

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.

Supreme Court Case No.:

84931-COA

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[District Court Case No.:

A-22-85107-0]

Elizabeth A. Brown

Clerk of Supreme Court

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

**APPELLANTS' MOTION TO SUSPEND THE RULES
PURSUANT TO NRAP 2 AND ORDER PROCEEDINGS
FOR EXPEDITED BRIEFING AND DECISION**

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MOTION

Appellants, Las Vegas Bistro, LLC d/b/a Larry Flynt's Hustler Club and Little Darlings of Las Vegas, LLC d/b/a Little Darlings ("Appellants"), by and through their attorneys Deanna L. Forbush, Esq. and Colleen E. McCarty, Esq. of the law firm of Fox Rothschild LLP and Zachary M. Youngsma, Esq. of the law firm of Shafer & Associates, P.C., hereby file their Motion to Suspend the Rules Pursuant to NRAP 2 and Order Proceedings for Expedited Briefing and Decision.

Specifically, Appellants seek a ruling that they are entitled to all relief requested from the district court including, but not limited to, the return of all seized property without further review by the Las Vegas Metropolitan Police Department ("LVMPD"), pursuant to the plain language of both NRS 201.320 (Living from the Earnings of Prostitute) and NRS 201.395 (Advancing Prostitution), which are the purported crimes being investigated. LVMPD's investigation of these crimes is now, and has been from inception, fatally flawed where the predicate crime of Prostitution is specifically required, and as defined by NRS 201.295(5), the crime cannot be present under the facts and circumstances of the instant undercover case.

A second and equally compelling basis to grant the instant appeal, and thereafter remand the matter, exists where the evidence obtained from Appellants' electronic devices during LVMPD's improper investigation is rife with attorney-

client, work product and accountant-client privileged information, for which Appellants must be entitled to seek all legal protections prior to LVMPD's review.

In support hereof, Appellants assert that the record below clearly shows the district court's error when it denied Appellants' motion for return of property and other requested equitable relief. *See* Order dated May 22, 2022, attached hereto for ease of reference as **Exhibit 1**. The district court properly treated Appellants' request for relief regarding the search warrants, where no criminal case is pending, as a civil complaint seeking equitable relief, pursuant to NRS 179.085 and, in so doing, recognized that all forms of equitable relief sought by Appellants were available for review. **Exhibit 1** at 11:3-5. The district court nevertheless clearly erred in finding that good cause was established for the warrants and probable cause existed for their issuance, as well as that good cause existed for the sealing of the warrants, so as not to "compromise the ability of the Metropolitan Police Department ... further investigate the crimes alleged to have been committed, and any ongoing crimes allegedly being committed, relating to this investigation." **Exhibit 1** at 11:7-14. The district court heard the argument, but ultimately misapplied the law, regarding the crime of Prostitution and the objective absence of any evidence thereof in the instant case, which must preclude LVMPD's investigation and retention of Appellants' seized property. **Exhibit 1** at 12:5-11.

For all the reasons set forth herein, good cause exists to grant the relief requested pursuant to NRAP 2 and reverse the district court's ruling regarding

LVMPD's search warrants, upon review following an appropriately expedited briefing schedule.

POINTS AND AUTHORITIES

I. LEGAL ARGUMENT

A. Authority to Suspend the Rules.

Since 2015, NRAP 2 has permitted this Court, upon motion, to expedite its decision or for other good cause suspend any provision of the Rules in a particular case and order proceedings as the Court directs. Appellants respectfully ask for such consideration in the instant case, given the importance of ending LVMPD's investigation of Appellants' businesses and review of its privileged and other business records, which actions only commenced upon the issuance of search warrants used to investigate crimes for which Appellants may never be charged.

B. Expedited Briefing is Warranted in the Instant Appeal.

1. *The District Court Considered and Denied All Forms of Equitable Relief Sought By Appellants, Permitting Full Appellate Review Pursuant to NRAP 3A(b)(1).*

To be clear, Appellants respect and do not seek to further challenge this Court's decision to deny their request for stay relief. But that ruling should not preclude, and in fact may justify, granting the relief of expedited briefing and decision making requested herein. Specifically, the Court by its Order Directing Supplemental Briefing and Directing Transmission of Documents Under Seal,

filed July 11, 2022, already received one of the six sets of documents that make up the necessary record from below. The other five documents are the following:

