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Elizabeth A. Brown
Clerk of Supreme Court

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

Case No.: 84931-COA

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.

**RESPONDENT LAS VEGAS METROPOLITAN POLICE
DEPARTMENT'S RESPONSE TO LAS VEGAS REVIEW-JOURNAL'S
MOTION FOR RELIEF FROM TIME REQUIREMENT OF NRAP 36(f)(1)**

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

LVRJ's motion must be denied for two notable reasons. First, the time and manner requirements of NRAP 36(f)(1) are mandatory and cannot be circumvented by an untimely motion to extend. The plain language of the rules expressly limits the Court's ability to extend the deadline—permitting extension only prior to the expiration of the deadline. Because the plain language of NRAP 36(f)(1) is mandatory, the Court cannot grant LVRJ's untimely motion. Second, to the extent that this Court finds that the language within NRAP 36(f)(1) is not mandatory and applies the good cause standard provided in NRAP 26(b)(1)(A), LVRJ failed to satisfy the good cause standard. Despite acknowledging that it learned of the Court's Order in May 2023, LVRJ did not seek relief from this Court for two months. LVRJ's failure to act for 60 days cannot be reasonably interpreted as good cause. Accordingly, LVMPD asks that the Court deny LVRJ's motion for relief from NRAP 36(f)(1)'s mandatory time requirement.

II. LEGAL ARGUMENT

A. LVRJ'S REQUEST IS UNTIMELY.

Rule 36(f)(1) makes clear that a motion to reissue an Order as an Opinion must be filed no later than 14 days after filing of the order. Moreover, a motion to extend the time to file such motion **must** be filed before the expiration of the 14-day deadline. *Id.* (emphasis added). The term must within the Rule denotes a mandatory requirement. *Washoe Cnty. v. Otto*, 128 Nev. 424, 432, 282 P.3d 719, 725 (2012) (interpreting NRS 233B130(2) and concluding that the term “must” establishes mandatory requirements). When interpreting a statute, the Court first looks to its language, and when the language used has a certain and clear meaning, the Court will not look beyond it. *Harris Assocs. v. Clark County Sch. Dist.*, 119 Nev. 638, 641–42, 81 P.3d 532, 534 (2003).

Because Rule 36(f) contains a mandatory requirement, the Court must conclude that it requires strict compliance. “A [rule] may contain both mandatory and directory provisions.” *Markowitz v. Saxon Special Servicing*, 129 Nev. 660, 664, 310 P.3d 569, 571 (2013). A rule’s provisions are mandatory “when its language states a specific time and manner for performance.” *Id.* at 664, 310 P.3d at 572 (internal quotation omitted). “Time and manner refers to when performance must take place and the way in which the deadline must be met.” *Id.*

Here, the plain language of this rule confirms that this Court is powerless to extend this filing deadline after it has expired. *Cf. SFPP, L.P. v. Dist. Ct.*, 123 Nev. 608, 612, 173 P.3d 715, 717 (2007) (“We thus conclude that when the district court entered the order for dismissal, its jurisdiction, with respect to this order, ended even in the face of the parties’ contracting agreement purporting to extend the district court’s jurisdiction beyond this termination of the case.”). The Supreme Court has previously rejected untimely filings in relation to similar appellate rules denoting time and manner requirements. *See* NRAP 3(a)(1); *Walker v. Scully*, 99 Nev. 45, 46, 657 P.2d 94, 94–95 (1983) (appellate court lacks jurisdiction to entertain an untimely appeal); *Zugel by Zugel v. Miller*, 99 Nev. 100, 101, 659 P.2d 296, 297 (1983) (the timely filing of an appeal is jurisdictional). Notably, the time to appeal cannot be extended by an appellate court, a district court, or a stipulation between parties. *See Walker*, 99 Nev. at 46, 657 P.2d at 94–95. A district court has no jurisdiction to entertain an untimely post-judgment motion, and such untimely motions do not suspend the time for filing a notice of appeal. *See Ross v. Giacomo*, 97 Nev. 550, 553, 635 P.2d 298, 300 (1981), *abrogated on other grounds by Winston Prods. Co. v. DeBoer*, 122 Nev. 517, 134 P.3d 726 (2006); *Morrell v. Edwards*, 98 Nev. 91, 93, 640 P.2d 1322, 1324 (1982);

Oelsner v. Charles C. Meek Lumber Co., 92 Nev. 576, 577, 555 P.2d 217, 217 (1976).

This Court issued the underlying Order on April 7, 2023—nearly three months before the instant request. The plain language of the rule only permits an extension prior by the Court prior to the expiration of the deadline. Accordingly, the Court must deny LVRJ’s request to publish the Order as the time and manner requirements of NRAP 36(f)(1) are mandatory.

B. GOOD CAUSE DOES NOT EXIST TO EXTEND THE DEADLINE.

Even if this Court ignores the mandatory requirements of NRAP 36(f)(1) and permits LVRJ to rely on NRAP 26(b)(1)(A), LVRJ failed to satisfy the good cause standard for untimely moving to extend the deadline.

“Good cause” has been defined as “events unforeseen and uncontrollable by both counsel and client”. *Mississippi v. Turner*, 498 U.S. 1306 (1991). It has also been defined as “as a reason that would have prevented a reasonable person acting with due diligence from participating” in a hearing or function. *Fay v. Department of Employment and Economic Development*, 860 N.W.2d 385 (Minn. App. 2015).

“Good cause generally is established when it is shown that the circumstances causing the failure to act are beyond the individual’s control.” *Moseley v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 124 Nev. 654, 668, n. 66, 188 P.3d 1136,

1146 (2008) (citing *State v. Williams*, 120 Nev. 473, 477, 93 P.3d 1258, 1260 (2004)). An attorney's inadvertence or miscalculation does not meet the good cause standard. *Pioneer Investment Services v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 392 (1993) (“inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute excusable neglect” in bankruptcy context); *United States v. Torres*, 372 F.3d 1159, 1160 (10th Cir. 2004) (applying *Pioneer Investment Services* in Rule 4(b) context); *United States v. Alvarez-Martinez*, 286 F.3d 470, 473 (7th Cir. 2002) (miscalculation does not amount to good cause under Fed.R.App.4(b)(4)); *Virella-Nieves v. Briggs & Stratton Corp.*, 53 F.3d 451, 454 n.3 (1st Cir. 1995).

Curiously, LVRJ’s counsel admit that as early as May, it was aware of the order issued by this Court. Yet, LVRJ proffers no good cause basis to wait until July 14, 2023—more than three months after the order and two months after discovering the order—to move this Court for publication. LVRJ’s counsel assert that it has been active in several court cases, requiring LVRJ to focus on other matters. Interestingly, the dockets included as exhibits all pertain to the same, single case involved Mr. Telles. Even more telling is that in May 2023, LVRJ’s first written filing in the State Court Case, Case No. C-22-368935-1 was May 22, 2023. Likewise, the appellate docket sheet demonstrates that LVRJ did not make a

filing until May 26, 2023. Exhibit A. Although LVRJ's does not identify a specific date at which it became aware of the order, during the May 10, 2023 hearing, counsel for LVRJ referred the district court to this Court's order. See Transcript of May 10, 2023 hearing attached hereto as **Exhibit 1**, at p. 28-29. Thus, LVRJ had ample opportunity to, at the very least, file its request for publication in May 2023, but failed to do so. Notably, in *Mississippi v. Turner*, the Supreme Court held that state budgetary cuts resulting in a reduction of appellate attorneys in the Mississippi Attorney General's Office did not constitute "good cause" for a 30-day extension. As explained by the late Justice Antonin Scalia "Like any other litigant, the State of Mississippi must choose between hiring more attorneys and taking fewer appeals." 498 U.S. 1306 (1991). The same logic applies to LVRJ's "excuse" for not seeking its relief from the Court at least two months earlier. Accordingly, this Court should conclude that good cause does not exist to extend the deadline in Rule 36(f)(1).

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III. CONCLUSION.

LVMPD respectfully requests the Court to deny LVRJ's Motion for Relief from Time Requirement of NRAP 36(f)(1).

Dated this 21st day of July, 2023.

MARQUIS AURBACH

By: /s/ Jackie V. Nichols

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Metropolitan Police Department

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RESPONDENT LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S RESPONSE TO LAS VEGAS REVIEW-JOURNAL'S MOTION FOR RELIEF FROM TIME REQUIREMENT OF NRAP 36(f)(1)** was filed electronically with the Nevada Supreme Court on the 21st day of July, 2023. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Deanna Forbush, Esq.
Colleen McCarty, Esq.
Attorneys for Movants and Real Parties in Interest
Las Vegas Bistro, LLC and Little Darlings of Las Vegas, LLC

Janet Trost, Esq.

