

IN THE SUPREME COURT 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.

Supreme Court Case No.:
84931

Electronically Filed
Jul 14 2022 01:23 p.m.
[District Court Case No. A-22-851073]
Elizabeth A. Brown
Clerk of Supreme Court

From the Eighth Judicial District Court
Honorable Jerry A. Wiese II, District Judge

**APPELLANTS' REPLY IN SUPPORT OF EMERGENCY MOTION FOR
STAY PURSUANT TO NRAP 8 AND NRAP 27(e)**

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POINTS AND AUTHORITIES

I. INTRODUCTION

In the totality of the circumstances presented in this unusual case, this Honorable Court should determine that all NRAP 8(c) factors weigh in favor of granting Appellants' motion to stay the district court's May 22, 2022 order denying Appellants' request to: (1) unseal the search warrant applications and supporting affidavits, (2) quash the search warrants, and (3) return all seized property. Granting the stay is particularly appropriate where the district court did not just deny Appellants' requests for relief, but it affirmatively approved a process purportedly protective of Appellants' attorney-client, work product and accountant-client privileges, which is completely contrary to the privilege log process that LVMPD admits is the "quintessential document to substantiate the alleged privilege." *See* Supplemental Opposition at pp. 2-3.

The fact is LVMPD still has all of Appellants' documents and devices, and unless and until they are returned and reviewed, Appellants have no way to provide the necessary privilege log or otherwise ensure their privileges remain inviolate. Further, as counsel acknowledges, LVMPD has had these items for nearly four months, which is more than enough time to have completed any desired imaging. But even if its imaging process is incomplete, LVMPD still maintains custody of all devices ensuring no prejudice to its investigation.

All Appellants seek by way of their Motion for Stay is to preclude LVMPD from reviewing their privileged information unless and until this Court rules on the merits of the underlying appeal. Even after being afforded the opportunity to file a Supplemental Opposition, and far exceeding the page limitation in the process, LVMPD has failed to meaningfully dispute Appellants' contention that all NRAP 8(c) factors supports the granting of a stay. Further, NRAP 2 permits the Court to order expedited briefing or otherwise suspend the rules to reach a final resolution. Any stay would then be of limited duration, with LVMPD's investigation either ending or resuming unimpeded following the Court's final decision.

II. ARGUMENT

A. THE COURT'S ADDITIONAL BRIEFING DIRECTIVE.

The Court directed Appellants to address NRS 179.085(1)(e) and 179.085(3) and whether the property should be returned under the totality of the circumstances, as well as whether the information may be copied from the seized devices and the property returned. Without waiving their arguments regarding application of the NRAP 8(c) factors, including but not limited to the likelihood of their success on appeal based on the inability of LVMPD to prosecute the crimes of Living from Earnings of a Prostitute, pursuant to NRS 201.320, and Advancing Prostitution, pursuant to NRS 201.395, when there can be no predicate crime of Prostitution, defined in NRS 201.295(5), Appellants offer the following:

In 2018, this Court clarified the application of NRS 179.085(1)(e), and albeit without direct reference, the circumstances where a return of property motion is granted, as contemplated in NRS 179.085(3). *In re Execution of Search Warrants*, 134 Nev. 799, 804-07, 435 P.3d 672, 677-79 (Ct. App. 2018). Further, there is reference in the factual and procedural history to the copying and return of electronic devices. *Search Warrants*, 134 Nev. at 800, 435 P.3d at 674. LVMPD relies almost entirely on this case in its Supplemental Opposition, referring to it as the *Anderson* case, and for the reasons stated below, so will Appellants.

In the recent *Search Warrants* case, just like the instant case, LVMPD suspected the real party in interest, Lauren Anderson, of running a secret prostitution ring and obtained search warrants for her various properties wherein they seized numerous electronic items and other personal effects. *Search Warrants*, 134 Nev. at 800, 435 P.3d at 674. After months with no criminal charges filed or civil forfeiture proceedings initiated, Anderson moved for return of her seized property and later sought recovery of her attorney fees and costs. *Id.*

