

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE LAS VEGAS REVIEW-
JOURNAL, and THE ASSOCIATED
PRESS,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK, AND THE
HONORABLE RICHARD SCOTTI,
DISTRICT JUDGE

Respondent,

VERONICA HARTFIELD, A
NEVADA RESIDENT AND THE
ESTATE OF CHARLESTON
HARTFIELD, and OFFICE OF THE
CLARK COUNTY
CORONER/MEDICAL EXAMINER,

Real Parties in Interest.

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Feb 13 2018 03:31 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No.: 75073

Dist. Case No.: A-18-768781-C

PETITIONERS'
SUPPLEMENTAL
APPENDIX [VOLUME III]
TO EMERGENCY
PETITION FOR WRIT OF
PROHIBITION OR IN THE
ALTERNATIVE
MANDAMUS PURSUANT
TO NRAP 21 AND 27(e)

ACTION REQUIRED:
IMMEDIATELY

MCLETSCHIE SHELL LLC
Margaret A. McLetchie (Bar No. 10931)
Alina M. Shell (Bar No. 11711)
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Counsel for Petitioners,
The Las Vegas Review-Journal and The Associated Press

INDEX TO PETITIONERS' APPENDIX

[SUPPLEMENT APPEARS IN BOLD]

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II	Court Minutes	02/09/2018	PA324
I	Email Communication from Chief Deputy District Attorney, Mary-Anne Miller	01/31/2018	PA001
II	Email Communication from Deputy District Attorney, Laura Rehfeldt	02/09/2018	PA327 – PA355
I	Las Vegas Review-Journal Article “Coroner Releases Autopsy Reports of 58 Victims From Las Vegas Shooting”	01/31/2018	PA002 – PA007
II	Notice of Entry of Emergency Counter-Motion to Dissolve Temporary Restraining Order Immediately on Order Shortening Time [Immediate Action Required]	02/08/2018	PA249 – PA281
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III	Order on Counter-Motion to Dissolve Temporary Restraining Order and Opposition to Ex Parte Application for Temporary Restraining Order/ Motion for Preliminary Injunction	02/13/2018	PA356 – PA363
I	Plaintiff's Ex Parte Application for Temporary Restraining Order and Motion for Preliminary Injunction on Order Shortening Time	02/02/2018	PA013 – PA023
II	Plaintiffs' Opposition to Defendant Las Vegas Review Journal and Associated Press' Emergency "Counter-Motion" to Dissolve Temporary Restraining Order and Reply to Opposition to Ex Parte Application for Temporary Restraining Order/Motion for Preliminary Injunction	02/09/2018	PA282 – PA323
II	Register of Actions (Case No. A-18-768781-C)	02/09/2018	PA325 – PA326
I	Response in Non-Opposition	02/07/2018	PA024 – PA219

CERTIFICATE OF SERVICE

I certify that I am an employee of McLetchie Shell LLC and that on this 13th day of February, 2018 the PETITIONERS' SUPPLEMENTAL APPENDIX [VOLUME III] TO EMERGENCY PETITION FOR WRIT OF PROHIBITION OR IN THE ALTERNATIVE MANDAMUS PURSUANT TO NRAP 21 AND 27(e) ACTION REQUIRED: IMMEDIATELY was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the Master Service List and served by First Class United States Mail, postage fully prepaid to the following:

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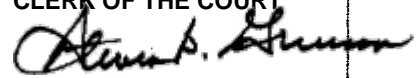
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///

Honorable Judge Richard F. Scotti
Eighth Judicial District Court, Department II
200 Lewis Avenue, Eleventh Floor
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Nevada Supreme Court Clerk
201 South Carson Street, Suite 201
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/s/ Pharan Burchfield
Employee, McLetchie Shell LLC



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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

VERONICA HARTFIELD, a Nevada resident,
and the ESTATE OF CHARLESTON
HARTFIELD,

Plaintiffs

vs.

OFFICE OF THE CLARK COUNTY
CORONER, an agency of the State of Nevada;
LAS VEGAS REVIEW JOURNAL, a Nevada
Corporation; and The ASSOCIATED PRESS, a
New York Corporation; DOE DEFENDANTS 1
through 10; and ROE DEFENDANTS 1 through
10,

Defendants.

