

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT HOLMES, III

\$70,000

Appellant,

Supreme Court Case No. : 71680

District Court Case No. A537416

vs.

LAS VEGAS METROPOLITAN

POLICE DEPARTMENT,

Respondents

**FILED**

MAR 28 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY J. Hendrick  
DEPUTY CLERK

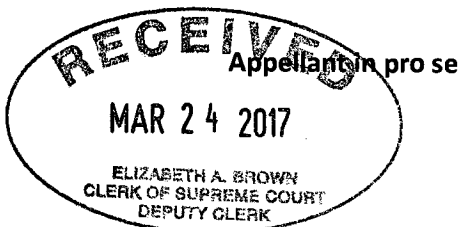
APPELLANT'S INFORMAL BRIEFF

Robert Holmes III pro se

4657 swaying Ferns Drive

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702-758-0228



17-10200

### STATEMENT OF CASE

- 1.) On 11-30-2006 Appellant and his attorney Sean p. Sullivan met these officers at 4750 W. Oakey, through the arm of the appellant attorney Sean P. Sullivan, he advised plaintiff to give him \$ 70,000 so he could give ICE and METROPOLITAN POLICE Department appellant's \$ 70,000 because they had alleged that TONYA TREVARTHEN took proceeds out of her bank account, that was allegedly under investigation. These proceeds was alleged as money that Tonya Trevarthen and Damion Monore/ Hoyt who were codefendants in appellant's Case c228752. These proceeds that Tonya Trevarthen allegedly took out of her bank account was traced to Texas where they apprehended Tonya Trevarthen ,who claimed that she gave appellant \$145,000. Appellant Robert Holmes III told his attorney that he never received any money from Tonya Trevarthen, but his attorney advised appellant to give him the sum of \$ 70,000 because Ice and Metro were seeking to seize appellant's 3 homes if appellant did not give them any money. Sean p. Sullivan assured appellant that he would get his money back after the criminal case was over. Appellant attorney Sean P. Sullivan also stated that if appellant did not give him the sum of \$ 70,000 ICE Customs and Metropolitan Police Department were seeking to charge him with money laundering which appellant was charged with possession of stolen property, and conspiracy to possess and or burglary. These were state charges, appellant did not have any Federal Charges.
- 2.) On February of 2007 a claim of Forfeiture was filed in the state court, under case No. A537416. The court ordered a **Stay to be placed UNTIL all cases were final, either through plea deals or conviction in trial. The Court stated the STAY shall be AUTOMATICALLY LIFTED and the Forfeiture may resume.** On October 29, 2009 the Court Dismissed the forfeiture case.
- 3.) On November 30, 2011 the Las Vegas Metropolitan Police Department filed a Notice of Motion and a Motion to reconsider Court statiscally closing case.
- 4) On January 24,2012 Las Vegas Metropolitan Police Department motion for reconsideration was granted.
- 5) On May 1, 2012 the Plaintiff's filed motion for Summary Judgment.  
On November 13, 2012 the court granted the plaintiff's summary Judgment.
- 6)

- 6) On December 7, 2012 the defendant Robert Holmes III filed a Notice of Appeal.
- 7) On March 18, 2016 The Nevada Supreme Court Reversed the summary Judgment and remanded the entire case back to the District court.
- 8) On May 5, 2016 the Plaintiff's filed a renewed Summary Judgment.
- 9) On November 28, 2016 the court granted the Plaintiff's the renewed Summary Judgment.
- 10) On November 28, 2016 the court filed the Notice of Entry Order.

( A) The Eighth Judicial District Court Abused its Discretion by Granting a Summary JUDGMENT

When there was still a Material Dispute. On October 18, 2016 Defendant Robert Holmes III specifically told the court that he did not receive any money from Tonya Trevarthen and he explained, that according to all paperwork that his prior attorneys Sean P. Sullivan and Kirk Kennedy presented to him and presented to the court, showed that Tonya Trevarthen was caught in Texas by The Las Vegas Metropolitan Police and ICE Immigration. Tonya was apprehended 7 to 10 days after she allegedly took large withdrawals of cash out of her bank account. See 10-18 2016 Transcripts from the eighth judicial district court. Also see the Defendants Opposition To the Renewed Summary Judgment See ex 2 attached hereto pg 2 lns 15-18 when the plaintiff's are alleging that Tonya Trevarthen gave the defendant a large sum of money

And the Defendant Robert Holmes III stated he did not receive any Money from Tonya Trevarthen. The plaintiff's also recognize and were aware of the fact, that the defendant stated over and over that he did not receive any money from Tonya Trevarthen. See Plaintiff's Reply to Renewed Summary Judgment at pg \_\_\_ line \_\_\_. They stated that the defendant Robert Holmes III stated that he did not receive any money from Tonya Trevarthen. This is a dispute between two parties the plaintiff's alleged that Tonya Trevarthen gave the defendant Robert Holmes III, money but the defendant Robert Holmes III stated over and over that he did not receive any money from Tonya Trevarthen. This is a material dispute between two parties and a summary judgment can not be granted when there is a

dispute of material fact. See October 18, 2016 transcript. The defendant stated that he never received any money from Tonya Trevarthen. The plaintiff's also stated in their Final Reply on Renewed Motion for summary judgment on pg 19 of 30 lines 13 through 16 The incomplete bank records do create a material issue of fact. A Summary Judgment can not be granted when there is a material issue. See The plaintiff's Final Reply on Renewed Motion.

( B ) The court erred because it stated that the money that the defendant codefendant's allegedly had was part of the alleged money that was seized from the defendant Robert Holmes III. This was a abuse of discretion because the defendant Robert Holmes III did not steal or take anything . Even according to Tonya Trevarthen statements at the grand jury indictment she clearly stated that Robert Holmes III never went out and stole anything with Damion and Bryan. See Grand Jury INDICTMENT. So even if they alleged that Damion and Bryan stole physical cash, they never gave any money to the defendant Robert Holmes III. The money that was seized was Robert Holmes III money not Tonya Trevarthen money, not Bryan money and not Damion money. The defendant stated that his money which was seized was his money from different line of credits and various home loans. Tonya Trevarthen stated that defendant Robert Holmes III would only buy items this is in the Indictment transcripts. SEE December 12, 2006 Indictment Transcripts. The court alleged that the money seized came from burglaries which was untrue. The currency seized from Robert Holmes III was his money which was specifically for purchasing his mother a home in Alabama that was the sole reason that the defendant took out loans and various line of credits. The defendant mother Ernestine Holmes gave the defendant her home for the purpose of him buying her a home. When the plaintiff's offered the defendant \$ 10,500 this was a insult because he explained to them that they took his \$ 70,000 from him, and now they only want to return \$ 10,500. This is a 5<sup>th</sup> Amendment violation under the United States Constitution. The government can not take a person property or money without just cause, this is a violation of the 5<sup>th</sup> Amendment taking Clause.

( C ) This is Tonya Trevarthen word against The Defendant Robert Holmes III word. The court abused its discretion because there is no evidence that the defendant Robert Holmes III ever received any money from Tonya Trevarthen. Tonya Trevarthen was caught in Texas after 7 to 10 days after she allegedly took a large amount of money out of her bank account. In between 7 to 10 days Tonya Trevarthen could have taken that money anywhere and her she was caught in Texas by Ice and Metro with a large amount of money. According to court documents she had payed her lawyers with stolen money and Damion Lawyers with stolen money, she also had payed the bails bonds a large amount of money. This shows that she was doing illegal acts because if she was a stand up citizen she would not have taken this alleged amount of money out of her bank account, when she clearly knew this money came from alleged crimes. The 7 to 10 days before she was caught is unaccounted for. The plaintiff's have failed to produce any evidence that the defendant received any money from Tonya Trevarthen.

