

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.

Case No.: 84931-COA

Electronically Filed
[District Court Case No. 2023-11:40 AM
A-22-851073-CL] Elizabeth A. Brown
Clerk of Supreme Court

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

APPELLANTS' PETITION FOR REHEARING

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Appellants, Las Vegas Bistro, LLC d/b/a Larry Flynt's Hustler Club and Little Darlings of Las Vegas, LLC ("Appellants"), respectfully submit the instant Petition for Rehearing, pursuant to NRAP 40, as to a single aspect of this Court's Order Affirming in Part, Reversing in Part and Remanding ("Remand Order") issued April 7, 2023.

The Court, in determining that the district court erred by prematurely denying Appellants' return of property motion without giving Appellants an opportunity to demonstrate privilege, wrote that "[o]n remand, appellants must create a privilege log, as they now have the seized materials in their possession." See Remand Order at *17 (emphasis added). The Court's statement does not accurately reflect the argument of Appellants or the record on appeal, and, as detailed herein, Respondent, Las Vegas Metropolitan Police Department ("LVMPD"), continues to retain a number of seized materials in derogation of the district court's order, creating a significant impediment to Appellants' ability to create the privilege log ordered by the Court. This misstatement requires rehearing and correction.

ARGUMENT IN SUPPORT OF PETITION FOR REHEARING

I. THE COURT MAY REHEAR A MATTER WHEN IT OVERLOOKS OR MISAPPREHENDS A MATERIAL FACT.

Pursuant to NRAP 40(c)(2), this Court considers rehearing when it has overlooked or misapprehended a material fact or question of law. *Bahena v.*

Goodyear Tire & Rubber Co., 126 Nev. 606, 610, 245 P.3d 1182, 1184 (2010); *accord, McConnell v. State*, 121 Nev. 25, 26, 107 P.3d 1287, 1288 (2005). Here, as detailed below, the Court’s Remand Order filed April 7, 2023 overlooks or misapprehends the material fact that LVMPD still retains a significant number of the devices and materials seized from Appellants. Rehearing is imperative where the Court has directed Appellants to prepare a privilege log based on the false premise that “they now have the seized materials in their possession.” *See* Remand Order at *17.

II. THE RECORD SUBSTANTIATES THAT LVMPD HAS NOT COMPLIED WITH THE DISTRICT COURT’S ORDER TO RETURN ALL SEIZED DEVICES AND MATERIALS.

Prior to making the misstatement regarding Appellants’ possession of the seized devices and materials, the Court noted LVMPD’S assertion that “[A]ppellants’ request for the return of property is now moot because the electronic devices were returned to the property owners (though LVMPD retained a copy of the contents).” *See* Remand Order at *5. In its Answering Brief, LVMPD acknowledged the district court’s order requiring the return of all seized items once copied or imaged. *See* Respondent’s Answering Brief at p. 13. It then blanketly, and misleadingly, stated that “LVMPD returned the requested computers, tablets, and phones that were subject to the Appellants’ motion.” *See id.* The ostensible support for this assertion is the Notice of Returned Property, inclusive of its

attachments, provided in Respondent's Appendix at RA 007 – 021.

As shown in Appellants' Reply Brief and corresponding Appellants' Appendix, however, the Notice of Returned Property does not include all of the devices or materials on the Search Warrant Returns and subsequently issued Digital Forensic Search Warrants, which are found in Appellants' Appendix at AA 000077 – AA 000084 [i.e., Exhibits 1A – 1D of LVMPD's opposition briefing below]. *See* Reply Brief at pp. 1-2. The record further includes the Declaration of LVMPD Detective Robert Chavez, which authenticates these items (*see* AA 000071 – AA 000075, at ¶¶ 18, 20, 32 and 35). When actually compared with the items listed in LVMPD's Notice of Returned Property (*see* RA 007 – 021), the following seized devices and materials remain unaccounted for and subject to the district court's return order:

Las Vegas Bistro, LLC d/b/a Larry Flynt's Hustler Club

- Office Documents
- DVR Samsung SN ZC1T6V2H200287A
- Dell Server E02S
- DVR Hikvision DVRT2 Main Floor
- DVR Hikvision DVRT3 VIP Floor
- DVR Hikvision SN 819264409
- Apple Laptop SN CO2VNAAHHTD5
- 1x Apple Macbook Laptop

(*See* AA 077 – 078).

Little Darlings of Las Vegas, LLC

- Misc. Paperwork
- DVRs (Digital Recording System) 5 Total
- Dell Server w/ Cond.

(See AA 0086).

Without the Court rehearing this matter or otherwise correcting its Remand Order, with direction to LVMPD to return all seized items, it will be impossible for Appellants to complete the required privilege logs with any assurance that all privileged items have been listed.

III. CONCLUSION

It is submitted herein that the Court consider granting this Petition for Rehearing to address the overlooked or misapprehended material fact that all of Appellants' seized devices and materials have not been returned by Respondent Las Vegas Metropolitan Police Department and the possibility of modifying the Order Affirming in Part, Reversing in Part and Remanding issued April 7, 2023 to require that all seized devices and materials be returned to Appellants immediately so that proceedings below may commence as soon as remittitur is issued.

Dated this 28th day of April 2023.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of [NRAP 32\(a\)\(4\)](#), the typeface requirements of [NRAP 32\(a\)\(5\)](#) and the type style requirements of [NRAP 32\(a\)\(6\)](#) because:

It has been prepared in a proportionally spaced typeface using Word for Microsoft 365, Version 2208 in 14-point Times New Roman font.

2. I further certify that this brief complies with the page- or type-volume limitations of [NRAP 40](#) or [40A](#) because it is:

Proportionately spaced, has a typeface of 14 points or more, and contains 775 words.

Dated this 28th day of April 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of April 2023, I caused the foregoing **APPELLANTS' PETITION FOR REHEARING** 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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