Case No.: A-18-768781-C
Dept. No. II

**ORDER ON COUNTER-MOTION TO
DISSOLVE TEMPORARY
RESTRAINING ORDER -and-
OPPOSITION TO EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER/MOTION FOR
PRELIMINARY INJUNCTION**

1 On February 9, 2018, at 9:00 AM, Plaintiff appeared by and through counsel, Anthony
2 P. Sgro, Esq., of Sgro & Roger, and Defendants appeared by and through counsel, Margaret
3 A. McLetchie, Esq., of McLetchie Shell LLC, before this Court, on Defendants' Counter-
4 motion to Dissolve Temporary Restraining Order; Defendants' Opposition to Ex Parte
5 Application for Temporary Restraining Order/Motion for Preliminary Injunction; and
6 Plaintiffs' Opposition to Defendants' Counter-motion to Dissolve Temporary Restraining
7 Order and Reply to Defendants' Opposition to Ex Parte Application for Temporary
8 Restraining Order/Motion for Preliminary Injunction. After entertaining oral argument on the
9 same, the District Court makes the following findings:

10
11 THE COURT FINDS that the *Katz* case is clear that courts have authority to restrict
12 media's reporting and media's access to records provided the court makes findings that these
13 documents implicate a clear privacy interest and these documents would cause additional
14 anguish; moreover, the Court finds compelling the language cited in Plaintiffs' Opposition, to
15 wit:

16
17 Family members of decedents have a privacy right in records regarding their deceased
18 relatives. *Katz v. National Archives & Records Admin.*, 862 F.Supp. 476 (D.D.C. 1994). In *Katz*,
19 the court held:

20 [T]he Kennedy family has a clear privacy interest in preventing the disclosure
21 of both the x-rays and the optical photographs taken during President
22 Kennedy's autopsy...However, there can be no mistaking that the Kennedy
23 family has been traumatized by the prior publication of the unauthorized
24 records and that further release of the autopsy materials will cause additional
25 anguish...

26 ...The Court finds that allowing access to the autopsy photographs would
27 constitute a clearly unwarranted invasion of the Kennedy family's privacy.

28 *Katz*, 862 F.Supp. at 485-86.

1 THE COURT FURTHER FINDS compelling, the *Johnson* case, cited by Defendants,
2 which acknowledges that under certain circumstances, a gag order may ~~not~~ be appropriate,
3 and a balancing test is necessary. See *Johanson v. Eighth Judicial Dist. Court of State Of Nev.*
4 *ex. Rel. Cty. Of Clark*, 124 Nev. 245, 251, 182 P.2d 94, 98 (Nev. 2008).

5 THE COURT FURTHER FINDS that the anguish suffered by Plaintiffs by having the
6 autopsy report of Mr. Hartfield disseminated and/or published is significant, and that the
7 invasion of Plaintiffs' privacy right, which is a fundamental right, constitutes serious and
8 irreparable harm;

9 THE COURT FURTHER FINDS that the anguish being suffered by Plaintiffs
10 supports the view that there is a privacy interest, which is a fundamental, protected interest of
11 a very serious nature, that the Court must consider;

12 THE COURT FURTHER FINDS that the issue before the Court is whether the Court
13 can issue a so called "gag order" preventing the press from reporting on the information in the
14 redacted Hartfield report or even continuing to hold the redacted autopsy report of Mr.
15 Hartfield;

16 THE COURT FURTHER FINDS that in resolving this issue, the Court is mindful of
17 the competing fundamental rights-a fundamental right to privacy and a fundamental right
18 under the first amendment to speech. In resolving these two fundamental rights, the Court
19 must engage in a balancing approach.

20 THE COURT FURTHER FINDS compelling the language in *Johanson*, cited by
21 Defendants, that states:

22
23 We further conclude that the district court abused its discretion when it
24 issued an overly broad gag order sua sponte, without giving notice or a
25 meaningful opportunity to be heard, without making any factual findings with
26 respect to the need for such an order in light of any clear and present danger or
27 threat of serious and imminent harm to a protected interest, and without
28 examining the existence of any alternative means by which to accomplish this
purpose.

