

1 STATE OF MINNESOTA

DISTRICT COURT

2 COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

3 Paul Stepnes,

4 Plaintiff,

APPEARANCE

5 V.

File No. 27-CV-08-15108

6 Peter Ritschel; and
7 City of Minneapolis,
8 Minnesota,

COPY

9 Defendants.

10 The above-entitled matter came on for
11 appearance before the Hon. Charles A. Porter, Jr.,
12 one of the Judges of the above-named court, in
13 Courtroom C-1853 Hennepin County Government Center,
14 city of Minneapolis, county of Hennepin, state of
15 Minnesota, on the 2nd day of June, 2008, at 2:07
16 p.m.

17 APPEARANCES

18 JILL CLARK, Attorney at Law, appeared as
19 counsel for and on behalf of the Plaintiff.

20 CHRISTOPHER DIXON, Assistant City Attorney,
21 appeared as counsel for and on behalf of the
22 Defendants.
23
24
25

1 THE COURT: All right, Mr. Dixon.

2 MR. DIXON: Your Honor, there is a
3 police report now that indicates the background of
4 the investigation, specifically why certain items
5 were taken pursuant to 626.204 for why we are
6 willing to give it to the court for in camera
7 inspection or ex parte hearing. We would request
8 that pursuant to statute and the allowances made in
9 that statute, but also because there is an ongoing
10 criminal investigation and, frankly, Your Honor,
11 there is an anonymous witness who does fear reprisal
12 in this particular case, and those are our reasons
13 for that. I am willing and I have a copy right here
14 for the court and we're willing to proceed with at
15 least that stage of this hearing.

16 THE COURT: What's the status of the
17 sign?

18 MR. DIXON: Your Honor, the sign, from
19 my understanding, there were -- two attempts were
20 made this morning. After the officer left Friday--I
21 was with him--he made two calls down to Property
22 Inventory. The gentleman in charge of that made two
23 calls to the, um, well, I can -- this portion of the
24 supplement can certainly be read. This is from
25 Supervisor Ken Hammerberg [phonetic]. I probably

1 mispronounced that. Sergeant Ritschel went to him
2 Friday --

3 COURT REPORTER: Slow down. Slow down.

4 MR. DIXON: I'm sorry. Sergeant
5 Ritschel went to him Friday afternoon. He explained
6 to Sergeant Ritschel that he only had one person at
7 the staff at the warehouse, so he called the
8 warehouse at 1450 hours and got no answer. They
9 went in and made another call 1510. Eventually
10 someone answered and said that the property evidence
11 unit warehouse staff was sent to a narcotics search
12 warrant and was not able do anything on Friday
13 evening. They opened business hours Monday morning.
14 I told them to do it as soon as possible. From what
15 I understand, they made two attempts this morning.
16 Nobody's been present. We don't want to just leave
17 it on the front steps. We can do that if the court
18 orders it, but --

19 THE COURT: I ordered you to reinstall
20 it.

21 MR. DIXON: Then they will -- they will
22 do so.

23 THE COURT: Well, that's what I ordered
24 you to do; but, I don't understand why it can't have
25 been done over the weekend.

1 MR. DIXON: Your Honor, I think that's
2 just a misinterpret -- we didn't hear "reinstall,"
3 so I apologize for that. I'll get it reinstalled.
4 Um, I'll send them out to reinstall it.

5 THE COURT: And I assume you brought
6 the tape recorder back?

7 MR. DIXON: Your Honor, there was a
8 reason that was seized, but I can certainly have
9 that returned today. And I just ask that the court
10 read into the report the reasons for that. And
11 again, if the court doesn't agree, we can certainly
12 understand that, but we at least --

13 THE COURT: You concede that this
14 recorder was ten minutes old, right?

15 MR. DIXON: Yes, sir.

16 THE COURT: And it's still in the
17 package.

18 MR. DIXON: From my understanding, yes,
19 sir.

20 THE COURT: And has never been out of
21 the package.

22 MR. DIXON: I don't know, but it says
23 it's in a package, so I certainly am not contesting
24 that issue. But, again, if Your Honor doesn't agree
25 with the explanation --

1 THE COURT: Well, I can't for the life
2 of me figure out what evidence of wrongdoing a
3 brand-new tape recorder can be that's never been
4 used.

5 MR. DIXON: Well, Your Honor, actually
6 that probably can be shared with the court in open
7 court. The fact of the matter is, Your Honor, they
8 thought it was a prize. It was going to be the next
9 prize awarded. We were hoping to find some
10 additional information about what prizes were being
11 taken and in what order. I'm not sure if they have
12 obtained that type of information yet. It might be
13 on the electronic records.

14 THE COURT: Well, let me see the police
15 report.

16 (Mr. Dixon hands the Court a document.)

17 MR. DIXON: If Your Honor is simply
18 looking for the explanation, I can tell Your Honor
19 what page those are on. Those would be on Page 11
20 of 13.

21 THE COURT: I'm suppose to do this in
22 camera thing, so I'm reading it. Just take your
23 time.

24 MR. DIXON: Yes, sir.

25 (Pause in proceedings from 2:14 p.m. until 2:23

1 p.m. while the Court reviews the document.)

