

ORIGINAL

JUL 13 2020

Douglas County  
District Court Clerk

FILED

2020 JUL 13 PM 1:20

Electronically Filed  
Jul 24 2020 09:33 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

CLARK HILL PLC  
DOMINIC P. GENTILE  
Nevada Bar No.: 1923  
Email: [dgentile@clarkhill.com](mailto:dgentile@clarkhill.com)  
MICHAEL V. CRISTALLI  
Nevada Bar No.: 6266  
Email: [mcristalli@clarkhill.com](mailto:mcristalli@clarkhill.com)  
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3800 Howard Hughes Parkway, Suite 500  
Las Vegas, Nevada 89169  
Tel: (702) 862-8300  
Fax: (702) 862-8400  
*Attorneys for Movant/Appellant James Kosta, Real Party in Interest*

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN THE COUNTY OF DOUGLAS, STATE OF NEVADA

IN THE MATTER OF THE SEARCH OF  
The residence and property located at  
1731 Sunset Court  
Gardnerville, Nevada 89410

CASE NO. 2019-SW-00045  
DEPT. 2

**MOVANT/APPELLANT JAMES KOSTA, REAL PARTY IN INTEREST NOTICE OF  
APPEAL OF ORDER DENYING MOTION FOR RETURN OF PROPERTY; TO  
UNSEAL SEARCH WARRANT APPLICATION; AND TO QUASH SEARCH  
WARRANT, OR IN THE ALTERNATIVE FOR PROTECTIVE ORDER**

TO: ALL PARTIES.

NOTICE IS HEREBY GIVEN that Movant/Appellant James Kosta, Real Party in  
Interest, by and through the law firm of Clark Hill PLC, hereby appeals to the Supreme Court of  
Nevada from the Order entered on June 11, 2020, by the Ninth Judicial District Court, Douglas  
County, Nevada, Movant/Appellant's Denying Motion for Return of Property; to Unseal Search

...

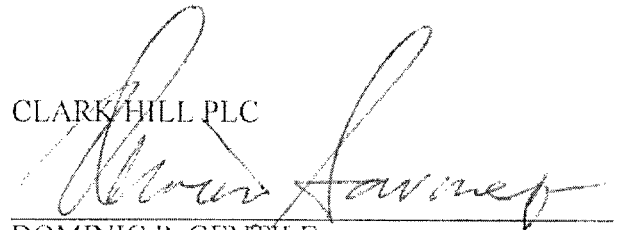
...

...

1 Warrant Application; and to Quash Search Warrant, or in the Alternative for Protective Order,  
2 attached hereto as **Exhibit "1"**.

3 DATED this 10 day of July, 2020.

4 CLARK HILL PLC

5 

6 DOMINIC P. GENTILE

7 Nevada Bar No. 1923

8 MICHAEL V. CRISTALLI

9 Nevada Bar No. 6266

10 VINCENT SAVARESE III

11 Nevada Bar No. 2467

12 3800 Howard Hughes Parkway, Suite 500

13 Las Vegas, Nevada 89169

14 Tel: (702) 862-8300

15 *Attorneys for Movant/Appellant James Kosta,*  
16 *Real Party in Interest*

1 CERTIFICATE OF SERVICE

2 The undersigned, an employee of Clark Hill PLC, hereby certifies that on the  
3 10 day of July, 2020, I served a copy of the MOVANT/APPELLANT JAMES  
4 KOSTA, REAL PARTY IN INTEREST NOTICE OF APPEAL OF ORDER DENYING  
5 MOTION FOR RETURN OF PROPERTY; TO UNSEAL SEARCH WARRANT  
6 APPLICATION; AND TO QUASH SEARCH WARRANT, OR IN THE ALTERNATIVE  
7 FOR PROTECTIVE ORDER, by electronic means, and by placing said copy in an envelope,  
8 postage fully prepaid, in the U.S. Mail at Las Vegas, Nevada, said envelope addressed to:

9 Douglas County District Attorney  
10 Criminal Division  
11 1038 Buckeye Road  
12 P.O. Box 218  
13 Minden, Nevada 89423  
14 Facsimile: (775) 782-9807

Special Agent Evan Miyamoto  
Drug Enforcement Agency  
8790 Double Diamond Parkway  
Reno, Nevada 89521

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28  
  
An employee of CLARK HILL PLC

**EXHIBIT 1**

**EXHIBIT 1**

RECEIVED

JUN 11 2020

FILED

Case No. 2019-SW-00045

Dept. No. II

Douglas County  
District Court Clerk

2020 JUN 11 AM 10:51

BOBBIE R. WILLIAMS  
CLERK

A. NEWTON  
DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF DOUGLAS

IN THE MATTER OF THE SEARCH OF

The residence and property  
located at 1731 Court  
Gardnerville, NV 89410

ORDER DENYING MOTION FOR RETURN  
OF PROPERTY; TO UNSEAL SEARCH  
WARRANT APPLICATION; AND TO QUASH  
SEARCH WARRANT, OR IN THE  
ALTERNATIVE FOR PROTETIVE ORDER

THIS MATTER comes before the Court on the Motion of Real  
Party in Interest James Kosta for Return of Property; to Unseal  
Search Warrant Application and Supporting Affidavit; and to Quash  
Search Warrant, or in the Alternative, for Protective Order filed  
on March 16, 2020. The State filed an opposition on April 6,  
2020.<sup>1</sup> Real Party in Interest, James Kosta ("Kosta") filed a  
reply on April 20, 2020.

