

IN THE CIRCUIT COURT OF POPE COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

VS.

Case No. 58CR-22-485

CHRISTOPHER BEWLEY

DEFENDANT

MOTION TO SUPPRESS

COMES the Defendant, by and through counsel, and for Defendant's Motion to Suppress Evidence, states and alleges as follows:

I.

1. Pursuant to Rule 16.2 of the Arkansas Rules of Criminal Procedure, the Defendant hereby respectfully moves the Court to Suppress any and all illegally obtained evidence and any statements made by the Defendant herein.

II.

2. In support of this motion, Defendant relies upon the principles of the Fourth Amendment to the United States Constitution; Article 2§ 15 of the Arkansas Constitution; and the Arkansas Rules of Criminal Procedure.

III.

3. The Defendant was subjected to an unlawful arrest. There was no probable cause to arrest the Defendant, and his arrest was a pretext for an investigation. That the police failed to secure a proper search warrant to conduct their search and the consent to search in this case was done after the fact. Because the search in this case was unlawful, all evidence and statements obtained as a consequence of that arrest must be suppressed.

IV.

4. The search in this case was unreasonable. Any search warrant which was issued prior to the search was issued without probable cause, and in violation of the Arkansas Rules of Criminal Procedure. Because the search warrant was improperly issued and unlawfully executed, all evidence obtained as a result of the search must be suppressed. The governmental misconduct which led to the search in this case is sufficient to overcome any "good faith exception" to the requirement of a valid warrant.

V.

5. The search in this case was unreasonable. Any warrantless search was not within a recognized exception to the Warrant Requirement. There is no probable cause to believe that the place searched contained items subject to seizure. The search cannot be justified as incident to a lawful arrest or based upon consent. The items seized were not discovered in plain view and were not discovered during the course of a lawful inventory. There was no emergency which would justify the intrusion in this case. Because the search did not fall within any recognized exception to the Warrant Requirement, all evidence obtained as a result of the search must be suppressed.

VI.

6. The Defendant's arrest was pretextual, and the search was investigative. Because pretextual arrests are unlawful, all evidence obtained subsequent to the arrest should be suppressed. Because investigative searches do not fit within any recognized exception to the Warrant Requirement, the evidence in this case must be suppressed.

VII.

7. Any statements allegedly given by the Defendant constitute the fruit of an unlawful arrest and should be suppressed.

VIII.

8. Any statements allegedly given by the Defendant were involuntary, and were given as a result of improper interrogation by the government. Because any statements given were not voluntarily, knowingly, and intelligently made, those statements must be suppressed.

IX.

9. The detention and/or arrest of the Defendant in this case was in violation of the Arkansas Rules of Criminal Procedure. Because that violation was substantial, the evidence obtained by the government should be suppressed.

X.

10. The search and seizure in this case was in violation of the Arkansas Rules of Criminal Procedure. Because the violation was substantial, all evidence obtained as a result of that search and seizure should be suppressed.

XI.

11. Any statement allegedly given by the Defendant constitute the fruit of an unlawful detention or arrest in violation of the Defendant's right of privacy guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution.

XII.

12. Any statements allegedly given by the Defendant were obtained in violation of the Defendant's privilege against self-incrimination and his right to counsel as guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

XIII.

13. The Government has the burden of proving that the Defendant's arrest was lawful. Because the Government cannot carry its burden of proof in this regard, all evidence and

statements obtained subsequent to the Defendant's arrest should be suppressed.

XIV.

14. Further grounds for the suppression of evidence in this case will be presented subsequent to discovery and before, or at the time of the hearing on this Motion.

XV.

15. The Government's Attorney involved in this case utilizes an "open file policy." The documentation in this "open file" does not contain the names of every law enforcement officer, dispatcher, jailer, matron, operator, chemist, or other person who acted for, on behalf of, or as an agent of the government in conjunction with the search and/or arrest in this case. The Defendant is entitled to the names, addresses, and telephone numbers of all such persons so that they can be compelled to appear, if necessary. The Prosecution should be ordered to provide the Defendant with the names, addresses, and telephone numbers of all such persons who were present at the time of the Defendant's search and/or the arrest in this case. Unless the Prosecution provides the Defendant with this information in sufficient time to issue subpoenas, the State should be required to have all such persons present and available for cross-examination at the hearing on this Motion. Unless all such persons are present and available at the hearing on this Motion, all evidence obtained as a result of the search and/or arrest in this case should be suppressed.

WHEREFORE, the Defendant prays that any unlawfully obtained evidence or statements be suppressed; that the Prosecution be ordered to provide the names, addresses, and telephone numbers of all persons who were present at the time of the search and investigation; that the Prosecution be ordered to advise the Defendant about any relevant evidence or statements which do not appear in the Prosecution's file as presented to the Defendant in conjunction with the open file policy; that any documentation not contained in the open file policy at the time the file is

provided to Defense Counsel be suppressed and for all other proper relief.

Respectfully submitted,

/s/ Patrick J. Benca

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CERTIFICATE OF SERVICE

I, Patrick J. Benca, affirm that the foregoing was filed via electronic filing, thereby sending a copy to the Prosecuting Attorney on March 13, 2023.

/s/ Patrick J. Benca

PATRICK J. BENCA