1. *Motion of Real Parties in Interest, Las Vegas Bistro, LLC dba Larry Flynt's Hustler Club and Little Darlings of Las Vegas, LLC dba Little Darlings to: (1) Unseal Search Warrant Applications and Supporting Affidavits; (2) Quash Search Warrants; and (3) Return Seized Property* [49 pages total with exhibits, filed April 12, 2022];
2. *Real Party in Interest, Las Vegas Metropolitan Police Department's Opposition to Motion of Real Parties in Interest, Las Vegas Bistro, LLC dba Larry Flynt's Hustler Club and Little Darlings of Las Vegas, LLC dba Little Darlings to: (1) Unseal Search Warrant Applications and Supporting Affidavits; (2) Quash Search Warrants; and (3) Return Seized Property* [46 pages total with exhibits, filed May 5, 2022];
3. *Reply in Support of Motion of Real Parties in Interest to: (1) Unseal Search Warrant Applications and Supporting Affidavits; (2) Quash Search Warrants; and (3) Return Seized Property* [36 pages total with exhibits, filed May 9, 2022];
4. *Order* [12 pages total, filed May 22, 2022]; and
5. *Recorder's Transcript of Hearing* [27 pages total, filed June 29, 2022].

With limited additional briefing and a quick set for oral argument before the Court, then, an expedited and definitive answer to the propriety of LVMPD's actions in this unique scenario will provide the necessary closure for all interested parties, as well as the important future clarification regarding the appropriate investigation and prosecution of crimes involving prostitution.

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2. Appellants Present a Substantial Case on the Merits.

Good cause justification for granting Appellants' motion comes first from their substantial case on the merits. Appellants maintain that the district court's decision to deny its requests to unseal LVMPD's search warrant applications and supporting affidavits, quash the warrants, and return all seized property, inclusive of Appellants' documents and electronic devices containing attorney-client, work product, and accountant-client privileged information, was erroneous and should be overturned.

With regard to quashing the warrants in their entirety, LVMPD represented it is investigating the crimes of Living from Earnings of Prostitute, pursuant to NRS 201.320, and Advancing Prostitution, pursuant to NRS 201.395, each of which require as an element the act of prostitution. Prostitution is specifically defined in statute as "engaging in sexual conduct with another person in return for a fee, monetary consideration or other thing of value." *See* NRS 201.295(5). Solicitation for prostitution, which is the inchoate crime of offering or agreeing to commit the crime of prostitution, is not the same act as prostitution. *See Ford v. State*, 127 Nev. 608, 619, 262 P.3d 1123, 1130 (2011). And solicitation for prostitution is all that LVMPD could possibly have asserted in support of its search warrants, where undercover police officers were involved, and it cannot now nor will it ever satisfy the prostitution element of the crimes being

investigated. The search warrants should have been quashed and Appellants' other relief granted on this basis alone.

With regard to the blanket sealing of warrant materials, as remains the status of the instant appeal, constitutionally this must be an option of last resort and not the district court's apparent default position. *See Howard v. State*, 128 Nev. 736, 745, 291 P.3d 137, 143, n.4 (2012) (citing SRCR 3(5)(b), (c) and SRCR 3(6) in a criminal case and ruling that "sealing of an entire court file is prohibited and ... should the court order sealing, it 'shall use the least restrictive means and duration'"); *see also Publiker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1074 (3rd Cir. 1984) (noting the district court abused its discretion when it "failed to consider less restrictive means to keep this information from the public").

With regard to the return of Appellants' property, distinct from the district court's protocol for handling the privilege review discussed below, Appellants point to the clear application of NRS 179.105 to the circumstances at bar. LVMPD argued below that NRS 179.105, which addresses the retention and return of property seized pursuant to warrant, is inapplicable and that, when given its requested reading with NRS 179.11518, no procedure exists for the return of privileged materials seized from a client as opposed to the attorney. This is not the law in Nevada under any fair reading of the statutes in question.

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First, courts are to “presume that the Legislature enacted the statute ‘with full knowledge of the existing statutes relating to the same subject.’” *Nevada Att’y for Injured Workers v. Nevada Self-Insurers Ass’n*, 126 Nev. 74, 84, 225 P.3d 1265, 1271 (2010) (quoting *State Div. of Ins. v. State Farm Mut. Auto Ins. Co.*, 116 Nev. 290, 294, 995 P.2d 482, 486 (2000)). Courts are also to “construe statutes to give meaning to all of their parts and language . . . [f]urther, no part of a statute should be rendered meaningless and its language should not be read to produce absurd or unreasonable results.” *Harris Assocs. v. Clark Cty. Sch. Dist.*, 119 Nev. 638, 642, 81 P.3d 532, 534 (2003) (citations and quotation marks omitted). Despite these well-settled principles, LVMPD’s interpretation of both NRS 179.105 and NRS 179.11518 would render the following line from NRS 179.105 meaningless: “. . . or that the property is determined pursuant to NRS 179.11518 to be subject to the attorney-client privilege.” And, of course, NRS 179.11518 already instructs, in the context of seizing property from an attorney, to return the property “as provided in NRS 179.105.” If NRS 179.105 was not intended to also command the return of property seized from a non-attorney, it would not have been necessary to include the reference to NRS 179.11518 because that provision already commands the return of property subject to the attorney-client privilege seized from an attorney.