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

Zachary M. Youngsma, Esq.
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Attorney for Movants and Real Parties in Interest
Las Vegas Bistro, LLC and Little Darlings of Las Vegas, LLC

/s/ Krista Busch

An employee of Marquis Aurbach

EXHIBIT 1



DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL, INC.,

Plaintiff,

vs.

THE STATE OF NEVADA,

Defendant.

CASE NO. A-22-859361-C

DEPT. NO. XII

THE STATE OF NEVADA,

Plaintiff,

vs.

ROBERT TELLES,

Defendant.

CASE NO. C-22-368935-1

DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

WEDNESDAY, MAY 10, 2023

RECORDER'S TRANSCRIPT OF PROCEEDINGS

MOTION FOR ENTRY OF ATTACHED INTERIM PROTOCOL ORDER JOINTLY
SUBMITTED BY PLAINTIFF AND DEFENDANT ROBERT TELLES;
DEFENDANT'S MOTION FOR ORDER TO COMPEL LVMPD TO PRODUCE
OBJECTS DEMANDED IN DEFENSE SUBPOENAS;
EMERGENCY MOTION ON ORDER SHORTENING TIME BY THIRD PARTIES
LAS VEGAS REVIEW-JOURNAL INC., KEITH MOYER, GLENN COOK,
ANASTASIA HENDRIX, ARTHUR KANE, AND BRIANA ERICKSON TO
PARTIALLY QUASH SUBPOENAS ISSUED BY ROBERT TELLES; AND
STATUS CHECK: TRIAL READINESS

RECORDED BY: SARA RICHARDSON, COURT RECORDER

1 **APPEARANCES:**

2 For the State of Nevada:

CHRISTOPHER S. HAMNER
Chief Deputy District Attorney

4 For Defendant Telles:

PRO SE

6 For the Review-Journal Parties:

ASHLEY I. KISSINGER, ESQ.
Pro Hac Vice
JOEL E. TASCA, ESQ.
DAVID Z. CHESNOFF, ESQ.
RICHARD A. SCHONFELD, ESQ.

10 For LVMPD:

MATTHEW J. CHRISTIAN, ESQ.

1 LAS VEGAS, NEVADA, WEDNESDAY, MAY 10, 2023, 8:44 A.M.

2 * * * * *

3 THE COURT: Telles, State of Nevada versus Telles, C368935, good
4 morning, Mr. Telles --

5 THE DEFENDANT: Good morning, Your Honor.

6 THE COURT: -- is present and in custody. You all can start making your
7 appearances.

8 MR. CHRISTIAN: Good morning, Your Honor, Matthew Christian for the
9 Las Vegas Metropolitan Police Department.

10 MR. HAMNER: Christopher Hamner for the State.

11 THE COURT: Good morning.

12 MR. CHESNOFF: Good morning, Your Honor. Dave Chesnoff on behalf of
13 the Review-Journal along with my colleagues Mr. Tasca and Ms. Ashley Kissinger.

14 THE COURT: Okay. Where do you want to start first?

15 THE DEFENDANT: Well, Your Honor, if we may start with, I think, my motion
16 addressing that because I think that will inform the discussion that we have on the --
17 the civil matter.

18 THE COURT: Okay. Now, it's my understanding that Ms. Weckerly did
19 provide you with some discovery. But that -- it was only within the last couple of
20 days.

21 THE DEFENDANT: No, Your Honor. It was last week.

22 THE COURT: Okay.

23 THE DEFENDANT: But I've got concerns I've got to put on the record
24 regarding the whole situation. If I may?

25 THE COURT: Sure.

1 THE DEFENDANT: All right. Well, thank you, Your Honor. So I do have a
2 very disturbing report to put on the record. I need to convey the seriousness of what
3 is going on here. Not only are we now talking about police misconduct, we're talking
4 about prosecutorial misconduct and obstruction of justice.

5 In court last, what, the last time we were here, the D.A. and L.V.M.P.D.
6 both said they were going to go ahead and comply with my requests, minus, of
7 course, the disciplinary records for Detective Gatus and Detective Jappe. Now,
8 after that hearing, the next day, I had my investigator contact their office to reaffirm
9 the fact that we were expecting that per what they discussed in court. And also too,
10 obviously, the D.A. asked for another week. They forced a continuance pushing
11 things out even further. And despite all of this, they still failed to respond to my
12 request for production.

13 So now to ensure that we've illustrated the -- the full extent of the
14 misconduct. Again, this is not simply limited to what -- what just happened and what
15 I just discussed, but there's far more. I've got to go ahead and put this on the
16 record, Your Honor, and then after that I'm going to ask if Your Honor will grant a --
17 my motion and have L.V.M.P.D. produce these materials directly. But to -- because
18 otherwise, if you do not, Your Honor, this is -- they're just going to continue to
19 stonewall and that's violating my constitutional rights. But I'll get into that further.

20 To give Your Honor the full scope of what is going on here, I have to go
21 back briefly into a little bit of history starting in 2019. Not long after I started as the
22 Clark County Public Administrator I found there was a ring that was defrauding the
23 court and families, and I assure you, this is relevant, Your Honor.

24 MR. CHESNOFF: Excuse me, Mr. Telles.

25 THE DEFENDANT: Yes.

1 MR. CHESNOFF: Your Honor, I hate to do this but I have another matter. I'm
2 going to go and try to get that done and come back up, but, obviously, able
3 counsel --

4 THE COURT: Yeah, no problem.

5 MR. CHESNOFF: All right. Thank you, everybody.

6 THE COURT: No problem. You bet

7 MR. CHESNOFF: Sorry, Mr. Telles.

8 THE DEFENDANT: No problem, sir.

9 So, again, I had just become the Clark County Public Administrator and
10 I found that there was this ring that was defrauding the court and families of
11 deceased Clark County residents. At the time, the person that the ring was using as
12 an administrator in court was a man named Thomas Moore, M-O-O-R-E. In early
13 2020 *Vegas Voice*, a popular senior publication, did an investigative report on
14 Mr. Moore's activities. So not long after that, the ring began to use
15 Cynthia Sauerland, S-A-U-E-R-L-A-N-D, as the administrator in their probate cases.
16 The names of both can be found in hundreds of cases in Odyssey.

17 This ring opened many of these probates, hundreds, hundreds,
18 asserting that almost every home had substantial damage. The homes were sold at
19 low prices to associates who would turn around and sell the homes for as much as
20 double as what they were purchased. Also, the ring failed to report any personal
21 property such as jewelry, cash, firearms, collectibles, or vehicles. This would be
22 impossible based on how many estates they had opened.

23 The issue had been raised to the prior Public Administrator by the court
24 and by families. However, he told the court that his office could not spare the
25 resources to address the ring because of internal issues. When I learned of the

1 ring, I began to file oppositions to their administrations and I was successful. But
2 despite my success, in many cases the ring continued to persist with their conduct.

3 In early 2022, I spoke with D.A. Wolfson and asked if his office would
4 investigate the ring. He said his office did not have that function, but that he would
5 put me in touch with Detective Jappe, that's J-A-P-P-E, but pronounced Jaffe, and
6 Detective Jappe worked in Public Corruption at L.V.M.P.D. Detective Jappe I met,
7 we went over the materials I had, and then within about a month or so he contacted
8 me and informed me that his team had figured out one of the ways that there was
9 likely criminal conduct. They found that there was no personal property reported in
10 any of these cases.

11 They were going to go ahead and set up sting operations on homes
12 where the ring started administrations. Also on cases where they had vehicles that
13 they did not report, these vehicles could be traced back to the tow yards to which
14 they were abandoned and because there was a high likelihood of kickbacks, they
15 could figure all that out. There was, with the vehicles alone, over hundreds of
16 thousands of dollars in lost values to estates. Those were vehicles that should have
17 been sold for the benefits of families but were given away to these tow yards,
18 Your Honor.

19 It's, you know, again, it was good news to hear that finally their actions
20 were going to catch up to them. Within a day of Detective Jappe giving me the good
21 news, I spoke to D.A. Wolfson. I shared with him the good news and his reply was
22 that he already knew. He is in close contact with Detective Jappe on all of
23 Detective Jappe's important cases which, again, was good as far as I was
24 concerned. However, after that I heard nothing more about the investigation. I lost
25 my primary election, but I continued to fight the ring in probate court.