1 *Johanson v. Eighth Judicial Dist. Court of State of Nev. ex. Rel. Cty. of Clark*, 124 Nev. 245,
2 253, 182 P.2d 94, 99 (Nev. 2008).

3 THE COURT FURTHER FINDS that *Johanson* contemplates a balancing approach in
4 determining whether the press' access to the redacted Hartfield report may be restrained;

5 THE COURT FURTHER FINDS that it agrees with the approach taken by the Eighth
6 Circuit in *Certain Interested Individuals, John Does I-V, Who are Employees of McDonnell*
7 *Douglas Corp. v. Pulitzer Pub. Co.*, 895 F.2d 460 (8th Cir. 1990), where the Eighth Circuit
8 Court of Appeals stated, "We agree with the district court that what is required is a careful
9 balancing of the public's interest in access against the individual's privacy interests, and we
10 commend the district court for its efforts to protect and accommodate the conflicting interests
11 in access and privacy." *Certain Interested Individuals, John Does I-V, Who are Employees of*
12 *McDonnell Douglas Corp. v. Pulitzer Pub. Co.*, 895 F.2d 460, 464 (8th Cir. 1990);

13 THE COURT FURTHER FINDS that, based on the cited cases, a balancing test is
14 required in this case;

15 THE COURT FURTHER FINDS that the matter before the Court is different from the
16 case brought in A-17-764842-W, Department XVI, prior to this action because this Court is
17 dealing with a personal privacy interest, which is a fundamental right, instead of government
18 interests;

19 THE COURT FURTHER FINDS that redacting the Hartfield autopsy report is not
20 sufficient to guard against the fundamental right to privacy being asserted in this action;

21 THE COURT FURTHER FINDS that Defendants have failed to assert any legitimate
22 basis for why the public would need to have access to the redacted Hartfield autopsy report;

23 THE COURT FURTHER FINDS that there is a strong public policy that individuals
24 are entitled to protection from intrusion into their medical records and medical history that is
25 supported in part by the Coroner's counsel who came forward and explained the principles of
26 the Coroner's office in exercising some degree of control over the dissemination of the
27 autopsy records;
28

1 THE COURT FURTHER FINDS that the Court must also be sensitive to the grief that
2 the victims and the victim's family are suffering from;

3 THE COURT FURTHER FINDS that Defendants have failed to demonstrate that the
4 redacted autopsy report of Mr. Hartfield has any significant relationship to the manner in
5 which the government operates to warrant dissemination and/or publication;

6 THE COURT FURTHER FINDS that Defendants have failed to demonstrate that the
7 redacted autopsy report of Mr. Hartfield has any significant relationship to the need to keep
8 the government accountable to warrant dissemination and/or publication;

9 THE COURT FURTHER FINDS that Defendants have failed to demonstrate that the
10 redacted autopsy report of Mr. Hartfield has any significant relationship to the need for the
11 government to be transparent to determine whether governmental officials are acting
12 responsibility or with efficiency, to warrant dissemination and/or publication;

13 THE COURT FURTHER FINDS that Defendants have failed to demonstrate, in this
14 case, irreparable harm or immediate or recognizable harm to Defendants if the redacted
15 autopsy report of Mr. Hartfield remains protected;

16 THE COURT FURTHER FINDS that this case is substantively different from the
17 case heard in A-17-764842-W, Department XVI; as such, this Court finds that releasing Mr.
18 Hartfield's redacted autopsy report would be a dissemination of highly intimate and utterly
19 invasive information of a person's life and this is in connection with a horrific event;

20 THE COURT FURTHER FINDS that the disclosure of Mr. Hartfield's redacted
21 autopsy report is not one involving a legitimate public concern;

22 THE COURT FURTHER FINDS that there is no less restrictive order than this
23 Court's order prohibiting the further dissemination or disclosure of Mr. Hartfield's redacted
24 autopsy report;

25 THE COURT FURTHER FINDS that there is ~~nothing more than~~ *no less restrictive action that* the Court could take
26 other than prohibiting the complete disclosure of the redacted autopsy report of Mr. Hartfield;
27
28