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Under the rules of statutory construction then, the only permissible reading of NRS 179.105 is that there are now three circumstances under which the court “shall cause [the seized property] to be returned to the person from whom it was taken,” inclusive of where “[i]t appears that . . . the property is determined . . . to be subject to the attorney client privilege.” NRS 179.105. And, consistent with its protocol argument for how Appellants’ privileged information should be addressed, which the district court adopted fully in its Order [**Exhibit 1** at 11:24-12:1], LVMPD has effectively conceded that there is, in fact, privileged information to be found in the extensive seized documents and devices. The question to be answered is whether it was reasonable under the totality of the circumstances to permit LVMPD to retain those privileged materials and continue its search through them unfettered. It is not.

Finally, as to the district court’s approved protocol for the ongoing investigation, as the litigation stands now LVMPD is free to search all information it has imaged from Appellants’ devices and documentation seized with impunity. In other words, LVMPD is permitted to search all documents and devices seized without Appellants themselves first redacting any confidential or privileged information. Allowing LVMPD’s Digital Forensics Lab (“DFL”) to run a search for certain names and contact information, however, provides no guarantee that privileged information will be properly searched and, if that does not occur,

Appellants will have no recourse. There is no way to restore the privileged nature of the information, because once such information is disclosed, it is irretrievable.

The plain language of NRS 49.095 unambiguously guarantees a client the right "to prevent any other person from disclosing" privileged communications, and this broad language in the statute clearly does not allow for persons other than the client itself to use or disclose the privileged information over the client's assertion of privilege. NRS 49.045 defines "client" as "a person, including a public officer, *corporation*, association or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from the lawyer." (Emphasis added.) In a corporate context, then, a client corporation is not a living entity that can make decisions independently – people must make decisions on its behalf. Thus, the issue pertains to all persons who have the authority to assert and/or must hold inviolate a corporation's privilege. In the case of Appellants, the list of names provided to LVMPD numbered over 100, taking into account all the attorneys, accountants and their staff members who interact with members of Appellants' respective management teams. Allowing LVMPD, through its DFL, to proceed with and be responsible for locating and redacting all of Appellants' privileged materials in this context is simply untenable.

Finally, LVMPD would benefit just as much as Appellants should their motion to be granted, and to the extent they want to be sure their actions are

appropriate, Appellants would hope LVMPD would join the motion rather than oppose it. Any delay for LVMPD in its search of the seized documents and devices would at best be temporary, and if the outcome is not favorable, then it will have not expended valuable time or possibly subjected it to additional litigation. And, although Appellants believe the outcome should be otherwise, in the event the appellate court decides that the retention of Appellants' documents and devices and/or the district court's protocol for their search will somehow not occasion the loss of Appellants' attorney-client, work product, or accountant-client privileges, LVMPD will obviously continue its search without further delay.

In the end, any limited interest LVMPD may have in searching Appellants' documents and electronic devices prior to the Court's decision on appeal is easily outweighed by the risk of the irreparable harm to Appellants if their privileges are disregarded and destroyed before that decision is rendered.

II. CONCLUSION

Based on the foregoing, Appellants respectfully ask this Court to suspend the Rules pursuant to NRAP 2, schedule expedited briefing on this finite appeal

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matter of significant importance, and issue an expedited decision prior to any further advancement of the improper investigation of Appellants' businesses.

Dated this 17th day of August, 2022.

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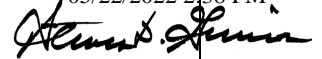
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EXHIBIT 1



CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-**

IN RE 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,)

CASE NO.: A-22-851073-C
DEPT. NO.: XXX

ORDER

Movants and Real Parties
in Interest.

INTRODUCTION

The above-referenced matter came on for a hearing on May 12, 2022, with regard to a Motion of the Real Parties in Interest, Las Vegas Bistro, LLC, d/b/a Larry Flynt's Hustler Club, and Little Darlings of Las Vegas, LLC, d/b/a Little Darlings, to 1) Unseal Search Warrant Applications and Supporting Affidavits; 2) Quash Search Warrants; and 3) Return Seized Property. The Court had reviewed the papers and pleadings on file, and allowed oral argument. The Court thereafter Ordered that the actual Search Warrant Applications be submitted to the Court in camera, so that the Court could determine if there was a basis for the Applications to be sealed, and to determine if there was good cause to quash the warrants and return the property seized. Counsel for the State provided a number of the Warrant Applications at the time of the hearing, and submitted the final Warrant Application to the Court on May 18, 2022. Having now reviewed all of the available information, and good cause appearing, the Court enters the following Order.