1 In about mid-to-late August, I obtained authority from the probate court
2 to dissect one of the ring's administrations so that I could prove the fraud upon the
3 court. And then on September 2nd, 2022, Mr. German was murdered and the
4 investigation in Mr. German's death focused almost immediately on me with
5 Detective Jappe seemingly at the helm of the case.

6 Last week I received proof of one of the most disturbing events in this
7 case. I had, again, asked for discovery. I didn't get what I wanted, but I did get
8 something that, again, shed some light on this -- this concern with Detective Jappe
9 and his influence on this case, Your Honor. Detective Jappe had actually opened,
10 after he dropped a case with probable cause, he opened a case into me for bribery
11 of a public official or a public officer. I have an investigative report right here, in-
12 person surveillance of me on this.

13 So it's concerning that, again, he dropped this case that had probable
14 case and he opened this sham investigation into me. It was a sham. As you can
15 see, I was not charged under any crime for bribery of a public officer and that
16 investigation still yet was opened and it was opened very shortly before Mr. German
17 was murdered giving Detective Jappe the opportunity to be very involved with the
18 murder investigation. It's a huge coincidence if Detective Jappe was not aware that
19 someone intended to murder Mr. German and frame me for it.

20 Given that D.A. Wolfson was on top of all of Detective Jappe's cases,
21 D.A. Wolfson will, at a minimum, be able to testify about Detective Jappe dropping
22 the case of probable cause and opening a sham investigation against me, at
23 minimum. D.A. Wolfson will be able to also testify about Detective Jappe's influence
24 on Detective Gatus, G-A-T-U-S. You can see one of the reasons that the D.A.
25 would be so eager to help deny me this information, the stuff that I am requesting.

1 So this now brings me to Attorney Weckerly's conduct in the case and
2 talking more prosecutorial misconduct. When Detective Gatus provided two search
3 warrant applications that had obvious mentions of warrantless stingray surveillance
4 and warrantless procurement of phone records, Attorney Weckerly still yet gave her
5 approval before the applications were submitted to Judge Tierra Jones.

6 Attorney Weckerly is a Chief Deputy District Attorney. She of all people would know
7 how critical it is to carefully review and question all search warrant applications
8 because the alleged suspect has important constitutional duties -- or excuse me,
9 constitutional rights that must be protected.

10 This past Monday -- and unfortunately, my investigator, I had asked that
11 he come and be here in case he needed to be called to testify, but he's not here,
12 unfortunately. This past Monday I asked my investigator to email Attorney Weckerly
13 and ask her why her emails, again, there's so much I wasn't provided, but why
14 specifically her emails with Gatus were not provided and the response was that I
15 was not entitled to those emails.

16 Now, there is no attorney-client privilege between the D.A.'s Office and
17 L.V.M.P.D. Emails going to an external organization are not attorney work product.
18 So it seems that, really, what Attorney Weckerly was doing was trying to obscure
19 her own conduct in the matter by claiming that she had the authority to deny me
20 those emails which she had no authority to do that.

21 So now, as it stands, we have a prosecutor who approved search
22 warrant applications that should not have been approved because they had facial
23 violations of my constitutional rights and she is now attempting to help L.V.M.P.D.
24 block my access to this exculpatory evidence while also trying to convict me in this
25 case.

1 About two months ago, in fact, I asked my investigator, well, my
2 investigator and I were preparing the original subpoenas that, again, we have
3 abandoned for my motion. But during several occasions, we discussed the
4 importance of the car washing video because, again, that car washing was a
5 lynchpin issue for the search warrants. We wanted to demonstrate that
6 Detective Gatus plainly lied. But not long after we served those search warrants, my
7 investigator was apparently contacted by an employee at the D.A.'s office. My
8 investigator informed me that the D.A. was not going to let me have the video. I
9 would only be allowed photos if any -- if anything, excuse me.

10 At the time I was shocked, I couldn't see how the D.A. could possibly
11 stop me from getting the videos from Metro or from L.V.M.P.D. However, it is clear
12 now by taking up the duty to act as L.V.M.P.D.'s conduit for evidence production, the
13 two can play these games where they expect that neither will be held accountable
14 for omissions of evidence. This is absolute -- there's absolutely no good faith
15 reason for allowing L.V.M.P.D. and the D.A.'s office to deny a defendant's
16 constitutional right, their Sixth Amendment right to discovery.

17 The cover-up is more -- it's really just more evidence of their
18 misconduct in this case and it's frightening really that the D.A. and L.V.M.P.D. are so
19 boldly violating my constitutional rights when the citizens of Clark County are
20 watching. It's obvious that Attorney Weckerly is either well aware of the police
21 misconduct or she was remaining willfully ignorant. Over a month ago I asked her to
22 look into the police misconduct and interview the officers. It is her duty under the
23 Rules of Professional Conduct to refrain from pursuing a conviction where there is
24 no probable cause, yet we are still here.

25 After knowing my claim and what I was seeking for over a month now,

1 Attorney Weckerly and L.V.M.P.D. have acted as though, you know, I haven't made
2 my requests clear. I have made my production requests very clear. And, again, we
3 were here for over a month now and still yet they have not been responsive. In fact,
4 in the last hearing, Attorney Christian said they would produce everything that was
5 requested except for the disciplinary records for Detective Gatus and
6 Detective Jappe. What I received last week was five percent responsive to my
7 request, no more, absolutely no more than that, Your Honor.

8 I have a constitutional right to conduct discovery under the
9 Sixth Amendment under the confrontation clause. And here that is compounded by
10 the fact that I will be using the evidence to vindicate my Fourth Amendment rights.
11 As it stands at this moment, the D.A. and L.V.M.P.D. are engaging in obstruction of
12 justice. I look forward to hearing the responses to my assertions on the record
13 today, as I intend to have this transcript ordered so that I might file a complaint with
14 the Department of Justice.

15 As of now, I respect that the Court -- and excuse me, I respectfully
16 request that the Court enter an order granting my motion for the production of items
17 listed therein directly from L.V.M.P.D. along with the affidavits of custodian. Again,
18 their conduct thus far has given me no faith that they will perform without an order
19 from this court and I am happy to prepare the order. Given that the order should be
20 only two to three pages, I can have my investigator come during an in-person visit
21 and I can type out the investigator, excuse me, the order in a matter of, you know,
22 half an hour or so.

23 And so, Your Honor, again, for the reasons I've discussed, I implore
24 you to enter that order so that we can protect my constitutional rights. Thank you,
25 Your Honor.

1 THE COURT: Okay. You understand that you're only entitled to what the
2 statute indicates, that discovery in a criminal case is governed by statutes and case
3 law and some of these things in here, I'm not sure that you would be entitled to. I
4 mean, so they're required to turn this stuff over to you pursuant to the statute,
5 without even a request. But they only have to turn over what's statutorily required.

6 THE DEFENDANT: Your Honor, you're talking about the D.A.'s requirement.
7 You are not separating the two entities. The statute -- and I've got the statute
8 right --

9 THE COURT: Because they're not separate. They are not separate for
10 purposes of discovery.

11 THE DEFENDANT: I --

12 THE COURT: If it's in the possession of Metro, it's in the possession of the
13 D.A.

14 THE DEFENDANT: I respectfully disagree, Your Honor, and I've got the --

15 THE COURT: Well, you can -- I'm just -- that's what the case law says.

16 THE DEFENDANT: Okay. Now, I've got --

17 THE COURT: So you can disagree all you want. But that's what the case law
18 says.

19 THE DEFENDANT: I've got the statute -- I've got the statute right here. And
20 it is interesting that Your Honor is taking up the same argument that the D.A. had
21 made to me just earlier this week. So I've got here, again, N.R.S. 174.235.

22 THE COURT: Uh-huh.

23 THE DEFENDANT: It says that the only thing that the prosecution cannot or
24 is not forced to give me are internal reports, internal books, internal papers.

25 THE COURT: Right.

1 THE DEFENDANT: Internal documents, internal tangible objects. So those
2 are internal things. Anything else that I am requesting is due to me and we are,
3 again, talking about the vindication --

4 THE COURT: No, I'm sorry, it's not.

5 THE DEFENDANT: Your Honor, we are talking about the vindication of my
6 constitutional rights and you're talking about -- we're talking about upholding police
7 misconduct. And if Your Honor is standing in the way of that you are engaging in
8 well -- as well in obstruction of justice.

