

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT HOLMES, III,

Appellant,

vs.

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT,

Respondent.

Case No.: 71680 Electronically Filed
Dec 06 2016 02:31 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Eighth Judicial District
Court, The Honorable Douglas E. Smith
Presiding

MOTION TO DISMISS APPEAL

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Attorneys for Respondent, Las Vegas Metropolitan Police Department

MAC:05166-785 2945584_1

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

1. Respondent, Las Vegas Metropolitan Police Department (“LVMPD”), is a government entity, and it is not owned in whole or in part by any publicly traded company.

2. LVMPD is represented in the District Court and in this Court by Marquis Aurbach Coffing and General Counsel for LVMPD. LVMPD was previously represented in the District Court and this Court by the Clark County District Attorney’s Office.

Dated this 6th day of December, 2016.

MARQUIS AURBACH COFFING

By /s/ Micah S. Echols
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I. INTRODUCTION

This Court should dismiss the instant appeal for Appellant, Robert Holmes, III's ("Holmes"), failure to pay the \$500.00 bond for costs on appeal as required by NRAP 7(a). *See Exhibit 1* (November 1, 2016 Notice of Deficiency). This Court has held that failure to pay the appeal filing fee is grounds for dismissal. *Weddell v. Stewart*, 126 Nev. 768, 367 P.3d 833 (2010). Likewise, failure to pay the \$500.00 bond for costs on appeal should result in dismissal of this appeal. Therefore, Respondent, Las Vegas Metropolitan Police Department ("LVMPD"), respectfully moves this Court for an order dismissing this appeal for failure to pay the \$500.00 bond for costs on appeal.

II. FACTUAL AND PROCEDURAL HISTORY

A complaint for forfeiture was filed on March 9, 2007, wherein LVMPD requested forfeiture of \$281,656.73 as proceeds attributable to the commission or attempted commission of a felony under NRS Chapter 179. *See Exhibit 2* (October 18, 2016 Findings of Fact, Conclusions of Law, and Order) at 2. Holmes, as a Claimant, filed an answer through his former counsel, Sean Sullivan, Esq., on April 12, 2007. *Id.* The District Court case was then stayed pending the completion of the companion criminal cases. *Id.* Holmes entered a plea of guilty to one count of conspiracy to possess stolen property and/or commit burglary on

January 5, 2009. *Id.* at 3. The other Claimants, Tonya Trevarthen, Daimon Monroe, and Bryan Fergason, likewise, entered guilty pleas or were found guilty. *Id.* at 2–3. The stay of the forfeiture case was lifted on April 27, 2012 as all of the Claimants had been adjudicated in all of the criminal cases. *Id.* at 3.

LVMPD filed a motion for summary judgment, which was granted on November 28, 2012. *Id.* Holmes appealed the order granting summary judgment to this Court, docketed as Case No. 62274. *Id.* This Court reversed the summary judgment as to the \$70,000.00 forfeited from Holmes by attorney Sean Sullivan, Esq. for a determination of whether the funds came from the commission or attempted commission of a felony and remanded the case back to the District Court on March 18, 2016. *Id.*

After remand, LVMPD filed a renewed motion for summary judgment on May 5, 2016, and incorporated 11 volumes of appendices to establish by the complete record (that this Court did not previously consider) that there existed no issue of material fact regarding the \$70,000.00 relinquished by Holmes' attorney in 2006 as proceeds from the commission or attempted commission of a felony under NRS 179.1164. *Id.* Holmes submitted an opposition without any evidence attached, but, then later, submitted a second supplement to his opposition to summary judgment, attaching incomplete bank records and loan statements with

missing pages from what the District Court labeled “irrelevant periods of time.” *Id.* at 5. The District Court concluded that LVMPD had established that “there are no genuine issues of material fact remaining on this matter of civil forfeiture against Robert Holmes, III.” *Id.* at 6. The District Court further found that LVMPD was entitled to judgment as a matter of law regarding the forfeiture of the \$70,000.00 as proceeds from the commission or attempted commission of a felony pursuant to NRS 179.1164 and granted the renewed motion for summary judgment in its entirety against Holmes. *Id.* at 8. LVMPD previously obtained summary judgment against Trevarthen that was not appealed. LVMPD’s renewed motion for summary judgment against Monroe and Ferguson remains pending in the District Court.