FACTUAL AND PROCEDURAL HISTORY

The instant Motion was filed on 4/12/22. There is no separate Complaint on file in this matter. The Civil Cover Sheet indicates that this case is designated as "Other Civil Matters." The case was previously assigned to Department 4, reassigned to Department 14, and most recently reassigned to Department 30. The Las Vegas

1 Metropolitan Police Dept. filed an Opposition on 5/5/22, and Petitioners filed a Reply
2 on 5/9/22.

3 Factually, this case stems from the issuance and service of several Search
4 Warrants. On or about 4/1/22, an Application and Affidavit for Search Warrant was
5 submitted to Judge Harmony Letizia, for the business known as Larry Flynt's Hustler
6 Club. She issued a Search Warrant that same date, and an Order Sealing Affidavit was
7 granted on the same date. The Warrant appears to have been executed on 4/5/22, and
8 a Return was thereafter submitted to the Court, identifying the items seized.

9 On the same date, 4/1/22, an Application and Affidavit for Search Warrant was
10 submitted to Judge Harmony Letizia, for the business known as Little Darlings. She
11 issued a Search Warrant that same date, and an Order Sealing Affidavit was granted on
12 the same date. The Warrant appears to have been executed on 4/5/22, and a Return
13 was thereafter submitted to the Court, identifying the items seized.

14 On 4/7/22, an Application and Affidavit for Search Warrant, Digital Storage
15 Device, was submitted to Judge Joseph Sciscento, requesting authority to search for
16 information in various digital storage devices obtained from Larry Flynt's Hustler Club.
17 Judge Sciscento issued a Search Warrant that same date, and an Order Sealing
18 Affidavit was granted on the same date. The Warrant appears to have been executed on
19 the same date, 4/7/22, and a Return was submitted to the Court, identifying the items
20 searched.

21 On the same date, 4/7/22, an Application and Affidavit for Search Warrant,
22 Digital Storage Device, was submitted to Judge Joseph Sciscento, requesting authority
23 to search for information in various digital storage devices obtained from Little
24 Darlings adult club. Judge Sciscento issued a Search Warrant that same date, and an
25 Order Sealing Affidavit was granted on the same date. The Warrant appears to have
26 been executed on the same date, 4/7/22, and a Return was submitted to the Court,
27 identifying the items searched.

28 The Court was also provided with a transcript of a Telephonic Search Warrant
Application on 4/5/22, which appears to be related to the 4/7/22 Application and
Affidavit for Search Warrant, Digital Storage Device, relating to Little Darlings.

....

SUMMARY OF LEGAL AND FACTUAL ARGUMENTS

Petitioner's Motion requests that the Court:

1. Unseal Applications and Supporting Affidavits submitted in support of search warrants authorized by Judge Letizia and Judge Sciscento;
2. Enter an order prohibiting LVMPD, the Clark County District Attorney's Office, and any person acting on their behalf from reviewing any of the seized property is defined in NRS § 179.015, until such a time as Movants and the Court can facilitate the scrubbing of the seized property of any materials protected by either the attorney-client, work product, or accountant-client privileges; and
3. Order the permanent return of all property that contains information protected by the attorney-client, work product, or accountant-client privileges return

Petitioner states that on January 26, 2022 and March 12, 2022, LVMPD sent correspondence to the Hustler Club purportedly providing "notice" that one or more unidentified entertainers solicited an undercover police detective for sexual acts on the premises. Hustler Club responded in writing to LVMPD Detective R. Sioson on February 1, 2022, and LVMPD Detective R. Chavez on March 15, 2022, asking for identification of the entertainer(s) at issue, affirming its zero-tolerance policy regarding illegal sexual conduct, and outlining its extensive efforts to ensure that no acts of solicitation of prostitution occurred on its premises. Hustler Club requested guidance from LVMPD regarding additional actions, policies and procedures it could implement to address the issue and ensure compliance with NRS 201.395(3). LVPD did not respond.

On January 8, 2022 and March 12, 2022, Little Darlings received correspondence from LVMPD regarding alleged prostitution activity by one or more unidentified entertainer(s). Like the Hustler Club, Little Darlings responded to Detective Chavez, via email on January 11, 2022, and March 14, 2022, detailing its efforts to ensure that no such conduct occurred on its premises, and inviting further input from LVMPD regarding the same. Metro did not respond.

Based on the Application and Affidavit of Metro Detective R. Chavez, P#775, on April 1, 2022, Judge Letizia authorized a search by law enforcement officers of the business known as Larry Flynt's Hustler Club and further authorizing seizure of, among other items, business documents and electronic and digital storage devices, inclusive of

1 computers, cellular phones and tablets. The Search Warrant Application and
2 Supporting Affidavit was sealed by Judge Letizia, pending further order of the court.

3 On April 5, 2022, members of LVMPD's Special Investigations Section executed
4 a search of the premises of Larry Flynt's Hustler Club (as well as premises leased to
5 another entity) and Little Darlings. Petitioner contends that the detectives corralled the
6 employees of each respective business and seized the personal cellular telephones of
7 the persons who identified themselves as management employees of each club. Police
8 officers took three (3) cellular telephones from managers of the Hustler Club and one
9 cellular telephone from a manager at Little Darlings. Petitioner contends that all of the
10 phones were personally owned by the individuals for personal and business use.