2 THE COURT: Mr. Dixon, could I see the
3 warrant again, please?

4 MR. DIXON: Yes, sir.

5 (Mr. Dixon hands the Court a document.)

6 (Pause in proceedings from 2:23 p.m. until 2:24
7 p.m. while the Court reviews a document.)

8 THE COURT: Mr. Dixon, is it your
9 theory that you can seize all of this stuff to shut
10 the project down?

11 MR. DIXON: No, sir, I don't think
12 that's the officer's intent in this case. It was to
13 obtain evidence in regards to the ongoing criminal
14 investigation to see if, in fact, it was a lottery
15 going on without a permit or perhaps some other
16 underlying fraud.

17 THE COURT: And what about this line
18 about the "possession of the items constitutes that
19 the defendant will continue to commit said act."

20 MR. DIXON: Could you refer me to the
21 line?

22 THE COURT: The last line in the
23 narrative of the search warrant. It seems to me
24 that that's what happened here, was that the
25 officers went in there with the purpose of shutting

1 it down.

2 MR. DIXON: The last line of the first
3 page of the search warrant? Oh, yes.

4 THE COURT: The last line of the
5 narrative portion of the search warrant. I mean I
6 think that -- that statement is pretty accurate.
7 That's what they did and that's why they did it.
8 And I don't know that you -- that that's a proper
9 use of a search warrant.

10 MR. DIXON: Well, Judge, I certainly
11 believe that before they issued the search warrant,
12 they thought that they had probable cause that a
13 crime had been committed. That is certainly true.
14 And I do believe that they were attempting to seize
15 items which were part of that crime. And I do --

16 THE COURT: Well, they're not entitled
17 to seize items that are part of the crime. They're
18 entitled to seize potential evidence of the
19 existence of the crime. But if they've got 25,000
20 identical items, you really only need one if all
21 you're doing is seizing evidence.

22 MR. DIXON: That would be true for
23 certain of these items, absolutely, Your Honor. But
24 in regards to the items that have individual
25 people's names listed, obviously we would want to

1 know who the potential victims are in these cases.
2 And these are the ones where I see most of the
3 duplication in this particular case.

4 THE COURT: Well, you took pads of
5 stuff and hundreds of business cards and none of
6 those are individuals different from each other.

7 MR. DIXON: Those would not be
8 individuals, no.

9 THE COURT: I mean you've got half a
10 dozen checks or so on here. There may be a few more
11 than that, maybe a dozen.

12 MR. DIXON: True, Your Honor. But with
13 regards to the checks, they were issued by different
14 people.

15 THE COURT: Yeah, I understand that. I
16 mean they may fall into this category that you're --
17 you're now prescribing, but... [long pause] 22 dream
18 house entry forms, quantity of dream house giveaway
19 cards in a holder.

20 MR. DIXON: I grant that, Your Honor,
21 the investigation could survive with simply one of
22 these cards.

23 THE COURT: Well, I mean I -- but the
24 reason I'm concerned about it is that it doesn't
25 seem to me that the -- that what the officers were

1 about was seizing evidence. They went in there with
2 the intent to shut the project down, and they did.
3 I mean they don't need the sign. All they need is a
4 photograph of the sign. They don't need to take
5 down the sign that says "knock for entry." All they
6 need is a photograph of the sign. But if they take
7 the signs, they shut the project -- they have the
8 effect of shutting the project down. And I don't
9 have an opinion at this point whether this is legal
10 or not. That's beside the point at this moment.
11 The question is, is -- was the execution -- the
12 preparation and execution of this search warrant an
13 appropriate police action or not. And I don't think
14 it was because I think the warrant makes it clear
15 that they were intending to shut the business down,
16 not primarily to seize evidence. The probable cause
17 for the arrest was Mr. Stepnes's refusal to quit
18 doing the lottery. You know, that -- I don't -- I
19 don't get it.

20 MR. DIXON: Your Honor, I was not part
21 of the search warrant. That was obviously done by
22 the officers involved and Judge Belois at the time.
23 I was not present at that time.

24 THE COURT: What are we going to do
25 about the box and the nails? I mean I don't know

1 whether Judge -- whether Ms. Clark's most recent
2 affidavit is accurate or not. I have no way to
3 verify that. But if it is accurate, the actions of
4 the police without a good reason have destroyed this
5 project.

6 MR. DIXON: In regards to that, Your
7 Honor, I think to be perfectly frank, there was a
8 large plastic -- from what I understand now, a large
9 plastic item within these boxes of nails and other
10 items, which would make a scientific guess
11 impossible anyway, to be perfectly frank.

12 THE COURT: Well, I don't know whether
13 that's true or not. I mean, again, I don't have any
14 way to verify the accuracies of Ms. Clark's first
15 affidavit, but I read it to say that you could come
16 to the house and inspect the thing.

17 MR. DIXON: I don't think you were
18 allowed to dig in it. But, again, I don't know.
19 You're right. I wasn't present also for that
20 particular --

21 THE COURT: I mean, you know, one could
22 speculate as to whether it's an investigation or
23 whether it's a guess. But if you're allowed to
24 investigate, then it's an investigation. Whether
25 you still have to guess is another matter.