On October 31, 2016, Holmes filed an appeal from the October 26, 2016 order granting summary judgment. *See* Supreme Court Docket of Case No. 71680. However, Holmes neglected to pay both the Supreme Court filing fee of \$250.00 as required by NRAP 3(e), NRS 2.250(1)(a), and NRS 2.250(c)(1) and the \$500.00 bond for costs on appeal pursuant to NRAP 7. *See Exhibit 1.* Indeed, this Court issued a notice of potential dismissal for failure to pay the filing fee on November 9, 2016. *See id.* Holmes has now paid the appeal filing fee on November 21, 2016, but he has not yet paid the cost bond on appeal. *See* Supreme

Court Docket of Case No. 71680. Holmes' failure to comply with NRAP 7 is grounds for dismissal, and this Court should, therefore, dismiss the instant case. *Weddell*, 126 Nev. at 768, 367 P.3d at 833.

III. LEGAL ARGUMENT

Parties to an appeal are bound by the rules of this Court. NRAP 1. An appellant's failure to take the required steps other than the timely filing of a notice of appeal may, as this Court deems appropriate, have his or her appeal dismissed. NRAP 3(a)(2). This Court held in *Weddell* that appellant's failure to pay the filing fee was grounds for dismissal. 126 Nev. at 768, 367 P.3d at 833. The mandatory language of NRAP 3(e) provides that the appellant ***must pay*** the Supreme Court filing fee. Similarly, NRAP 7(a) provides that the appellant ***shall file a bond for costs*** on appeal or equivalent security. NRAP 1(e)(9) indicates that "shall" is mandatory. Just as the wording in NRAP 3(e) is mandatory, so, too, is the wording in NRAP 7(b). By analogy, the holding in *Weddell* should apply to the instant case, and this Court should dismiss this appeal for Holmes' failure to pay the \$500.00 bond for costs to the District Court.

IV. CONCLUSION

Holmes has failed to pay the mandatory \$500.00 bond for costs as set forth in NRAP 7(e). Holmes' failure to abide by the rules of this Court is grounds for

dismissal of the instant appeal. NRAP 3(a)(2); *Weddell*, 126 Nev. at 768, 367 P.3d at 833. Therefore, LVMPD respectfully requests that this Court issue an order dismissing the instant appeal for failure to pay the bond for costs on appeal.

Dated this 6th day of December, 2016.

MARQUIS AURBACH COFFING

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*Attorneys for Respondent, Las Vegas
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **MOTION TO DISMISS APPEAL** was filed electronically with the Nevada Supreme Court on the 6th day of December, 2016. I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

Robert Holmes, III
4657 Swaying Ferns Dr.
Las Vegas, Nevada 89147
Appellant in Proper Person

/s/ Leah Dell

Leah Dell, an employee of
Marquis Aurbach Coffing

Exhibit 1



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

ROBERT HOLMES, III
4657 SWAYING FERNS DR.
LAS VEGAS, NV 89147

DATE: November 1, 2016
CASE: 07A537416

RE CASE: LAS VEGAS METROPOLITAN POLICE DEPARTMENT vs. U.S. CURRENCY \$281,656.73

NOTICE OF APPEAL FILED: October 31, 2016

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS NOT TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

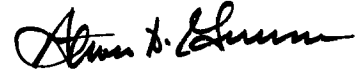
****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.**

Exhibit 2

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CLERK OF THE COURT

**LAS VEGAS METROPOLITAN
POLICE DEPARTMENT**

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Attorneys for Plaintiff, LVMPD

DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

Plaintiff,

vs.

U.S. CURRENCY \$281,656.73,

Defendant.

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

Date of Hearing: October 18, 2016
Time of Hearing: 8:00 a.m.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This matter having come on for hearing on October 18, 2016, on Plaintiff, Las Vegas Metropolitan Police Department's ("LVMPD") Renewed Motions for Summary Judgment Against Defendants, Ferguson, Monroe and Holmes, Micah S. Echols, Esq. and Adele V. Karoum, Esq. of the law firm of Marquis Aurbach Coffing and Matthew Christian, Esq. of the

1 Las Vegas Metropolitan Police Department appearing on behalf of LVMPD; Defendants,
2 BRYAN FERGASON ("Ferguson"), DAIMON MONROE (aka Daimon Holt and Daimon Devi
3 Hoyt) ("Monroe") and ROBERT HOLMES, III (aka Bobby Holmes) (hereinafter "Holmes"),
4 appearing in proper person. The Court continued the renewed motion for summary judgment as
5 to claimants Daimon Monroe and Bryan Ferguson.

