

MARQUIS AURBACH
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 **Marquis Aurbach**
2 Craig R. Anderson, Esq.
3 Nevada Bar No. 6882
4 Nicholas M. Adams, Esq.
5 Nevada Bar No. 15859
6 10001 Park Run Drive
7 Las Vegas, Nevada 89145
8 Telephone: (702) 382-0711
9 Facsimile: (702) 382-5816
10 canderson@maclaw.com
11 nadams@maclaw.com

12 Attorneys for Defendants LVMPD, Sgt. Torrey, Ofc. Bourque, Ofc. Dingle, Ofc.
13 Sorenson, Ofc. Sandoval and Ofc. Doolittle

14 **UNITED STATES DISTRICT COURT**

15 **DISTRICT OF NEVADA**

16 JOSE DECASTRO,

17 Plaintiff,

18 vs.

19 LAS VEGAS METROPOLITAN POLICE
20 DEPARTMENT; STATE OF NEVADA;
21 BRANDEN BOURQUE; JASON TORREY;
22 C. DINGLE; B. SORENSON; JESSE
23 SANDOVAL; OFFICER DOOLITTLE and
24 DOES 1 to 50, inclusive,

25 Defendants.

Case Number:
2:23-cv-00580-APG-EJY

**DEFENDANTS LVMPD, SGT.
TORREY, OFC. BOURQUE, OFC.
DINGLE, OFC. SORENSON, OFC.
SANDOVAL AND OFC. DOOLITTLE'S
MOTION FOR LEAVE TO FILE
SUPPLEMENTAL EVIDENCE IN
SUPPORT OF SUMMARY JUDGMENT**

26 Pursuant to LR 7-2(g), Defendants Las Vegas Metropolitan Police Department, Ofc.
27 Torrey, Ofc. Bourque, Ofc. Dingle, Ofc. Sorenson, Ofc. Sandoval and Ofc. Doolittle
28 (“LVMPD Defendants”), by and through their attorneys of record, Marquis Aurbach, hereby
file their Motion for Leave to File Supplemental Evidence in Support of Summary
Judgment. This Motion is made and based upon the Memorandum of Points & Authorities,
the pleadings and papers on file herein and any oral argument allowed by counsel at the time
of hearing.

MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

Since LVMPD Defendants filed their Motion to Dismiss Plaintiff’s Second Amended Complaint, or in the Alternative, Motion for Summary Judgment (ECF No. 66),

MARQUIS AURBACH

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 Plaintiff Jose DeCastro (“Plaintiff”) has been tried and convicted for: (1) False Statement to
2 or Obstruct Police Officer – NRS 197.190; and (2) Resisting Public Officer – NRS
3 199.280.3. The convictions stem from the same March 15, 2023 incident which forms the
4 basis for Plaintiff’s claims in this case. Plaintiff’s convictions are dispositive of most of
5 Plaintiff’s claims in the instant case, as the guilty verdict resolves in LVMPD Defendants’
6 favor multiple issues raised in the instant case. Accordingly, pursuant to LR 7-2(g), LVMPD
7 Defendants request this Court grant leave for the LVMPD Defendants to file a supplemental
8 brief and incorporate evidence of Plaintiff’s criminal conviction into the record.

9 **II. STATEMENT OF FACTS**

10 Plaintiff filed his Second Amended Complaint (“SAC”) on November 27, 2023.
11 (ECF No. 61). Plaintiff’s claims stem from an incident which occurred on March 15, 2023
12 wherein Plaintiff was arrested for obstructing a lawful traffic stop and subsequently refusing
13 to comply with Defendant Officer Bourque’s commands. *See id.*

14 On December 11, 2023, LVMPD Defendants filed a Motion to Dismiss Plaintiff’s
15 Second Amended Complaint, or in the Alternative, Motion for Summary Judgment (the
16 “Motion”), taking the position the body worn camera footage of the subject incident should
17 unambiguously resolve Plaintiff’s claims in LVMPD Defendants’ favor. (ECF No. 66).
18 Plaintiff opposed the Motion (ECF No. 79), and LVMPD Defendants filed a reply brief in
19 support of it (ECF No. 80).

