

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

Docket No. \_85159

**RESPONDENT'S POINTS AND  
AUTHORITIES IN RESPONSE TO  
PROPRIETY OF APPEAL**

MARGAUX SHANNON ORNELAS,

Defendant.

8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

1 On remand, the district court held an evidentiary hearing on June 10, 2022 wherein the State  
2 presented testimony from David Inman, the owner of the property, and Sergeant Andrew Shark from  
3 the Las Vegas Metropolitan Police Department (*Id.* at 126-127). After hearing evidence on the  
4 suppression motion, the district court held its prior ruling, granting suppression, would stand. (*Id.* at  
5 126). The district court issued an extremely detailed Findings of Fact, Conclusions of law and Order,  
6 suppressing the evidence on August 11, 2022 (*Id.* at 127-137).

8 The State filed its Notice of Appeal on August 12, 2022. (*Id.* at 143-144). On August 22, 2022,  
9 this Court issued an Order for the State to demonstrate the propriety of the appeal. The State filed their  
10 Points and Authorities in support of the appeal on August 30, 2022.

### 11 **STATEMENT OF THE FACTS**

12 On December 8, 2018, at 10:17 AM, Officer Penney with the Las Vegas Metropolitan Police  
13 Department was dispatched to the StorageOne storage facility at 9960 West Flamingo Road to  
14 investigate a burglary at unit B-151. (1 AA 18). He contacted complaining witness Marc Falcone, the  
15 unit's renter, who had last been to the unit the previous day. (*Id.*) On the 8th, Mr. Falcone received a  
16 phone call from a StorageOne employee saying his unit had been burglarized. (*Id.* at 19) Mr. Falcone  
17 told officers he was missing 21 wrist watches worth an estimated \$2.173 million. (*Id.*) Further  
18 investigations revealed that, in addition to unit B-151, units B-145 and B-147 had been burglarized on  
19 December 8; and units A-301, A-185, B-148, and B-259 were burglarized on December 6. (*Id.* at  
20 19,22.) Beyond Mr. Falcone's watches, he reported as missing a Panerai watch brand bag, watch  
21 boxes, duffle bag, and a briefcase that also had watches in it. (*Id.* at 20.)

24 StorageOne video surveillance stills showed two individuals, a white female adult and a white  
25 male adult, entering the facility at 3:21 AM on the 8th and leaving again at 4:43 AM, carrying several  
26 bags and pushing a wheel-chair. (*Id.* at 19.) Detectives canvassed the area and learned from  
27 unidentified homeless people that the suspects may be homeless and living near the intersection of  
28 Tropicana and Fort Apache, which is approximately two miles from the StorageOne location. (*Id.*)

1 Upon checking past crime reports and field interviews of homeless people in that area, detectives  
2 found an interview from July 7, 2018, involving an Annie Bishop and a James Gregg who were  
3 homeless and matched the general description of the suspects. (*Id.* at 19-20.) The lead detective  
4 compared still shots from StorageOne surveillance to booking photos of Ms. Bishop and Mr. Gregg,  
5 determined there were similarities, but could not conclude that they were the burglary suspects due to  
6 the still shots being distant and the faces unclear. (*Id.* at 21.) The detective did determine from  
7 surveillance that the suspects were carrying various bags and an apparent chessboard. (*Id.*) Ms. Bishop  
8 and Mr. Gregg were never located or charged.

10 On December 11, 2018, at 6:30 PM, officers re-canvassed the area around StorageOne  
11 attempting to locate Ms. Bishop and Mr. Gregg and discovered a tent in a fenced off desert area east of  
12 the StorageOne facility. (*Id.* at 22.) Officers “decided to hop the fence that surrounds the desert area  
13 and challenged the tent to see if anyone was inside. There was no answer, so they unzipped the door of  
14 the tent to see if anyone was inside.” (*Id.* at 22–23.) Upon opening the tent, officers found no one  
15 home, but they took the opportunity the unzipped and open tent afforded, looked inside, and saw a  
16 wooden chessboard and watch boxes, one of which had “Panerai” written on it. (*Id.* at 23.) Outside the  
17 tent, approximately 25 yards east, there was a folded wheelchair. (*Id.*)