9 THE COURT: Okay.

10 THE DEFENDANT: Because these materials I am requesting are -- I am
11 requesting them to prove police misconducts, Your Honor, and I will ask that the
12 Court enter its order, if you are denying it, so I can go ahead and immediately file a
13 petition for writ of mandamus.

14 MR. HAMNER: Could I be heard?

15 THE COURT: Sure.

16 MR. HAMNER: Okay. I just want to say, I mean, listen, it's a riveting speech,
17 but it is chock full of total inaccuracies about the law of the State of Nevada. Clearly
18 Mr. Telles has no understanding about how discovery is turned over in a case. He's
19 already shown us that during his Faretta canvass and that speech tells us
20 everything that we need to know.

21 The reality is this, Nevada governs the discovery -- the discovery
22 statutes are governed and we have to abide by those rules. We also have a
23 temporary protective order in place that also limits things that we would normally
24 hand over to you. So it's interesting that Mr. Telles is frustrated over this when he
25 also wants to keep this -- essentially this injunction in place and want to make more

1 difficulties for him to get information.

2 The bottom line is, we already provided discovery at the beginning of
3 this case to Ed Kane of the Public Defender's Office and that information was
4 provided to Ryan Helmick and then Ryan Helmick didn't turn it over to your third
5 lawyer. So what we're talking about right now is actually your second production of
6 discovery. So it's not like we haven't been turning these things over, you've had a
7 lot of this stuff from jump.

8 But now we have new issues we have to deal with and there are --
9 there is information that we can't fully give over to you because of what's in place
10 here. And if you're not happy about it, well, these are the rules that we have to live
11 under.

12 I want to point out one of the things he asked for, he asked
13 Ms. Weckerly for all of her emails. You're not entitled to that under the Nevada
14 discovery statute and she didn't say -- you said and there's no work -- there's no
15 attorney-client privilege between Metro and Pam Weckerly, that's not what she said
16 in the email. She said you're not entitled to it under Nevada's discovery statutes
17 and she's 100 percent correct. But you wouldn't know that because the defendant
18 doesn't practice criminal law.

19 But then he spins out things like conspiracies and working and
20 subterfuge and all of these kind of fancy words to make it sound as if there's some
21 sort of obstruction going in play. We're not trying to obstruct anything. We are
22 bound by discovery statutes. We turn over what we can and we made that clear to
23 the Court, we made it clear to his investigator.

24 He makes claims about Ms. Weckerly's review of warrant, again, it's a
25 little rich to listen to him sit here and criticize Ms. Weckerly who has been doing her

1 job longer than he was even an attorney. It's a joke. If he has an issue with a
2 warrant, file a motion to suppress it and provide your legal basis. But there's
3 nothing been improper by Ms. Weckerly in this case in terms of reviewing a potential
4 search warrant. I mean, that's just -- it's offensive. It's offensive.

5 I want to address the issue about delaying the discovery. The bottom
6 line is we have provided and turned over everything that is in our possession that we
7 can right now under the auspices of these rules. And until we get a protocol in
8 place, some of these other things are not -- are not going to be produced and that's
9 just the reality of it.

10 So I just wanted to address a couple of those things and just make that
11 clear because that was -- that was quite a speech.

12 THE DEFENDANT: And, Your Honor, if I may reply to that?

13 THE COURT: Are you done?

14 MR. HAMNER: I'm done, Your Honor.

15 THE COURT: Okay.

16 THE DEFENDANT: Again, the D.A. and the L.V.M.P.D. are not one
17 organization and to say that I cannot request items directly from L.V.M.P.D. is false
18 and to also say that this injunction, which is against only the items on Mr. German's
19 devices, to somehow try to claim that this is blocking the effort for me to get the
20 proof of police misconduct is just absurd. Counsel wants to raise his voice and
21 sound like he's so upset about the indignity of being called on the carpet for their
22 bad behavior. But it is what it is.

23 They are obstructing of justice by failing to give me the proof of police
24 misconduct and it is crazy. We are here in a court of law, we are here to pursue
25 justice, not just what the D.A.'s idea of justice is, but what real justice is. Justice is

1 not convictions. Justice is getting to the truth and they are obstructing my ability to
2 get to the truth.

3 And, Your Honor, I will quote the U.S. Supreme Court which says, "The
4 U.S. Supreme Court has held that it is as much the prosecutor's duty to refrain from
5 improper methods calculated to produce a wrongful conviction as it is to use every
6 legitimate means to produce a just one." The U.S. Supreme Court stated that in
7 Berger v. U.S. For the record, the citation is 295 U.S. 78.

8 It's -- I'm floored, Your Honor. The fact that I have asserted real police
9 misconduct and the fact that I need the proof for that, it's evident. And yet counsel
10 says, well, file your motion to suppress; of course, I would like to, give me the rest of
11 the evidence that I need to to firmly prove the police misconduct. And, again, if
12 Your Honor's going to deny my request, I'm -- I'll -- so be it, I will have to just -- we'll
13 file a writ and we'll move forward.

14 But I am hoping that Your Honor sees the concern with allowing them to
15 hide this police misconduct, to allow them to play this shell game with the evidence I
16 need to vindicate my Fourth Amendment rights. I assure you that I will prevail. It's
17 just a matter of how many roadblocks people are trying to put in front of me right
18 now.

19 THE COURT: Okay. We can go to the next issue regarding the search and
20 the protocol for the search. I did -- excuse me -- I did receive competing orders. So
21 I don't know who wants to be heard first. We can hear from the R.J., if you want.

22 MS. KISSINGER: Your Honor, may I speak first?

23 THE COURT: Yeah, of course.

24 MS. KISSINGER: I'd just like to say that -- make a record of the events that
25 have occurred over the past couple of weeks. There have been some

1 developments. And Your Honor had planned to proceed today to discuss what kind
2 of search order you were going to enter. At our last, kind of, substantive hearing
3 where we all met, you had anticipated entering -- not entering, rather, but distributing
4 to the attorneys a tentative ruling that we could discuss and, you know, focus our
5 argument on. I think that's a good idea and I would encourage Your Honor and
6 request that no final order be entered today, also for the reason that there have
7 been these other developments.

8 Nine days ago the plaintiffs, the Review-Journal parties, and Mr. Telles
9 jointly submitted a request that Your Honor enter their preferred interim protocol
10 order. It was a short brief. I don't even know that it cited any legal authority. About
11 24 hours ago Metro filed, I don't know, a 15-page legal brief responding to that and
12 we -- I doubt Mr. Telles has received that. I'm not sure he has.

13 THE DEFENDANT: I have not.

14 MS. KISSINGER: The certificate of service did not indicate that it was
15 emailed to his investigator. It indicated that it was mailed, so I was presuming that
16 that was the case.

17 We, however, you know, did scramble to pull together a brief because it
18 did raise a host of new issues that Metro has never, or the State, they've never
19 asserted many of the issues raised in that brief over the seven months that we've
20 been talking about the interim protocol order. Nevertheless, we pulled together a
21 brief so that we could have that on the record today just in case, you know, you had
22 planned to enter an order.

23 THE COURT: Is that what was up here this morning? Okay.

24 MS. KISSINGER: Yes. Yes, Your Honor. And I brought copies if you don't
25 have a copy in front of you. I'm happy to give you one. The other parties have been

1 given courtesy copies.

2 I think that it is important that -- that Your Honor, you know, carefully
3 consider, obviously this is an important issue and that care be taken to enter this
4 search order protocol in a way that protects every party's rights which is what the
5 Nevada Supreme Court expressly said in its order of limited remand should be
6 done. And so therefore, we request that you do not enter any final order today. We
7 are prepared to discuss with you any issues that you would like to discuss
8 regarding, you know, what the appropriate terms of such an order would be.

9 THE COURT: Well, I think I have a pretty good idea of the terms that each
10 party thinks are appropriate.

11 MS. KISSINGER: Yes. And I'm happy to --

12 THE COURT: Right?

13 MS. KISSINGER: -- to go forward and discuss that.

14 THE COURT: I mean, because you submitted a -- an order, right?

15 MS. KISSINGER: We did submit an order.

16 THE COURT: And I'm assuming --

17 MS. KISSINGER: Yes. And --

18 THE COURT: And Metro did as well, so I'm assuming those are the things
19 both sides want in the order.

20 MS. KISSINGER: Well, the order -- Metro has recently, in its brief that it filed
21 just 24 hours ago, it submitted yet a new version of its proposed order and I don't
22 know -- and they did not discuss that in the text of their brief. So I don't know if
23 Your Honor is aware that they are now removing the right for any party on behalf of
24 Mr. Telles, even his investigator, to be present during those searches. And there
25 was, you know, no explanation given as to why that change was made.