A hearing is unnecessary to the determination of the motion  
given Kosta's failure to allege sufficient facts warranting the  
taking of evidence and oral argument would not be of assistance to  
the Court. NRS 179.085(1); NJDC(e). Good cause appearing, the  
Court denies Kosta's requests for relief as follows:

<sup>1</sup> On March 19, 2020, the State filed a Motion to Enlarge Time seeking an  
extension of its time to file an opposition. The Motion to Enlarge Time was  
unopposed.

1                                    Procedural and Factual Background

2            On July 29, 2019, the Court issued a search warrant upon  
3 review of a search warrant application/affidavit. The face of the  
4 search warrant indicates a finding of probable cause to believe  
5 that evidence of the crimes of Open Murder, a category A felony,  
6 and Import of a Controlled Substance, a category B felony, was  
7 located at a specific residence and/or on Kosta's person.

8            On the same day, the State filed an *Ex Parte Motion to Seal*  
9 *Search Warrant Affidavit* pursuant to NRS 179.045(4). The State  
10 alleged good cause to seal the search warrant affidavit as  
11 follows:

12                    The Affidavit details an ongoing investigation,  
13 including ongoing police tactics related to that  
14 investigation, which may or may not result in  
15 charges being brought against an individual, and  
16 the release of the information in the warrant and  
17 affidavit may compromise this ongoing  
18 investigation. Public disclosures of the  
19 information contained in the affidavit in support  
20 of the search warrant at this time would seriously  
21 jeopardize the ongoing investigation, provide an  
opportunity to destroy evidence, change patterns  
of behavior, notify confederates, or allow  
confederates to flee or continue flight from  
prosecution. Furthermore, this investigation may  
result in applications for additional search  
warrants to be executed at other locations in the  
near future.

22 *Ex Parte Motion to Search Warrant Affidavit*, p. 1. The Court  
23 entered an *Order Granting Motion to Seal Search Warrant Affidavit*.  
24 A *Search Warrant Return* was filed on August 6, 2019.

25            On March 16, 2020, Kosta filed the pending *Motion of Real*  
26 *Party in Interest James Kosta for Return of Property; to Unseal*  
27 *Search Warrant Application and Supporting Affidavit; and to Quash*  
28 *Search Warrant, or in the Alternative, for Protective Order.*

1 Kosta's motion is not supported by affidavit. NJDCR 7.

2 The criminal investigation remains active and no arrests have  
3 been made.

4 Discussion

5 Motions for the return of property must be premised on at  
6 least one of the five grounds enumerated in NRS 179.085. Kosta  
7 alleges that the search warrant was not supported by probable  
8 cause. NRS 179.085(1)(c). Kosta does not supply any basis for  
9 his claim, which is unsupported by affidavit or other evidence.  
10 Instead, Kosta requests that the Court unseal the search warrant  
11 affidavit in hopes of revealing that the search warrant was  
12 deficient.

13 Once a search warrant affidavit is sealed, it may be unsealed  
14 by a court "upon a showing of good cause." NRS 179.045(4). The  
15 only cause suggested by Kosta is his curiosity as to what is  
16 contained in the search warrant affidavit. Kosta ignores the  
17 State's representation that the criminal investigation remains  
18 pending and that the good cause to seal the search warrant  
19 affidavit has not dissipated. The State's representations are  
20 supported by affidavit and are uncontested by Kosta.

21 The Court agrees with the State that the sealing provisions  
22 of NRS 179.045 would be meaningless if all that was required to  
23 unseal was for a party to assert a naked allegation that the  
24 search warrant was unsupported by probable cause. Upon balancing  
25 the interests of the State and Kosta and considering the nature of  
26 the investigation, Kosta has not demonstrated good cause to unseal  
27 the search warrant affidavit. Kosta has not demonstrated that the  
28 search warrant was unsupported by probable cause. Kosta is not

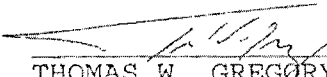
1 entitled to the return of seized property pursuant to NRS  
2 179.085(1)(c). Kosta has not supplied any basis to quash the  
3 search warrant.