6 The Court severed the renewed motion for summary judgment as to claims against
7 claimant Robert Holmes, III, for the civil forfeiture of \$70,000 cash relinquished by Sean
8 Sullivan, Esq., former attorney for Robert Holmes, III.

9 The Court having considered the issues and arguments presented, and good cause
10 appearing therefore, the Court hereby GRANTS summary judgment to LVMPD on the severed
11 claim for civil forfeiture against claimant Robert Holmes, III for \$70,000.

12 FINDINGS OF FACT

13 1. A Complaint for Forfeiture was filed on March 9, 2007, wherein U.S.
14 CURRENCY \$281,656.73 represents proceeds attributable to the commission or attempted
15 commission of a felony under NRS Chapter 179.

16 2. Answers to the Complaint for Forfeiture were filed by Holmes, through his
17 former counsel Sean Sullivan, Esq., on April 12, 2007.

18 3. In 2007, the case was stayed pending the completion of the companion criminal
19 proceedings.

20 4. Monroe was found guilty in a trial by jury in Case No. C228752 for 26 counts of
21 Possession of Stolen Property, all Category B and C felonies, in violation of NRS 205.275, and
22 one count of Conspiracy to Possess Stolen Property and/or to Commit Burglary, a gross
23 misdemeanor. An Amended Judgment of Conviction was filed in this matter on September 17,
24 2010. An Amended Judgment of Conviction in Case Number C227874 was filed on August 4,
25 2008, as to Monroe, who was found guilty of two counts of Burglary, both Felonies, in violation
26 of NRS 205.050 and NRS 205.060, and guilty of Grand Larceny, a Category B Felony in
27 violation of NRS 205.220 and NRS 205.222.

1 5. Holmes entered a plea of guilty to one count of Conspiracy to Possess Stolen
2 Property and/or Commit Burglary and two counts of Possession of Stolen Property, a Category B
3 felony, in violation of NRS 205.275, in Case No. C228752 on January 5, 2009.

4 6. Trevarthen entered a plea of guilty to one count of Conspiracy to Possess Stolen
5 Property and/or to Commit Burglary and one count of Possession of Stolen Property in Case No.
6 C228752 on October 3, 2008.

7 7. On March 5, 2012, Plaintiff filed a Motion to Lift the Stay of this forfeiture matter
8 as the Defendants had been adjudicated in all of the criminal cases, Case Nos. C228752,
9 06F18594 (which was bound over to District Court as Case No. C227874), and C208321. The
10 Order Granting Motion to Lift Stay was filed with the Court on April 27, 2012.

11 8. Plaintiff thereafter filed a Motion for Summary Judgment on June 5, 2012. The
12 Motion for Summary Judgment was granted on November 28, 2012.

13 9. Claimants Ferguson, Holmes, and Monroe all appealed the Order Granting
14 Summary Judgment from November 28, 2012, to the Nevada Supreme Court.

15 10. As to Claimant Holmes, on March 18, 2016, the Nevada Supreme Court reversed
16 the judgment as to the \$70,000 forfeited from Holmes by attorney Sean Sullivan, Esq.

17 11. On May 5, 2016, LVMPD filed a Renewed Motion for Summary Judgment
18 against Defendants Monroe and Holmes, incorporating the eleven volumes of appendices
19 previously attached to a Renewed Motion for Summary Judgment against claimant Ferguson, to
20 establish, based on the complete record, there is no issue of material fact remaining as to the
21 issue of whether the remaining proceeds in this case, including the \$70,000 relinquished by
22 Holmes in 2006, were proceeds from the commission or attempted commission of a felony,
23 under NRS 179.1164.

24 12. Holmes, Ferguson, Monroe, and Trevarthen were involved in a burglary ring and
25 were adjudicated guilty between 2008 and 2011. The burglaries spanned a time period over
26 several years, and involved a sophisticated method of gaining entry to commercial businesses
27 with doors of a particular type, which could be opened with a specially-crafted tool. Claimants
28 Holmes, Ferguson, Monroe, and Trevarthen were all found guilty of felonies including Burglary

1 (NRS 205.060), Grand Larceny (NRS 205.220), and/or Possession of Stolen Property (NRS
2 205.275).