19 Based on the prior investigation and, significantly, the items officers saw inside and outside the  
20 tent, a search warrant was sought and obtained. (*Id.* at 33–39.) Officer Shark, in his application, stated  
21 he was part of the “Flex” team who saw the tent in the desert, and that officers attempted to make  
22 verbal contact with the residents of the tent. (*Id.* at 33:18–34:42, 37:234–40.) Upon opening the tent  
23 and looking inside, officers saw the watch boxes, one of which had “Panerai” written on it, and the  
24 chessboard they believed was seen on video, while outside was the folded wheelchair. (*Id.* at 37:240–  
25 38:250.)

27 During the processing of the tent and surrounding area, latent prints were recovered from  
28 various items including the chessboard, a coin holder, a blue bag, and a red jewelry cleaner jar, all

1 from inside the tent. (*Id.* at 23.) Additionally, the wheelchair handles were swabbed for DNA. (*Id.*) Ms.  
2 Ornelas's prints came back on the chessboard, while Mr. Lewis's prints came back on the coin holder,  
3 blue bag, and red jewelry cleaner jar. (*Id.* at 27.) It was based on the recovery of these prints that the  
4 lead detective on the case made a forensic request for the prints recovered from the StorageOne facility  
5 to be matched against them, while a comparison of the prints of Mr. Faulkner, Ms. Bishop and Mr.  
6 Gregg was also requested. (*Id.* at 28.)

8 Later the night of the 11th, after the property from the tent and the surrounding area was  
9 impounded, officers returned to the campsite for the ostensible purpose of searching for Officer  
10 Shark's lost cell phone. (*Id.* at 23–24.) They discovered that the scene had been disturbed since their  
11 earlier departure. (*Id.* at 24.) While at the campsite, they heard an alarm sound from inside the  
12 StorageOne facility, but did not locate any suspects inside. (*Id.*) Instead, officers saw a black Lincoln  
13 Navigator parked nearby. (*Id.*) Officers sealed the vehicle and towed it to a secured lot, anticipating  
14 searching it the following day. (*Id.*) In the nearby Chevron gas station parking lot, officers saw two  
15 black male adults get into a silver Nissan Altima with a Lyft sticker and drive away, but did not  
16 investigate them at that time. (*Id.*)

18 On December 12th at 1:02 AM, a "Chris Jones" called to report a robbery at 9920 West  
19 Flamingo Road, the Chevron station just east of the StorageOne facility. (*Id.*) The caller reported two  
20 homeless men with a handgun and a sawed-off shotgun took his phone and wallet and escaped in a  
21 silver Nissan Altima with a Lyft sticker. (*Id.* at 24–25.) The caller then said he was now at his home at  
22 the Eagle Trace Apartments, 5370 East Craig Road. (*Id.* at 25.) The Lincoln Navigator, notably, had a  
23 parking tag for the same apartment complex. (*Id.*) Surveillance video from the StorageOne facility  
24 showed the same white male adult from the prior video, as well as the black male adults from the  
25 Nissan Altima, on the StorageOne property that evening. (*Id.*)

27 Officers identified one of the black male adults as Tyree Faulkner and interviewed him. (*Id.* at  
28 25–26.) He would later admit to fabricating the robbery he reported, and admitted he was with his

1 cousin who knew a white homeless couple who paid them five hundred dollars to drive them around;  
2 the homeless woman had tried to sell a watch, but decided against it. (*Id.* at 26–27.) Later, the  
3 homeless man offered Mr. Faulkner and his cousin each one thousand dollars to drive them around.  
4 (*Id.* at 27.) They then went to the StorageOne facility where the homeless man used a pair of bolt  
5 cutters to cut the hasp of a lock on a unit. (*Id.*)

6  
7 A search warrant for the Lincoln Navigator issued based on the information Mr. Faulkner  
8 provided, the prior investigation, and notably, a “bag of clothing sitting on the ground to the rear of the  
9 Navigator” that officers recognized as one of the bags seen in the desert area near the tent. (*Id.* at 58.)  
10 Upon searching the Navigator, officers found two watches. (*Id.* at 63.)