This Court noted that had LVMPD contested Anderson's motion in a substantive way, the district court would have had to resolve the matter by weighing evidence. *Search Warrants*, 134 Nev. at 807, 435 P.3d at 679. But this did not occur because LVMPD quickly conceded the motion. *Id.* The true revelation of the *Search Warrants* case, and what should be determinative of the Court's requested analysis here, is the fact that LVMPD stipulated to "the return

of some computer equipment and memory devices whose contents had been copied.” *Search Warrants*, 134 Nev. at 800, 435 P.3d at 674. The Court can take judicial notice of LVMPD’s opposition to Anderson’s motion in the underlying case, a copy of which is attached as **Exhibit 1**. Therein, the opposing counsel appearing here, Nick Crosby, Esq., stated, “In this [*Search Warrants*] case, the Department has imaged the computer devices and is agreeable to releasing the computer devices, as the mirrored images are sufficient to satisfy the government’s evidentiary needs in that respect.” See **Exhibit 1** at 4:8-10 (emphasis added).

LVMPD has therefore answered in the affirmative that, in the totality of circumstances substantially similar to those of the instant case, Appellants’ devices can be copied and their property returned and this imaging fully satisfies LVMPD’s evidentiary needs. LVMPD’s opposition to the requested stay on the grounds that LVMPD’s investigation would be hindered thus fails in its entirety.

B. APPELLANTS’ MOTION IS PROCEDURALLY SOUND.

The citations in LVMPD’s Opposition and Supplemental Opposition do not support the arguments that Appellants’ Motion for Stay was untimely, without proper notice, or devoid of necessary arguments. Given this Court’s direction to address the matters above, it appears these arguments have been disregarded, but Appellants offer the following response in an abundance of caution:

First, the Motion for Stay was filed well within, and prior to, the time for

appeal, and LVMPD offers no authority for the proposition that not filing within “a day or two” of the district court’s decision warrants denial. *See* Opposition at p. 3. And the *Houchin* decision relied on by LVMPD has nothing to do with a stay motion and addresses the inapposite situation of a pro se party being denied an emergency motion to file a supplemental appendix six days before oral argument. *Half Dental Franchise, LLC v. Houchin*, 403 P.3d 685, 2017 WL 3326425 at *2, n.1 (2017).

Second, with regard to notice, the Motion for Stay contains an NRAP 27(e) certificate and was filed after Appellants were denied a stay from the district court. LVMPD offers no authority to support its request for denial of the emergency motion based solely on a purported lack of best efforts to provide notice prior to filing. *See* Opposition at p.p. 3-4. And the *TRP Fund* decision relied on by LVMPD addresses another inapposite situation of a party who did not include an NRAP 27(e) certificate with its filing and did not first request a stay from the district court. *TRP Fund VI, LLC v. PHH Mortg. Corp.*, 138 Nev. Adv. Op. 21, 506 P.3d 1056, 1058 (2022).

Third, LVMPD makes assertions in its Supplemental Opposition, belied by the record, that Appellants failed to address likelihood of success on the merits in support of its stay request or invoke the provisions of NRS 179.085 below. *See* Supplemental Opposition at pp. 1, 4-5. To the contrary, Appellants fully argued facts supporting the likelihood of success on the merits at both the district court

and appellate court levels by noting that the predicate crime of Prostitution is mutually exclusive to the undercover operation that precipitated the search warrants in question, and otherwise asserting the matter involves a serious legal question with a balance of equities favoring Appellants. *See, e.g.*, Motion for Stay at pp. 9-10. Further, Appellants' original motion identifies from the outset the numerous laws upon which it is based, including NRS 179.085, and they properly responded now to the Court's briefing request.

VI. CONCLUSION

For all of the reasons argued by Appellants, this Court should grant the Motion for Stay and maintain the status quo pending this Court's appellate review.

Dated this 14th day of July, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of July, 2022, I caused the foregoing **APPELLANTS' REPLY IN SUPPORT OF EMERGENCY MOTION FOR STAY PURSUANT TO NRAP 8 AND NRAP 27(e)** to be served on all parties to this action by electronically filing it with the Court's e-filing system, which will electronically serve the following:

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EXHIBIT 1


CLERK OF THE COURT

1 **Marquis Aurbach Coffing**
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6 **DISTRICT COURT**
7 **CLARK COUNTY, NEVADA**

8 **IN RE THE EXECUTION OF SEARCH**
9 **WARRANTS FOR:**

Case No.: A-16-732077-C
Dept. No.: XXVIII

10 12067 Oakland Hills, Las Vegas, Nevada
89141;

11 54 Carolina Cherry Dr., Las Vegas, Nevada
89141;

12 5608 Quiet Cloud Dr., Las Vegas, Nevada
13 89141; and

14 3321 Alcudia Bay Ave., Las Vegas, Nevada
15 89141,

16 **LVMPD'S OPPOSITION TO MOTION FOR RETURN OF SEIZED PROPERTY**

17 The Las Vegas Metropolitan Police Department ("Department"), by and through its
18 attorney of record, Nick D. Crosby, Esq., of Marquis Aurbach Coffing, hereby files its
19 Opposition to Motion for Return of Seized Property.