3 13. Between November 2006 and February 2007, U.S. CURRENCY \$281,656.73
4 was recovered by LVMPD from the actual or constructive possession of Monroe, Ferguson,
5 Trevarthen, and Holmes, and their attorneys.

6 14. The \$281,656.73 included \$70,000 in cash voluntarily surrendered by attorney
7 Sean P. Sullivan, who was representing Holmes.

8 15. When Monroe and his co-defendants stole from businesses, they often took cash
9 during the burglaries. Testimony from the criminal trials of Monroe and Ferguson indicated
10 victims reported cash was stolen from their businesses' cash registers or petty cash drawers
11 during the burglaries, for which Defendants were convicted.

12 **A. THE \$70,000 PROVIDED TO LVMPD BY ATTORNEY SEAN SULLIVAN ON**
13 **BEHALF OF HOLMES.**

14 1. Trevarthen testified Monroe burglarized businesses weekly or twice per week and
15 made sales of stolen property nearly every weekend.

16 2. Trevarthen and Monroe lived together and had children together. After her arrest,
17 Trevarthen withdrew \$145,000 in funds from bank accounts in Trevarthen's name, shared with
18 Monroe, at Bank of America. Trevarthen admitted the funds in her bank accounts were funds
19 from criminal activity including selling stolen property. Trevarthen admitted her income did not
20 cover the family's bills, and Monroe did not work between 2002 and 2006.

21 3. In Monroe's criminal trial, Trevarthen testified that after her arrest, she withdrew
22 money from her accounts for attorney fees as well as \$145,000, which she gave to Holmes in late
23 November 2006. This consisted of \$20,000 and then an additional \$125,000.

24 4. Trevarthen's bank statements, attached as exhibits, were consistent with this
25 sequence of events. After making payments to bail bonds companies and transferring money
26 between accounts, Trevarthen withdrew \$172,500 using cash withdrawals and counter debits in
27 the proceeding days in November 2006.
28

1 entitled to a judgment as a matter of law.” NRCP 56(c). Summary judgment is proper when no
2 genuine issue of material fact exists. Farmers Ins. Exchange v. Young, 108 Nev. 328, 832 P.2d
3 376 (1992).

4 2. Although the non-moving party is entitled to all reasonable inferences from the
5 documents and supporting evidence in its favor, it is not entitled to “build a case on gossamer
6 threads of whimsy, speculation, and conjecture.” Collins v. Union Fed. Sav. & Loan Ass’n, 99
7 Nev. 284, 302, 662 P.2d 610 (1983).

8 3. The non-moving party “must, by affidavit or otherwise, set forth specific facts
9 demonstrating the existence of a genuine issue for trial or have summary judgment entered
10 against him.” Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992).

11 4. EDCR 2.24 permits the Court to reconsider a matter previously decided.
12 Rehearings are granted only when “there is a reasonable probability that the court may have
13 arrived at an erroneous conclusion or overlooked some important question necessary to a full and
14 proper understanding of the case.” State v. Fitch, 68 Nev. 422, 233 P.2d 1070, 1072 (1951);
15 accord, Moore v. City of Las Vegas, 92 Nev. 402, 551 P.2d 244, 246 (1976); Geller v. McCown,
16 64 Nev. 102, 178 P.2d 380, 381 (1947). “In a concise and non-argumentative manner, such a
17 petition should direct attention to some controlling matter which the court has overlooked or
18 misapprehended.” Matter of Ross, 99 Nev. 657, 668 P.2d 1089 (1983). Regardless, nothing in
19 NRCP 56 prohibits the filing of successive motions for summary judgment, as expressly
20 recognized by the Supreme Court. Barnettler v. Reno Air, Inc., 114 Nev. 441, 956 P.2d 1382
21 (1998).

22 5. LVMPD’s renewed motions for summary judgment and the referenced exhibits
23 from the criminal matters and the investigation by LVMPD establish there are no genuine issues
24 of material fact remaining on this matter of civil forfeiture against Robert Holmes, III.

25 6. Further, LVMPD is entitled to judgment as a matter of law regarding the
26 forfeiture of U.S. CURRENCY in the amount of \$70,000.