1 But, yes, our proposed interim protocol order is, you know, has been
2 the same since May 1st when we submitted that jointly with Mr. Telles and it's, you
3 know, similar to the prior version that we had submitted.

4 THE DEFENDANT: Your Honor, if I --

5 THE COURT: Okay.

6 THE DEFENDANT: Since I'm on the same --

7 THE COURT: Well, let me hear from Metro first and then I'll hear from you.

8 THE DEFENDANT: Sure. Sure.

9 MR. CHRISTIAN: So, Your Honor, I did file a new brief yesterday.

10 THE COURT: Uh-huh.

11 MR. CHRISTIAN: The reason I did that was because the court set a notice of
12 hearing on their motion for today. And the court did that on Friday, so I figured
13 maybe the court wants another brief. The brief -- the most substantive part of the
14 brief is no different than I've been arguing since September, which is we didn't --

15 THE COURT: And I'm not sure I saw new arguments.

16 MR. CHRISTIAN: Right. I -- there's no -- the basic argument is the same.
17 We didn't take anything from the R.J. We took things from the victim of a homicide.
18 The reporter's privilege was, is, and always will be personal. It's not the R.J.'s
19 devices. It's not their property.

20 They're intervening in this matter when they have no standing to do so.
21 That's been the same argument that I made even before I hardly knew anything
22 about this case, when I first spoke with Mr. Lipman on the phone. There's a
23 problem with their standing.

24 The only other thing that I --

25 THE COURT: Well, it can't be that the privilege just dies with the reporter.

1 MR. CHRISTIAN: Well, Your Honor --

2 THE COURT: I mean, that just isn't logical.

3 MR. CHRISTIAN: Well, maybe it's the family's privilege. Maybe they -- but
4 the R.J. didn't inherit it.

5 Your Honor, let's imagine -- I think that -- I think that's something that
6 we can explore. Let's imagine that Mr. German was only brutally battered instead of
7 murdered and let's say Metro was trying to figure out who battered him and he
8 consented to giving us his devices to search so that we could help him figure out
9 who battered him. Would the R.J. be able to step in and tell Mr. German, no, you
10 can't give Metro your property to help Metro help you find out who did this? That's --
11 never would be able to happen.

12 But that's essentially what is happening here. They've intervened and
13 they're interfering with an investigation when they have no standing to do so.
14 Maybe the family has standing. It's their property. But the R.J. does not have
15 standing.

16 The only additional thing that I raised in the brief that I filed yesterday
17 was I felt like because the court set a hearing on their motion, that I better go
18 through and point out all of the flaws in their protocol. Because when we were here
19 in January, Your Honor, if the Court recalls, I had already filed a countermotion to
20 have our protective order entered as the search protocol and the Court indicated
21 that it would enter the protective order.

22 Then fast forward to where we are today, the R.J. has submitted its
23 proposed protocol again and now I'm not sure if the Court is actually considering
24 their protocol versus the protective order that I had submitted back before. I'm
25 getting the impression that the Court wants to, you know, weigh the differences

1 between the two.

2 THE COURT: Well, my concern is can I even delegate Metro's obligation and
3 duty to investigate a homicide.

4 MR. CHRISTIAN: No. And --

5 THE COURT: That's my biggest concern.

6 MR. CHRISTIAN: Well, that's right. And so the new argument that's being
7 made is that, oh -- well, this actually isn't a new argument, they made this argument
8 back before, it's actually astonishing. The argument is that their First Amendment
9 right, which doesn't exist because we didn't take anything from them, but assuming
10 that there is some First Amendment right here, that it's -- the only thing that could
11 possibly compete with that is the State's duty to turn over Brady and Giglio material.
12 But if there's --

13 THE COURT: Well, they also have statutory obligations as well.

14 MR. CHRISTIAN: That's right.

15 THE COURT: And there could be in those -- in those items, there could be
16 statutory --

17 MR. CHRISTIAN: That's right.

18 THE COURT: -- documents or things that need to be turned over.

19 MR. CHRISTIAN: And some of it might be inculpatory not exculpatory.

20 THE COURT: Right.

21 MR. CHRISTIAN: But they've taken the position that if there's inculpatory
22 material on these devices and that it's simultaneously journalistic material, that they
23 and they alone can let us know whether they will allow us to use that inculpatory
24 material in the prosecution of Mr. Telles. That's the position that they're taking and
25 it's ridiculous.

1 The State has an obligation to the family, to the victims, and to the
2 public to find every bit of evidence that's relevant in this case --

3 THE COURT: That's how you interpret their order?

4 MR. CHRISTIAN: Yes.

5 THE COURT: Okay.

6 MR. CHRISTIAN: Yes. That's how it works. The special master is to go
7 through the materials and find out what's relevant first.

8 THE COURT: Well, I noticed they left out any statutory obligation and they
9 just refer to Brady and Giglio.

10 MR. CHRISTIAN: Okay. Right. Then when this initial review is done, there is
11 a log that's created and the items and the log are given to the R.J. They're not
12 given to you. They're given to the State. And they're not given to Metro. So we're
13 going to have third parties that know nothing about the claims or the defenses in this
14 case figuring out what's relevant and what's not relevant and letting the R.J. know
15 and only the R.J. And then R.J. gets to go through it and determine, they get to look
16 at the items and they get to determine whether or not any of it is journalistic material,
17 and if it is, then they get to make another log and protect it if they want to.

18 Never until the very end of this whole process is the Court ever even
19 involved. So it's not workable. And, yes, I -- they take the position that exculpatory
20 material is one thing, but inculpatory is something totally different, that their rights
21 are always going to trump the State's rights to find and use inculpatory material and
22 that can't possibly be right. So that was one of the other reasons that I felt like I had
23 to file something else because they bring that back up again in the protocol. I mean,
24 there's a lot of other problems with the protocol too, Your Honor, I don't know how
25 much you want to go through it, but --

1 THE COURT: Well, I want to hear -- Mr. Hamner, what do you think?

2 MR. HAMNER: I mean, listen, we've kind of -- we've joined Metro's position
3 on this.

4 THE COURT: Okay.

5 MR. HAMNER: So we stand with the arguments that they're making. And,
6 again, I think our concerns are layered. I think the standing argument is an
7 appropriate argument that needs to be made. It's always kind of been strange to me
8 to think that a newspaper somehow dictates how a private person, what they get to
9 do with their phone. And it's -- and when we look at that case law about, you know,
10 invoking a First Amendment right, a lot of situations it's law enforcement issuing
11 subpoenas to a newspaper and asking, we need information out of you. That's --
12 that's not the facts that we have here.

13 And all Metro is trying to do is what they do in every other homicide
14 case. If they find a victim who is dead with a phone that's on his person, they are
15 entitled to look into that phone to try to determine if any evidence on that phone can
16 help identify the person's killer. I mean, it's a real basic thing. And we believe that
17 Metro's proposed plan offers a level of confidentiality where if there's information out
18 there that's sensitive to the R.J. but doesn't fall under Brady or Giglio or isn't
19 inculpatory that the Court thinks shouldn't be disclosed, well, the parties are bound,
20 Mr. Telles and the State are bound to not disclose it and not make it public. And I
21 think that that's important.

22 And at the end of the day, we stand with what they've kind of laid out, I
23 mean, I know the briefs are lengthy. But I think the Court is right, their protocol, the
24 R.J.'s protocol haven't laid out the statutory obligations as the Court has noticed --

25 THE COURT: You mean the R.J.?

1 MR. HAMNER: The R.J., I'm sorry, they haven't laid out, as the Court has
2 noted, statutory obligations that the parties are obliged to follow and that is a
3 concern. So at this point we stand with the R. -- we don't stand with the R.J. -- we
4 stand with Metro.

5 THE COURT: Mr. Telles, go ahead.

6 THE DEFENDANT: Your Honor, it's --

7 MR. CHESNOFF: Take note of that, Your Honor.

8 THE DEFENDANT: -- it's interesting that, you know, they've claimed,
9 L.V.M.P.D., that this is strictly in the pursuit of exculpatory evidence that my
10 constitutional rights, originally, is what they claimed. Originally they claimed that
11 they needed to respect my constitutional rights and that my constitutional rights
12 trump the constitutional rights of the L.V.R.J. and that was the basis for the
13 argument that they be allowed to go from end to end on all of Mr. German's
14 electronic devices.