11 Later investigation revealed that Ms. Ornelas was in downtown Las Vegas at the Fun City  
12 Motel at 2233 South Las Vegas Boulevard. (*Id.* at 28.) On December 14, she was taken into custody,  
13 and an application was made for a search warrant for her hotel room and her DNA. (*Id.* at 69–74.) The  
14 applying detective referred to the search of the tent and the items recovered inside such as the watch  
15 boxes, chessboard, coin holder and bags. (*Id.* at 72:159–70.) The applicant then told the judge that  
16 latent prints were recovered from the tent property that returned to Ms. Ornelas and Mr. Lewis. (*Id.* at  
17 72:186-89.) That search warrant application was granted and among the numerous items seized and  
18 listed on the return were three watches determined to belong to Mr. Falcone. (*Id.* at 78.)

19  
20 On January 9, 2019, the lead detective received a report on prints recovered from StorageOne  
21 indicating Mr. Lewis’s handprint and Ms. Ornelas’s thumbprint were found on the outside wall of unit  
22 B-145. (*Id.* at 30.) According to the lead detective, “That now placed both Lewis and Ornelas at the  
23 scene of the original burglaries to Blutman, Rodrigue and Falcone’s units.” (*Id.*) Based on this new  
24 development, officers began a search for Mr. Lewis which led to his mother’s address and Mr. Lewis’s  
25 arrest for a parole violation. (*Id.*)

26  
27 The lead detective then interviewed Mr. Lewis about various aspects of this case, including the  
28 mode of the burglaries, the handprint found at Storage One, the tent and the items seized from it, and

1 the fingerprints found there. (*Id.* at 30–31.) While Mr. Lewis denied involvement in these burglaries  
2 and made no admissions of guilt, the lead detective repeatedly accused him of lying, offered to lessen  
3 his term of incarceration if Mr. Lewis would return the watches, and generally made comments meant  
4 to elicit an admission. (*Id.* at 31.) At one point, the detective asked Mr. Lewis who had the watches and  
5 Mr. Lewis said to talk with Ms. Ornelas. (*Id.*) After the interview, the detective re-booked Mr. Lewis  
6 for the instant offenses. (*Id.*)

### 8 **SUMMARY OF THE ARGUMENT**

9 The State has not shown good cause for its appeal to go forward.

### 10 **ARGUMENT**

11 The State’s memorandum is conclusory and baseless. No miscarriage of justice would result in  
12 permitting the State to try its case on the remaining evidence left to it.

13 Nevada Revised Statute 177.015(2) requires the State to show “good cause” before the Court  
14 will entertain the merits of an interlocutory appeal. *State v. Brown*, 134 Nev. 837, 838, 432 P.3d 195,  
15 197 (2018). “Good cause” means that “the state must make a preliminary showing of the ‘propriety of  
16 the appeal’ and that a miscarriage of justice’ would result if the appeal is not entertained.” *Id.* An  
17 appeal is proper if it is not undertaken “for the purpose of delay.” *Id.* at 839, 432 P.3d at 198. A  
18 “miscarriage of justice” results when “the suppressed evidence is of substantial importance such that  
19 its suppression would significantly impair or terminate the State’s ability to prosecute the case.” *Id.*  
20 However, the relief permitted by NRS 177.015(2) is not absolute, and the legislature made this  
21 appellate opportunity to only be available in the most dire of circumstances.

22 Ms. Ornelas concedes that the appeal in this case is not undertaken for the purposes of delay.  
23 Ms. Ornelas argues, however, that a miscarriage of justice would not result from the suppression of  
24 evidence as ordered by the district court.

