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FILED
MAR 29 2023
Scott G. Weber, Clerk, Clark C
1:40pm

IN THE CLARK COUNTY SUPERIOR COURT FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

v.

STEPHEN MARK REICHOW,

Defendant.

No. 15-1-01458-7

MOTION FOR RETURN OF PROPERTY:
ORDER FOR HEARING (CrR 2.3, 3.6)

I. GROUNDS

Stephen Mark Reichow, Defendant, incarcerated at Stafford Creek Corrections Center, moves the court for the Return of Property pursuant to CrR 2.3(e), CrR 3.6, and CrR 8.2; The Fourth and Fourteenth Amendments to the U.S. Constitution; and, Washington Constitution Article I § 7. The motion is supported by the included Declaration and Memorandum of Authorities.

Police obtained search warrants supported by affidavits to seize and perform investigatory searches of Reichow's cell phone, DNA, blood and wallet. Officers stripped Reichow of his clothing and photographed his undressed body.

Defendant Reichow contends the search warrants were invalid because the supporting affidavits include material misrepresentations made with intentional disregard for the truth and lack probable cause.

Whereas the search warrants were invalid, the seizures and searches were in violation of the Fourth Amendment and executed without "authority of law" required by Wash. Const. art I, § 7.

CrR 2.3(e) provides, "A person aggrieved by an unlawful search and seizure may move the court for the return of property on the ground that the property was illegally seized and that the person is lawfully entitled to possession thereof."

On the filing of a CrR 2.3(e) Motion for Return of Property:

1. An evidentiary hearing is required under CrR 2.3(e) where the State and the defendant can offer evidence of their claimed right to possession;
2. The purpose of this hearing is to determine the right to possession as between the State and the defendant;
3. The State has the initial burden of proof to show right to possession;
4. Thereafter, the defendant must come forward with sufficient facts to convince the court of his right to possession.

State v. Marks, 114, Wn.2d 724, 734-35 (1990).

The seizure of property from someone is prima facie evidence of that person's entitlement. Id.

A Motion for Return of Property made after an information is filed is treated as a [CrR 3.6] motion to suppress. CrR 2.3(e). Such a motion may be brought after a determination of guilt. State v. Card, 48 Wn. App. 781, 786 (1987).

RULE 3.6. SUPPRESSION HEARINGS- DUTY OF COURT

(a) Pleadings. Motions to suppress... shall be in writing supported by an affidavit or document setting forth the facts the moving party anticipates will be elicited at a hearing, and a memorandum of authorities in support of the motion. Opposing counsel may be ordered to serve and file a memorandum of authorities in opposition to the motion. The court shall determine whether an evidentiary hearing is required based upon the moving papers. If the court determines that no

evidentiary hearing is required, the court shall enter a written order setting forth its reasons.

(b) Hearing. If an evidentiary hearing is conducted, at its conclusion the court shall enter written findings of fact and conclusions of law.

Franks Hearing: Where a defendant makes a substantial preliminary showing that an affidavit in support of a search warrant includes a material false statement or omission made intentionally or in reckless disregard for the truth, the Fourth Amendment requires a hearing be held at the defendant's request. If the defendant then establishes the allegations by a preponderance of the evidence at the hearing, the material misrepresentations will be stricken from the affidavit and the material omissions added. If the modified affidavit then fails to support a finding of probable cause, the warrant is void. Franks v. Delaware, 438 U.S. 154, 155-56 (1978); State v. Cord, 103 Wn.2d 361, 366-67 (1985).

II. RELIEF REQUESTED: ORDER FOR HEARING

Resolution of the motion will require a CrR 2.3(e)/CrR 3.6 evidentiary/Franks hearing to determine:

1. The right to possession as between the State and the Defendant.
2. Whether the affidavits for search warrants were made with material misrepresentations, omissions, and false statements in reckless or intentional disregard for the truth.
3. Whether after modification, the affidavits lack sufficient probable cause and warrants void.

Therefore Defendant asks the Court to grant ORDER FOR HEARING.

Respectfully submitted this 21st day of March, 2023, Aberdeen, Washington.



Stephen Mark Reichow