1 MR. DIXON: True.

2 THE COURT: But Ms. Clark's affidavit,
3 for whatever -- for whatever value it has, I read to
4 say whatever you needed to do, other than take all
5 the nails out and count them, could be done by
6 someone who went to the house. Not by somebody
7 perhaps who read about the project over the
8 Internet, but certainly by anybody who went to the
9 house and was granted entry pursuant to the "knock
10 and come in." If that's so, I think the fact that
11 your guys have dumped nails on the floor, and
12 perhaps in the front yard, and god knows where all
13 else, and I don't know where all else--I mean, all
14 we've got is sort of the trails of the
15 truck--creates a problem for the -- for this
16 project, if it is to continue. And, again --

17 MR. DIXON: If true, Your Honor, it
18 might; but, I have two questions. Did they count
19 them before they put them in? If not, again, we're
20 talking about broad guesses here. I see -- I can't
21 see how the project would not be able to continue.
22 If they had a number ahead of time, they have a
23 number.

24 THE COURT: Well, let's suppose just
25 for purposes of argument, and I admit this is rank

1 speculation --

2 MR. DIXON: Yes, sir.

3 THE COURT: -- but let's suppose
4 somebody went in there last week and looked at the
5 box and did an investigation and came up with a
6 number and the number turned out to be right as of
7 that time. Now there's fewer in the box. And let's
8 suppose further for the purposes of argument that
9 they didn't count them before. They were never
10 intending to count them before. They were going to
11 count them afterwards. And, you know, they got to
12 500,000 and every guess was under that number.
13 Every submission was 500,000 or less. And when they
14 get to 500,000, there wasn't a submission of a
15 greater number, so whoever was the highest wins.
16 They get the house.

17 MR. DIXON: Your Honor, like you say, I
18 can't answer your questions. It is speculation. I
19 got these affidavits at 12:30. I was out to lunch
20 and --

21 THE COURT: Well, the one from before
22 though had the -- the one from Friday had the other
23 information.

24 MR. DIXON: True.

25 THE COURT: And I suppose, since you

1 guys have the key to the place, there isn't any
2 problem with verifying whether this box of nails is
3 on the mantle or not. Isn't there a photograph in
4 the affidavit that you got today of a box of nails
5 sitting on the mantle in the place?

6 MR. DIXON: It's on the web site. I've
7 seen the box on the --

8 THE COURT: No, I'm talking about the
9 ones that got dumped out.

10 MR. DIXON: Your Honor, I haven't even
11 had a chance to see the photographs. They just got
12 served me --

13 THE COURT: I'm talking about the ones
14 that got dumped out during the -- if I'm
15 understanding it. Maybe I don't understand what Ms.
16 Clark is saying, but that's what I thought, was that
17 there's this pile fasteners on the mantle. Keep
18 going. You didn't go far enough. It's a page that
19 looks like this [indicating].

20 MR. DIXON: Well, I see Ms. Clark's.
21 And, again, I don't know where those came from, Your
22 Honor. I just saw that today. I could not tell
23 you. I don't know if it's true that they came from
24 the original box, came from some other area.

25 THE COURT: Well, what's the -- is

1 every day a new crime, or is every letter a new
2 crime, or is it -- is there one enterprise or what's
3 the deal?

4 MR. DIXON: In regards to that, Your
5 Honor, to be perfectly frank, we haven't even gotten
6 this case for complaint yet. We haven't -- it's
7 just -- the investigation essentially was starting.
8 My opinion at this point in time is the enterprise
9 itself would have been a crime. That said, it could
10 be separate crimes for the lottery that was over
11 \$50,000 in value. It could be a separate gambling
12 crime for the daily drawings. There could be
13 allegations of fraud out there for a failure to
14 disclose certain information. Again, that is rank
15 speculation and --

16 THE COURT: But it's not one of those
17 sorts of things where you're going issue a 40-count
18 complaint with every day listed as an offense or
19 anything of that sort?

20 MR. DIXON: Your Honor, I can say that
21 I doubt our office would do that. But, again,
22 depending on the certain values, it might not be our
23 office. I should put for the record, Your Honor,
24 I'm here representing the MPD as their -- as the
25 custodian of this property. I have -- in this case

1 I am not a prosecutor and this case has not been
2 referred to our office for prosecution.

3 THE COURT: Do you have an ability to
4 duplicate the hard drive?

5 MR. DIXON: I can check on that, Your
6 Honor. I do not know the answer. I do know that
7 they usually send it out to out-source it to another
8 agency that has a greater capability to perform that
9 work. That's my understanding, I should say, from
10 comments made by Sergeant Ritschel.

11 THE COURT: Ms. Clark, do you want to
12 be heard further here?

13 MS. CLARK: Sure.

14 THE COURT: I mean I'm not inviting you
15 to do it.

16 MS. CLARK: Well, of course it's hard
17 for me to know what's in the police report and I
18 guess that my initial thought about it was for a
19 case that began essentially with an arrest in front
20 of the media, it might not be as much policy reason
21 to have an ex parte about the police investigation
22 as in some other cases.