11 Further, a Duplicate Original Search Warrant and Order Sealing Affidavit was
12 issued by Judge Sciscento on April 5, 2022 for Little Darlings. Both the original Little
13 Darlings search warrant and sealing order and the duplicate search warrant and sealing
14 order were left at the business following the search.

15 Petitioner argues that the search warrant applications and supporting affidavits
16 fail to set forth sufficient facts and circumstances to establish probable cause to justify
17 the seizure of the Property pursuant to the Search Warrants as required by the Fourth
18 Amendment, Article 1, Section 18 of the Nevada Constitution, and NRS 179.045(1) and
19 (6)(a). Petitioners state that the gravamen of the instant LVMPD investigation is the
20 alleged solicitation of prostitution at the Hustler Club and Little Darlings in January
21 and March of this year, and Movants' responses thereto to abate the alleged illegal
22 activity as required under NRS 201.395(c). As such, all of the events at issue have
23 already occurred.

24 Petitioner states that the Property contains documents and communications,
25 which are privileged pursuant to the attorney-client privilege and work product
26 doctrine, NRS 49.095, and the accountant-client privilege, NRS 49.185. Accordingly
27 seek to protect all privileged information contained within the Property seized by
28 LVMPD, inclusive of the personal cellular telephones of the managers. The seized
computers, thumb drives, hard drives and tablets are used to run/oversee/manage
numerous businesses worldwide. The owners of the Hustler Club and Little Darlings,
their respective general managers, and in some cases, certain personnel, are in near

1 daily contact with their businesses' attorneys and accountants, and the vast majority of
2 these communications are conducted through the Property.

3 The Metropolitan Police Department's Opposition states that the search
4 warrants were sought and obtained after Petitioner failed to take corrective action
5 following Metro's letters re: illicit activity.

6 Metro argues that the Motion must be denied as this matter should have been
7 brought before Judge Letizia who initially ordered the affidavits to be sealed. See *In re*
8 *Searches & Seizures*, 2008 WL 5411772 (December 19, 2008) (where movants sought
9 to unseal search warrant records in the same court that issued search warrants and
10 ordered records sealed). NRS 179.045 confers jurisdiction upon the Justice of the
11 Peace to seal an affidavit in support of a search warrant upon a showing of good cause.
12 Here, Judge Letizia determined that good cause existed and ordered the affidavit
13 sealed. The order further provides that the affidavit is to remain sealed pending further
14 order of this Court. Accordingly, the Order Sealing the Affidavit requires the Petitioners
15 to seek relief from the issuing Court and not file a separate action.

16 Further, Metro argues that judicial economy supports transferring this matter to
17 the issuing judge. Despite setting a briefing schedule on the motion, this Court has not
18 expended a significant amount of time or resources into this matter. In fact, this Court
19 has not even had the opportunity to review the search warrants or the search warrant
20 application at issue. In the event the Court entertains the motion, a review of the
21 search warrant materials in camera may be necessary to determine with nondisclosure
22 remains appropriate.

23 Moreover, Metro argues that the Petitioner has not provided a basis for the
24 unsealing of the warrant applications. Essentially, Petitioner wants the warrant
25 application unseals so it can determine whether or not probable cause existed for the
26 warrant. Despite the fact that a neutral magistrate already determined that probable
27 cause existed for the warrants, if Petitioner truly believes that the applications are
28 deficient, the appropriate remedy, undoubtedly, would be for this Court to review the
sealed materials and make a determination as to whether probable cause exists.

While the covert operations described are certainly relevant and play a part in
the obtaining of the warrants, such conduct is not the sole basis of the warrants. The
remaining aspects of the investigation are confidential in nature and would be

1 detrimental to the investigation if revealed, either by including such facts in the instant
2 brief or by unsealing the warrant applications.

3 Metro's SIS team is primarily responsible for the enforcement of all federal,
4 state, county, and city laws concerning privileged and regulated businesses in Clark
5 County and the City of Las Vegas. Privileged licenses include Erotic Dance
6 establishments and Adult Cabarets. Here, Metro is investigating the crime of
7 Advancing Prostitution and Living from Earnings of Prostitution.

8 Based on SIS's investigation, both the Hustler Club and Little Darlings failed to
9 take reasonable steps to abate such illegal prostitution within 30 days after receiving
10 notice from LVMPD. Metro states that the information contained in the search
11 warrants relate to an ongoing criminal investigation. As such, it would be detrimental
12 to reveal it at this time. Unsealing the search warrant affidavits might result in the
13 destruction of evidence necessary for the investigation. During the execution of the
14 warrant, Metro obtained passwords to some of the seized devices from various
15 employees of the Hustler Club and Little Darlings to assist with search process, but not
16 all.