15 And so my concern, Your Honor, is that this is a bad faith argument.
16 When -- and think of this, Your Honor, if for some reason I was confident that they
17 were acting in good faith, if they actually provided all the documentation that I
18 requested per my motion, then I could perhaps think that -- that they are truly or
19 were truly just looking for exculpatory evidence to pass to me. It is clear now that
20 they're on some type of fishing expedition to go through his entire phone or all of his
21 devices, and now to say, oh, well, just kidding, now we're looking for inculpatory
22 evidence, all of a sudden.

23 It's now showing that --

24 THE COURT: Well, they're required to.

25 THE DEFENDANT: Well, Your Honor --

1 THE COURT: In any discovery, they're required to comply with their statutory
2 obligations as well as the case law. So I'm not sure what you're trying to argue.

3 THE DEFENDANT: And what I'm saying is if that was the case, why wasn't
4 that argued to begin with. Their argument to begin with --

5 THE COURT: Because it's -- it's --

6 THE DEFENDANT: -- was --

7 THE COURT: -- so obvious.

8 THE DEFENDANT: Yeah, well, Your Honor, then they still frankly should
9 have raised it with the Supreme Court. That would have been an additional
10 important argument if really, truly their -- their rights to conduct --

11 THE COURT: Well, the Supreme Court knows that they have statutory
12 obligations, so.

13 THE DEFENDANT: And -- may I?

14 THE COURT: I mean, do you have anything else to say about the order?
15 Because it appears as though you --

16 THE DEFENDANT: I am --

17 THE COURT: -- have entered into a stipulation --

18 THE DEFENDANT: I do, Your Honor.

19 THE COURT: Okay.

20 THE DEFENDANT: And, again, please, if you, again, I would like to make
21 my --

22 THE COURT: No, I mean, I'm pretty much, if you have anything else to say
23 about the order --

24 THE DEFENDANT: I --

25 THE COURT: -- I'll be happy to hear that, but --

1 THE DEFENDANT: But, again, I do need to get the record out. I had told
2 you, I do plan to file a petition for writ of mandamus, so I do also have a
3 constitutional --

4 THE COURT: Okay.

5 THE DEFENDANT: -- right to be heard in court as well.

6 THE COURT: Not at the expense of everybody else.

7 THE DEFENDANT: Well, it's only us here, Your Honor. There are no other
8 defendants in this -- in this courtroom, so if you would please indulge me just a
9 moment

10 THE COURT: If you have something to say about the protocol order, I'll hear
11 that.

12 THE DEFENDANT: Yes.

13 THE COURT: Otherwise.

14 THE DEFENDANT: I do. Again, it is clear that L.V.M.P.D. has a bad faith
15 purpose for -- for trying to get into these devices. I disagree with Your Honor's
16 assertions about the investigation. They've already completed their investigation.
17 They've already made their charges. To now say they are re-opening their
18 investigation is just ridiculous. But, again, that is something that the Court and I will
19 disagree upon.

20 I am concerned, again, that their original argument was that I was to get
21 exculpatory evidence yet they want to be in charge of the process and now all of a
22 sudden they've cut me out of the process entirely saying, well, since he's siding with
23 the R.J., we can just penalize him and take him out of the process altogether.
24 Again, bad faith.

25 So I'm asking that Your Honor grant the motion by the R.J., the

1 L.V.R.J., and I would like for the exculpatory evidence to come to me and me alone
2 because, again, if it's -- if it was truly just about my rights to exculpatory evidence,
3 then -- then the D. --

4 THE COURT: Well, of course the exculpatory evidence is going to come to
5 you. I don't know what that means.

6 THE DEFENDANT: To me only, Your Honor, to me only, not to the D.A., not
7 to L.V.M.P.D. Because if it's exculpatory and it's for my use, I should get to decide
8 whether to use it or not. It is not for the D.A. or for L.V.M.P.D. to say whether or not
9 I should get to use it. So, therefore, give it to me and me alone if you are acting in
10 good faith. That's it.

11 MR. HAMNER: I get -- I get it.

12 THE COURT: Okay.

13 THE DEFENDANT: So that's, you know, that is my argument, Your Honor.

14 THE COURT: All right. That --

15 THE DEFENDANT: After the process with the special master, that the -- that
16 these items come to me alone.

17 MR. HAMNER: I just --

18 THE COURT: Okay. That's interesting.

19 MR. HAMNER: Okay.

20 THE COURT: Because that could not happen. This is not a civil case. This
21 is a criminal case.

22 MR. HAMNER: I just have to make one comment. Under Metro's protective
23 order Mr. German's electronic devices, the entire content of Mr. German's electronic
24 devices go to Mr. Telles. They come to the State as well, but it comes to you, sir.
25 So you have the opportunity to review all of it. You can decide for yourself what's

1 really good for my case.

2 And at the same time, what it sounds like Mr. Telles fails to understand
3 is the laws of Nevada also obligate the State of Nevada to review that material to
4 see if we believe something's exculpatory. So even if Mr. Telles doesn't look at a
5 piece of evidence and think, oh, that's exculpatory, we still need that opportunity
6 because as this Court knows, we could try him and if he's found guilty, there's other
7 lawyers that come down the road who look at it and go, well, why wasn't this
8 particular thing turned over.

9 If it's left in the hands of Mr. Telles to decide what every other
10 experienced criminal lawyer down the road in post-conviction, what he decides is,
11 oh, this one's exculpatory, that's not a good precedent and that's why the law still
12 puts it upon the State an obligation to review all of the material to say, hey, is this
13 potentially exculpatory.

14 So under Metro's plan you get it all, you can review it all, and if we think
15 there are things that are in there, we can pass them along. But under our plan, you
16 get it all. You get everything on the device. You just can't talk about certain things
17 to the public that may infringe on their First Amendment right dealing with media
18 stuff that has not ties to our case. That's all I wanted to lay out.

19 THE COURT: Anything else?

20 MS. KISSINGER: Your Honor, I do have a responses to --

21 THE COURT: Sure.

22 MS. KISSINGER: -- to the points of both parties. Let's start with the last one
23 first. I did not read Metro's proposed protective order as doing what Mr. Hamner just
24 described, providing him -- providing Mr. Telles with everything. So if that is --

25 THE COURT: Well, because he was referring to the R.J.'s order.

1 MS. KISSINGER: Oh, you were -- you were referring to our order as --
2 MR. CHESNOFF: He said -- he said "Metro."
3 MS. KISSINGER: He did say Metro. I'm confused.
4 THE COURT: Did you mean Metro or --
5 MR. HAMNER: I apol -- yes, I did. I said Metro.
6 THE COURT: Okay. Sorry. Sorry.
7 MS. KISSINGER: Okay. So I'm not sure that Mr. Hamner is even correctly
8 articulating what their proposed order is. I'm going to leave standing aside for the
9 moment, and I want to just raise to Your Honor's attention, first, I want to ask, have
10 you had an opportunity to read what we filed this morning?
11 THE COURT: I literally just saw it on my desk up here this morning.
12 MS. KISSINGER: Okay.
13 THE COURT: So, of course, I want to have --
14 MS. KISSINGER: Okay.
15 THE COURT: -- an opportunity.
16 MS. KISSINGER: Okay.
17 THE COURT: I have drafted an order. I'm prepared to enter it. I obviously
18 won't do it until I have had an opportunity to review, you know, your latest
19 submission.
20 MS. KISSINGER: Okay. That's great, Your Honor. Thank you. I appreciate
21 that very much.
22 So I just want to raise a few points that are in it.
23 THE COURT: Sure.
24 MS. KISSINGER: The most salient point is that the Court of Appeals entered
25 an order a month ago that basically answers a lot of the questions that have been

1 raised in this case. It's -- and it involves Metro as a party. And there is issue
2 preclusion. They are collaterally estopped from arguing many of the arguments that
3 they are putting forth in this case at this point. There was a --

4 THE COURT: Such as?

5 MS. KISSINGER: Such as the way that the privilege works when materials
6 are in the possession of the State and a third party asserts privilege over them.
7 There was a case where Metro seized materials from a third party, it was two strip
8 clubs that were being investigated. They asserted two privileges, the attorney-client
9 privilege and the accountant privilege. And Metro made all -- you know, many of the
10 same arguments, there are some unique to this case, of course, about jurisdiction,
11 about this being the wrong court, the wrong way to proceed, and about how, you
12 know, most importantly for your purpose today, how privileges should be dealt with
13 in a criminal case when they are asserted by a third -- by a party or a third party.