1 THE COURT FURTHER FINDS that the only autopsy report at issue in this case is
2 Mr. Hartfield's autopsy report;

3 THE COURT FURTHER FINDS unpersuasive Defendants' argument that it does not
4 "know" which autopsy report to return, as Defendants may either: 1) return all autopsy reports
5 to be destroyed by the Coroner, and request the Coroner to re-send a new set of reports
6 without Mr. Hartfield's report contained therein; or 2) a representative from the Coroner's
7 office can review the records that the Las Vegas Review Journal and/or Associated Press has
8 and that record can be destroyed;

9 THE COURT FURTHER FINDS unpersuasive Defendants' argument that it is
10 impossible to retrieve the redacted autopsy report of Mr. Hartfield from the reporters that it
11 has disseminated the report to, as any reporter who has received the redacted autopsy report of
12 Mr. Hartfield is an employee of the Las Vegas Review Journal and/or Associated Press;

13 THE COURT FURTHER FINDS that it is limiting its ruling to the redacted autopsy
14 report of Mr. Hartfield, and its order does not contemplate any other individual's autopsy
15 reports or records;

16 THE COURT FURTHER FINDS that the press can report on information gleaned
17 separate and apart from information gleaned from Mr. Hartfield's redacted autopsy report;

18 THE COURT FURTHER FINDS that it is not dealing with the issue of what entities
19 the Coroner's office released the autopsy report to, concerning Mr. Hartfield; the Court only
20 has jurisdiction over the Las Vegas Review Journal and the Associated Press regarding the
21 issues in the case at bar. As such, the Court can only determine whether the arguments the Las
22 Vegas Review Journal and/or the Associated Press has made in support of continued
23 possession, dissemination and/or publication of the redacted autopsy report of Mr. Hartfield
24 warrants continued possession, dissemination, and/or publication of the redacted autopsy
25 report of Mr. Hartfield and this Court has concluded that Defendants have failed to meet that
26 burden;

27 Based on the findings of fact, the Court orders as follows:
28

1 IT IS HEREBY ORDERED that Defendants' Counter-motion and Opposition is
2 denied;

3 IT IS FURTHER ORDERED that Plaintiff's request for injunctive relief as to the
4 autopsy report of Charleston Hartfield is granted, as: 1) Plaintiffs enjoy a reasonable
5 likelihood of success on the merits; 2) Plaintiffs are likely to suffer irreparable harm if the
6 injunctive relief is not granted; 3) the balance of equities tips in Plaintiffs' favor; and 4) an
7 injunction is in the public interest;

8 IT IS FURTHER ORDERED that the Las Vegas Review Journal and the Associated
9 Press are hereby restrained and barred from disclosing, disseminating, publishing, or sharing
10 the redacted autopsy report of Mr. Hartfield, or any information of Mr. Hartfield therein;

11 IT IS FURTHER ORDERED that the Las Vegas Review Journal ~~and the Associated~~
12 Press must destroy any and all autopsy records relating to the October 1 event ^{and A.P.} as it pertains to
13 Mr. Hartfield; *alternatively, the Las Vegas Review Journal may collect*
14 */// and return all copies of such records. in the event the*
15 */// Las Vegas Review Journal and/or the Associated Press is*
16 */// uncertain as to which records relate to Mr. Hartfield,*
17 */// then they must allow a representative of the Coroner's*
18 */// Office and Petitioner's Counsel to review such*
19 */// records at the offices of the Las Vegas Review Journal,*
20 */// and/or the Associated Press to ascertain the records,*
21 */// among all the other autopsy records, to be returned*
22 */// and/or destroyed.*

23 *[Signature]*
24
25
26
27
28

1 IT IS FURTHER ORDERED that the Coroner's office must send letters to any and all
2 entities, media outlets, and other individuals, to whom Mr. Hartfield's redacted autopsy
3 records were produced or disseminated reflecting this Court's order, except to the extent that
4 the redacted Hartfield autopsy report may be disseminated to the Plaintiff in this case.
5

6 DATED this ¹⁴13 day of February, 2018.

7 
8 _____
9 DISTRICT COURT JUDGE
10 Dh

11 Submitted by:

12
13 ___/s/ Eunice M. Beattie, Esq. ___
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