23 But I wanted to throw out a couple thoughts.
24 It seems that by looking at the statutory language,
25 626.04, that the burden is on the Minneapolis Police

1 Department to show that the property is being held
2 in good faith, and we would argue that they haven't
3 met that threshold and we have a couple of ways of
4 looking at it that would aid that analysis.

5 First of all, the whole way this came down by
6 the search warrant affidavit, we now know that the
7 morning of May 28th Sergeant Ritschel receives this
8 phone call to [sic] D.E. And we have already
9 figured out who D.E. is and so this notion that her
10 identity should be confidential I think is a little
11 bit moot. But at any rate, by 10:00 the next
12 morning --

13 THE COURT: Well, her name should be of
14 public record somewhere, if her allegations are
15 correct.

16 MS. CLARK: Oh, right. All we have is
17 D.E. in the search warrant affidavit. But based on
18 the claimed -- what is claimed, what she said, we
19 figured out who she is, is all I'm saying. The --
20 Oh, I know what you're saying. Yes, I understand
21 that. Yes.

22 THE COURT: She alleges that she was a
23 subcontractor and filed a mechanics lien.

24 MS. CLARK: Right.

25 THE COURT: If she's done that, her

1 name is of public record.

2 MS. CLARK: Right. Right. Right. And
3 there are a lot of factual disputes about that whole
4 issue. But it seems that, number one, there's a red
5 flag to the police officers. Should be a red flag.
6 It's a person with a grudge. Within hours
7 literally, Paul Stepnes is in handcuffs. It seems
8 disingenuous --

9 THE COURT: Well, he acted the fool a
10 little bit.

11 MS. CLARK: Huh?

12 THE COURT: He acted the fool a little
13 bit.

14 MS. CLARK: Well, we don't know what
15 the police report says, but we're not inclined to
16 agree that -- that he did anything inappropriate,
17 except to stand on his rights.

18 So -- and it's pretty clear from the *Southwest*
19 *Journal* argument or, excuse me, article that Stepnes
20 had time to get out to the officer before the
21 arrest. Essentially, his -- even if charges aren't
22 filed, he's a good faith defense. And it seems that
23 this is all sound and fury signifying nothing
24 because even if the State could prove everything
25 that it claims, there's still a good faith defense

1 that Ritschel was on notice of day one. Hour one,
2 probably.

3 So the problem is Ritschel had opportunity to
4 investigate and didn't take it. Goes over to the
5 house and slaps the cuffs on Stepnes and takes him
6 downtown. And it's disingenuous we think now to
7 claim that this is a good faith investigation and we
8 would argue that that's what needs to be proved
9 because it's really attempting to put the genie back
10 in the bottle and saying, Okay, we need to justify
11 the arrest by showing there's some evidence of
12 criminality.

13 One of the other problems we have with the good
14 faith effort that's claimed here is that police
15 knew, and this is our argument and I understand
16 everything is on affidavit at this point, no facts
17 have been found, but it is our argument that the
18 police were sloppy in the execution of the warrant,
19 so sloppy that they pick up this chest, turn it on
20 its end and out spill some of the things that are to
21 be counted. We're quite appalled that Mr. Dixon
22 would suggest that, well, gee, maybe a couple
23 shouldn't matter. I mean if the contest lacks
24 integrity, that matters to Mr. Stepnes and it
25 matters to the project, even if it doesn't matter to

1 certain others.

2 But the police knew --

3 THE COURT: It seems to me that it's
4 got to be accurate to the staple or the whole
5 integrity of the project, whether it's a -- I mean
6 whether it's a lottery or not to the contrary
7 notwithstanding, if it turns out that either there's
8 a good faith defense or that it is in fact not
9 gambling --

10 MS. CLARK: Right.

11 THE COURT: -- it's ruined.

12 MS. CLARK: That's exactly right. And
13 it's shut down. I mean there's no way that Mr.
14 Stepnes is going forward with that chest. He can't.
15 He just can't do it. And so the problem we have
16 with, and I think the pictures -- you know, their
17 circumstantial, but on the other hand, there's the
18 one where Darryl Robinson is snapping the police
19 officer picking something up from the steps. I mean
20 that's pretty strong circumstantial evidence that as
21 the chest plunked down the steps, little nails were
22 lost. We don't know how many are in the truck, we
23 don't know if there's some at the warehouse, as Your
24 Honor has point the out.

25 The problem is the police knew that. They

1 didn't disclose it to us, they didn't disclose it to
2 Your Honor on Friday, it appears they didn't tell
3 Mr. Dixon, and yet there's now this effort coming in
4 over the weekend. I mean, frankly, I haven't seen
5 this for a misdemeanor. I don't know if I've ever
6 seen the search warrant for a misdemeanor and I
7 would be curious how many they've done. But then
8 there's the coming in over the weekend to do an
9 inventory, which unfortunately now looks like police
10 are desperate to find some criminality to justify
11 the fact that they've essentially shut down the
12 contest --

13 THE COURT: I don't know about that.

14 MS. CLARK: -- and they put it down --

15 THE COURT: You know, that may be
16 stretching it a little bit, to prepare an inventory
17 that's significantly more accurate than what we had
18 on Friday. And since I only gave Mr. Dixon 48 hours
19 to do it, he was pretty much obligated to do it over
20 the weekend.

