

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 THE STATE OF NEVADA,

3 Appellant,

4 us.

5 MARGAUX SHANNON ORNELAS,

6 Respondent.

Docket No.

82751

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May 14 2021 06:08 p.m.

Elizabeth A. Brown
Clerk of Supreme Court
**RESPONDENT'S POINTS AND
AUTHORITIES IN RESPONSE TO
PROPRIETY OF APPEAL**

7
8 **PRELIMINARY STATEMENT**

9 This is the State's appeal from an order of the District Court granting
10 Respondent Margaux Ornelas's pretrial motion to suppress. The State "may,
11 upon good cause shown, appeal . . . from a pretrial order of the district court
12 granting . . . a motion to suppress evidence" NRS § 177.015(2).

13 **STATEMENT OF THE ISSUE**

14 Whether good cause exists to permit an appeal from the district court's
15 suppression order.

16 **STATEMENT OF THE CASE**

17 On May 3, 2019, the State filed its Indictment charging Margaux Or-
18 nelas and Dustin Lewis with: conspiracy to commit burglary; 4 counts of bur-
19 glary; grand larceny; and conspiracy to commit burglary. (I Appellant's Ap-
20 pendix [hereinafter "AA"] 1–5.) On February 26, 2021, Mr. Lewis filed a Mo-
21 tion to Suppress Evidence Based on Fourth Amendment Violation and Fruit
22 of the Poisonous Tree Doctrine, (*id.* at 6), to which Ms. Ornelas joined, (*id.*
23 at 80). The district court heard argument on that motion April 5, 2021, at
24 which hearing the court then granted the motion. (*Id.* at 105–11.) The district
25 court filed its Order Granting Dustin Lewis Motion Suppress Evidence Based
26 on Fourth Amendment Violation and Fruit of the Poisonous Tree Doctrine
27 on April 8, 2021. (*Id.* at 112–13.) The State filed its Notice of Appeal on April
28 9, 2021. (*Id.* at 115.)

STATEMENT OF THE FACTS

On December 8, 2018, at 10:17 AM, Officer Penney with the Las Vegas Metropolitan Police Department was dispatched to the StorageOne storage facility at 9960 West Flamingo Road to investigate a burglary at unit B-151. (1 AA 18.) He contacted complaining witness Marc Falcone, the unit's renter, who had last been to the unit the previous day. (*Id.*) On the 8th, Mr. Falcone received a phone call from a StorageOne employee saying his unit had been burglarized. (*Id.* at 19.) Mr. Falcone told officers he was missing 21 wrist-watches worth an estimated \$2.173 million. (*Id.*) Further investigations revealed that, in addition to unit B-151, units B-145 and B-147 had been burglarized on December 8; and units A-301, A-185, B-148, and B-259 were burglarized on December 6. (*Id.* at 19, 22.) Beyond Mr. Falcone's watches, he reported as missing a Panerai watch brand bag, watch boxes, duffle bag, and a briefcase that also had watches in it. (*Id.* at 20.)

StorageOne video surveillance stills showed two individuals, a white female adult and a while male adult, entering the facility at 3:21 AM on the 8th and leaving again at 4:43 AM, carrying several bags and pushing a wheelchair. (*Id.* at 19.) Detectives canvassed the area and learned from unidentified homeless people that the suspects may be homeless and living near the intersection of Tropicana and Fort Apache, which is approximately two miles from the StorageOne location. (*Id.*) Upon checking past crime reports and field interviews of homeless people in that area, detectives found an interview from July 7, 2018, involving an Annie Bishop and a James Gregg who were homeless and matched the general description of the suspects. (*Id.* at 19–20.) The lead detective compared still shots from StorageOne surveillance to booking photos of Ms. Bishop and Mr. Gregg, determined there were similarities, but could not conclude that they were the burglary suspects due to the still shots being distant and the faces unclear. (*Id.* at 21.) The detective

1 did determine from surveillance that the suspects were carrying various bags
2 and an apparent chessboard. (*Id.*) Ms. Bishop and Mr. Gregg were never lo-
3 cated or charged.

