



Las Vegas Police Protective Association Metro, Inc.



To: Officer Frank Bien
Officer Eli Cardenas
Officer Jason Strehle
From: David Roger, General Counsel DJR
Re: Telephonic Search Warrants
Date: February 21, 2014

On February 14, 2014, I issued an opinion regarding the search warrant requirements set forth in NRS 179.045 (5). You have asked whether the affidavit provisions apply to telephonic search warrants.

The affidavit requirements of NRS 179.045(5) do not apply to telephonic search warrants issued pursuant to NRS 179.045 (2). In *State v. Gameros-Perez*, 119 Nev. 537, 539, 78 P.3d 511, 512, the Court made clear, “Now presented with a warrant issued pursuant to NRS 179.045(2), we hold that a warrant issued pursuant to this subsection need not contain a statement of probable cause on the face of the warrant.”

ORAL STATEMENT IN SUPPORT OF APPLICATION

NRS 179.045 (2) provides, “In lieu of the affidavit required by subsection 1, the magistrate may take an oral statement given under oath, which must be recorded in the presence of the magistrate or in the magistrate’s immediate vicinity by a certified court reporter or by electronic means, transcribed, certified by the reporter if the reporter recorded it, and certified by the magistrate. The statement must be filed with the clerk of the court.”

Thus, an officer may make an oral application for a search warrant, under oath, provided the officer's statement of probable cause is recorded. Thereafter, the officer must transcribe the recorded statement and provide the transcription to the judge for certification. Finally, the transcribed affidavit must be filed with the clerk.

SEARCH WARRANT

NRS 179.045 (5)(b) requires that the search warrant incorporate by reference the oral statement upon which it is based. The remainder of the section requiring the warrant to include the statement of probable cause is not applicable to telephonic search warrants. *State v. Gameros-Perez*, 119 Nev. at 540, 78 P.3d at 513.

NRS 179.045(4) sets forth the requirements of the actual search warrant, "After a magistrate has issued a search warrant, whether it is based on an affidavit or an oral statement given under oath, the magistrate may orally authorize a peace officer to sign the name of the magistrate on a duplicate original warrant. A duplicate original search warrant shall be deemed to be a search warrant."

The duplicate original search warrant will include a statement that the magistrate found probable cause and that the oral statement given under oath is incorporated by reference. All other standard language will be included in the search warrant. The search warrant will be left at the place searched.

SEALING OF ORAL STATEMENT AND RECORDING

NRS 179.045(3) states, "Upon a showing of good cause, the magistrate may order an affidavit or a recording of an oral statement given pursuant to this section to be sealed." The same standard for establishing cause to seal a search warrant

affidavit applies to sealing the recording of the officer's oral application for a search warrant.

POST EXECUTION OF SEARCH WARRANT

In addition to the transcription requirements of NRS 179.045(2), the officer must return a copy of the duplicate original search warrant to the magistrate for his signature. Thereafter, the warrant is filed with the transcription of the oral statement, any sealing orders and the return.