( D ) The court abused its discretion by granting another summary Judgment without any evidence to support these allege claims. The plaintiff's never used a actual Affidavit from Tonya Trevarthen they only applied court statements from a co- defendant Tonya who was also facing a 27 count indictment. They never brung in Tonya Trevarthen to support any claim and they failed to produce a Affidavit. This alleged claim was never supported by any evidence. There must be supporting evidence which the plaintiff's never provided ,which this honorable court reversed this case so that the plaintiff's could produce evidence which still has never happened because the defendant never received any money from Tonya Trevarthen. This case still has a material dispute between both parties.

( E ) The plaintiff's Stated in their own Argument that the incomplete bank records do create a material issue. See pg 19 of 30 in LVMPD'S FINAL REPLY ON RENEWED MOTION FOR SUMMARY JUDGMENT. The court abused it's discretion by granting another SUMMARY JUDGMENT. They alleged that the bank records were incomplete. When there is a dispute between material issues a summary Judgment can not be granted. The defendant stated that his bank records were complete but the Plaintiff's and the court claim that it is incomplete. This is a dispute of material issues.

( F ) The Ice and Metro agents alleged that they were the FBI, they seized the defendants money without any valid search warrant. See minutes 1-5-07 page 3. The defendant's attorney Sean Sullivan stated on court records on January 5, 2007 that Holmes never admitted to taking money . Further, equity lines where opened prior to all of this. Mr Sullivan further argued defendant was advised all of his homes and property would be seized and counsel advised Defendant to give what ever money he has to metro and the FBI. Additionally Mr Sullivan argued Defendant has provided sufficient proof as to where his money is coming from See At The defendants 2<sup>nd</sup> Supplement EX 3. also see source hearing for case 228752. This was a violation of the 4<sup>th</sup> Amendment Illegal Search and Seizure.

( G ) The court Erred because they failed to address the time barr issue because the plaintiff's waited almost 3 years to file a reconsideration motion for the first dismissal of the entire Forfeiture case. The eighth Judicial district court Judge Dismissed the original Forfeiture case without prejudice. The plaintiff's should have filed a NOTICE OF APPEAL but they chose not to. The 30 day clock started to tick as soon as Judge Douglas Smith Entered his Order. The Plaintiff's failed to file a Notice Of Appeal. They have never had to provide any reason for a three year delay. Even at best a reconsideration MOTION should have been filed in a timely matter. In this case the plaintiff's have never had to face the time-barr which they should have had to. The prior Judge Bell stated that the automatic stay is to be lifted as soon as all defendants are found guilty or as soon as they plead or take a deal. All the defendants had took deals and were found guilty by 2009. When the Automatic Stay had been lifted. SEE Forfeiture order set in 2007 By Judge Bell.

*See EX 1 and 2  
attached hereto EX 1 LVMPD  
P. 12/21*

( H ) ) In 2007 the defendant had a source hearing in this case. In the hearing he provided all bank statements and his full job history. The court reviewed all records so that he could post a \$ 150,000 bail he was the only one in this entire case that could provide a full work history and show all line of credits and the court was aware that he had three homes. His entire finances was reviewed by the court for case c228752, so that he could post a \$ 150,000 bond. See Source hearing for case case c22852.

### CONCLUSION

The defendant ask this honorable court to Reverse this case and remanded it back to trial because the plaintiff's have not did what the court asked in the prior REVERSAL ORDER, they have not provided any evidence that supports Tonya court testimony. These are clear disputes and because the Defendant ROBERT HOLMES stated in his pleadings and in Court that he did not receive any money from Tonya Trevarthen a SUMMARY JUDGMENT can not be Granted. The Defendant ask this court to reverse and Order the Eighth Judicial District Court to set this for trial or Order the Return of The Defendant's \$ 70,000. Also the plaintiff's state in their on words that the bank records are incomplete so it does create a material issue of fact.

*See EXS 1 and 2 EX 1, Plaintiff's Final Replz  
EX 2 Defendant's opposition  
To Summary Judgment*

Dated March 21,2017

Executed at 4657 Swaying Ferns Dr

Las Vegas Nevada 89147

By Robert Holmes III

*X Robert Holmes III*

**CERTIFICATE OF SERVICE BY MAILING**

**I ROBERT HOLMES III , hereby certify, pursuant to NRCP 5 ( b ), that on this 21 Day of March 2017 I mailed a true and correct copy of the foregoing Informal Brief**

**by placing document in a sealed pre- postage paid envelope and deposited said envelope in the United States Mail addressed to the following :**

TO MARQUIS AURBACH COFFING

Micah S. Echols , ESQ


Adele V. Karoum

10001 Park Run Drive

Las Vegas, Nevada, 89145

Attorney`s for Plaintiff, LVMPD

By Robert Holmes III

x 

Date March 21, 2017

Executed at 4657 Swaying Ferns DR LV NV 89147

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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.

**LVMPD'S FINAL REPLY ON RENEWED  
MOTION FOR SUMMARY JUDGMENT**

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**LVMPD'S FINAL REPLY ON RENEWED MOTION FOR SUMMARY JUDGMENT**

Plaintiff, Las Vegas Metropolitan Police Department ("LVMPD"), by and through its attorneys of record, Marquis Aurbach Coffing and the Clark County District Attorney's Office, hereby files its Final Reply on Renewed Motion for Summary Judgment. This Reply is made and based upon the papers and pleadings on file herein, the memorandum of points and authorities, the attached declarations, and any argument allowed by the Court at the time of the hearing.

**MEMORANDUM OF POINTS AND AUTHORITIES****I. INTRODUCTION**

Monroe, Holmes, Ferguson, and Trevarthen (hereinafter collectively "Claimants") were involved in an extensive burglary ring. Individual conviction information is cited at Renewed Motion for Summary Judgment, filed May 5, 2016, at pp. 2-3. In 2012, LVMPD filed a motion for summary judgment on the civil forfeiture claim in this case, based on \$281,656 seized from the Claimants. ("First Motion for Summary Judgment"). The District Court granted LVMPD's First Motion for Summary Judgment. Claimants Ferguson, Monroe, and Holmes appealed separately. Upon remand from the Supreme Court, LVMPD filed renewed motions for summary judgment in two separate motions based on the timing of the remittitur, one Renewed Motion for Summary Judgment against Bryan Ferguson (filed March 15, 2016) and a Renewed Motion for Summary Judgment against Daimon Monroe and Robert Holmes III (filed May 5, 2016).

On July 12, 2016, this Court extended the time for briefing and permitted the claimants to file an additional responsive brief on why LVMPD should not be permitted to keep the seized funds in this case. Claimants received an additional sixty days to provide additional briefs, summarizing their positions.<sup>1</sup> After the July hearing, Bryan Ferguson filed several briefs. Ferguson's brief was titled "Claimant Ferguson's Reply to LVMPD's Opposition, et. al." Ferguson's most recent brief was filed as a reply brief related to Ferguson's June 25, 2016 "Motion to Strike" and also "in compliance with. . . previous orders and directives from this

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<sup>1</sup> See Order entered on August 19, 2016, on file herein.

1 Honorable Court.” Claimant Monroe filed seven briefs between July 22, 2016 and August 29,  
2 2016, which were filed in the case but not served on Plaintiff. Plaintiff obtained these documents  
3 from the Court website in October, after finding the items in the docket which were never  
4 received in the mail. These include: 1) “Reply to Judge Smith’s Request,” filed August 29,  
5 2016, 2) Motion on Some More Facts on Illegal Warrant’s and Illegal Taking of the Monies, 3)  
6 Motion to Supplement my Opposition to Plaintiffs Summary Judgment [sic], 4) Supplement to  
7 Opposition to Plaintiffs Motion for Summary Judgment, filed July 22, 2016, 5) Motion on cover  
8 up done by R-O-P and Sandra Digiacomio, filed July 22, 2016, 6) Motion on Monies Taken  
9 Illegally, Due to Original Arrest Lacking Legal Warrant, filed July 22, 2016, and 7) Motion,  
10 Evidence Submitted into Record on Illegal Arrests and Seizure and Illegal Convictions, and State  
11 Obstructing, and Illegal Seizure of Money, filed July 22, 2016.