4 On December 11, 2018, at 6:30 PM, officers re-canvassed the area
5 around StorageOne attempting to locate Ms. Bishop and Mr. Gregg and dis-
6 covered a tent in a fenced-off desert area east of the StorageOne facility. (*Id.*
7 at 22.) Officers “decided to hop the fence that surrounds the desert area and
8 challenged the tent to see if anyone was inside. There was no answer, so they
9 unzipped the door of the tent to see if anyone was inside.” (*Id.* at 22–23.)
10 Upon opening the tent, officers found no one home, but they took the oppor-
11 tunity the unzipped and open tent afforded, looked inside, and saw a wooden
12 chessboard and watch boxes, one of which had “Panerai” written on it. (*Id.*
13 at 23.) Outside the tent, approximately 25 yards east, there was a folded
14 wheelchair. (*Id.*)

15 Based on the prior investigation and, significantly, the items officers
16 saw inside and outside the tent, a search warrant was sought and obtained.
17 (*Id.* at 33–39.) Officer Shark, in his application, stated he was part of the
18 “Flex” team who saw the tent in the desert, and that officers attempted to
19 make verbal contact with the residents of the tent. (*Id.* at 33:18–34:42,
20 37:234–40.) Upon opening the tent and looking inside, officers saw the
21 watch boxes, one of which had “Panerai” written on it, and the chessboard
22 they believed was seen on video, while outside was the folded wheelchair.
23 (*Id.* at 37:240–38:250.)

24 During the processing of the tent and surrounding area, latent prints
25 were recovered from various items including the chessboard, a coin holder,
26 a blue bag, and a red jewelry cleaner jar, all from inside the tent. (*Id.* at 23.)
27 Additionally, the wheelchair handles were swabbed for DNA. (*Id.*) Ms. Or-
28 nelas’s prints came back on the chessboard, while Mr. Lewis’s prints came

1 back on the coin holder, blue bag, and red jewelry cleaner jar. (*Id.* at 27.) It
2 was based on the recovery of these prints that the lead detective on the case
3 made a forensic request for the prints recovered from the StorageOne facility
4 to be matched against them, while a comparison of the prints of Mr. Faulk-
5 ner, Ms. Bishop and Mr. Gregg was also requested. (*Id.* at 28.)

6 Later the night of the 11th, after the property from the tent and the sur-
7 rounding area was impounded, officers returned to the campsite for the os-
8 tensible purpose of searching for Officer Shark's lost cell phone. (*Id.* at 23-
9 24.) They discovered that the scene had been disturbed since their earlier
10 departure. (*Id.* at 24.) While at the campsite, they heard an alarm sound from
11 inside the StorageOne facility, but did not locate any suspects inside. (*Id.*)
12 Instead, officers saw a black Lincoln Navigator parked nearby. (*Id.*) Officers
13 sealed the vehicle and towed it to a secured lot, anticipating searching it the
14 following day. (*Id.*) In the nearby Chevron gas station parking lot, officers
15 saw two black male adults get into a silver Nissan Altima with a Lyft sticker
16 and drive away, but did not investigate them at that time. (*Id.*)

17 On December 12th at 1:02 AM, a "Chris Jones" called to report a robbery
18 at 9920 West Flamingo Road, the Chevron station just east of the StorageOne
19 facility. (*Id.*) The caller reported two homeless men with a handgun and a
20 sawed-off shotgun took his phone and wallet and escaped in a silver Nissan
21 Altima with a Lyft sticker. (*Id.* at 24-25.) The caller then said he was now at
22 his home at the Eagle Trace Apartments, 5370 East Craig Road. (*Id.* at 25.)
23 The Lincoln Navigator, notably, had a parking tag for the same apartment
24 complex. (*Id.*) Surveillance video from the StorageOne facility showed the
25 same white male adult from the prior video, as well as the black male adults
26 from the Nissan Altima, on the StorageOne property that evening. (*Id.*)

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1 Officers identified one of the black male adults as Tyree Faulkner and
2 interviewed him. (*Id.* at 25–26.) He would later admit to fabricating the rob-
3 bery he reported, and admitted he was with his cousin who knew a white
4 homeless couple who paid them five hundred dollars to drive them around;
5 the homeless woman had tried to sell a watch, but decided against it. (*Id.* at
6 26–27.) Later, the homeless man offered Mr. Faulkner and his cousin each
7 one thousand dollars to drive them around. (*Id.* at 27.) They then went to the
8 StorageOne facility where the homeless man used a pair of bolt cutters to cut
9 the hasp of a lock on a unit. (*Id.*)

10 A search warrant for the Lincoln Navigator issued based on the infor-
11 mation Mr. Faulkner provided, the prior investigation, and notably, a “bag
12 of clothing sitting on the ground to the rear of the Navigator” that officers
13 recognized as one of the bags seen in the desert area near the tent. (*Id.* at 58.)
14 Upon searching the Navigator, officers found two watches. (*Id.* at 63.)