21 MS. CLARK: That's true.

22 THE COURT: I mean I, you know, I can't
23 manufacture an extra Monday within the 48 hours. I
24 mean the 48 hours is about to run.

25 MS. CLARK: Right. That's right. And

1 I don't know if the prosecutor's officer is going to
2 try to pick this up. I don't know that. But
3 it's -- I guess what I'm saying is it's not just the
4 inventory, but it is the moving forward with this,
5 quote, investigation by a police, appears to be an
6 attempt to justify their own conduct. And let me
7 say that a slightly different way. I mean it's very
8 clear that under the due process clause in the
9 Fourth Amendment that you can't establish probable
10 cause if you ignore all the exculpatory facts.
11 That's the *Keuhl v. Burtis* that we cited in the
12 first Friday papers.

13 And yet what we have here, I over the weekend
14 offered to meet with prosecutors for the police
15 officer to provide all the exculpatory information
16 that I know. No one took me up on it. I mean you
17 can't turn a blind eye to exculpatory evidence and
18 then claim you're doing the good faith police
19 investigation. I think that sometimes police think
20 their only job is to find incriminating evidence,
21 but that's not the law. And if they have turned a
22 blind eye, for example --

23 THE COURT: I'm laughing, Mr. Dixon,
24 because in the previous case that I tried with Ms.
25 Clark a number of months ago, a member of the

1 Minneapolis Police Department said exactly that,
2 "I'm not about finding exculpatory evidence; I'm
3 looking for evidence of guilt," in his description
4 of his efforts in a search. So it's ironic that she
5 would use that phrase again to me.

6 MS. CLARK: Unfortunately, it comes up
7 all too often, you know. I mean if I had a --

8 THE COURT: It's the first time I'd
9 ever heard it in at that time 26 years of being a
10 judge. In any case, but -- well, I mean, with
11 regard to the ignoring the exculpatory evidence, I
12 mean by the time they got around to doing the search
13 warrant affidavit, they had done some investigation
14 of the -- of the -- had done some -- made some
15 contact with some of the people that had been
16 identified as having exculpatory evidence.

17 MS. CLARK: Well, I think actually
18 that's a case in point. Let's take Tom Barrett,
19 who's the head of State Gambling Board. He's
20 interviewed by the *Southwest Journal* reporter, who
21 doesn't seem to have a dog in the fight, and says,
22 Oh, yeah, I remember meeting with Stepnes and yeah,
23 I [indiscernible utterance] --

24 THE COURT REPORTER: I cannot
25 understand you.

1 MS. CLARK: I'm sorry. Oh, yeah, I
2 remember meeting with Stepnes. That's skill and not
3 chance. Or words to that effect. I'm not quoting
4 verbatim.

5 According to the signed affidavit of Ritschel,
6 he also called Tom Barrett and yet either left out
7 of the search warrant the exculpatory evidence
8 gathered by the *Southwest Journal* reporter or failed
9 to ask the question. Either of those is turning a
10 blind eye to the State's exculpatory evidence. You
11 know, if there's a good faith defense, it doesn't
12 matter if you can find some evidence of criminality.
13 There are a lot of things in the search warrant
14 affidavit that are frankly irrelevant. I mean this
15 notion that, well, the house is in foreclosure.
16 Well, that's why the contest is being done. It's
17 not evidence of gambling. And, you know, someone
18 described it to me in the last couple days that
19 gambling, this notion of unlawful lottery is like a
20 three-legged stool. You have to have three things,
21 prize, consideration and chance. But if any one leg
22 is missing, the stool falls over, it's not gambling.
23 So this whole notion that there isn't an application
24 for charitable gambling, first of all, that's
25 irrelevant if it's, quote, number one, not a

1 charitable institution performing a gambling event;
2 and, two, not gambling. And so, unfortunately, we
3 see the search warrant affidavit as very much trying
4 to line the facts up to make it look as if there's
5 some basis to launch into the search warrant
6 investigation to gather the evidence to try to show
7 that there was justification for the investigation.
8 And one of the things in particular that Ritschel
9 does is he says in the search warrant affidavit--and
10 of course Judge Belois doesn't know, she's not
11 looking at the web site--but he says if you pay \$20,
12 you can get in one of these weekly drawings. That's
13 a misstatement of the facts that he had right in
14 front of him in the form of the web site, which is
15 it doesn't cost anything to enter a weekly drawings.
16 That's a fact established on the web site. The web
17 site is a contest. And when I talked to Ritschel,
18 he said he was investigating the web site. And yet
19 with a straight face he comes in and tells Judge
20 Belois that the \$20 gets you this weekly drawing.
21 And I can't remember his exact words. It's like
22 lining up these facts as if to try to make them look
23 inculpatory and yet rejecting the exculpatory.
24 Little tidbits like, well, this claim that Stepnes
25 owed D.E. money. Well, that's just to try to impune

1 his character, make him look like a bad guy. But
2 unfortunately, we have yet to see evidence of
3 gambling. And I think the court's questions about,
4 you know, how many of a thing do you need to
5 establish evidence, um, if it's a lottery, the web
6 site would show it. If it's a lottery, the web site
7 would show it.