20 Throughout the pendency of the instant case, Plaintiff has been facing misdemeanor
21 criminal charges in connection with the March 15, 2023 incident. *See Exhibit 1*, Register of
22 Actions Case No. 23-CR-013015. On March 19, 2024, a criminal trial was held in relation to
23 the charges against Plaintiff for (1) False Statement to or Obstruct Police Officer – NRS
24 197.190; and (2) Resisting Public Officer – NRS 199.280.3. *Id.* Plaintiff was found guilty
25 and convicted on both counts and was sentenced to 90 days in the Clark County Detention
26 Center for each offense. *Id.*

27
28

1 **III. LEGAL ARGUMENT**

2 Local Rule 7-2(g) requires parties to obtain leave of the Court before filing any
 3 supplemental briefs. L-R 7-2(g). The Court may grant leave to file supplemental authority
 4 “for good cause” found. *Id.* “Good cause may exist either when the proffered supplemental
 5 authority controls the outcome of the litigation, or when the proffered supplemental
 6 authority is precedential, or particularly persuasive or helpful.” *Alps Prop. & Cas. Ins. Co. v.*
 7 *Kalicki Collier, LLP*, 526 F. Supp. 3d 805, 812 (D. Nev. 2021). Further, good cause under
 8 LR 7-2(g) exists if a party seeks leave to file supplemental briefing in a reasonably diligent
 9 manner. *See, e.g., De Luna v. Sunrise Hosp. & Med. Ctr., LLC*, Case No. 2:17-cv-01052-
 10 JAD-VCF, 2018 WL 4053323, at *5 (D. Nev. Aug. 24, 2018).

11 Here, several of Plaintiff’s claims fail as a matter of law in light of his criminal
 12 convictions, and therefore the proffered supplemental evidence is dispositive of multiple
 13 claims at issue in the Motion. *See Heck v. Humphrey*, 512 U.S. 477 (“when a state prisoner
 14 seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor
 15 of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it
 16 would, the complaint must be dismissed unless the plaintiff can demonstrate that the
 17 conviction or sentence has already been invalidated”); *see also See Matthews v. Macanas*,
 18 990 F.2d 467, 468 (9th Cir.1993) (“A plaintiff may be estopped from bringing a civil action
 19 to challenge an issue which was distinctly put in issue and directly determined in a previous
 20 criminal action.”). As argued in the Motion, many of Plaintiff’s claims are reliant upon his
 21 assertion that his March 15, 2023 arrest was not supported by probable cause, and/or that the
 22 commands issued to him by the Defendant Officers were unlawful. A court of competent
 23 jurisdiction has now determined beyond a reasonable doubt Plaintiff was guilty of
 24 obstructing and resisting a public officer in relation to his conduct on March 15, 2023. (Ex.
 25 1.)

26 The LVMPD Defendants have been reasonably diligent in seeking leave to file
 27 supplemental evidence and authority in support of its Motion, as Plaintiff was only recently
 28 convicted. Moreover, the evidence is helpful to the Court’s analysis insofar as it should

MARQUIS AURBACH
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 resolve in the LVMPD Defendants’ favor the following issues: (1) that the arrest was
2 supported by probable cause; (2) that the commands issued to Plaintiff were lawful; (3) that
3 Plaintiff obstructed the Defendant Officers; and (4) that Plaintiff resisted the arrest of the
4 Defendant Officers.

5 **IV. CONCLUSION**

6 Based on the foregoing, the LVMPD Defendants respectfully request this Court
7 grant their Motion for Leave to File Supplemental Evidence in Support of Summary
8 Judgment.

9 Dated this 5th day of April, 2024.

10 MARQUIS AURBACH

11 By /s/ Craig R. Anderson
12 Craig R. Anderson, Esq.
13 Nevada Bar No. 6882
14 Nicholas M. Adams, Esq.
15 Nevada Bar No. 15859
16 10001 Park Run Drive
17 Las Vegas, Nevada 89145
18 Attorneys for Defendants

16 **CERTIFICATE OF SERVICE**

17 I hereby certify that I electronically filed the foregoing **DEFENDANTS LVMPD,**
18 **OFC. TORREY, OFC. BOURQUE, OFC. DINGLE, OFC. SORENSON, OFC.**
19 **SANDOVAL AND OFC. DOOLITTLE’S MOTION FOR LEAVE TO FILE**
20 **SUPPLEMENTAL EVIDENCE IN SUPPORT OF SUMMARY JUDGMENT** with the
21 Clerk of the Court for the United States District Court by using the court’s CM/ECF system
22 on the 5th day of April, 2024.

23 I further certify that all participants in the case are registered CM/ECF users
and that service will be accomplished by the CM/ECF system.

