

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

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[District Court Case No. 23-03:00 PM
A-22-851073-C] Elizabeth A. Brown
Clerk of Supreme Court

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

APPELLANTS' REPLY IN SUPPORT OF PETITION FOR REHEARING

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ARGUMENT IN REPLY

I. LVMPD’S ANSWER IS DEVOID OF ANY FACTUAL BASIS TO DENY THE PETITION FOR REHEARING.

There is no diplomatic way to call out the Answer filed by Respondent, Las Vegas Metropolitan Police Department (“LVMPD”) to the limited Petition for Rehearing (“Petition”) filed by Appellants, Las Vegas Bistro, LLC d/b/a Larry Flynt’s Hustler Club (“Hustler Club”) and Little Darlings of Las Vegas, LLC (“Little Darlings,” and collectively with Hustler Club, “Appellants”). It is pure fabrication.

LVMPD bases its Answer on three factual assertions completely belied by the record herein. First, Appellants consistently asserted below and on appeal that all of the items seized from Appellants have the potential to contain privileged information. (Appellant’s Appendix (“AA”) 8 – 11, 107 – 111, 113; Opening Brief at pp. 8 – 9; Reply Brief at p. 1.) Contrary to LVMPD’s claim with no actual record support, Appellants never limited their assertions of privilege to “only three devices belonging to the Hustler Club” or said anything to indicate “only certain property belonging to the Hustler Club contains such information.” (Answer at pp. 2 – 4.) Appellants also never limited their request for the return of all of their property to one theory of relief at the exclusion of the others. (Answer at p. 7.) LVMPD’s request to deny the Petition on this basis must fail.

Second, Appellants cannot specifically demonstrate their claimed privileges

until the matter returns to the district court. LVMPD argues that Appellants should be denied Petition relief because they “did not demonstrate that all property seized contained privileged information,” and “[t]o be sure, Appellants have waived any argument as to any property not specifically identified as having privileged information.” (Answer at p. 2.) To the contrary, LVMPD knows the Court found that “[w]ithout access to the property, appellants had no ability to create a privilege log in conformance with NRCP 26(b)(5)(A)(ii).” (Court’s Order Affirming in Part, Reversing in Part, and Remanding (“Remand Order”) at p. 17.) LVMPD also knows the Court held that “LVMPD’s proposed DFL search protocol was inadequate, and the district court erred in summarily adopting it,” and directed the district court to “follow the protocol for asserting privilege pursuant to the applicable statutory privileges and NRCP 26(c) and set a schedule for appellants to submit a privilege log with a reasonable time.” (Remand Order at pp. 17-18.) LVMPD’s request for denial based on Appellants’ inability to specifically demonstrate privilege also must fail.

Third, there is no “ownership dispute as to the Apple devices” complicating or otherwise barring LVMPD from returning the Apple laptop belonging to the Hustler Club’s General Manager. (Answer at pp. 2, 8-10.) LVMPD knows that one of the eight (8) items seized from the Hustler Club not otherwise listed on LVMPD’s Notice of Returned Property (Respondent’s Appendix (“RA”) 7 – 21) is the Apple laptop listed on the Search Warrant Return as “1x Apple Macbook

Laptop” (AA 77). LVMPD also knows this device belongs to Hustler Club General Manager, Ralph James (AA 123). LVMPD also knows that the Apple laptop separately listed on the Search Warrant Return as “Apple Laptop SN CO2VNAAHHTD5” came from a locked office suite belonging to another company, Go Best, LLC (AA 117), and LVMPD’s improper retention of this device is being challenged in a separate appeal under Case No. 85082. (Answer at p. 8). There is no confusion about which Apple device Appellants seek return of in the instant case, and any argument for denial of the Petition on this basis must fail.

II. APPELLANTS HAVE PROVEN REHEARING AND REVISION OF ITS REMAND ORDER IS WARRANTED.

In the end, it is LVMPD’s prior misdirection concerning the return of seized property that justifies granting the Petition. LVMPD attempted to argue mootness in its Answering Brief by asserting, either directly or by implication, that they had returned all items seized from Appellants. (Answering Brief at p. 17; RA 7 – 21). Prior to making the statement challenged by the Petition, the Court specifically 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).” (Remand Order at p. 5). As stated in the Petition and unrefuted in the Answer, however, the following ten (10) seized items remain unaccounted for and subject to the district court’s order, with the exception of the Apple laptop seized from Go Best, LLC:

Items Seized from 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 [Go Best, LLC]
- 1x Apple Macbook Laptop

Items Seized from Little Darlings of Las Vegas, LLC

- Misc. Paperwork
- DVRs 5 Total
- Dell Server

(AA 77 – 78, 86)

LVMPD's prior misdirection unfortunately worked so well that the Remand Order mistakenly included the mandate that Appellants complete their privilege log on remand because Appellants "now have the seized materials in their possession." (Remand Order at p. 17). Fortunately, NRAP 40(c)(2) permits rehearing when, as here, the Court overlooks or misapprehends 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). The Court's Remand Order overlooks or misapprehends the material fact that LVMPD still retains devices and materials seized from Appellants. And rehearing is especially imperative where the Court has directed Appellants to prepare a privilege log they knowingly cannot prepare.

Accordingly, Appellants seek by way of their Petition that the Court rehear the matter and correct the record to state that Appellants are still awaiting the return of the seized materials to their possession and that Appellants be afforded a meaningful opportunity to create their privilege log in conformance with NRCp 26, which is conditioned on the requirement that LVMPD comply with the district court's order to return all seized devices and materials immediately—more than enough time has passed (over one year and two months in fact) for the completion of any imaging or other reproduction.

III. CONCLUSION

For the reasons set forth in the Petition and this Reply, Appellants respectfully request the Court grant the Petition in its entirety.

Dated this 13th day of June 2023.

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CERTIFICATE OF COMPLIANCE

I certify that I have read this reply in support of petition for rehearing, and it is not frivolous or interposed for any improper purpose. I further certify that this reply complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in a brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 13th day of June 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of June 2023, I caused the foregoing
APPELLANTS' REPLY IN SUPPORT OF 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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