8 So there's been no attempt to interview Mr.
9 Stepnes. There's been no attempt to get my
10 exculpatory information. And that, together with
11 the unfortunate motive that it appears that police,
12 um, that Ritschel had a basis to try to cover his
13 own track so to speak, we just believe don't rise to
14 this level of good faith. And I guess that we're in
15 this -- we're in this interesting situation since
16 the City Attorney's Office is say, Well, we don't
17 know whether we're going to charge this out. And
18 I'm not --

19 THE COURT: Well, that's not what he
20 said. What he said was he didn't know whether it's
21 even going to be presented to them.

22 MS. CLARK: Oh. Okay.

23 THE COURT: I mean it might go to the
24 county attorney.

25 MS. CLARK: Well, hmm, okay. I didn't

1 see a jurisdiction for the county attorney in the
2 statute and --

3 THE COURT: Well, I don't know. That's
4 what he said.

5 MS. CLARK: I guess --

6 THE COURT: Isn't that what you said,
7 Mr. Dixon.

8 MR. DIXON: I did, Your Honor. And,
9 again, I feel myself constrained to respond. I
10 cannot without this being ex parte. Your Honor has
11 the copies of the investigation and I'll have to
12 rely on that at this time.

13 THE COURT: I don't know what -- I
14 don't know what jurisdiction there is, Ms. Clark, in
15 the county attorney either, other than Mr. Dixon
16 said out loud it might go to the county attorney, or
17 at least said something that I interpreted is that
18 was what he was saying. So I don't know the answer
19 to that. I don't know -- I don't know what
20 expansion the County Attorney's Office is now making
21 of all of these sort of greater housing fraud claim
22 cases. You know, there -- there's a move afoot to
23 expand the criminal jurisdiction into housing fraud.
24 I don't know whether they would consider this a part
25 of that or not. I don't.

1 MS. CLARK: Well, and, you know, I
2 haven't read the police report; but, from Mr.
3 Dixon's comments on Friday, it sounded like there
4 was an attempt to make some kind of a fraud
5 argument. Two points about that. Number one, when
6 I looked at gambling --

7 THE COURT: Well, I mean that's in the
8 search warrant affidavit. I mean the implication in
9 the search warrant affidavit is this house is going
10 to belong to Americana Bank long before the drawing
11 is over.

12 MS. CLARK: I understand that's the
13 implication.

14 THE COURT: Yeah. Well, I mean so I
15 don't -- that's not something secret from something
16 you haven't seen or I haven't seen.

17 MS. CLARK: Oh, oh, yeah. No. And I
18 can make the argument without seeing the police
19 report. And the argument is this: That when I
20 looked at the 609.75 section of the statutes, which
21 is this lottery and gambling, gambling fraud
22 protects the house. It's designed to protect the
23 corporate gambling entity from using magnets and
24 counting cards and things like that. So that's not
25 this. And if they're now -- and this is what I was

1 worried about, that they're now trying to make some
2 kind of a fraud case, which first of all we have
3 exculpatory evidence to knock down every pillar that
4 I've seen that they have, but if they're trying to
5 make that argument, that's not what the search
6 warrant allowed them to seize. They were allowed to
7 seize evidence of unlawful gambling and it doesn't
8 seem that they have that.

9 THE COURT: Mr. Dixon, do you want to
10 respond to that before I rule?

11 MR. DIXON: Your Honor, the thing --
12 the only thing I can say in addition is obviously I
13 can't respond to any specific allegations, other
14 than what's already been presented to the court in
15 the police reports. We would stand by those as
16 stating that there is a sufficient reason why we're
17 doing this investigation and why we seized the
18 particular items and we stand on that.

19 THE COURT: All right. I want you to
20 give this stuff back and I'm going make some
21 exceptions. You can keep one of everything as an
22 original. So one key, one business card, one
23 brochure, whatever. You should return the sign and
24 you should return the "knock before you enter" sign.
25 You can have your pictures of those. I mean I've

1 already ordered you to reinstall the sign.

2 MR. DIXON: If Your Honor could just
3 slow down for a second so I can... I apologize. I'm
4 not good at shorthand. Okay.

5 THE COURT: You can take a picture of
6 the wicker basket and you can keep a key. Give them
7 the rest of the keys back. I'll come back to the
8 bench. You can copy the hard drive off the laptop
9 and give it to me to review in camera before you
10 look at it, and then give them the laptop back.

11 MR. DIXON: May I repeat that back to
12 you, Your Honor? Copy hard drive; give to you, sir,
13 to review in camera before we look at it?

14 THE COURT: Right.

15 MR. DIXON: And then return it.

16 THE COURT: And you should do the same
17 thing with the memory cards out of the camera and
18 give them the camera back. You can copy his energy
19 bill; give it back to him. You can give him the
20 notice of sheriff's sale. It's of public record
21 that he has that.

22 MS. CLARK: And I believe, Your Honor,
23 that's for a different property.

24 THE COURT: I don't know that. But
25 even if it's for this one, you don't need that.

1 Same thing with the Apple computer, copy the hard
2 drive.

3 MR. DIXON: Again, Your Honor, I'm
4 not technologically -- I don't know enough about
5 technology. I assume that's possible. Can we call
6 you if it's a problem?