17 After executing the initial search warrants at each of the establishments, LVMPD
18 obtained additional search warrants for the electronic devices and electronically stored
19 information. These warrants expressly permit LVMPD, through its Digital Forensic Lab
20 (DFL), to examine, image, and copy the electronic devices as part of its search. DFL has
21 imaged the following property from the Hustler Club:

- 22 1. White Apple Phone with clear case
- 23 2. Black iPhone w/ black case
- 24 3. Blue iPhone w/ clear case
- 25 4. Black iPhone w/ pink case
- 26 5. iPad S/N GG8WQ3S3JF8J
- 27 6. iPad S/N DMPRLA6MH1MK
- 28 7. HP Prop, desktop computer
8. Dell OptiPlex 3060 desktop computer
9. HP Pro desktop compute
10. Black Cell Phone
11. Black Apple iPhone
12. (3) Lexar 64 GB thumb drives
13. (1) SanDisk 32GB thumb drive
14. (7) Unknown make thumb drives
15. (1) Microsoft thumb drives

1 Metro states that these items have not yet been returned and are still located in
2 the DFL Evidence Vault. DFL is currently processing the images and it would be best to
3 maintain the custody of the original evidence until DFL can confirm that the imaging
4 was successful. Return of the original devices prior to confirming the successful
5 imaging of the same could result in a loss of evidence.

6 With respect to the concern of privileged information, in other scenarios, DFL
7 has been provided a list of full names, email addresses, and/or phone numbers that
8 would be considered privileged. DFL utilizes software that can search for these
9 keywords. After the search is completed, DFL reviews the keyword hits for the provided
10 information. Items related to those keywords will be redacted. The software system
11 then generates a report for the investigative detectives, in this case the SIS team, to
12 review. The detectives would not be privy to the redacted, privileged information. DFL
13 does not participate in the investigation of any alleged criminal acts but merely
14 facilitates the process to allow the detectives to search electronic devices. Here, DFL
15 has not received a list of names, email addresses, and/or phone numbers that would be
16 considered privileged.

17 In reply, Petitioner argues that Metro failed to address the underlying issue of
18 whether the sealed affidavits even sought, let alone justified, the seizure of any
19 materials or communications protected by either the attorney-client or the accountancy
20 privileges. Petitioner argues that Metro did not address the duplicate search warrants
21 signed by JP Sciscento on 4/5/22, several hours into LVMPD's actual execution of the
22 search warrants at the Hustler Club and Little Darlings. It appears from their face that
23 these additional search warrants were submitted by Metro due to the facial deficiencies
24 of the original warrants acknowledge that the search warrants for digital storage
25 devices and associated sealing orders subsequently obtained on 4/7/22, were also
26 entered by Judge Sciscento.

27 With regard to Metro's request to transfer this matter to Justice Court,
28 Petitioner argues that this request is baseless. Petitioner notes the procedural
background of the reassignment of this particular "Motion," including Judge Bell's
minute order reassigning the matter to this criminal department. Petitioner states,
"Significantly, Judge Bell, a long-time jurist and criminal practitioner, found no basis

1 to transfer the matter to the Justice Court, where the search warrants were issued and
2 sealed ...”

3 Further, Petitioner argues that Metro ignores that NRS 179.085 provides the
4 mechanism for return of property pre-indictment. NRS 179.085(5) states, “[i]f a motion
5 pursuant to this section is filed when no criminal proceeding is pending, the motion
6 must be treated as a civil complaint seeking equitable relief. NRS 4.370 sets forth the
7 civil actions and proceedings over which the Justice Court has jurisdiction, and does
8 not provide jurisdiction for equitable relief matters, as is required here. Pursuant to
9 NRS 179.045(4), the magistrates in this case can and did seal the search warrant
10 affidavits, and any court, including this Court, can unseal them. If the Legislature
11 intended to craft a law that only permitted the issuing magistrate to unseal an affidavit,
it would have specifically stated.

12 Without permitting Petitioner access to the sealed original search warrant
13 affidavits, neither Petitioner nor this Court are able to determine whether there is
14 anything contained therein that either requests, or justifies, not only the seizure of, but
15 now the searching through, privileged information and communications. In addition, of
16 course, assuming that there is nothing in those affidavits to justify the seizure of
17 privileged information, which LVMPD’s silence on this topic concedes, there is then
18 absolutely no basis whatsoever for either LVMPD’s continued retention of the same or
its review thereof.

19 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

20 Although the issue before this Court sounds like an “Appeal” from the Justice
21 Court, it is not.

22 NRS 179.045 authorizes the issuance and sealing of search warrants. NRS
23 179.045 provides the following:

24 **NRS 179.045 Issuance and contents; sealing information upon which warrant is based; time for serving warrant.**

25 1. A search warrant may issue only on affidavit or affidavits sworn to
26 before the magistrate and establishing the grounds for issuing the
27 warrant or as provided in subsection 3. If the magistrate is satisfied that
28 grounds for the application exist or that there is probable cause to believe
that they exist, the magistrate shall issue a warrant identifying the
property and naming or describing the person or place to be searched.