12 Plaintiff, LVMPD, hereby files this reply as a final summary briefing in response to  
13 Claimants arguments on the renewed motions for summary judgment, including Ferguson’s and  
14 Monroe’s final supplemental briefing as permitted by the Order entered on August 19, 2016. As  
15 the briefing has been extensive throughout this case and to avoid duplication, LVMPD’s  
16 arguments will be in a brief, summary form with citations to the case record where detail or  
17 additional documentation is required for full analysis of the issue.<sup>2</sup>

## 18 **II. LEGAL ARGUMENT**

### 19 **A. FINAL REPLY AS TO MONROE**

#### 20 **1. The Supreme Court Order on Monroe.**

21 The Supreme Court affirmed the civil forfeiture in this case as to the \$13,825 seized from  
22 Monroe and Trevarthen’s house and \$26,938.64 seized from Trevarthen’s bank account, which  
23 Monroe accessed as if it were a joint account.<sup>3</sup> However, Monroe’s case was reversed and  
24

25 <sup>2</sup> All citations to “Exhibit” with Bates numbers, unless otherwise specified, refer to the Appendix of  
Exhibits for Renewed Motion for Summary Judgment against Defendant Bryan Ferguson.

26 <sup>3</sup> See Monroe v. Las Vegas Metropolitan Police Dept., Case No. 62254, Order Affirming in Part,  
27 Reversing in Part and Remanding (Nev. March 18, 2016), **Exhibit 21**, Bates 2743–2746, attached to  
28 Motion for Renewed Motion for Summary Judgment against Defendants, Damon Monroe and Robert  
Holmes, III.

1 remanded in part, reversing this Court's order granting summary judgment concerning the funds  
2 "recovered from the bail bond companies and the attorneys."<sup>4</sup> Specifically, the Supreme Court  
3 stated that this Court erred by "concluding that appellant's judgment of conviction was  
4 conclusive evidence establishing all elements of the forfeiture complaint."<sup>5</sup> In addition, the  
5 Supreme Court stated there was no evidence included with the respondent's summary judgment  
6 motion "that established that the funds recovered from the bail bond companies and the attorneys  
7 were attributable to the felony."<sup>6</sup> The Supreme Court remanded for further proceedings. Aside  
8 from the presumption, the Supreme Court's order leaves open the possibility that LVMPD can  
9 prove its case by summary judgment based upon the actual evidence that LVMPD has now  
10 presented. For **Monroe**, the remaining legal issue is: Has LVMPD demonstrated that **\$53,827**  
11 **in funds** relinquished by **bail bond companies and attorneys** were proceeds from the  
12 commission or an attempted commission of a felony under NRS 179.1164?

13 2. **LVMPD's Evidence on Renewed Motion for Summary Judgment on**  
14 **Monroe.**

15 The evidence attached to the Renewed Motion for Summary Judgment against Monroe  
16 was more extensive than the evidence attached and submitted as exhibits to the 2012 Motion for  
17 Summary Judgment and included evidence from the criminal investigations and trials of the  
18 Claimants. The extensive evidence set forth how the following \$53,827 was proceeds of felonies  
19 of Monroe: \$528.95 (As the Bail Turns paid by Trevarthen); \$5,105.38 (All Out Bail Bonds, paid  
20 by Trevarthen for Monroe's bail); \$26,502 (Attorney Al Lasso's client trust account, paid to him  
21 by Trevarthen for representation of Monroe); \$3,500 (Attorney Jonathan Lord, received from  
22 Trevarthen); and \$10,000 (Attorney Joel Mann, received from Trevarthen).

23  
24  
25  
26 <sup>4</sup> Id.

27 <sup>5</sup> Id.

28 <sup>6</sup> Id. at 3 (citing Cuzze v. Univ. & Cmty. Coll. Sys., 123 Nev. 598, 602, 172 P.3d 131, 134 (2007)).

a. **Tracing the Monroe Funds: The money in Trevarthen's Bank of America account was proceeds of a felony or attempted felony.**

Monroe, Trevarthen, and their children lived in a home together in Las Vegas, Nevada.<sup>7</sup> Monroe did not work, beyond his "business" of selling stolen property for cash and bringing stolen cash home from burglaries.<sup>8</sup> Between 2001 and 2006, Monroe only worked for a few months in 2001 cleaning restaurants.<sup>9</sup> At times, including at the time of Monroe's arrest,<sup>10</sup> Monroe stated he had a pressure washing business, but "pressure washing" was a code word for the burglaries they were committing.<sup>11</sup> Trevarthen worked as a substitute teacher, earning around \$2,000 per month, and her income did not cover the bills.<sup>12</sup> The couple's rent alone was \$1,600 per month between 2003 and 2006,<sup>13</sup> and the residence had expenses including home phone and internet through Cox, gas, water, and electricity bills as high as \$500 per month during the summer.<sup>14</sup>

Trevarthen and Monroe shared bank accounts that were in her name, using Trevarthen's ATM card and online login, because Monroe did not have his own identification and account.<sup>15</sup> The money in Trevarthen's bank accounts was from Monroe's burglaries,<sup>16</sup> because Monroe did

<sup>7</sup> See Monroe Trial Transcripts attached to Renewed Motion for Summary Judgment as **Exhibit 6** at Bates 0900-0901.

<sup>8</sup> See **Exhibit 20** at Bates 2738-2739; **Exhibit 6** at Bates 1114; **Exhibit 7** at Bates 2259; and **Exhibit 20** at Bates 2733 ("Did he tell you he actually would go in and burglarize the businesses? A: Yes. Q: Did he tell you—I mean, how often would he come home with these items? A: He basically considered it his job. I mean, it was every Friday and Saturday, and occasionally one day in the middle of the week.").

<sup>9</sup> See **Exhibit 7** at Bates 2259.

<sup>10</sup> See **Exhibit 8** at Bates 2627-2629.

<sup>11</sup> *Id.* at Bates 2629; see **Exhibit 9** at Bates 2631-2632. See also **Exhibit 10** at Bates 2635.

<sup>12</sup> See **Exhibit 7** at Bates 2255; see also **Exhibit 6** at Bates 1114 and 1141. Trevarthen Financial Records attached as **Exhibit 11** at Bates 2637-2639 (direct deposits shown as CC SCHOOL D; DES=SURE PAY).

<sup>13</sup> See **Exhibit 6** at Bates 0900-0903.

<sup>14</sup> See **Exhibit 7** at Bates 2261.

<sup>15</sup> See **Exhibit 6** at Bates 1113; **Exhibit 20** at Bates 2736.

<sup>16</sup> **Exhibit 6** at Bates 1141.