27 7. After remand from the Nevada Supreme Court cases, the issue remaining for
28 claimant Holmes was whether the \$70,000 seized from Holmes and his attorney constituted

1 proceeds attributable to the commission or the attempted commission of a felony. If the money
2 is determined to have been proceeds from the commission or attempted commission of a felony,
3 NRS Chapter 179 provides the money is subject to forfeiture to the plaintiff, LVMPD, as fruits
4 of the crime.

5 8. LVMPD's briefs were timely filed including the Reply in Support of Renewed
6 Motion for Summary Judgment, filed June 21, 2016, based on the Nevada Rules of Civil
7 Procedure and the Eighth Judicial District Court Rules.

8 9. There is no issue of material fact remaining as to whether the \$70,000 voluntarily
9 relinquished by attorney Sean Sullivan on behalf of Holmes was connected to a felony or
10 attempted commission of any felony where (a) evidence established Trevarthen's accounts
11 included proceeds from the sale of stolen property by Monroe; (b) Monroe was convicted of
12 several felonies related to possession and sale of stolen property; (c) Trevarthen's testimony and
13 bank records establish Trevarthen withdrew these funds that were admittedly from the sale of
14 stolen property in late November 2006; (d) Trevarthen informed police she gave this money to
15 Holmes and he refused to return it; (e) During this time period when Trevarthen said she gave
16 Holmes the money, recorded call evidence established Holmes was assisting Monroe while he
17 was incarcerated; (f) When confronted about the money, Holmes' attorney said only \$70,000
18 remained and the remainder of the money had already been spent; (g) Sullivan, Holmes'
19 attorney, voluntarily relinquished \$70,000 cash in \$100 bills to LVMPD.

20 10. The evidence provided by Holmes does not raise an issue of material fact as to the
21 source of the \$70,000, in light of the clear and convincing evidence set forth by LVMPD in the
22 renewed motion for summary judgment. The financial information provided by Holmes is from
23 different time periods, incomplete, and missing pages, and does not establish an issue of material
24 fact exists as to the source of the \$70,000. The evidence only reflects an open home equity line
25 and money borrowed during other time periods of 2005 and 2007 does not establish an issue of
26 material fact exists as to the source of the \$70,000 that was seized by Metro in November 2006.
27 Holmes' self-serving and uncorroborated statements by family members regarding the facts do
28 not create an issue of material fact where the financial information does not corroborate the

1 statements. The evidence did not set forth facts material to the remaining issues in the case,
2 whether the \$70,000 was proceeds of a felony or attempted commission of a felony, or whether it
3 had another source. See Dennison v. Allen Group Leasing Corp., 110 Nev. 181, 185, 871 P.2d
4 288, 290–291 (1994); see also Clauson v. Lloyd, 103 Nev. 432, 434–435, 743 P.2d 631, 632–633
5 (1987); see also Catrone v. 105 Casino Corp., 82 Nev. 166, 170–171, 414 P.2d 106, 108–109
6 (1966).

7 11. Holmes' and Sullivan's voluntary relinquishment of the money to LVMPD did
8 not require a warrant for seizure of the \$70,000. LVMPD had probable cause for the seizure of
9 the \$70,000 based upon the information provided to LVMPD by Trevarthen, where Trevarthen
10 told detectives she gave the money from stolen property that was in her bank accounts to Holmes
11 and he would not return it.

12 12. The reopening of this case in 2009 has been previously determined to be
13 procedurally proper in this case. Reconsideration of this issue was not required.

14 13. As to claimant Holmes, the elements of LVMPD's Forfeiture Complaint have
15 been satisfied. As to Claimant Holmes, the \$70,000 relinquished by Holmes' attorney for
16 seizure was proceeds from the commission or attempted commission of a felony and subject to
17 forfeiture to Plaintiff LVMPD under NRS 179.1164.

18 **ORDER**

19 Therefore, it is hereby ordered that the Renewed Motion for Summary Judgment against
20 Claimant ROBERT HOLMES, III, aka Bobby Holmes, is hereby granted in its entirety.

21 IT IS SO ORDERED, this 25 day of October 2016.

22
23 
24 DISTRICT COURT JUDGE
25
26
27
28

MARQUIS AURBACH COFFING

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Submitted by:

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