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1 This Opposition is made and based upon the attached memorandum of points and
2 authorities, all papers and pleadings on file herein, and any oral argument permitted by the Court
3 at the time of the hearing.

4 Dated this 10th day of March, 2016.

MARQUIS AURBACH COFFING

By 

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Attorney(s) for LVMPD

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

13 The motion is premature and the subject property should not be ordered to be returned
14 because the case is pending review. Further, the motion fails to demonstrate why retention of the
15 seized property is unreasonable and it is unclear whether Movant has an individual interest in the
16 property identified. As such, the motion should be denied.

II. STATEMENT OF RELEVANT FACTS

A. THE WARRANT.

19 On or about May 18, 2015, officers served and executed a search warrant on five separate
20 locations throughout the Las Vegas valley. (See Exh. A attached to Pl.'s Motion). The warrants
21 were issued in furtherance of a pandering and living off the earnings of a prostitute criminal
22 investigation.

B. THE MOTION.

24 Movant, Laura Anderson ("Movant"), filed the instant motion seeking the return of
25 property seized from four of the five locations.¹ It is unclear whether Movant is the owner of *all*
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27 ¹ It is unclear as to why Movant only seeks return of property seized from four, rather than five, of the
28 properties.

1 of the property identified in the motion. Movant identifies a company, Libra Group, Inc., in the
2 motion and the warrant identifies a Johnnie Green ("Green") as the subject of the warrants.
3 Green is not listed as a movant in the motion.

4 **III. LEGAL ARGUMENT**

5 **A. RELEASE OF ALL OF THE SEIZED PROPERTY IS PREMATURE.**

6 Retention of the seized property is not unreasonable because the case is currently pending
7 federal review. Nevada Revised Statute 179.085 provides, in relevant part:

8 1. A person aggrieved by an unlawful search and seizure or the deprivation
9 of property may move the court having jurisdiction where the property was seized
10 for the return of the property on the ground that:

11 (e) Retention of the property by law enforcement is not reasonable under
12 the totality of the circumstances.

13 Nev. Rev. Stat. 179.085(1)(e). The statute further states:

14 The judge shall receive evidence on any issue of fact necessary to the decision of
15 the motion.

16 3. If the motion is granted on the ground set forth in paragraph (e) of subsection
17 1, the property must be restored, but the court may impose reasonable conditions
18 to protect access to the property and its use in later proceedings.

19 5. If a motion pursuant to this section is filed when no criminal proceeding is
20 pending, the motion must be treated as a civil complaint seeking equitable relief.

21 Id. at 179.085(3) and (5).

22 Here, Movant asserts, via declaration of counsel, that Movant is not a target of an
23 investigation or is no longer a suspect in the case. (Mot., p. 5:2-4). However, this assertion
24 appears to be limited to a *state* criminal case. The reality is that the underlying investigation is
25 currently pending federal review for potential violations of federal law. Releasing all of the
26 property at this stage in the case would improperly impede the case and put the proverbial cart
27 before the horse.
28

1 Movant does not assert the seizure of the property was improper or illegal and, instead,
2 only asserts that retention of the property is unreasonable. When property has an evidentiary
3 value and has been legally seized, the property does not have to be returned to the owner until
4 the evidentiary value of the property has been exhausted. U.S. v. Mills, 991 F.2d 609, 612 (9th
5 Cir. 1993), *citing* U.S. v. U.S. Currency Amounting to Sum of \$20,294.00 More or Less, 1495
6 F.Supp. 147, 150 (E.D.N.Y 1980). Once the government no longer has a need for the property,
7 the court has duty to return the property. U.S. v. Martinson, 809 F.2d 1364, 1370 (9th Cir.
8 1987). In this case, the Department has imaged the computer devices and is agreeable to
9 releasing the computer devices, as the mirrored images are sufficient to satisfy the government's
10 evidentiary needs in that respect. However, ordering the release of *all* of the property is
11 premature, given the pending federal review.