24 I further certify that some of the participants in the case are not registered
25 CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid,
26 or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days
to the following non-CM/ECF participants: n/a

27
28 /s/ Sherri Mong
an employee of Marquis Aurbach

Exhibit 1

REGISTER OF ACTIONS

CASE NO. 23-CR-013015

State of Nevada vs. DECASTRO, JOSE

§
§
§
§
§

Case Type: **Misdemeanor CR**
 Date Filed: **03/15/2023**
 Location: **JC Department 8**

PARTY INFORMATION

Defendant	DECASTRO, JOSE Other Agency Numbers 1669561 Justice Court Scope ID Subject Identifier	Lead Attorneys Michael Mee <i>Retained</i> 702-308-6363(W)
State of Nevada	State of Nevada	

CHARGE INFORMATION

Charges: DECASTRO, JOSE	Statute	Level	Date
1. False stmt to/obstruct pub off [52312]	197.190	Misdemeanor	03/15/2023
2. Resist public officer [52990]	199.280.3	Misdemeanor	03/15/2023

EVENTS & ORDERS OF THE COURT

	DISPOSITIONS 03/19/2024 Disposition (Judicial Officer: Zimmerman, Ann E.) 1. False stmt to/obstruct pub off [52312] Guilty as Charged 2. Resist public officer [52990] Guilty as Charged 03/19/2024 Misdemeanor Sentence (Judicial Officer: Zimmerman, Ann E.) 1. False stmt to/obstruct pub off [52312] 03/19/2024 Misdemeanor Sentence (Judicial Officer: Zimmerman, Ann E.) 2. Resist public officer [52990]
	OTHER EVENTS AND HEARINGS 03/15/2023 Original Track Assignment JC08 03/15/2023 Case Assignment Sent <i>Case Assignment Sent</i> 03/15/2023 DA Request for Prosecution <i>Request for Prosecution Sent to DA</i> 03/29/2023 Case Assignment Sent <i>Case Assignment Sent</i> 03/29/2023 Citation Image 03/29/2023 Supplemental Documentation Submitted with Citation 03/30/2023 Media Request for Electronic Coverage <i>of Court proceedings filed.</i> 04/03/2023 Media Request for Electronic Coverage Granted 04/03/2023 Order Regarding Media Request for Electronic Coverage Filed 06/12/2023 Notice of Appearance <i>Notice of Appearance of Defense Counsel</i> 06/13/2023 Arraignment (8:00 AM) (Judicial Officer Zimmerman, Ann E.) NO BAIL POSTED Result: Matter Heard 06/13/2023 Counsel Confirms as Attorney of Record <i>M. Mee, Esq.</i> 06/13/2023 Arraignment Completed <i>Defense advised of Charges on Criminal Complaint, Waives Reading of Criminal Complaint</i> 06/13/2023 Discovery Given to Counsel in Open Court 06/13/2023 Early offer received in open court <i>Continued for negotiations</i> 06/13/2023 Minute Order - Department 08 06/27/2023 Negotiations (8:00 AM) (Judicial Officer Zimmerman, Ann E.) NO BAIL POSTED Result: Matter Heard 06/27/2023 Defendant Rejected the State's Offer 06/27/2023 Plea of Not Guilty Entered <i>by Defense</i> 06/27/2023 Minute Order - Department 08 09/01/2023 Motion

09/06/2023 **Motion for Production of Discovery**
Motion (8:00 AM) (Judicial Officer Zimmerman, Ann E.)
 NO BAIL POSTED
 Result: Matter Heard

09/06/2023 **Motion to Continue - Defense**
by Defense for production of discovery no objection by State- granted

09/06/2023 **Future Court Date Stands**
09/12/2023 at 9:30am for Bench Trial

09/06/2023 **Minute Order - Department 08**

09/12/2023 **Bench Trial** (9:30 AM) (Judicial Officer Zimmerman, Ann E.)
 No bail posted
 Result: Matter Heard

09/12/2023 **Motion to Continue - Defense**
to review additional discovery - No objection by State - Granted

09/12/2023 **Bench Trial Date Reset**

09/12/2023 **Minute Order - Department 08**

11/28/2023 **Motion**
Renewed Motion for Discovery

11/30/2023 **Motion** (8:00 AM) (Judicial Officers Pro Tempore, Judge, Jansen, William D.)
 No bail posted
 Result: Matter Heard

11/30/2023 **Motion**
by Defense for Discovery - State represents all discovery in their possession has been turned over - Denied

11/30/2023 **Comment**
State represents they will be filing a Hill Motion to Continue the Bench Trial as the lead officer is unavailable.