2. Secure electronic transmission may be used for the submission of
an application and affidavit required by subsection 1, and for the issuance
of a search warrant by a magistrate. The Nevada Supreme Court may

1 adopt rules not inconsistent with the laws of this State to carry out the
2 provisions of this subsection.

3 3. In lieu of the affidavit required by subsection 1, the magistrate
4 may take an oral statement given under oath, which must be recorded in
5 the presence of the magistrate or in the magistrate's immediate vicinity by
6 a certified court reporter or by electronic means, transcribed, certified by
7 the reporter if the reporter recorded it, and certified by the magistrate.
8 The statement must be filed with the clerk of the court.

9 4. Upon a showing of good cause, the magistrate may order an
10 affidavit or a recording of an oral statement given pursuant to this section
11 to be sealed. Upon a showing of good cause, a court may cause the
12 affidavit or recording to be unsealed.

13 5. After a magistrate has issued a search warrant, whether it is based
14 on an affidavit or an oral statement given under oath, the magistrate may
15 orally authorize a peace officer to sign the name of the magistrate on a
16 duplicate original warrant. A duplicate original search warrant shall be
17 deemed to be a search warrant. It must be returned to the magistrate who
18 authorized the signing of it. The magistrate shall endorse his or her name
19 and enter the date on the warrant when it is returned. Any failure of the
20 magistrate to make such an endorsement and entry does not in itself
21 invalidate the warrant.

22 6. The warrant must be directed to a peace officer in the county
23 where the warrant is to be executed. It must:

24 (a) State the grounds or probable cause for its issuance and the
25 names of the persons whose affidavits have been taken in support thereof;
26 or

27 (b) Incorporate by reference the affidavit or oral statement upon
28 which it is based.

☐ The warrant must command the officer to search forthwith the person
or place named for the property specified.

7. The warrant must direct that it be served between the hours of 7
a.m. and 7 p.m., unless the magistrate, upon a showing of good cause
therefor, inserts a direction that it be served at any time.

8. The warrant must designate the magistrate to whom it is to be
returned.

9. As used in this section, "secure electronic transmission" means
the sending of information from one computer system to another
computer system in such a manner as to ensure that:

(a) No person other than the intended recipient receives the
information;

(b) The identity of the sender of the information can be
authenticated; and

(c) The information which is received by the intended recipient is
identical to the information that was sent.

(Added to NRS by 1967, 1459; A 1975, 39; 1981, 1652; 1993, 1412;
1997, 741; 2015, 2487)

1 Preliminarily, this Court notes that subsection 4 of NRS 179.045 not only allows
2 the Court to issue a Search Warrant, but “Upon a showing of good cause, a court may
3 cause the affidavit or recording to be unsealed.” This appears, though it does not say
4 specifically, that it would apply to the Court that issued the Warrant.

5 NRS 179.085 provides the following:

6 **NRS 179.085 Motions for return of property and to
suppress evidence.**

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

10 (a) The property was illegally seized without warrant;

11 (b) The warrant is insufficient on its face;

12 (c) There was not probable cause for believing the existence of the
13 grounds on which the warrant was issued;

14 (d) The warrant was illegally executed; or

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

17 → The judge shall receive evidence on any issue of fact necessary to the
18 decision of the motion.

19 2. If the motion is granted on a ground set forth in paragraph (a),
20 (b), (c) or (d) of subsection 1, the property must be restored and it must
21 not be admissible evidence at any hearing or trial.

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

26 4. A motion to suppress evidence on any ground set forth in
27 paragraphs (a) to (d), inclusive, of subsection 1 may also be made in the
28 court where the trial is to be had. The motion must be made before trial
or hearing unless opportunity therefor did not exist or the defendant was
not aware of the grounds for the motion, but the court in its discretion
may entertain the motion at the trial or hearing.

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

(Added to NRS by 1967, 1460; A 2015, 405)

Because the statute indicates, “The judge shall receive evidence on any issue of
fact necessary to the decision of the motion,” this Court requested that the Applications
and Affidavits for Search Warrants be provided to the Court, in camera, for review. The
Court has reviewed those documents and the information contained therein.

NRS 179.085 seems to allow for the Motion filed by the Petitioners in this case,
as it indicates that “If a motion pursuant to this section is filed when no criminal

1 proceeding is pending, the motion must be treated as a civil complaint seeking
2 equitable relief.” Based upon that language, this Court cannot find that it was improper
3 for the Petitioners to file the Motion with the District Court. Although NRS 179.045
4 seems to imply that the issuing judge can unseal a Warrant that he or she sealed, NRS
5 179.085 also indicates that such a motion should be treated as a Complaint seeking
6 equitable relief, and consequently, the District Court would be an appropriate venue.

