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Electronically Filed
Nov 06 2014 03:27 p.m.
Tracie K. Lindeman
Clerk of Supreme Court**IN THE SUPREME COURT OF THE STATE OF NEVADA**

BRYAN FERGASON,

Appellant,

Case No.: 62357

vs.

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT,

Respondent.

Appeal from The Eighth Judicial
District Court, The Honorable Douglas
E. Smith Presiding**MOTION TO REINSTATE RESPONDENT'S APPENDIX IN PART
AND NOTICE OF FILING AMENDED ANSWERING BRIEF**

Respondent, Las Vegas Metropolitan Police Department ("LVMPD"), by and through its counsel of record, Marquis Aurbach Coffing, hereby moves this Court pursuant to NRAP 10(c) to reinstate Respondent's appendix in part and provides notice to the Court and all counsel that an amended answering brief has been filed concurrently with this motion.

On July 23, 2014, LVMPD submitted its answering brief and Respondent's appendix, along with its motion for judicial notice. On August 25, 2014, this Court filed its order denying judicial notice and striking Respondent's appendix. On September 2, 2014, the parties filed their

1 stipulation to allow LVMPD to file a motion in the District Court to settle the
2 record pursuant to NRAP 10(c). This Court granted the stipulation on
3 September 11, 2014, and suspended the briefing schedule for 60 days to allow
4 LVMPD to file its motion in the District Court. The District Court order
5 granting LVMPD's motion to settle the record pursuant to NRAP 10(c) was
6 filed on November 6, 2014.¹

7 In the order, the District Court acknowledged that it considered and took
8 judicial notice of the entire criminal proceedings in Case No. C228752 and the
9 related proceedings in the Nevada Supreme Court, particularly noting the
10 following documents:

- 11 • Reporter's Partial Transcript—Trial by Jury, May 15, 2008 in Case
12 No. C228752;
- 13 • Reporter's Partial Transcript—Trial by Jury, May 19, 2008 in Case
14 No. C228752;
- 15 • Reporter's Partial Transcript—Trial by Jury, May 27, 2008 in Case
16 No. C228752;
- 17 • Reporter's Partial Transcript—Trial by Jury, May 28, 2008 in Case
18 No. C228752;
- 19 • Reporter's Partial Transcript—Trial by Jury, May 29, 2008 in Case
20 No. C228752;

21
22
23 ¹ A certified copy of the order granting LVMPD's motion to settle the record is
attached as **Exhibit 1**.

- Dated this 6th day of November, 2014.

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Attorneys for Respondent, LVMPD

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the foregoing **MOTION TO REINSTATE**
3 **RESPONDENT'S APPENDIX IN PART AND NOTICE OF FILING**
4 **AMENDED ANSWERING BRIEF** was filed electronically with the Nevada
5 Supreme Court on the 6th day of November, 2014. Electronic Service of the
6 foregoing document shall be made in accordance with the Master Service List
7 as follows:

8 Ryan Daniels, Esq.

9 I further certify that I served a copy of this document by mailing a true
10 and correct copy thereof, postage prepaid, addressed to:

11 Thomas J. Moreo
12 Chief Deputy District Attorney
13 Clark County District Attorney
14 200 Lewis Ave., 3rd Floor
15 Las Vegas, NV 89155
16 *Co-counsel for Respondent, LVMPD*

17 /s/ Leah Dell

18 Leah Dell, an employee of
19 Marquis Aurbach Coffing
20
21
22
23

Exhibit 1

ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED

NOV 06 2014

John J. Sullivan
CLERK OF COURT

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

Plaintiff,

Case No.: 07A537416
Dept. No.: VIII

vs.

U.S. CURRENCY \$281,656.73,

Defendant.

Date of Hearing: October 13, 2014
Time of Hearing: In Chambers

**ORDER GRANTING LVMPD'S MOTION TO SETTLE
THE RECORD PURSUANT TO NRAP 10(c)**

Plaintiff, Las Vegas Metropolitan Police Department ("LVMPD"), filed its Motion to Settle the Record Pursuant to NRAP 10(c) on September 5, 2014, and the Supplement to LVMPD's Motion to Settle the Record Pursuant to NRAP 10(c) on October 7, 2014. No opposition having been filed, the motion having come on for hearing on October 13, 2014, the Court having considered the motion, and good cause appearing therefore, the Court hereby orders as follows:

The Court previously granted LVMPD's motion for summary judgment against all Defendants in this case on November 28, 2012. Prior to granting summary judgment, the Court held a hearing on November 13, 2012. During this hearing, the Court heard argument from all parties and took LVMPD's motion under submission to issue a written decision. The Court related at the time of the hearing that it would review the related criminal proceedings and the pending Supreme Court case.

In making its decision, the Court reviewed the related criminal proceedings in Case No. C228752. Out of an abundance of caution, the Court also reviewed the Supreme Court proceedings and decisions arising from the related criminal case. LVMPD moved this Court to settle the record pursuant to NRAP 10(c) and itemize of which documents were reviewed in making its decision to grant summary judgment.

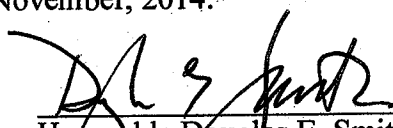

1 The Court previously took judicial notice of the entire related criminal proceedings in
2 Case No. C228752, including but not limited to the following specific documents as a
3 consideration in granting LVMPD's motion for summary judgment:

- 4 • Reporter's Partial Transcript—Trial by Jury, May 15, 2008 in Case No. C228752;
- 5 • Reporter's Partial Transcript—Trial by Jury, May 19, 2008 in Case No. C228752;
- 6 • Reporter's Partial Transcript—Trial by Jury, May 27, 2008 in Case No. C228752;
- 7 • Reporter's Partial Transcript—Trial by Jury, May 28, 2008 in Case No. C228752;
- 8 • Reporter's Partial Transcript—Trial by Jury, May 29, 2008 in Case No. C228752;
- 9 • Nevada Supreme Court August 4, 2010 Order of Affirmance in Case No. 52877.

10 which arose from District Court Case No. C228752.

11 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that
12 LVMPD's Motion to Settle the Record Pursuant to NRAP 10(c) is GRANTED and judicial
13 notice of these itemized documents is hereby ACKNOWLEDGED and CONFIRMED.

14 IT IS SO ORDERED this 6 day of November, 2014.

15 
16 Honorable Douglas E. Smith
District Court Judge 

17 I hereby certify that on the date filed, I caused to be
18 placed a copy of the foregoing Order in the folder(s)
in the Clerk's Office or mailed to the following:

19 Thomas Moreo, Esq.	DISTRICT ATTORNEY'S OFFICE	
20 Ryan Daniels, Esq.	SYLVESTER & POLEDNAK	
21 Bryan Fergason	(BAC #96803)	High Desert State Prison, PO Box 650 Indian Springs, NV 89070-0650
22 Robert Holmes, III	(BAC #1034184)	Southern Desert Correctional Center, PO Box 208 Indian Springs, NV 89070-0208
23 Daimon Monroe	(BAC #38299)	High Desert State Prison, PO Box 650 Indian Springs, NV 89070-0650
24 Tonya Trevarthen,	807 David Curry Drive	1409 Hermitage Drive Round Rock, TX 78664 Round Rock, TX 78681-1924

25 SUSANNE ANDERSON, Judicial Assistant

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE


CLERK OF THE COURT

NOV 06 2014