15 Later investigation revealed that Ms. Ornelas was in downtown Las
16 Vegas at the Fun City Motel at 2233 South Las Vegas Boulevard. (*Id.* at 28.)
17 On December 14, she was taken into custody, and an application was made
18 for a search warrant for her hotel room and her DNA. (*Id.* at 69–74.) The
19 applying detective referred to the search of the tent and the items recovered
20 inside such as the watch boxes, chessboard, coin holder and bags. (*Id.* at
21 72:159–70.) The applicant then told the judge that latent prints were recov-
22 ered from the tent property that returned to Ms. Ornelas and Mr. Lewis. (*Id.*
23 at 72:186-89.) That search warrant application was granted and among the
24 numerous items seized and listed on the return were three watches deter-
25 mined to belong to Mr. Falcone. (*Id.* at 78.)

26 On January 9, 2019, the lead detective received a report on prints re-
27 covered from StorageOne indicating Mr. Lewis’s handprint and Ms. Or-
28 nelas’s thumbprint were found on the outside wall of unit B-145. (*Id.* at 30.)

1 According to the lead detective, “That now placed both Lewis and Ornelas at
2 the scene of the original burglaries to Blutman, Rodrigue and Falcone’s
3 units.” (*Id.*) Based on this new development, officers began a search for Mr.
4 Lewis which led to his mother’s address and Mr. Lewis’s arrest for a parole
5 violation. (*Id.*)

6 The lead detective then interviewed Mr. Lewis about various aspects of
7 this case, including the mode of the burglaries, the handprint found at Stor-
8 ageOne, the tent and the items seized from it, and the fingerprints found
9 there. (*Id.* at 30–31.) While Mr. Lewis denied involvement in these burglaries
10 and made no admissions of guilt, the lead detective repeatedly accused him
11 of lying, offered to lessen his term of incarceration if Mr. Lewis would return
12 the watches, and generally made comments meant to elicit an admission. (*Id.*
13 at 31.) At one point, the detective asked Mr. Lewis who had the watches and
14 Mr. Lewis said to talk with Ms. Ornelas. (*Id.*) After the interview, the detec-
15 tive re-booked Mr. Lewis for the instant offenses. (*Id.*)

16 **SUMMARY OF THE ARGUMENT**

17 The State has not shown good cause for its appeal to go forward.

18 **ARGUMENT**

19 The State’s memorandum is both conclusory and misleading. While
20 the district court’s order was sweeping, it was not by any stretch “all” of the
21 evidence against Ms. Ornelas and Mr. Lewis. No miscarriage of justice would
22 result in permitting the State to try its case on the remaining evidence left to
23 it.

24 Nevada Revised Statute 177.015(2) requires the State to show “good
25 cause” before the Court will entertain the merits of an interlocutory appeal.
26 *State v. Brown*, 134 Nev. 837, 838, 432 P.3d 195, 197 (2018). “Good cause”
27 means that “the state must make a preliminary showing of the ‘propriety of
28 the appeal’ and that a miscarriage of justice’ would result if the appeal is not

entertained.” *Id.* An appeal is proper if it is not undertaken “for the purpose of delay.” *Id.* at 839, 432 P.3d at 198. A “miscarriage of justice” results when “the suppressed evidence is of substantial importance such that its suppression would significantly impair or terminate the State’s ability to prosecute the case.” *Id.*

Ms. Ornelas concedes that the appeal in this case is not undertaken for the purposes of delay. Ms. Ornelas argues, however, that a miscarriage of justice would not result from the suppression of evidence as ordered by the district court.

In the State’s own Opposition to Ms. Ornelas’s Motion for Own Recognition Release/Setting Reasonable Bail, the State argued that it had plenty of evidence to go forward at trial. (1 Respondent’s Appendix 2; 8:25–9:22.) The State felt confident that there were numerous photos and videos of Ms. Ornelas and Mr. Lewis pawning and attempting to pawn stolen items from the storage units. (*Id.*) This, combined with the surveillance videos from StorageOne, should be more than enough for the State to prove their case.

Ms. Ornelas and Mr. Lewis should not be held to account for the State’s failure to legally collect more evidence in support of its charges. It is incumbent upon the State to explain why this evidence is inadequate for a conviction. *Brown*, 134 Nev. at 840, 432 P.3d at 198. The State has failed to do so. For that reason alone, Ms. Ornelas submits, the State has not met its burden to demonstrate good cause to proceed.

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1 **CONCLUSION**

2 For the foregoing reasons, Ms. Ornelas submits that the State has not
3 met its burden to show good cause to permit an appeal from the district
4 court's suppression order.

5 DATED this May 14, 2021.

6 /s/ Michael A. Troiano

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am a person competent to serve papers, that I am
3 not a party to the above-entitled action, and that on May 14, 2021, I served
4 this document via the Nevada Supreme Court's eFlex system on the counsel
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26 **AFFIRMATION**

Pursuant to NRS 239B.030, this document contains no social security numbers.

27 /s/ Michael Troiano

05-14-21

28 Michael Troiano, Esq.

Date