14 And the court there held that the order entered by the district court,
15 which was Metro's proposed order, which was similar, just a protective order, was
16 error because it did not adequately protect those privileges. And the Court of
17 Appeal held that the materials needed to be provided to the privilege asserter, the
18 party asserting those privileges, first to review them in order to make those privilege
19 assertions by way of a privilege log, exactly what our order does, so that the court
20 could then, you know, rule on those privilege assertions.

21 Our interim protocol order does all of that and more. It actually provides
22 for a multi-layered review that could end this dispute all together and wind up with
23 there being no material that's privileged, there being material that's privileged that
24 the R.J. continues to assert privilege in. In other words, it may decide to waive its
25 privilege in some of that material. So it's a very -- it's a very comprehensive order

1 tailored to the specific privilege at issue in this case, which by the way is a stronger
2 privilege than the privileges asserted in that case.

3 And it -- the protective order that the State and Metro are proffering, it's
4 widely inadequate according to the Court of Appeals' decision just a month ago. I
5 want to make clear that it's an unpublished disposition, but under the rules, we are
6 allowed to provide it to Your Honor and we set that forth in the brief because we are
7 asserting collateral estoppel by way of issue preclusion. So that's one very
8 important thing I wanted to raise.

9 Metro takes the position that, you know, nothing that it said in its brief is
10 new, it's pretty much a rehash. All of the issues that it raised with our -- with our
11 proposed order, which has been around for a very long time, are new. And so they
12 require some thought and some digestion by the Court and the parties.

13 In response to Mr. Christian's comment that, oh, you know, his
14 hypothetical about let's say Mr. German was battered and not murdered, would the
15 Review -- would the Review-Journal have standing, yes, it would as would
16 Mr. German, they both hold the reporter's privilege.

17 There is a concern you asked, Your Honor, is there -- you had a
18 concern of can you delegate Metro's duty to investigate. That's not what we're
19 asking you to do.

20 THE COURT: Well, that's exactly what you're asking me to do in the order.
21 You're asking me to take it all from Metro and the State and put it in the hands of
22 two special masters.

23 MS. KISSINGER: No, Your Honor. Well, let me --

24 THE COURT: Yeah. That, I mean --

25 MS. KISSINGER: No. It's -- that -- with respect, Your Honor --

1 THE COURT: Okay.

2 MS. KISSINGER: -- it does not put it completely in the hands of the special
3 masters. The special masters play a very limited role. They simply facilitate the
4 process of the privilege review and they create logs that would be of the nature that
5 a party might want to make various different kinds of arguments, constitutional,
6 statutory, in order to argue that the privilege is overcome. Those arguments would
7 ultimately come to you by virtue of the special masters' report and recommendation.

8 So the special masters would take the first crack at those legal issues,
9 issue report -- it's called in your rules a report and recommendations. You,
10 Your Honor, would then take that and you would have an opportunity to completely
11 reject it. You would have the opportunity to look at material in camera. You are the
12 ultimate decision-maker in this process. That's why we called it an interim protocol
13 order. It is an interim step in this process. It's not the end game. So there's no
14 delegation of any -- of any party's duty in this case in the -- by virtue of this order.

15 You did mention that the order did not reflect -- it talks about Brady and
16 Giglio, which I hope I'm pronouncing that correctly.

17 THE COURT: No, you are.

18 MS. KISSINGER: But it didn't include certain criminal statutory obligations of
19 prosecutors. We are hap -- this is the first time we heard that. Again, this thing's
20 been around a long time. I wish that they would engage with us to discuss these
21 issues. We're happy to amend it to include that.

22 I heard, you know, we -- we, the R.J., the Review-Journal parties and
23 the Review-Journal parties alone get to decide what's turned over to them and to
24 Mr. Telles at the end of this protocol order, that's absurd. That is not what it does.
25 Again, any party, Metro, the State, Mr. Telles, the Review-Journal parties, any party

1 has an opportunity to file a motion to Your Honor at the conclusion of
2 implementation of that interim protocol order.

3 So, you know, the State and Metro are misstating to the Court how the
4 interim protocol order works. They are making suggestions they should have made
5 a long time ago. You know, we should really, again, do what the, you know, justice
6 court told us to do seven months ago, go out in the hall, see if you can work out the
7 details of the order.

8 THE COURT: Yeah, but I'm not convinced you guys can.

9 MS. KISSINGER: I know, I mean, we're -- I know the ship has sailed, and I
10 agree, we couldn't. But, you know, here we are in a courtroom kind of trying to
11 negotiate language that we're happy to adjust. It seems a little silly for --

12 MR. CHESNOFF: Your Honor, may I say one thing to Ms. Kissinger?

13 THE COURT: Of course.

14 MS. KISSINGER: Your Honor, the special master does not take the place of
15 the court either. So you're not delegating any judicial function to special masters.
16 Special masters are regularly consulted -- appointed in criminal cases to deal with
17 exactly this kind of issue, privilege reviews, complicated privilege review.
18 Sometimes the court can do it themselves, sometimes they can't. In a case like this,
19 it seems prudent to appoint special masters to create all these logs for the reasons
20 that we've set forth.

21 And I want to say, I want to make clear because it sometimes gets lost
22 in the discussion, well, number one, parties in a criminal case are not automatically
23 entitled whether by virtue of statutory rights, by virtue of constitutional rights --

24 THE COURT: You're right.

25 MS. KISSINGER: -- to privileged material of another party. They do not

1 automatically get that material. You have to adjudicate whether the privilege
2 supersedes those rights and that has to be done here. And in this case the privilege
3 that the Review-Journal parties are asserting is an order of magnitude stronger than
4 the privilege that Your Honor is typically asked to deal with which is the
5 attorney-client privilege. That's a privilege arising from the public policy protecting
6 confidential relationships. This privilege arises from something different even
7 though there is that same idea of confidentiality with confidential sources.

8 It actually arises from public policy, the public policy in protecting a free
9 press, a free press's ability to uncover corruption and wrongdoing and provide
10 information on matters of public concern to the public. And it's -- it is shown to be so
11 strong by the fact that this state has entered one of the strongest such privileges in
12 the country, it's an absolute privilege.

13 So I want it to be clear that the Review-Journal's position is that no
14 party in the courtroom can overcome this privilege, not Mr. Telles, not the State
15 under any circumstances. So we have an absolute privilege. We didn't even need
16 to file all of this. The Review-Journal is, in the interest of justice, agreeing to
17 relinquish that privilege to the degree that is it willing to enter, to have the Court
18 enter the interim protocol order. So I just -- that's kind of a point that gets lost, but I
19 wanted to make sure that Your Honor understood our position and it was on the
20 record.

21 MR. CHESNOFF: Your Honor, originally Metro and the D.A.'s position was
22 that they were arguing with us because they were trying to protect Mr. Telles's
23 rights. Well, Your Honor, he's his own lawyer, he is a lawyer, and he believes our
24 protocol does more to protect his rights than the one that they're proposing. In light
25 of the fact that Ms. Kissinger has just articulated our willingness to try to work

1 something out here that protects everybody, our protocol should be put in place. If
2 the concern is somehow Mr. Telles is going to be impacted in future appeals or
3 whatever, he's agreeing to this.

4 So I would submit to you, Your Honor, that our proposal is the one. It
5 meets his needs, it meets their needs, and we're giving up something but it'll meet
6 our needs.

7 MS. KISSINGER: I hate to say one more thing.

8 THE COURT: That's okay.

9 MS. KISSINGER: Because that was a beautiful conclusion. But this is
10 important and Mr. Tasca's helping me remember this important point.

11 That Court of Appeals' decision that was handed down a month ago, it
12 makes clear that it is error to enter an order that would allow Metro detectives and
13 district attorneys to be on the review team searching these privileged materials.
14 That's clear, it's clear-cut. They are precluded from even requesting that and so --

15 THE COURT: Does the State and counsel from Metro agree with that?

16 MR. CHRISTIAN: No.

17 THE COURT: Okay. All right.

18 MR. CHRISTIAN: I'm going to -- I'm glad that that case was brought up.

19 THE COURT: That's okay.

20 MR. CHRISTIAN: And I'll be addressing it just as soon as it's my turn again.

21 THE COURT: That's okay. I just thought if you agreed, why are we here.

22 MR. CHESNOFF: Your Honor, if you're going to take some time to consider, I
23 would suggest rather than replying in some verbal way now, that the district
24 attorneys file something trying to distinguish that case so that we have a chance to
25 study it.