1 not have a job between 2002 and 2006, and Trevarthen's income did not cover the bills for the  
2 couple and their three children.<sup>17</sup>

3                   **b. Tracing the Monroe Funds: The Trevarthen bank account**  
4                   **proceeds were used for payments to the attorneys and bail**  
5                   **bond companies.**

6 Trevarthen testified in the criminal trial that after her arrest on November 6, 2006,<sup>18</sup> she  
7 withdrew money from her accounts at Bank of America to pay retainers and attorney fees.<sup>19</sup>  
8 Trevarthen bank records reflect payments of attorneys fees including a \$17,500 cashier's check  
9 to the Law Offices of Al Lasso, LLC on November 9, 2006,<sup>20</sup> a \$2,500 cashier's check written to  
10 the Law Offices of Al Lasso, LLC on November 17, 2006,<sup>21</sup> and a \$25,000 cashier's check made  
11 payable to Trevarthen and endorsed by a trust account for the Law Office of Al Lasso, LLC on  
12 November 17, 2006.<sup>22</sup> Trevarthen's records also establish a check card transaction to her  
13 attorney, Jonathan Lord, for \$3,500 on November 9, 2006.<sup>23</sup> Trevarthen paid attorney Joel Mann  
14 \$10,000 for legal services for Monroe, which was voluntarily surrendered by Mann.<sup>24</sup> In  
15 addition, Trevarthen paid \$10,000 to bail bond companies using her check card linked to her  
16 Bank of America account.<sup>25</sup>

17 See also Exhibit 20 at Bates 2741 ("Q. And you knew that the money made from selling the stolen  
18 property was going into your checking account? A: Right.").

19 <sup>17</sup> See Exhibit 7 at Bates 2259; 2261; 2255 at ll. 5-16. See also Exhibit 6 at Bates 1114 at ll. 23-25 and  
20 1141 at ll. 4-24.

21 <sup>18</sup> See Exhibit 6 at Bates 1138-1139.

22 <sup>19</sup> Id. at 1140-1141.

23 <sup>20</sup> See Payments to Attorneys and Bail Bonds attached as **Exhibit 14** at Bates 2654.

24 <sup>21</sup> Id. at Bates 2655.

25 <sup>22</sup> Id. at Bates 2656.

26 <sup>23</sup> See Exhibit 11 at Bates 2638 (Checking account statement, \$3500 to "Jonathan J"); see also  
27 **Exhibit 14** at Bates 2659 (Officer's Report).

28 <sup>24</sup> See Payments to Attorneys and Bail Bonds at **Exhibit 14** at Bates 2658 (Property Report).

<sup>25</sup> See Exhibit 11, Trevarthen's Financial Records, Checking Statement, 11/13/06 and 11/16/06, \$10,000  
on statement as "As the Bail" at Bates 2638-2639. The Complaint for Civil Forfeiture explains funds  
were turned over to authorities by As the Bail Turns Bail Bonds and All Out Bail Bonds. These

1                                   3.     Monroe's opposition arguments.

2                                   a.     Monroe argues the warrants are fraudulent or invalid.

3             Monroe's opposition has exclusively focused on a theory he has presented, in various  
4 forms throughout this case, that the warrants were somehow illegal or invalid and therefore the  
5 seizure and his conviction are illegal.<sup>26</sup> In the July 12, 2016 hearing in this matter, Monroe  
6 argued he recently received evidence that he believes proves there was change in the date on the  
7 warrant, making the warrant invalid.<sup>27</sup> The warrant issue was simultaneously being reviewed in  
8 Monroe's underlying criminal case in Department 20 in July 2016. In seven supplemental  
9 motions filed between July 22, 2016 and August 29, 2016, Monroe focused on the specific  
10 details of his arrest and his belief that there was not a warrant on November 6, 2006, and his  
11 belief that the warrant was backdated from November 23, 2006 to November 3, 2006.<sup>28</sup> While  
12 each of the motions focuses on different details, the argument is essentially that the warrants  
13 were allegedly fraudulent, invalid, and/or not with the correct date, and Monroe argues this was  
14 an "obstruction of justice" between the police department and the DA's office, with a specific  
15 focus on DA Sandra Digiacomo, because Digiacomo was, according to Monroe, present on  
16 November 6, 2006, when the home was searched.<sup>29</sup> Monroe maintains that the validity of the  
17 warrants is an issue in the civil forfeiture case, and LVMPD's argument that the warrant issue

18  
19 corporations are no longer in business, but public filings with the Nevada Secretary of State reflect the  
20 Director/President of As the Bail Turns and All Out Bail Bonds was the same individual.

21 <sup>26</sup> See Motion to Personally Give Evidence Proving the Fraudulent Warrant and Request for Discovery,  
22 filed April 14, 2016, at pp. 1-2; Motion and Notification of Inability to Get Proper Copies Because of  
23 Conditions of My Confinement, filed May 6, 2016; Motion to Compel Plaintiffs to Produce for the Court  
24 all Pictures of the Warrants, filed May 6, 2016; Notice of Motion, Motion for 60 Days to Refile my  
25 Opposition . . . and Request . . . to Share this Evidence on the Fraudulent Warrants, filed July 7, 2016;  
26 Notice of Motion, Motion to Clarify I Did File an Opposition, filed July 7, 2016; Monroe's Exhibits,  
27 filed in Court on July 12, 2016.

28 <sup>27</sup> See Monroe's Exhibits, filed in Court on July 12, 2016.

<sup>28</sup> See Motion on Some More Fact's [sic] on Illegal Warrants and Illegal Taking of These Monies, filed by  
Daimon Monroe on July 22, 2016, at pp. 4-5.

<sup>29</sup> See, e.g. Motion on Cover Up Done by R-O-P and Sandra Digiacomo, filed by Daimon Monroe on July  
22, 2016.

1 “does not pertain to the illegal arrest is nonsencical” [sic] because without the “illegal arrest this  
2 money would not be before this court.”<sup>30</sup>

3 **4. LVMPD’s response to Monroe’s arguments on the warrants.**

4 Monroe’s only opposition in this case relies on this theory of the warrants being allegedly  
5 invalid and, most recently, new evidence on the warrants related to the date on the warrant.  
6 LVMPD maintains this issue is barred by preclusion principles under Nevada law.<sup>31</sup> A decision  
7 was reached in Department 20 on the warrant issue in August 2016.<sup>32</sup> Nothing has changed with  
8 respect to Monroe’s underlying conviction. Despite this fact, Monroe failed to make any other  
9 substantive opposition to LVMPD’s Renewed Motion for Summary Judgment. At this time,  
10 Monroe’s conviction remains a final conviction, and this civil forfeiture can, and should, proceed  
11 as a civil action as the criminal convictions are final.

12 **a. The warrant issue is also barred by issue preclusion based on**  
13 **this Court’s consideration and the Supreme Court’s**  
14 **consideration of the issue.**

15 Monroe appealed his criminal conviction in 2008 and his conviction was affirmed on all  
16 counts except one count of stolen property.<sup>33</sup> Notably, in Monroe’s appeal of his conviction in  
17 2010, the Supreme Court thoroughly reviewed Monroe’s contentions regarding the warrants and  
18 found the warrants were based on probable cause and described items to be seized with  
19 particularity.<sup>34</sup> Specifically, the court stated there was evidence for probable cause for the  
20 issuance of the warrants.<sup>35</sup> The Supreme Court in 2010 concluded, “[T]he district court did not

21 <sup>30</sup> Motion on Monies Taken Illegally, Due to Original Arrest Lacking Legal Warrant, filed by Daimon  
22 Monroe, July 22, 2015, at p. 2.

23 <sup>31</sup> See Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1052, 194 P.3d 709, 711 (2008).

24 <sup>32</sup> See Order Denying Defendant’s Pro Per Motion to Enter into the Record One Piece of My Evidence. . .  
on Fraudulent Warrants, dated August 29, 2016, attached hereto as **Exhibit 1**.

25 <sup>33</sup> See 2008 Notice of Appeal and Monroe v. State of Nevada, Order Affirming in Part, Reversing in Part  
26 and Remanding, Case No. 52788, July 30, 2010, attached to Opposition to Motion to Personally Give  
Evidence, filed April 26, 2016, as **Exhibit 2** and **Exhibit 3**, respectively.

27 <sup>34</sup> Id. at 123.

