “legal” and “legal evidence.” Based on those

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<sup>1</sup> By Skylar Arakawa-Pamphilon.

<sup>2</sup> *Ostman v. Eighth Judicial Dist. Court*, 107 Nev. 563, 656 (1991).

<sup>3</sup> NEV. REV. STAT. § 172.135(2) (2019).

<sup>4</sup> *Leven v. Frey*, 123 Nev. 399, 403 (2007).

definitions, the Court concluded that, at the time the statute was enacted, legal evidence meant evidence that was admissible under law.

If evidence is suppressed because police violated a defendant's constitutional rights in procuring it, then that evidence is inadmissible. Therefore, such evidence is not legal evidence.

Relying on *Sheriff v. Harrington*, 108 Nev. 869 (1992), the State first argued that it could present the suppressed evidence to the grand jury without violating NRS § 172.135(2), because the State was purportedly not bound by the justice court's suppression ruling. In *Harrington*, a grand jury indicted the defendant based on a DUI conviction that was dismissed by the justice court on constitutional grounds.<sup>5</sup> In a pretrial writ, the defendant argued that the justice court's decision to dismiss the DUI was evidence that had to be presented to the grand jury, pursuant to NRS § 172.145(2).<sup>6</sup> The Court disagreed, finding that the justice court's decision was a legal opinion, not evidence.<sup>7</sup>

In analogizing to *Harrington*, the State argued that the justice court's suppression ruling in Gathrite's case also was not evidence. Therefore, it did not need to be presented to the grand jury. Distinguishing this case, the Court stressed that *Harrington* did not consider NRS § 172.135(2) or whether suppressed evidence was legal evidence. Therefore, the two cases were not analogous.

In the alternative, the state argued that the justice court's suppression was not binding outside the proceedings in justice court. The Court entertained that argument, acknowledging that when a justice court binds a defendant and orders a trial in district court, parties will often relitigate the justice court's suppression rulings. However, the Court found that this argument bore little relationship to the issue on petition for writ: Pursuant to NRS § 172.135(2), is evidence suppressed by the justice court during a preliminary hearing "legal evidence" that can be presented to the grand jury?

Precedent holds that when a State brings proceedings before the grand jury, it must comply with evidentiary rules, such as NRS § 172.135(2). Regarding the legal evidence requirement, the Legislature has made no exception for evidence suppressed by a justice court during a preliminary hearing. What is more, no statutory provisions expressly or implicitly limit the legal effect of a justice court's suppression ruling when the State proceeds to the grand jury.

## **Conclusion**

If the State wishes to present the grand jury with suppressed evidence, it may seek an expedited appeal of the justice court's suppression ruling. When a State has not successfully challenged a suppression ruling prior to grand jury proceedings, then the State is prohibited from presenting the grand jury with that suppressed evidence.

The State did not challenge the justice court's suppression. Therefore, as Gathrite alleged in his pretrial habeas petition, the suppressed evidence was not legal evidence and the State erred by presenting it to the grand jury. Because the State presented only the suppressed evidence in the grand jury proceedings against Gathrite, the district court abused its discretion by denying Gathrite's petition.

Granting Gathrite's petition in part, the Court issued a writ of mandamus instructing the district court to vacate its order denying Gathrite's pretrial petition for writ of habeas corpus.

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<sup>5</sup> *Sheriff v. Harrington*, 108 Nev. 869, 871 (1992).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*