

IN THE COURT OF APPEALS OF THE STATE OF NEVADA


IN THE MATTER OF: SEARCH
WARRANTS REGARDING SEIZURE
OF DOCUMENTS, LAPTOP
COMPUTERS, CELLULAR
TELEPHONES, AND OTHER DIGITAL
STORAGE DEVICES FROM THE
PREMISES OF LAS VEGAS BISTRO,
LLC, AND LITTLE DARLINGS OF LAS
VEGAS, LLC.

LAS VEGAS BISTRO, LLC, D/B/A
LARRY FLYNT'S HUSTLER CLUB;
AND LITTLE DARLINGS OF LAS
VEGAS, LLC,
Appellants,
vs.
LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,
Respondent.

No. 84931

FILED

JUL 11 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

*ORDER DIRECTING SUPPLEMENTAL BRIEFING AND DIRECTING
TRANSMISSION OF DOCUMENTS UNDER SEAL*

Las Vegas Bistro, LLC, and Little Darlings of Las Vegas, LLC, appeal from a district court order denying a motion to unseal search warrant and supporting affidavits, quash search warrants, and return seized property. Appellants have filed an emergency motion for stay of the district court's order and respondent has filed an opposition. *See* NRAP 8.

Having considered appellants' motion and the opposition, we defer our decision on the motion for stay pending additional briefing. Therefore, we direct respondent to file a supplement to its opposition to the emergency motion for stay, specifically addressing NRS 179.085(1)(e) and

NRS 179.085(3) and whether the property should be returned under the totality of the circumstances. In addition, the parties should address whether the information may be copied from seized devices and the property returned. We direct appellants to address the same issues in their reply. Respondent will have until 2:00 p.m. on July 13, 2022, to file their supplemental answer and appellants will have until 2:00 p.m. on July 14, 2022, to file their reply.

Additionally, we have determined that our review of the search warrant and supporting affidavits is required. The district court shall have until 2:00 p.m. on July 13, 2022, to transmit to the clerk of this court a copy of the search warrant and supporting affidavits that it reviewed *in camera*, in sealed envelopes.

It is so ORDERED.


_____, C.J.
Gibbons


_____, J.
Bulla

cc: Hon. Jerry A. Wiese, Chief Judge
Fox Rothschild, LLP/Las Vegas
Shafer & Associates, P.C./MI
Marquis Aurbach Coffing
Eighth District Court Clerk

Tao, J., dissenting:

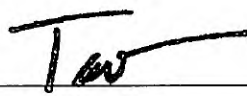
As this Court explained at length in *In Re the Execution of Search Warrants for: 12067 Oakland Hills, Las Vegas, Nev. 89141*, 134 Nev. 799, 435 P.3d 672 (2018), a proper motion for return of seized property is limited to requesting the return of seized property currently in the possession of the police that is neither contraband nor part of any active criminal investigation or prosecution, and whose return will not jeopardize any current criminal investigations or prosecutions. If seized property is either contraband, part of an active criminal investigation or prosecution, or its return will jeopardize an active criminal investigation or prosecution, then the police are entitled to keep it for now, and the motion should be denied.

Such a motion is not the proper vehicle to determine such questions as: the guilt or innocence of any person from whom property was seized; the rightness or wrongness of any investigation that led to the seizure of the property; the constitutional validity of any search warrant that permitted the seizure; the nature of any criminal charges that may or may not result from any investigation; the conduct of the police in obtaining the warrant or executing the seizure; how the police should conduct any future investigations based on the seizure. These are questions left to other vehicles to answer, such as trial and direct appeal, post-conviction petitions for writ of habeas corpus, and civil rights actions under 42 U.S.C. 1983.

Here, the appellant seeks to derail or handicap an ongoing criminal investigation of potential felony crimes before any charges have been filed, by asserting that some seized property may include attorney-client privileged materials. As a remedy, appellant proposes that further

criminal investigation be stayed, and that conditions be placed on how the police handle the materials. Neither of these proposed remedies falls within the scope of a motion for return of seized property. NRS 179.085. The only remedy that does, return of the materials, must be denied because the materials constitute part of an ongoing and active criminal investigation—notably, something appellant does not even seriously dispute, or else he wouldn't have asked for further investigation to be stayed.

This isn't a proper motion seeking return of materials accidentally seized that have nothing to do with a crime, after charges have been dismissed, or where no charges will ever be filed. This is a clever attempt to obstruct an active criminal investigation in which charges may well be forthcoming. It should be straightforwardly denied in its entirety. I dissent.


_____, J.
Tao