28 <sup>35</sup> Id.

err in refusing to suppress the evidence gathered as a result of the searches of Monroe's property."<sup>36</sup> Monroe has filed numerous unsuccessful motions, writs, and appeals on all aspects of his criminal case, including the stop, arrest, warrant, various evidentiary matters, effectiveness of his counsel, and contesting a finding of vexatious litigant.<sup>37</sup>

This court, too, considered the criminal information at the time of the 2012 Motion for Summary Judgment and concluded all Defendants "were served with the original search warrants, as well as being provided with filed copies of the search warrants at a later date."<sup>38</sup> This Court previously found the "**allegation that they never received copies of the search warrants is inaccurate** pursuant to the facts of the case."<sup>39</sup>

Issue preclusion applies when there is "common issue that was actually decided and necessary to the judgment in the earlier suit."<sup>40</sup> "[A]ny issue that was *actually and necessarily litigated* in one action will be estopped from being relitigated in a subsequent suit."<sup>41</sup> The decision on the validity of the warrants is law of the case, and summary judgment should be granted as to the funds from attorneys and bail bond companies claimed by Monroe.

b. **Monroe's recent "new" arguments on the warrants in Department 20 criminal case have been unsuccessful.**

Monroe has argued in this case and in recent motions in Department 20 there is a new issue related to the warrant based on evidence he recently obtained. LVMPD maintains the validity of warrants is not the legal issue in this civil case, and Monroe has also pursued this

<sup>36</sup> Id. at 124.

<sup>37</sup> See, e.g., Monroe v. State, 2013 WL 3325102 (Nev. 2013) (vexatious litigant); Monroe v. Eighth Judicial District Court, 2013 WL 3270959 (Nev. 2013) (declining to exercise jurisdiction on writ on seized property); Monroe v. State, 2015 WL 1877693 (2015) (ineffective counsel regarding handling of warrant matter).

<sup>38</sup> Findings of Fact, Conclusions of Law and Order, November 28, 2012, attached to Opposition to Motion to Personally Give Evidence, filed on April 26, 2016, as **Exhibit 5**, at 709-710.

<sup>39</sup> Id. (emphasis added).

<sup>40</sup> Id. (citing University of Nevada v. Tarkanian, 110 Nev. 581, 598-599, 879 P.2d 1180, 1191 (1994)).

<sup>41</sup> Id.



1 issue in his underlying criminal case.<sup>42</sup> Judge Eric Johnson in Department 20 denied Monroe's  
2 motion and found the claims were concluded and time-barred by law of the case, and the Court  
3 did not feel it was required to reconsider the legality of the search warrants based upon the  
4 previous rulings.<sup>43</sup> Monroe's criminal case began in 2006 and the criminal case is not  
5 reconsidering the legality of the search warrant. Therefore, the civil forfeiture matter may now  
6 proceed, as Monroe's recent arguments on the warrant have not impacted the underlying criminal  
7 convictions that relate to this case.

8 **c. Monroe has not opposed this motion on any basis other than**  
9 **the invalidity of the warrant.**

10 As the federal courts have recently stated, "In forfeiture proceedings, we have  
11 acknowledged that the risk of false claims 'requir[es] courts to demand more than conclusory or  
12 hearsay allegations of some 'interest' in the forfeited property.'"<sup>44</sup> "Neither naked possession  
13 nor bare title, standing alone, will do. Rather, a claimant must offer some additional explanation  
14 concerning his lawful possessory interest in the money seized."<sup>45</sup> At "the summary judgment  
15 phase, claimants alleging a possessory interest must set forth supporting evidence along with  
16 some explanation of how they came into possession of the seized property."<sup>46</sup> While the federal  
17 case law on the subject is persuasive rather than controlling in this matter in terms of what a  
18 claimant must show, Monroe has not only failed to provide an explanation of how he came into  
19 possession of the seized property, but he has failed to provide any evidence or opposition on  
20 anything other than the precluded warrant issue.

21  
22 <sup>42</sup> See Defendant's Motion to be Allowed to Produce Illegally Withheld Evidence from the Court that  
23 Petitioner Just Received Proving Fraudulent Warrants, dated June 22, 2016, filed in Department 20, Case  
24 No. 228752, attached hereto as **Exhibit 2**.

25 <sup>43</sup> See **Exhibit 1**; see also Minutes, August 16, 2016, Department 20, attached hereto as **Exhibit 3**.

26 <sup>44</sup> United States v. JP Morgan Chase Bank Account No. Ending 8215 in Name of Ladislao v. Samaniego,  
27 VL: \$446,377.36, 14-16070, -- F.3d --, 2016 WL 4547359 (9th Cir. 2016) (quoting United States v.  
28 \$100,348.00 in U.S. Currency, 354 F.3d 1110, 1118-19 (9th Cir. 2004)).

<sup>45</sup> Id. (citing United States v. \$133,420.00 in U.S. Currency, 672 F.3d 629, 639 (9th Cir. 2012) (quotation  
omitted) (emphasis added)).

<sup>46</sup> JP Morgan Chase Bank Account No. Ending 8215, -- F.3d --, 2016 WL 4547359 (9th Cir. 2016).

1 The renewed motion for summary judgment related to Monroe was filed in May 2016.  
2 Monroe had 10 days to file an opposition under the rules. His motions and oppositions have,  
3 over this four month period with several filing extensions, not addressed the issue remaining for  
4 this summary judgment motion: the funds relinquished by attorneys and bail bond companies.  
5 Nevada courts require plaintiffs proceeding pro se or proper person to comply with the relevant  
6 rules of the court and rules of law.<sup>47</sup>

7 Even after the Order in Department 20 in August 2016 denying Monroe's motion to  
8 present new evidence on the warrants, Monroe continued to utilize the additional time for  
9 briefing until September 13, 2016, to continue to make arguments exclusively on the validity of  
10 the warrant.<sup>48</sup> This Court should grant summary judgment as to these funds based upon the  
11 evidence presented by LVMPD, and Monroe's failure to oppose the renewed motion for  
12 summary judgment on any basis other than the failed warrants argument. LVMPD has submitted  
13 its evidence, including affidavits, in the proper form pursuant to NRCP 56(c). Monroe has not  
14 "set forth specific facts showing that there is a genuine issue for trial," in response to LVMPD's  
15 evidence submitted under NRCP 56(c) but instead continues to repeatedly allege the warrants  
16 were invalid, which is not a genuine issue for trial. This does not satisfy the standard under  
17 NRCP Rule 56(e).

18 Summary judgment should be entered against Monroe, as he has not responded with  
19 specific facts as required by NRCP Rule 56(e), but has focused only upon the precluded issue of  
20 the warrants. There is no issue of material fact remaining as to the \$53,827 surrendered by bail  
21

22 <sup>47</sup> See Bonnell v. Lawrence, 128 Nev. Adv. Op. 37, 282 P.3d 712, 718 (2012) (quoting Gleash v. Yuswak,  
23 308 F.3d 758, 761 (7th Cir. 2002) ("Even pro se litigants must follow the rules")).

24 <sup>48</sup> See Reply to Judge Smith's Request, filed August 29, 2016; Motion on Some More Facts on Illegal  
25 Warrant's and Illegal Taking of the Monies, filed July 22, 2016; Motion to Supplement my Opposition to  
26 Plaintiffs Summary Judgement [sic], filed July 22, 2016; Supplement to Opposition to Plaintiffs Motion  
27 for Summary Judgment, Motion on cover up done by R-O-P and Sandra Digiacomio, filed July 22, 2016;  
28 Motion on Monies Taken Illegally, Due to Original Arrest Lacking Legal Warrant, filed July 22, 2016;  
Motion, Evidence Submitted into Record on Illegal Arrests and Seizure and Illegal Convictions, and State  
Obstructing, and Illegal Seizure of Money, filed July 22, 2016.