7 THE COURT: Yeah.

8 Give them the recorder back as is, unopened.

9 I honestly don't know what to say about the
10 checks. I mean, if it's true that Mr. Stepnes
11 intends to call this thing off, they ought to be
12 returned to whoever sent them in. I mean isn't
13 there about a page and a half of entry forms with
14 checks attached to it? Isn't that what this --

15 MR. DIXON: Yes, checks. I thought you
16 said "chest" originally. I'm sorry.

17 THE COURT: Checks. If he's not going
18 to call it off, then that's a different matter and I
19 don't know what to say about that. I mean I have
20 Ms. Clark's representation that that's what he's
21 going to do, but I don't know whether she was
22 authorized to make that representation or not.

23 You know, I'm not questioning your integrity in
24 that regard, Ms. Clark. I just don't know whether
25 that was --

1 MS. CLARK: What was it that I said?

2 THE COURT: You said he was going to
3 call the deal off because of the nails falling out.

4 MS. CLARK: Oh, yes. If he's going to
5 terminate that contest, yes.

6 THE COURT: He has to give all these
7 people their checks back because their --

8 MS. CLARK: Or figure out some way to
9 make it right.

10 THE COURT: Their skilled analysis of
11 the number of fasteners was based on the box having
12 everything in it. I mean he can't have it both ways
13 in that regard.

14 MS. CLARK: Well, he's going to make it
15 right one way or the other and we just haven't
16 gotten all the way down that road.

17 THE COURT: All right. I guess with
18 regard to the bench and the nails and all of that
19 stuff, I'll let -- Mr. Dixon, you guys can choose
20 what you want to do. You can either give it all
21 back to them with it separately -- with all the
22 fasteners separately packaged in the sense that
23 whatever is still in the box stays in the box;
24 whatever is lying on the floor in the truck
25 packaged -- put together in a package that's

1 identified as "floor of truck." You know what I'm
2 saying?

3 MR. DIXON: Yes.

4 THE COURT: Or you can let Mr. Stepnes
5 and his representatives go through the various
6 places that the box has been and photograph and
7 count, and then you can keep it.

8 MR. DIXON: So either return everything
9 and make note if anything fell and where it was or
10 we keep the chest but allow them to walk through and
11 count everything?

12 THE COURT: Well, I mean if -- if it --
13 go and look in the supply place; and if it's stuff
14 on the floor, they get to look at the stuff on the
15 floor and count what's on the floor; and let them
16 have access to the unmarked panel truck or whatever
17 it was and let them go in there and look around and
18 see what fell out and -- I mean don't know what fell
19 out; but, their allegation is that this stuff was
20 sort of a trail of nails. And you can either let
21 them look at the trail of nails or you can give it
22 back to them. But I think you need to document the
23 trail of nails if you give it back to them by
24 separately packaging the stuff that isn't still in
25 the box, if it's in your possession.

1 MR. DIXON: If I may, again, these are
2 allegations that I'm not sure necessarily what they
3 are, I mean other than the nails were spilled. It's
4 very possible that there was no nails spilled in the
5 truck and no nails spilled in the evidence room.
6 And I'm anticipating that we don't have access to
7 their property or their steps. They already had
8 access to that. So we're only talking from the
9 trucks onwards, if there has been any spilled.

10 THE COURT: As long as somebody hasn't
11 tried to go out there and tried to clean up the
12 yard, yes.

13 MR. DIXON: Okay.

14 THE COURT: And I have not relied on
15 anything in the confidential portion of the
16 investigation in order to make these determinations.
17 I have made them based on the affidavits of Ms.
18 Clark, and the search warrant applications, and the
19 various photographs.

20 MR. DIXON: Your Honor, in regards to
21 the checks, you have been pondering what to do. Can
22 we have a --

23 THE COURT: Well, it seems to me that
24 if you insist on keeping them, you reduce the
25 possibility that Mr. Stepnes can return them to the

1 people that you characterize as victims.

2 MR. DIXON: We can provide them a copy
3 of the checks immediately.

4 THE COURT: Yeah, but they can't --

5 MR. DIXON: The checks --

6 THE COURT: -- the original is still
7 out there to be cashed by somebody. I mean, the
8 better course might be to keep copies and give them
9 the originals back to return; but, I'm letting
10 you -- I'm still sort of at a loss as to what to do
11 about the checks.

12 MR. DIXON: Your Honor, I'm not even
13 sure, were they cashed or uncashed?

14 THE COURT: My interpretation is that
15 they're the original checks. That this is a pile of
16 stuff that people sent in and a form, some form that
17 was this is my estimate of how many nails there are
18 and here's my 20 bucks so that my estimate qualifies
19 for this process. That's my assumption. I could be
20 wrong.

21 MR. DIXON: Right. If they're cashed
22 checks, I'm assuming that we can keep them because
23 at some point in time --

24 THE COURT: If they're cashed checks,
25 make them a copy. You --

1 MR. DIXON: Right.

2 THE COURT: -- give them the original
3 back and keep the copy.

4 MR. DIXON: Okay. And if they're
5 uncashed checks, then --

6 THE COURT: Well, then I think you guys
7 are kind of over a barrel one way or the other. I
8 mean it's hard for you to say that there's an
9 ongoing fraud here and he's continuing to deceive
10 people and hasn't made any effort to return the
11 funds if you've got the checks.