1 MR. CHRISTIAN: It's --

2 THE COURT: Well, everybody --

3 MR. CHRISTIAN: Anyone --

4 THE COURT: -- has submitted briefs.

5 MR. CHRISTIAN: Anyone that reads the case will easily distinguish it on the
6 first go-around.

7 MR. CHESNOFF: Well, I failed that test then.

8 MR. CHRISTIAN: What happened -- what happened in the Hustler case,
9 Your Honor, is Metro was investigating the Hustler Club and I think Little Darlings for
10 encouraging prostitution in their establishments. So they got a search warrant and
11 they executed it upon the Little Darlings and the Hustler Club. So the attorney-client
12 privileged materials that were supposedly going to be on these devices were not the
13 third party's materials, as Ms. Kissinger keeps saying. It's the subject of the
14 investigation's property that was seized.

15 THE COURT: Oh, like the target?

16 MR. CHRISTIAN: The target of the --

17 THE COURT: It was their --

18 MR. CHRISTIAN: That's right.

19 THE COURT: And it was their attorney-client privilege? Material?

20 MR. CHRISTIAN: Yeah, the target of the investigation. And it was their
21 property. There was no question that we seized property from Little Darlings and
22 Hustler Club. Little Darlings and Hustler Club came to court, they sought a motion
23 for return of property, they sought to quash the warrant, and they sought to unseal a
24 warrant, and I don't -- a motion to suppress, I think. So, yes, the Supreme Court
25 decided that because the -- that was their property and they're the ones filing the

1 motions, then they should have an opportunity to provide a privilege log, which
2 apparently they couldn't do because they didn't have copies of what was on the
3 devices. So this is different and it goes right back to we didn't take anything from
4 the R.J. If we had taken -- if we had executed a search warrant at Glenn Cook's
5 house or the offices of the Las Vegas Review-Journal, then they would have
6 standing to be here. That's not what happened. And that's not what happened in
7 Little Darlings either. So that's the distinction.

8 MR. CHESNOFF: So, Your Honor, if one of my associates was at home
9 doing work on one our files and they went into his house and took the file, are they
10 suggesting that the law firm couldn't intercede to protect the privileged materials that
11 would be in the file? That's absurd.

12 THE DEFENDANT: And, Your Honor, if I may also?

13 THE COURT: Okay.

14 THE DEFENDANT: I've got -- I haven't been able to speak again, this is my
15 first time.

16 THE COURT: Okay.

17 THE DEFENDANT: I --

18 THE COURT: Well, this is about your third time speaking.

19 THE DEFENDANT: I'm referring to the --

20 THE COURT: And so is it specifically about the order?

21 THE DEFENDANT: -- to the R.J.'s motion is what I'm referring to.

22 THE COURT: Is it specifically about the order?

23 THE DEFENDANT: Absolutely.

24 THE COURT: Because at some point we've got to wind it down.

25 THE DEFENDANT: Of course, Your Honor, but I need to put this on the

1 record. The fact is that Metro and L.V.M.P.D. keep saying we have a constitutional
2 duty to review all this information and if there's anything exculpatory we have a
3 constitutional duty to give it to -- to Mr. Telles. But yet they don't treat the evidence
4 that I have asked them for as, you know, they've not done that review for that
5 evidence because by the time I finally --

6 THE COURT: Okay. So this has -- this doesn't have anything to do with the
7 order.

8 THE DEFENDANT: -- by the time I finally get it -- I'm showing you,
9 Your Honor, the hypocrisy of what is --

10 THE COURT: Okay.

11 THE DEFENDANT: -- going on here.

12 THE COURT: You know what, you can file something.

13 THE DEFENDANT: It is relevant, Your Honor.

14 THE COURT: And you can lay out --

15 THE DEFENDANT: It is relevant.

16 THE COURT: -- the hypocrisy that you think is shown. But is there anything
17 else from the parties?

18 MS. KISSINGER: One last thing, Your Honor, the distinction that
19 Mr. Christian raised, I did misspeak, it wasn't a third party, it was a target of the
20 investigation, but what does that have -- what -- distinction without a -- not only is it a
21 distinction without a difference, it actually makes our position stronger, this is a third
22 party's privilege that they're asserting.

23 So I, you know, I -- I'll be interested in seeing what -- how -- how, you
24 know, the brief turns out that that somehow matters. We all read the case and it
25 strikes us as being on all fours in the relevant respects that we've discussed and

1 demonstrating that their order is -- is -- would be error.

2 THE COURT: Okay. Anything else? Because what I think I'll do is I'll just
3 circulate a draft order and give the parties an opportunity to make any objections. I'll
4 make sure Mr. Telles gets a copy of it as well.

5 THE DEFENDANT: Thank you, Your Honor. And just one housekeeping
6 issue.

7 Just one housekeeping issue, if I may? My investigator, he is both
8 former L.V.M.P.D. and he's a --

9 THE COURT: Did he -- did your investigator come in at all today?

10 THE DEFENDANT: There he is. But I would like --

11 THE COURT: Okay. I just wanted to make sure. Because I --

12 THE DEFENDANT: He's both -- he's both former L.V.M.P.D. and former --
13 former investigator for the D.A.

14 THE COURT: Okay.

15 THE DEFENDANT: And he's been getting a lot of grief over this case. So I
16 am concerned that I may --

17 THE COURT: Grief, like what?

18 THE DEFENDANT: Possibly, I may need to actually switch investigators.
19 And so I was hoping I could get a copy of Your Honor's approved list of
20 investigators. That's all.

21 THE COURT: Mr. Drew Christensen can provide that.

22 THE DEFENDANT: Oh, no. Okay.

23 THE COURT: Who's giving your investigator a hard time? Nobody should be
24 giving your investigator a hard time.

25 THE DEFENDANT: They should not. They should not at all. You know, he's

1 got friends in Metro and the D.A. and unfortunately, you know, it, again -- the way
2 things have been recently, I'm -- it is what it is. And, you know, if I have to I'll just
3 hire another investigator, that's all, Your Honor, and so I just need to get that list.
4 But you say that Attorney Christensen's --

5 THE COURT: Right. Drew Christensen, he's the one that --

6 THE DEFENDANT: Okay. And do you know, I mean, my apologies --

7 THE COURT: Do you want to do -- are you asking to have your investigator
8 replaced?

9 THE DEFENDANT: Your Honor, I'm funding the investigator out of my own
10 pocket. So I'm just asking for a list of contacts.

11 THE COURT: Oh, you just want Drew -- okay. I get it.

12 THE DEFENDANT: Yeah, yeah.

13 THE COURT: You just want one so you can review it. Okay.

14 THE DEFENDANT: Correct. So if you all --

15 THE COURT: All right. We can ask Drew for that.

16 THE DEFENDANT: If the Court happens to have one, I'd appreciate it.

17 THE COURT: Sure. We'll make --

18 THE DEFENDANT: Does the Court -- may I get that before I leave here
19 today?


20 THE COURT: I don't have it here, I'll have to ask Drew for it.

21 THE DEFENDANT: Okay.

22 THE COURT: And then we'll see that it gets to you.

23 THE DEFENDANT: Okay. If I call from the jail to Your Honor's chambers will
24 they pick up the call?

25 THE COURT: Yeah. I don't -- we'll -- yeah, I don't see why not.

1 THE DEFENDANT: Okay. And so --
2 THE COURT: Wait, is it a collect call?
3 THE DEFENDANT: No, no, it's not a collect call.
4 THE COURT: Okay. Yeah, I don't see why not.
5 Okay. And then we have to set a new trial readiness date.
6 THE CLERK: So the following status check, trial readiness date will be
7 July 5th at 8:30.
8 MS. KISSINGER: I'm sorry, I missed that. I'm sorry.
9 THE COURT: Well, it's just a trial readiness date.
10 MS. KISSINGER: Oh, I'm sorry.
11 THE COURT: We'll probably be back together before then anyways.
12 MR. CHESNOFF: Nice to see you, Your Honor.
13 THE COURT: Good to see everybody.
14 THE DEFENDANT: Your Honor, may I take a moment to just chat with
15 Attorney Kissinger just very quick? Is that all right
16 THE COURT: If she wants to, yeah. Absolutely.
17 MS. KISSINGER: I'm fine, Your Honor. Yes.
18 THE DEFENDANT: Thank you very much. Appreciate it.
19 THE COURT: Thank you.
20 PROCEEDING CONCLUDED AT 9:45 A.M.
21 * * * * *
22 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
23 video recording of this proceeding in the above-entitled case.
24 
25 SARA RICHARDSON
Court Recorder/Transcriber