1 bond companies and attorneys for Monroe and Trevarthen, which has been established as  
2 proceeds of a felony or attempted felony.

3 **B. FINAL REPLY AS TO HOLMES**

4 **1. The Supreme Court Order.**

5 With respect to Holmes, the Supreme Court reversed the judgment as to the \$70,000  
6 forfeited from Holmes via his attorney Sean Sullivan, who voluntarily surrendered the money.  
7 The Supreme Court held Holmes had standing in the money despite the money being turned over  
8 by his attorney because Sullivan acted as his agent,<sup>49</sup> and this Court erred in granting summary  
9 judgment because the judgment of conviction did not establish the funds seized from Holmes  
10 were attributable to a felony.<sup>50</sup> Once again, the Supreme Court left open the opportunity for this  
11 Court to review the actual evidence instead of relying upon the presumption.

12 **2. LVMPD's Evidence on Renewed Motion for Summary Judgment on**  
13 **Holmes.**

14 **a. LVMPD's evidence establishes on the ongoing financial**  
15 **relationship between Holmes and Monroe after Monroe's**  
16 **incarceration.**

17 In late October and early November 2006, while Monroe was incarcerated at Clark  
18 County Detention Center, Holmes remained in touch with Monroe.<sup>51</sup> Holmes appeared to take  
19 on a role of assisting Monroe while he was incarcerated and involved in "cleaning up"  
20 evidence.<sup>52</sup>

21  
22  
23 <sup>49</sup> Holmes v. Las Vegas Metropolitan Police Department, Case No. 62274, Order of Reversal and Remand  
24 (Nev. March 18, 2016), attached to Renewed Motion for Summary Judgment against Defendants Daimon  
Monroe and Robert Holmes, III, filed May 5, 2016 as **Exhibit 22**, Bates 2747-2750.

25 <sup>50</sup> See id. at 2748.

26 <sup>51</sup> See **Exhibit 24**, attached to Renewed Motion for Summary Judgment Against Monroe and Holmes,  
Additional Transcribed Telephone Calls from Clark County Detention Center at Bates 2762-2787.

27 <sup>52</sup> See Renewed Motion for Summary Judgment against Monroe and Holmes, filed May 5, 2016, at pp.  
28 17-18, fn. 88-93.

b. LVMPD's evidence connects the \$70,000 surrendered by Holmes' attorney, Sullivan, to Trevarthen's accounts containing proceeds of stolen property.

Trevarthen and Monroe shared the bank accounts that were in her name, using Trevarthen's ATM card and online login, because Monroe did not have his own identification and account.<sup>53</sup> The money in Trevarthen's bank accounts was from Monroe's burglaries,<sup>54</sup> because Monroe did not have a job between 2002 and 2006, and Trevarthen's income did not cover the bills for the couple and their three children.<sup>55</sup>

In the criminal trial, Trevarthen testified that after her arrest, she withdrew money from her accounts for retainers and attorney fees as well as \$145,000, which she gave to Holmes.<sup>56</sup> Specifically, Trevarthen reported giving Holmes \$20,000 during the week prior to Thanksgiving 2006,<sup>57</sup> and an additional \$125,000 cash on November 20, 2006.<sup>58</sup> Trevarthen's bank records were consistent with this sequence of events.<sup>59</sup> At the beginning of November 2006, Trevarthen had \$135,291 in her money market savings account, which listed "Ashley Monroe" as the beneficiary upon her death.<sup>60</sup> Two weeks later, this account had a *negative* balance of \$19.37.<sup>61</sup> Similarly, Trevarthen's checking account, also payable on death to "Ashley Monroe," had

<sup>53</sup> See **Exhibit 6** at Bates 1113; **Exhibit 20** at Bates 2736.

<sup>54</sup> **Exhibit 6** at Bates 1141; see also **Exhibit 20** at Bates 2741 ("Q. And you knew that the money made from selling the stolen property was going into your checking account? A: Right.").

<sup>55</sup> See **Exhibit 7** at Bates 2259; 2261; 2255 at ll. 5-16. See also **Exhibit 6** at Bates 1114 at ll. 23-25 and 1141 at ll. 4-24.

<sup>56</sup> See **Exhibit 6** at Bates 1140-1141.

<sup>57</sup> See **Exhibit 17** at Bates 2698-2699.

<sup>58</sup> See LVMPD Officer's Report attached as **Exhibit 18** at Bates 2715-2717.

<sup>59</sup> See **Exhibit 6** at Bates 0937 (Testimony establishing Trevarthen had withdrawn \$240,000 from her bank account between November 7 and November 20, and specifically, she had withdrawn \$200,000 on November 20, 2006).

<sup>60</sup> See Trevarthen Financial Documents attached as **Exhibit 19** at Bates 2727-2730 (Bank Records); **Exhibit 9** at 2630; and **Exhibit 10** at Bates 2633 (Testimony regarding alternate name/identity of Ashton/Ashley Monroe).

<sup>61</sup> See **Exhibit 17** at Bates 2714.

1 \$50,420 at the beginning of November 2006,<sup>62</sup> but only \$26,498.36 at the end of the month.<sup>63</sup>  
2 Trevarthen moved large sums between accounts beginning on the week of November 13, 2006,  
3 in order to substantially reduce the amounts available in the accounts.<sup>64</sup> After a \$5,000 payment  
4 to As the Bail Turns on November 13, 2006, Trevarthen transferred and deposited \$67,108 and  
5 \$102,477 into her checking account on November 16, 2006.<sup>65</sup> Trevarthen made an additional  
6 check card payment of \$5,000 to As the Bail Turns on November 16, 2006.<sup>66</sup> She then  
7 proceeded to withdraw \$172,500 using cash withdrawals and counter debits in the proceeding  
8 days.<sup>67</sup> In sum, Trevarthen's bank records substantiate her testimony that she withdrew a large  
9 sum of stolen cash from burglaries or the sale of stolen property<sup>68</sup> from her bank account in mid-  
10 November.

11 Trevarthen reported she gave the money from her bank accounts to Holmes. In  
12 interviews with LVMPD, Trevarthen stated she met with Holmes near the California Hotel  
13 downtown to attempt to retrieve the money from Holmes after she was told the money should be  
14 retrieved and surrendered for seizure, and Holmes refused to give her the money, stating he  
15 wanted to speak to his attorney.<sup>69</sup> When LVMPD had evidence that Holmes possessed the  
16 money and would not return the money to Trevarthen, they went to Holmes' residence to speak  
17 with him.<sup>70</sup> Holmes was not home but agreed to come home in twenty minutes.<sup>71</sup> After delaying

18  
19 <sup>62</sup> See **Exhibit 11** at Bates 2637-2639.

20 <sup>63</sup> Id.

21 <sup>64</sup> See id.

22 <sup>65</sup> See id.

23 <sup>66</sup> See id.

24 <sup>67</sup> See id.

25 <sup>68</sup> See **Exhibit 6** at Bates 1141.

26 <sup>69</sup> Id. at 2716.

27 <sup>70</sup> See **Exhibit 11** at 2716-2717.

28 <sup>71</sup> Id.

1 his arrival for approximately 45 minutes, Holmes' attorney Sean Sullivan called and spoke to  
2 LVMPD Detective Nickell on the phone.<sup>72</sup> Sullivan advised Nickell that Holmes only had  
3 \$70,000 left of the \$145,000, and the missing money was used to pay bills.<sup>73</sup> Holmes gave the  
4 \$70,000 to Sullivan, who met with and provided the money to LVMPD.<sup>74</sup> \$70,000 cash, in \$100  
5 bills, was voluntarily surrendered to LVMPD by attorney Sean Sullivan.<sup>75</sup>

6 **3. Holmes' Opposition Arguments.**

7 Holmes has four principal arguments. First, Holmes argues that there was a procedural  
8 issue with the Court re-opening this case, after it had been statistically closed, based on the  
9 timing of the motions and reopening. Second, Holmes argues the \$70,000 was seized without a  
10 warrant or probable cause. Third, Holmes argues he did not receive the \$70,000 from  
11 Trevarthen, but the money was from home equity lines as part of an exchange to buy his mother  
12 a home in Alabama. Fourth, Holmes argues LVMPD's Reply was untimely and should be  
13 stricken. None of these arguments have any merit.