11/30/2023 **Future Court Date Stands**
12/6/23 at 9:30 am for Bench Trial

11/30/2023 **Minute Order - Department 08**

11/30/2023 **Notice of Motion**
State's Notice of Motion and Motion to Continue

12/06/2023 **Bench Trial** (9:30 AM) (Judicial Officer Zimmerman, Ann E.)
 No bail posted
 Result: Matter Heard

12/06/2023 **Hill Motion by State to Continue - Granted**
Witness unavailable until after the start of the year.

12/06/2023 **Bench Trial Date Reset**

12/06/2023 **Minute Order - Department 08**

01/23/2024 **Bench Trial** (9:30 AM) (Judicial Officer Zimmerman, Ann E.)
 No Bail Posted
 Result: Matter Continued

01/23/2024 **Motion to Continue - Defense**
Due to medical reasons. No objection by State - Granted

01/23/2024 **Bench Trial Date Reset**
Firm Setting.

01/23/2024 **Minute Order - Department 08**

01/24/2024 **Media Request for Electronic Coverage**
of Court proceedings filed.

01/24/2024 **Order Regarding Media Request for Electronic Coverage Filed**

02/26/2024 **Bench Trial** (9:30 AM) (Judicial Officer Zimmerman, Ann E.)
 No Bail Posted
 Result: Matter Heard

02/26/2024 **Remote Appearance by**
Defendant via Zoom

02/26/2024 **Motion to Continue - Defense**
Counsel is in Trial - No objection by State - Granted

02/26/2024 **Bench Trial Date Reset**

02/26/2024 **Minute Order - Department 08**

03/18/2024 **Motion**
 DEFENDANTS REQUEST TO CONVERT COUNSEL TO STANDBY COUNSEL

03/18/2024 **Miscellaneous Filing**
Bench Memorandum

03/19/2024 **Bench Trial** (9:30 AM) (Judicial Officer Zimmerman, Ann E.)
 No bail posted
 Result: Matter Heard

03/19/2024 **Bench Trial Held**
Motion to Exclude Witnesses by State - Motion Granted States Witnesses: 1. Branden Bourque - Witness Identified Defendant State Rests. Defense Witnesses: 1. Jose Decastro Sworn In and Testified. Defense Rests Motion to Dismiss and Argument In Favor of Said Motion by Defense Argument Against Said Motion by State Thereupon the Court Found the Defendant Guilty. Arguments made by parties regarding sentencing.

03/19/2024 **Judgment Entered**

03/19/2024 **Remand - Cash or Surety**
Counts: 001; 002 - \$0.00/\$0.00 Total Bail

03/19/2024 **Case Closed - Court Order**

03/19/2024 **Minute Order - Department 08**

03/19/2024 **Comment**
Both (2) of Defendant's cell phones where returned to his counsel and is in M. Mee, Esq. possession.

03/19/2024 **Notice**
Notice of Appeal

03/20/2024 **Notice of Disposition and Judgment**

03/20/2024 **Temporary Custody Record**
Remand 3/19/24

03/20/2024 **Appeal from LVJC - Appearances**

03/26/2024 **Motion**
Motion for Bail, or in the Alternative, for Own Recognizance Release

03/28/2024 **Media Request for Electronic Coverage**

of Court proceedings filed.
04/01/2024 **Motion** (8:00 AM) (Judicial Officer Zimmerman, Ann E.)
In custody
Result: Matter Heard
04/01/2024 **Media Request for Electronic Coverage**
of Court proceedings filed - LV Review Journal
04/01/2024 **Order Regarding Media Request for Electronic Coverage Filed**
04/01/2024 **Media Request for Electronic Coverage Granted**
Las Vegas Review Journal
04/01/2024 **Media Request for Electronic Coverage Granted**
DALI TALK
04/01/2024 **Order Regarding Media Request for Electronic Coverage Filed**
DALI TALK
04/01/2024 **Motion**
by Defense, for O/R or Bail - Objection by State - Motion Denied
04/01/2024 **Custody Comment**
Case Closed Stands
04/01/2024 **Remand - Cash or Surety**
Counts: 001; 002 - \$0.00/\$0.00 Total Bail
04/01/2024 **Minute Order - Department 08**