25 The State, in their Points and Authorities in Support of the Propriety of the Appeal, states that  
26 they are “entirely unable to prosecute this case” without the suppressed evidence (State’s Points and  
27  
28

1 Authorities, p. 8-9). The State offers further conjecture that the loss of the evidence “amounts to the  
2 death knell of the State’s case.” (State’s Points and Authorities, p. 12). However, these bare and naked  
3 statements do not satisfy the burden that this Court requires in order to demonstrate whether there is in  
4 fact good cause to have this Court interject itself in pretrial proceedings. “Though we are mindful that  
5 the State is in the best position to evaluate the strength of its evidence and the chances of success at  
6 trial, we will not rely solely on the State’s own assessment of the evidence when evaluating good cause  
7 under NRS 177.015(2).” *Brown*, 432 P2d. at 198.  
8

9       The State’s implication that without the suppressed evidence their case would no longer be  
10 prosecutable is wholly without any basis. Similarly, the State’s claim that the case is “dependent” upon  
11 presentation of the suppressed evidence is false (State’s Points and Authorities, p. 10). What the State  
12 fails to inform this Court is the relative strength of its case through other evidence that is not impacted  
13 by the district court’s ruling. According to the State’s own words, the State has plenty of evidence to  
14 mount a substantial case against Ms. Ornelas at trial. In the State’s own Opposition to Ms. Ornelas’s  
15 Motion for Own Recognizance Release/Settling Reasonable Bail, the State argued that it had plenty of  
16 evidence to go forward at trial. (1 Respondent’s Appendix (hereinafter “RA”) 2). Within the  
17 Opposition to the request for bail, the State questioned how the granting of the motion to suppress  
18 “somehow qualitatively changed” the strength of the evidence against Ms. Ornelas or the likelihood of  
19 conviction at trial (*Id.*). During the argument hearing on the bail motion, the State confirmed the  
20 granting of the suppression motion did not affect the State’s ability to present the case to a jury (*Id.* at  
21 6). The State felt confident that there were numerous photos and videos of Ms. Ornelas and Mr. Lewis  
22 pawning and attempting to pawn stolen items from the storage units. (*Id.* at 2, 9) This, combined with  
23 the surveillance videos from StorageOne, should be more than enough for the State to prove their case.  
24 Afterall, even after the evidence was ordered suppressed the State argued they had a “viable and solid”  
25 criminal case against both Ms. Ornelas and Mr. Lewis (*Id.*).  
26  
27  
28

1 Similar to this Court's finding in *Brown*, the State's assertion that the suppressed evidence has  
2 caused the "death knell" of its case and its ability to prove the case against Ms. Ornelas is inconsistent  
3 with the record before this Court. The State's claim that they are unable to proceed to trial with the  
4 remaining evidence after suppression is baseless as the State has prosecuted cases with much less  
5 evidence. *See Detloff v. State*, 120 Nev. 588, 595, 97 P.3d 586, 590 (2004) (the State has prosecuted  
6 cases with evidence that was "slight or marginal").  
7

8 Ms. Ornelas and Mr. Lewis should not be held to account for the State's failure to legally  
9 collect more evidence in support of its charges. It is incumbent upon the State to explain why this  
10 evidence is inadequate for a conviction. *Brown*, 134 Nev. at 840, 432 P.3d at 198. The State has failed  
11 to do so. For that reason alone, Ms. Ornelas submits, the State has not met its burden to demonstrate  
12 good cause to proceed.  
13

#### 14 CONCLUSION

15 For the foregoing reasons, Ms. Ornelas submits that the State has not met its burden to show  
16 good cause to permit an appeal from the district court's suppression order.

17 DATED this 6<sup>th</sup> day of September, 2022.

18 The Law Office of Michael A. Troiano

19  
20 By: /s/ Michael A. Troiano, Esq.  
21 Michael A. Troiano, Esq.  
22 Nevada Bar No.: 11300  
23 601 South 7th Street  
24 Las Vegas, NV 89101  
25 (702) 843-5500  
26 Attorney for Respondent  
27  
28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that I am a person competent to serve papers, that I am not a party to the above-entitled action, and that on September 6, 2022, I served this document via the Nevada Supreme Court’s eFlex system on the counsel and/or parties as listed below:

Steven B. Wolfson, Esq.	200 Lewis Ave.
Karen Mishler, Esq.	Las Vegas, NV 89155
Clark County District Attorney’s Office	
Aaron D. Ford, Esq.	100 N. Carson St.
Nevada Attorney General’s Office	Carson City, NV 89701

BY: /s/ Michael A. Troiano, Esq.  
Law Office of Michael A. Troiano  
601 South 7th Street  
Las Vegas, NV 89101  
(702) 843-5500  
Attorney for Respondent