12 MR. DIXON: True. But from our
13 perspective, if we return them and he cashes them,
14 are we are perpetrating a possible fraud to
15 continue? And, again, like I said, Your Honor, we
16 haven't gotten this case for charging yet and I'm
17 not making any assumptions yet at this point in
18 time, but that's the quandary. I see the --

19 THE COURT: That's -- that's the
20 quandary, yes.

21 MR. DIXON: What I would say is
22 obviously we will not cash the checks. At this
23 point this time they're simply piece of commercial
24 paper that has not been --

25 THE COURT: All right. And they're

1. going to expire at some point.

2. MR. DIXON: Exactly.

3. THE COURT: So we'd better get going on
4. whatever we're going to do here.

5. MR. DIXON: Okay.

6. THE COURT: And you're going to --
7. somebody's going to start getting a bunch of angry
8. phone calls if Mr. Stepnes concludes that he's going
9. to discontinue this particular contest and none of
10. these people get their money back. I mean --

11. MR. DIXON: True. But if the checks
12. are uncashed, then they have not yet been out of
13. pocket at this time.

14. THE COURT: I know, but you get people
15. like my mother who gets paranoid if a cleared check
16. doesn't end up in their account by the end of the
17. month. It's your call.

18. MR. DIXON: Okay.

19. THE COURT: But, you know, I mean we've
20. got a record now of the situation that you're not
21. going to be able to extricate yourself from by
22. saying he never gave them their money back.

23. MR. DIXON: I understand that.

24. THE COURT: I think that's it. I mean
25. I think that covers all of the items. I mean

1 there's a gravel delivery receipt or something in
2 there. I mean, ish, what's that got to do with it?
3 I mean, he's not giving away \$300 worth of gravel as
4 a drawing prize.

5 MR. DIXON: Possible unsecured
6 creditor, again, Your Honor.

7 THE COURT: But you are weren't
8 searching for creditors. You were searching for
9 gambling.

10 MR. DIXON: We were searching for
11 evidence of his personal finances in this particular
12 case. That is listed as -- in the search warrant
13 it's --

14 THE COURT: That was a stretch.

15 MR. DIXON: We can make a copy of that
16 and return that. Okay. I'll write that one down.

17 THE COURT: And, Ms. Clark, I don't see
18 anything on there, on that inventory that to me
19 looks like attorney-client privileged communication.
20 I don't see anything on there. If there's something
21 on the hard drives, that's why I want to look at
22 them in camera before they look at them.

23 MS. CLARK: That's where I expect that
24 it will be.

25 THE COURT: Well, if you want to

1 provide me with a list of his counsel, that will
2 help me in my perusal of the hard drive.

3 MR. DIXON: Timing, Your Honor. Can we
4 have 48 hours to make copies. And, again, this is
5 end of business at 3:00 now.

6 THE COURT: Yeah, you can have it
7 Wednesday, close of business.

8 MR. DIXON: Wednesday, close of
9 business. Thank you, sir.

10 THE COURT: Except for the sign. I
11 want the damn sign put back up.

12 MR. DIXON: I'll call them again as
13 soon as I get out of here.

14 THE COURT: I thought I was more clear
15 than apparently I was. I'll put all of this stuff
16 in an envelope, since it hasn't ever really been
17 filed.

18 MR. DIXON: That's fine. It calls for
19 a seal; but, if Your Honor wants to just throw it
20 out, too.

21 THE COURT: No, I don't want to throw
22 it out.

23 MR. DIXON: Just seal it and --

24 THE COURT: Finally, I'm suppose to
25 slap you because you didn't get a file number for

1 this and do some kind of filing that they wanted you
2 to do. I have no clue as to what it was.

3 MS. CLARK: We paid the money.

4 THE COURT: I don't have any idea what
5 it is that they wanted you to do; but, whatever it
6 is, they think you didn't do it.

7 MS. CLARK: "They" meaning Civil
8 Filing? I'll make peace with them, but we paid the
9 money.

10 THE COURT: Well, I'm glad to hear that
11 the 12th Floor takes the money first and then
12 figures out if something is proper. That would be
13 my preferred order for their activities as well.

14 MS. CLARK: Well, with the budget
15 shortfall and everything.

16 THE COURT: Yeah.

17 (Proceedings adjourned at 3:04 p.m.)

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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

REPORTER'S CERTIFICATE

Paul Stepnes,

Plaintiff,

APPEARANCE

V.

File No. 27-CV-08-15108

Peter Ritschel; and
City of Minneapolis,
Minnesota,

Defendants.

I, JODI R. HOFFARTH, do hereby certify that I am a Registered Professional Reporter acting as Official Court Reporter for the Hennepin County District Court, Fourth Judicial District; that, as such reporter, I reported in Stenotype the proceedings had in the said appearance of the above-entitled action on June 2, 2008; that I thereafter transcribed the same into typewritten form; that the foregoing pages, consisting of 39 pages, constitute a full, true, and correct transcription of all proceedings had at said appearance.

Dated: July 16, 2008

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