4 As alternative relief, Kosta asks the Court modify the search  
5 warrant to alter the manner by which remaining searches of seized  
6 property may be conducted. Kosta does not attack the search  
7 methodology employed by the State thus far. Kosta does not raise  
8 any specific concerns for any specific evidence remaining to be  
9 searched.

10 Per the State, the government seized approximately sixty-four  
11 items, fifty-nine of which the State is prepared to return to  
12 Kosta. Approximately five items "are still being searched  
13 pursuant to the warrant issued in this case", indicating to the  
14 Court that a search of the remaining items is already underway.  
15 State's *Opposition*, p. 11. Kosta's request is untimely and is  
16 unsupported by Nevada precedent.

17 IT HEREBY ORDERED that the *Motion of Real Party in Interest*  
18 *James Kosta for Return of Property; to Unseal Search Warrant*  
19 *Application and Supporting Affidavit; and to Quash Search Warrant,*  
20 *or in the Alternative, for Protective Order* is DENIED.

21 DATED this 11<sup>th</sup> day of June, 2020.  
22  
23

24   
25 THOMAS W. GREGORY  
26 DISTRICT JUDGE  
27

28  
THOMAS W. GREGORY  
DISTRICT JUDGE  
NINTH JUDICIAL  
DISTRICT COURT  
P.O. BOX 218  
MINDEN, NV 89423



1 Copies served by mail on June 11<sup>th</sup>, 2020, addressed to:

2 Dominique P. Gentile, Esq. (Mail)

3 Michael V. Cristalli, Esq.

4 Vincent Savarese III, Esq.

5 Clark Hill PLC

3800 Howard Hughes Parkway, Suite 500

Las Vegas, Nevada 89169

6 Douglas County District Attorney (Hand delivered)

P.O. Box 218

7 Minden, Nevada 89423

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Erin C. Plante  
Erin C. Plante

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THOMAS W. GREGORY  
DISTRICT JUDGE  
NINTH JUDICIAL  
DISTRICT COURT  
P.O. BOX 218  
MINDEN, NV 89423

# Douglas County District Court

## Case Summary Report

Case #: 2019-SW-00045  
Case Title: In the Matter Of Search Warrant  
Filed: 07/29/2019  
Cause: Search Warrant

DV: N

Case Status: CLOS

Date: 08/06/2019

### Parties

<u>Party</u>	<u>Name</u>	<u>Status</u>
Other	Kosta, James	

### Documents

<u>Date</u>	<u>Code</u>	<u>Description</u>
07/29/2019	DEXM	Ex Parte Motion - to Seal Search Warrant Affidavit
07/29/2019	DORD	Order - Granting Motion to Seal Search Warrant Affidavit
08/06/2019	DRTN	Return - Search Warrant Return
08/06/2019	DAIS	Affidavit in Support of - Search Warrant
08/06/2019	DSAS	Search and Seizure Warrant - Search Warrant
03/16/2020	MMOT	Motion - of Real Party in Interest James Kosta for Return of Property; to Unseal Search Warrant Application and Supporting Affidavit; and to Quash Search Warrant, or in the Alternative, for Protective Order
03/16/2020	MMOT	Motion - Motion of Real Party in Interest James Kosta for Return of Property; to Unseal Search Warrant Application and Supporting Affidavit; and to Quash Search Warrant , or in the Alternative, for Protective Order
03/19/2020	MMOT	Motion - to Enlarge Time
04/06/2020	DOPP	Opposition to Motion - for Return of Property, to Unseal Search Warrant Application, and to Quash Warrant or Issue Protective Order
04/09/2020	DCOS	Certificate of Service
04/20/2020	DREP	Reply to - Opposition to Motion of Real Party in Interest James Kosta for Return of Property; to Unseal Search Warrant and Supporting Affidavit; and to Quash Search Warrant, or in the Alternative, for Protective Order
04/20/2020	DREP	Reply to - Opposition to Motion of Real Party in Interest James Kosta for Return of Property; to Unseal Search Warrant and Supporting Affidavit; and to Quash Search Warrant, or in the Alternative, for Protective Order
06/11/2020	DODE	Order Denying - Motion for Return of Property; to Unseal Search Warrant Application; and to Quash Search Warrant, or in the Alternative for Protective Order
07/13/2020	DNOA	Notice of Appeal - Movant/Appellant James Kosta, Real Party in Interest Notice of Appeal of Order Denying Motion for Return of Property; to Unseal Search Warrant Application; and to Quash Search Warrant, or in the Alternative for Protective Order

RECEIVED FILED

JUN 11 2020 2020 JUN 11 AM 10:51

Douglas County  
District Court Clerk ROBBIE R. WILLIAMS  
CLERK

BY ALVAREZ DEPUTY

Case No. 2019-SW-00045

Dept. No. II

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IN AND FOR THE COUNTY OF DOUGLAS

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The residence and property  
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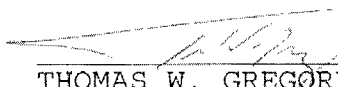
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17 IT HEREBY ORDERED that the *Motion of Real Party in Interest*  
18 *James Kosta for Return of Property; to Unseal Search Warrant*  
19 *Application and Supporting Affidavit; and to Quash Search Warrant,*  
20 *or in the Alternative, for Protective Order* is DENIED.