7 In reviewing the Applications and Affidavits in support of the requested Search
8 Warrants at issue, this Court finds and concludes that good cause was established for
9 the Warrants, and probable cause existed for their issuance. The Court further finds
10 that good cause was established for the sealing of such warrants, as the information
11 provided includes police procedures and intelligence obtained during the investigation,
12 and knowledge of this sensitive information may compromise the ability of the
13 Metropolitan Police Department’s ability to further investigate the crimes alleged to
14 have been committed, and any ongoing crimes allegedly being committed, relating to
15 this investigation. Disclosure of this information may also endanger the detectives
16 involved, and may compromise the identity of various undercover detectives, which
17 would therefore compromise the ability of the Metropolitan Police Department to
18 investigate further.

19 NRS 179.085 allows for a Motion to return seized property, and the Petitioners
20 in this matter have requested that the items seized be returned. This Court, however,
21 does not find that the items seized were improperly seized. The property was legally
22 seized with a warrant. The warrants appear to be valid and sufficient on their face.
23 There was probable cause supporting the issuance of the warrants. The warrants
24 appear to have been legally executed. Finally, retention of the property by Metro does
25 not appear to be unreasonable, due to their ongoing investigation.

26 Finally, Petitioners argue that Metro has seized information which is privileged.
27 Metro has suggested that DFL will redact information that Petitioners believe is
28 privileged, if Petitioners provide a list of names, email addresses, and/or phone
numbers, of information which would be considered privileged. This Court believes
this to be a reasonable resolution of the issue, and consequently, if the Petitioners
believe that there are specific information relating to communications with specific
individuals, they should provide a list of names, email addresses, phone numbers, etc.,

1 which would allow for a search and redaction of such information. It is reasonable,
2 however, for Metro to maintain possession of the seized items, at least for a reasonable
3 period of time, to obtain the stored information and determine if it supports the crimes
4 alleged to have been committed.

5 Petitioners argued that in considering the definitions of “solicitation” and
6 “prostitution,” there was insufficient evidence of “prostitution” to support the crimes
7 alleged, and consequently, the warrants issued. The Warrants indicate that the
8 detectives were investigating the crimes of “Advancing Prostitution” and “Living from
9 Earnings of Prostitution.” This Court finds and concludes that the evidence submitted
10 in support of the warrants was sufficient, and provided probable cause to believe that
11 the crimes of “Advancing Prostitution” and “Living from Earnings of Prostitution” were
being committed, and consequently, the warrants were appropriate.

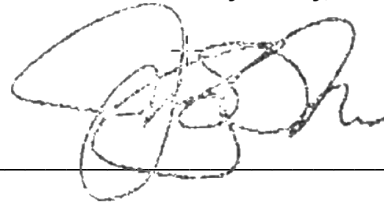
12 **CONCLUSION/ORDER**

13 Based upon the foregoing, and good cause appearing,

14 **IT IS HEREBY ORDERED** that Petitioners’ Motion of the Real Parties in
15 Interest, Las Vegas Bistro, LLC, d/b/a Larry Flynt’s Hustler Club, and Little Darlings of
16 Las Vegas, LLC, d/b/a Little Darlings, to 1) Unseal Search Warrant Applications and
17 Supporting Affidavits; 2) Quash Search Warrants; and 3) Return Seized Property, is
hereby **DENIED**.

18 The Court requests that counsel for Metro prepare and process a Notice of Entry
19 with regard to this Order.

20 Dated this 22nd day of May, 2022

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23

24 **1E9 F2B 311B 37A0**
25 **Jerry A. Wiese**
26 **District Court Judge**
27
28

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Las Vegas Bistro, LLC,
7 Plaintiff(s)

CASE NO: A-22-851073-C

8 vs.

DEPT. NO. Department 30

9 None, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
14 recipients registered for e-Service on the above entitled case as listed below:

Service Date: 5/22/2022

15 Krista Busch	kbusch@maclaw.com
16 Nicholas Crosby	ncrosby@maclaw.com
17 Jackie Nichols	jnichols@maclaw.com
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22 Zachary Youngsma	zack@BradShaferLaw.com

23
24
25 If indicated below, a copy of the above mentioned filings were also served by mail
26 via United States Postal Service, postage prepaid, to the parties listed below at their last
27 known addresses on 5/23/2022
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Nick Crosby

10001 Park Run Drive
Las Vegas, NV, 89145

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of August, 2022, I caused the foregoing
**APPELLANTS' MOTION TO SUSPEND THE RULES PURSUANT TO
NRAP 2 AND ORDER PROCEEDINGS FOR EXPEDITED BRIEFING
AND DECISION** 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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