14 **a. Holmes argues legal error in reopening the case after it was**  
15 **statistically closed.**

16 In his First Supplement to Opposition to Summary Judgment, filed May 2, 2016, Holmes  
17 raised the issue of the Order statistically dismissing this case, and what he alleged to be an  
18 untimely motion for reconsideration which resulted in the re-opening of this case.<sup>76</sup>

19 **b. Holmes argues the \$70,000 was seized without probable cause**  
20 **or a warrant.**

21 Holmes also argued, in his First Supplement to Opposition to Summary Judgment, the  
22 \$70,000 was seized without probable cause and without a search warrant.<sup>77</sup>

23 <sup>72</sup> Id.

24 <sup>73</sup> Id. See also **Exhibit 8** at Bates 1770

25 <sup>74</sup> See id.

26 <sup>75</sup> See Exhibit 18 at Bates 2719; see also Exhibit 7 at 1771; see also Exhibit 6 at Bates 942.

27 <sup>76</sup> See Holmes First Supplement to Opposition to Summary Judgment, filed May 2, 2016 at pp. 1-2.

28 <sup>77</sup> See id. at p. 2, ¶ B.

c. Holmes has argued the money came from his home equity line of credit and was to be used for purchasing a home.

Holmes has further opposed the forfeiture based upon an argument that 1) He was not charged with selling stolen property;<sup>78</sup> and 2) the \$70,000 was not from Trevarthen but from his own home equity lines, which he planned to use to purchase his mother a house.<sup>79</sup>

Holmes has supported his home equity line argument with written statements from members of his family, including his mother, attached to his June 28, 2016 Second Supplement, Opposition and Motion to Strike LVMPD's Reply in Support of its Renewed Motion for Summary Judgment. This version of the facts is that Holmes' mother was planning to give Holmes his parents' home when she turned 62 years old, and in exchange, Holmes was to buy his mother a home in Alabama.<sup>80</sup> As part of this exchange, Holmes was taking loans on the house that his mother was giving to him.<sup>81</sup> Holmes' mother, Ernestine, states Holmes was "forced" to give Metro \$70,000, and that was money taken off the equity of Ernestine's home. Notably, the statement by Ernestine states that she gave her son the house in **2007, when she turned 62 years old**, but she also states the money given to Metro was in 2006.<sup>82</sup> Financial evidence which could, theoretically, corroborate or substantiate the family's version of the facts consists of four bank statements, three of which are incomplete.<sup>83</sup>

<sup>78</sup> See First Supplement to Opposition to Summary Judgment, filed May 2, 2016; Second Supplement and Notice of Motion, Opposition and Motion to Strike Plaintiff's Reply in Support of Renewed Motion for Summary Judgment, filed June 28, 2016 (including documents as evidence of the alleged source of the funds from home equity lines of credit). The Second Supplement with all evidence on the home equity line was filed in *response* to LVMPD's reply brief on the renewed motion for summary judgment, after the time period for oppositions under E.D.C.R. 2.20. While LVMPD has previously asserted and still maintains these documents were untimely and should be stricken, LVMPD has addressed the issues presented therein on their merits in this summary.

<sup>79</sup> See Opposition to Summary Judgment, filed May 14, 2016, at p. 2.

<sup>80</sup> See *id.* at Exhibit 8.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> See *id.* at Holmes' attached Exhibits 5, 6, 11, 12, and 13.

1 d. Holmes argues LVMPD's reply was untimely and should be  
2 stricken.

3 Both Holmes and Monroe argued LVMPD's reply was untimely. Holmes presents this  
4 argument in his brief dated June 24, 2016, titled "2nd Supplement and Notice of Motion,  
5 Opposition and Motion to Strike Plaintiff's Reply in Support of Renewed [sic] Motion for  
6 Summary Judgment against Defendant Robert Holmes III," at page 2, arguing that the Court had  
7 ordered all motions must be filed by June 3, 2016.

8 4. LVMPD's Responses to Holmes' Arguments.

9 a. The statistical closing and reopening of the case was not in  
10 error, and this Court has previously examined this issue.

11 In LVMPD's Reply in Support of the Summary Judgment, filed June 21, 2016, LVMPD  
12 set forth in detail the issue of the statistical closing and reopening of the case with citations and  
13 attachment of all relevant documents.<sup>84</sup> The issue of the reopening of the case has been  
14 previously litigated and should not be revisited, based upon the doctrine of law of the case. The  
15 District Court has previously considered Holmes' arguments about the reopening of the case in  
16 1) Motion to Dismiss Plaintiffs Motion to Reconsider Court Statistically Closing Case filed  
17 February 6, 2012; 2) Supplement to Motion to Dismiss Plaintiff's Motion to Reconsider Court  
18 Statistically Closing Case; and 3) Holmes' opposition and the hearing on the First Motion for  
19 Summary Judgment in 2012. In the hearing on the 2012 motion for summary judgment, this  
20 Court has explained that LVMPD's motion was administrative, and in a civil case, "If either  
21 party wants to open it up, we reopen it. But sometimes people don't go forward with civil  
22 cases."<sup>85</sup> An order statistically closing a case does not enter judgment in favor of a party,  
23  
24  
25

26 <sup>84</sup> See Reply in Support of LVMPD's Renewed Motion for Summary Judgment, filed June 21, 2016, at  
pp. 17-18.

27 <sup>85</sup> See Exhibit 34 to Reply in Support of Renewed Motion for Summary Judgment, filed June 21, 2016, at  
28 pp. 6-7.



1 dismiss, or otherwise resolve a pending district court case, and is not a final, appealable  
2 judgment within the ambit of NRAP 3A(b)(1).<sup>86</sup>

3 The previous holding of this Court on this same issue in the same case is now law of the  
4 case, and the decision should not be relitigated. The Arizona courts have explained when law of  
5 the case is applied to decisions of the same court, it “promotes an orderly process leading to an  
6 end to litigation.”<sup>87</sup> The doctrine of law of the case, as applied to the same issue in the same  
7 case, “is one of procedure, not of substance,” because the court does not lack the power to  
8 change its own ruling, particularly if a substantial change has occurred in the evidence.<sup>88</sup> But  
9 here, there is no new evidence which affects this issue since 2012, and in the interest of  
10 efficiency, the issue of reopening the case should not be reconsidered.

11 **b. LVMPD presents a search warrant was not required, when the**  
12 **funds were voluntarily relinquished.**

13 LVMPD’s response to the allegations that the \$70,000 was seized without probable cause  
14 and without a search warrant is addressed in LVMPD’s Reply in Support of renewed Motion for  
15 Summary Judgment, filed June 21, 2016 at pp. 16–17. Essentially, LVMPD’s position is that the  
16 money was relinquished voluntarily, and therefore there is no unlawful search issue in this case.  
17 Further LVMPD had probable cause to believe the funds were proceeds of criminal activity  
18 based on information available at the time from Trevarthen, who told detectives she gave the  
19 money she withdrew from her bank accounts to Holmes, and he would not return it.<sup>89</sup> Since  
20 Holmes already surrendered the \$70,000 through the agency of his attorney, his proper recourse,  
21 if any, is against his own attorney.<sup>90</sup>

22  
23  
24 <sup>86</sup> See Brown v. MHC Stagecoach, 129 Nev. Adv. Op. 37, 301 P.3d 850, 852–853 (2013).