21 DATED this 11<sup>th</sup> day of June, 2020.  
22  
23

24   
25 THOMAS W. GREGORY  
26 DISTRICT JUDGE  
27

28  
THOMAS W. GREGORY  
DISTRICT JUDGE  
NINTH JUDICIAL  
DISTRICT COURT  
P.O. BOX 218  
MINDEN, NV 89423

1 Copies served by mail on June 14, 2020, addressed to:

2 Dominique P. Gentile, Esq. (Mail)

3 Michael V. Cristalli, Esq.

4 Vincent Savarese III, Esq.

5 Clark Hill PLC

3800 Howard Hughes Parkway, Suite 500

Las Vegas, Nevada 89169

6 Douglas County District Attorney

(Hand delivered)

7 P.O. Box 218

Minden, Nevada 89423

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Erin C. Plante  
Erin C. Plante

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THOMAS W. GREGORY  
DISTRICT JUDGE  
NINTH JUDICIAL  
DISTRICT COURT  
P.O. BOX 218  
MINDEN, NV 89423

1 STATE OF NEVADA           )  
2                                   )       ss  
3 COUNTY OF DOUGLAS       )

4  
5                   I, BOBBIE R. WILLIAMS, Clerk of the Ninth Judicial  
6 District Court, State of Nevada, in and for the said County of  
7 Douglas; said Court being a Court of Record, having common law  
8 jurisdiction, and a Clerk and a Seal, do hereby certify that the  
9 foregoing are the full, true copies of the MOVANT/APPELLANT JAMES  
10 KOSTA, REAL PARTY IN INTEREST NOTICE OF APPEAL OF ORDER DENYING  
11 MOTION FOR RETURN OF PROPERTY; TO UNSEAL SEARCH WARRANT  
12 APPLICATION; AND TO QUASH SEARCH WARRANT, OR IN THE ALTERNATIVE  
13 FOR PROTECTIVE ORDER; DISTRICT COURT DOCKET ENTRIES; ORDER  
14 DENYING MOTION FOR RETURN OF PROPERTY; TO UNSEAL SEARCH WARRANT  
15 APPLICATION; AND TO QUASH SEARCH WARRANT, OR IN THE ALTERNATIVE  
16 FOR PROTECTIVE ORDER in Case No. 2019-SW-00045 (ITMO A SEARCH  
17 WARRANT) .  
18  
19

20                   IN TESTIMONY WHEREOF, I have hereunto set my hand and  
21 affixed my Official Seal at Minden, in said County and State this  
22 16<sup>th</sup> day of July, A.D., 2020.  
23

24  
25                     
26                   \_\_\_\_\_  
27                   Clerk of the Court  
28                     
29                   \_\_\_\_\_  
30                   Deputy Clerk





**BOBBIE R. WILLIAMS**  
**CLERK OF COURT**  
**COURT ADMINISTRATOR**  
**JURY COMMISSIONER**

**District Court Clerk's Office**  
(775) 782-9820  
**Tahoe Justice Court**  
(775) 586-7200  
**East Fork Justice Court**  
(775) 782-9955

**Transmittal to the Supreme Court**

To: Nevada Supreme Court  
210 South Carson Street  
Carson City, Nevada 89710

Date: July 16, 2020

Re: District Court Case #: 2019-SW-00045  
District Court Case Name: ITMO A SEARCH WARRANT

The following documents are transmitted to the Supreme Court pursuant to the July 22, 1996 revisions to the Nevada Rules of Appellate Procedure. Checked items are **NOT** included in this appeal:

- ☐ Notice of Appeal
- ☒ Case Appeal Statement
- ☒ Certificate That No Transcript Is Being Requested
- ☒ Defendant's Request for Transcript of Proceedings
- ☒ Notice of Posting of Appeal Bond
- ☐ District Court Docket entries
- ☐ Judgment(s) or order(s) appealed from
- ☒ Order (NRAP FORM 4)
- ☒ Notice of entry of the judgment(s) or order(s) appealed from
- ☒ Certification order directing entry of judgment pursuant to NRCP 54(b)
- ☒ District Court Minutes
- ☒ Exhibit Lists
- ☐ Supreme Court filing fee (\$250.00), if applicable

Respectfully,  
BOBBIE WILLIAMS  
CLERK OF THE COURT

By:   
Deputy Court Clerk