

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 LEE A. GATES, SENIOR
JUDGE,
Respondents,
and
JOSEPH NORTON,
Real Party in Interest.

No. 61407

FILED

AUG 08 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *Tracie K. Lindeman*
DEPUTY CLERK

ORDER DISMISSING PETITION

This original petition for a writ of mandamus or prohibition challenges a district court order granting a defense motion for a directed verdict on two counts at the close of evidence in a criminal prosecution.

The district court clearly exceeded its authority when it granted the defense motion. In a criminal case being tried before a jury, if the district court believes there is insufficient evidence to find the defendant guilty of a charge, the district court has authority to give an advisory instruction to acquit or enter a judgment of acquittal if the jury finds the defendant guilty, but it has no authority to take the case from the jury and direct a verdict. State v. Combs, 116 Nev. 1178, 1180, 14 P.3d 520, 521 (2000); NRS 175.381; see also State v. Wilson, 104 Nev. 405, 407, 760 P.2d 129, 130 (1988).

Because it appeared that the district court had exceeded its authority in granting the motion for a directed verdict and therefore the petition had arguable merit,¹ we granted a stay of the trial pending further order of this court and set an expedited schedule for the real party in interest to respond to the petition. Despite that order, the district court allowed the jury to continue deliberations on the remaining charges, opining that the “trial” was over before this court granted the stay.² Later


¹It appears from the petition that the district court had not entered a final, written order granting the motion for directed verdict, and none of the subsequent filings have suggested otherwise. If such an order had been filed, we may have had to deny the petition. See Smith v. Massachusetts, 543 U.S. 462, 467 (2005) (indicating that “postacquittal factfinding proceedings going to guilt or innocence violates the Double Jeopardy Clause”); id. at 471-72, 474-75 (suggesting that seeking reconsideration of a ruling before the proceedings move forward could eliminate any prejudice to the defendant and may be sufficient to render an order granting an acquittal nonfinal, thereby preventing the implication of the Double Jeopardy Clause).

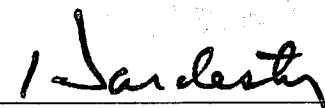
²The district court’s interpretation of the word “trial” as used in our order to exclude jury deliberations is exceedingly restrictive, if not disingenuous. See generally NRS 175.391-.533 (addressing conduct of jury and return of verdict in chapter entitled “Trial”); Schiappa v. Ferrero, 767 A.2d 785, 789 (Conn. Ct. App. 2001) (“In a general sense, the term trial means the investigation and decision of a matter in issue between parties before a competent tribunal, including all the steps taken in the case from its submission to the court or jury to the rendition of judgment.”); Hannah v. State, 92 S.E. 2d 89, 93 (Ga. 1956) (“The deliberations of a trial jury are just as much a part of a trial as any other act or procedure of the court in reference thereto”); State v. Pritchard, 54 N.E.2d 283, 285 (Ind. Ct. App. 1944) (“A trial includes all steps taken in a cause from the time it is submitted for trial until the rendition of final judgment”); Leonard’s of Plainfield v. Dybas, 31 A.2d 496, 497 (N.J. 1943) (“The trial of a cause is not concluded until a verdict has been rendered and the jury discharged.”); Black’s Law Dictionary 1348 (5th ed. 1979) (defining “trial” as “[a] judicial
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the same day, the district court accepted the jury's verdict on those charges. Although the district court's conduct violated our order, it also rendered this petition moot. Now that the jury has returned its verdict and been discharged, we can afford petitioner no relief because the Double Jeopardy Clause precludes a second trial even though the district court clearly erred in granting the directed verdict. Combs, 116 Nev. at 1181, 14 P.3d at 521 ("It is a violation of the Double Jeopardy Clause '[t]o permit a second trial after an acquittal, however mistaken the acquittal may have been.'" (quoting United States v. Scott, 437 U.S. 82, 91 (1978) (emphasis added))). Regardless of our view of the district court's actions in granting the directed verdict and in response to our order staying the trial, we cannot intervene. We therefore

ORDER the petition DISMISSED.


_____, J.
Douglas


_____, J.
Saitta


_____, J.
Hardesty

... continued

examination and determination of issues between parties to action, whether they be issues of law or of fact" (citations omitted) (emphasis added)). Even accepting that our meaning may have been unclear, the district court's duty was to maintain the status quo and seek clarification.

cc: Chief Judge, The Eighth Judicial District Court
Lee A. Gates, Senior Judge
Attorney General/Carson City
Clark County District Attorney
Clark County Public Defender
Eighth District Court Clerk