25 <sup>87</sup> Powell-Cerkoney v. TCR-Montana Ranch Joint Venture, II, 860 P.2d 1328, 1331 (Az. App. 1993).

26 <sup>88</sup> See Sholes v. Fernando, 268 P.3d 1112, 1115 (Az. App. 2011).

27 <sup>89</sup> See id.

28 <sup>90</sup> See Huckabay Props. v. NC Auto Parts, 322 P.3d 429, 434–435 (Nev. 2014).

c. LVMPD's examination of the evidence submitted by Holmes demonstrates the evidence does not create an issue of material fact as to the source of the \$70,000.

The evidence provided by Holmes demonstrates Holmes had lines of credit open in 2006, which does not create an issue of material fact as to the \$70,000. LVMPD's detailed evidence traces the money from stolen property (from Monroe's extensive felony history), to Trevarthen's bank account, to a large series of large withdrawals in a short time from Trevarthen's bank account, to Trevarthen requesting Holmes return the money and Holmes stating he wanted to speak to his attorney; and then, to Holmes' attorney giving the money to LVMPD and stating Holmes had used some of the money to pay bills. Notably, Holmes' attorney never mentioned a home equity line being the source of the money given to LVMPD.

Holmes has submitted self-serving affidavits and evidence which does not support the affidavits. A self-serving affidavit stating general conclusions, without any accompanying means of validation, cannot serve to support summary judgment.<sup>91</sup> The incomplete bank records do create a material issue of fact that Holmes had \$70,000 available in cash from a home equity line at the time of this seizure, or that the money provided to Sean Sullivan and LVMPD was money from a home equity line. The detailed analysis of each of the banking documents provided by Holmes is addressed in LVMPD's Reply in Support of Renewed Motion for Summary Judgment, filed June 21, 2016, at pp. 22-23. To summarize here, however, the evidence consisted of limited documents in the wrong time frames, with missing pages. The documents demonstrate Holmes had a great deal of debt beginning in 2005, but they **do not demonstrate** either that: 1) Holmes actually possessed \$70,000 from home equity lines in November 2006 or 2) Holmes withdrew money from the bank or from his home equity lines around the time the \$70,000 was turned over to LVMPD in November 2006. Holmes has submitted only incomplete evidence, but it did not create a material issue of fact.

<sup>91</sup> See Dennison v. Allen Group Leasing Corp., 110 Nev. 181, 185, 871 P.2d 288, 290-291 (1994); see also Clauson v. Lloyd, 103 Nev. 432, 434-435, 743 P.2d 631, 632-633 (1987); see also Catrone v. 105 Casino Corp., 82 Nev. 166, 170-171, 414 P.2d 106, 108-109 (1966).

FILED

2016 MAY 24 A 10:14

*[Signature]*  
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS METROPOLITAN POLICE  
DEPARTMENT,

Case No.: 07A537416

Dept. No.: VIII

PLAINTIFF,

VS.

ROBERT HOLMES III  
U.S CURRENCY \$281,656.73,

Defendant.

07A537416  
DMSJ  
Opposition to Motion For Summary Judgment  
4549378



OPPOSITION TO SUMMARY JUDGMENT AND MOTION TO  
STRIKE THE PLAINTIFF'S RENEWED SUMMARY JUDGMENT.

Defendant Robert Holmes III In pro se brings forth this motion to strike this second summary judgment motion filed by the plaintiff. These new arguments that the plaintiff's are trying to set forth should have been inserted in the first SUMMARY JUDGMENT. THESE NEW ARGUMENTS COULD have easily been brought in the first SUMMARY JUDGMENT the court should strike this newly filed SUMMARY JUDGMENT. THESE INADEQUATE FILING ARE COSTING THE TAXPAYERS MONEY. THE PLAINTIFF'S ARGUMENTS are still disputed first the \$70,000 that was seized by METRO AND ICE was the

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EX-2

defendants money which did not come from any crimes or felonies. The defendant has shown his bank statements he has also shown his signed notarized statements from his family which stated that the \$70,000 that was seized was Robert Holmes III money. It also stated exactly what the \$70,000 was for.

The plaintiff's has continued to try to place the money to a felony, which the money that was seized has absolutely no connection to any felony. The \$70,000 sized from Robert Holmes III was his money and he had took out many loans for the sole purpose of buying his mother a home in ALABAMA. These are clear disputes, the defendant argues that this money came from various loans on his three homes, which he proved to the courts over and over. The Plaintiff's have not proved that the defendant's \$70,000 was not his and that it came from a crime. These are clear disputes which is the reason that a SUMMARY JUDGMENT CANNOT BE GRANTED. JUST BECAUSE THE PLAINTIFF'S CLAIM THAT THE DEFENDANT PLED TO A FELONY, THIS DOES NOT TIE DEFENDANT MONEY TO ANY CRIME. THIS ALLEGED CRIME WAS A SEPARATE COMPLETE ACTION WHICH DOES NOT HAVE ANY AFFILIATION WITH THE DEFENDANTS \$ 70,000. THE DEFENDANT ROBERT HOLMES III SHOWED HIS 14 YEAR WORK HISTORY ON THE SAME JOB WHICH WAS AT THE BINIONS HORSHOE. THE DEFENDANT WAS CHARGED WITH POSSESSION OF STOLEN PROPERTY NOT THE SALES OF STOLEN PROPERTY. THERE IS NO PHYSICAL EVIDENCE THAT TIES THE DEFENDANT'S \$70,000 to any crime. These are facts that the defendant has proven. The SUMMARY JUDGMENT CANNOT BE GRANTED WHEN THERE IS A CLEAR DISPUTE. THE PLAINTIFFS CANNOT PLACE A SET OF FACTS THAT CAN SHOW THAT THE \$70,000 was not the defendant's. The court should strike the Newly filed SUMMARY JUDGMENT BECAUSE THESE SAME ARGUMENTS COULD HAVE BEEN ASSERTED IN THE FIRST SUMMARY JUDGMENT. The Plaintiffs keep turning the same wheel over and over, even if these newly stated arguments were placed in the first summary judgment these would still be disputes there is nothing in the record that shows that the \$70,000 that ICE AND METRO SEZIED was not DEFENDANT Robert Holmes III Money. The hearsay by TONYA IS NOT FACTS. THE DEFENDANT STATED OVER AND OVER THAT HE DID NOT RECEIVE ANY MONEY FROM TONYA TREVARTHEN. TOYNA WAS CAUGHT IN TEXAS WITH STOLEN MONEY BY ICE AND METRO this was a fact.

#### CONCLUSION

DEFENDANT ROBERT HOLMES III ASK THIS HONORABLE COURT TO STRIKE THE PLAINTIFF'S NEWLY FILED MOTION AND TO RETURN THE DEFENDANT'S MONEY OF \$70,000 SO THAT THE DEFENDANT CAN PURCHASE HIS MOTHER HER HOME IN ALABAMA. THERE IS STILL MANY DISPUTES. THIS SUMMARY JUDGMENT CAN NOT BE GRANTED.

*By Robert Holmes III  
Submitted  
MAY 14, 2016*

CERTIFICATE OF MAILING

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DECLARATION UNDER PENALTY OF PERJURY  
THE UNDERSIGNED DECLARES UNDER PENALTY OF PERJURY THAT THIS  
DEFENDANT HAS SENT A CORRECT COPY TO EACH PARTY MENTIONED HEREIN.

EXECUTED AT 4657 SWAYING FERNS DRIVE  
LAS VEGAS NEVADA  
BY ROBERT HOLMES III  
MAY 14 , 2016

*Robert Holmes III*