12 **B. FEDERAL LAW PROVIDES GUIDANCE ON THIS ISSUE AND**
13 **DEMONSTRATES RETURN OF THE PROPERTY IS PREMATURE.**

14 As noted in the motion, the statute relied upon by Movant closely mirrors that of Federal
15 Rule of Criminal Procedure 41(g). "To prevent the district courts from exercising their equitable
16 jurisdiction too liberally, the circuit courts have enumerated certain factors that must be
17 considered before a district court can reach the merits of a preindictment Rule 41[(g)] motion."
18 Ramsden v. United States, 2 F.3d 322, 324 (9th Cir. 1993). A court should consider: "(1)
19 whether the Government displayed a callous disregard for the constitutional rights of the movant;
20 (2) whether the movant has an individual interest in and need for the property she wants
21 returned; (3) whether the movant would be irreparably injured by denying return of the property;
22 and (4) whether the movant has an adequate remedy at law for the redress of his grievance." Id.

23 Here, there is no evidence offered to demonstrate the Department demonstrated a callous
24 disregard for the constitutional rights of Movant. As set forth above, Movant does not challenge
25 the sufficiency or legality of the warrants and, since the warrants were issued upon a showing of
26 probable cause, there can be no finding of callous disregard for Movant's rights because the
27 probable cause requirement of the Fourth Amendment is designed to protect the constitutional
28 interests of the moving party. See U.S. v. Comprehensive Drug Testing, 513 F.3d 1085, 1104

1 (9th Cir. 2008). In fact, when a court approves a search warrant, "great deference" should be
2 given to the finding of probable cause. See Illinois v. Gates, 462 U.S. 213, 236 (1983). Further,
3 it is not clear whether Movant has an *individual* interest in *all* of the seized property – which is a
4 requirement under a 41(g) analysis.

5 Further, Movant did not demonstrate that retention of the property caused irreparable
6 injury. Indeed, it is a well-recognized that temporary loss of income or money does not usually
7 constitute irreparable injury. Los Angeles Memorial Coliseum Commission v. Nat'l Football
8 League, 634 F.2d 1197, 1202 (9th Cir. 1980)(analyzing irreparable injury in the context of a
9 preliminary injunction). Here, Movant has only identified monetary losses stemming from the
10 retention of property. As such, Movant has failed to meet this requirement to permit the exercise
11 of the Court's equitable powers.

12 **C. MOVANT IS NOT ENTITLED TO DAMAGES OR ATTORNEYS FEES.**

13 In the motion, Movant not only requests the return of the seized property, but also
14 requests the Court award "all damages incurred herein, in an amount to be proven, costs,
15 reasonable attorneys' fees...." Even if the Court is inclined to grant the motion, it is without
16 authority to award damages or fees. Indeed, Nevada Revised Statute 179.085 provides no basis
17 for the Court to award damages or attorneys fees. As such, an award of fees, costs or damages
18 would be improper.

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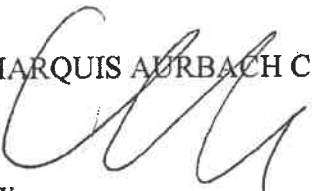
1 **IV. CONCLUSION**

2 Given the foregoing, the Department respectfully requests the Court deny the motion.
3 Alternatively, if the Court believes issues of fact exist with respect to the reasonableness of the
4 retention of property, an evidentiary hearing should be held to determine (1) ownership of the
5 subject property; and (2) the reasonableness of the Department's retention of the property.

6 Dated this 10th day of March, 2016.

7
8 MARQUIS AURBACH COFFING

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10 By


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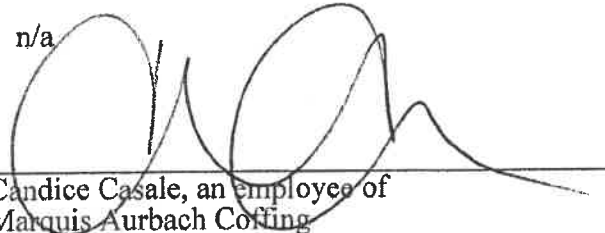
CERTIFICATE OF SERVICE

I hereby certify that the foregoing **LVMPD'S OPPOSITION TO MOTION FOR RETURN OF SEIZED PROPERTY** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 10th day of March, 2016. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows;²

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I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

n/a


Candice Casale, an employee of
Marquis Aurbach Coffing

² Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).