

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY _____
DEPUTY

No. 50289-5-II

(Clark County Superior Court No. 15-1-01458-7)

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON

Respondent,

v.

STEPHEN MARK REICHOW,

Appellant.

APPELLANT'S STATEMENT OF ADDITIONAL GROUNDS

STEPHEN M. REICHOW 399068
FOX WEST 230
Washington State Penitentiary
1313 North 13th Ave.
Walla Walla, WA 99362

I. INTRODUCTION

This is a case of self-defense. The Honorable Judge Suzan Clark remarked she has never "seen anything quite like this." This is a case where an innocent man, with no criminal record, no history of violence, was confronted and accused of being a "gangstalker" - by a mentally ill, paranoid delusional woman and her beligerant armed-with-a-knife-and-bat boyfriend. The Defendant felt threatened, had apprehension of harm, and ran for his life. The two pursued the Defendant in her vehicle, the Decedent jumped out and charged with the bat raised at the Defendant. When he collided into the defendant he lost his bat in his assault; immediately, while in imminent danger, and as the attacker appeared to be reaching for his knife, the Defendant used the attacker's own bat to neutralize the assailant.

In a county known for corrupt law enforcement and underhanded prosecution, the defendant received the "Clark County Home Cookin'". In no way was the Slain innocent. In fact, the evidence shows his act of felony assault resulted in his injuries. With careful sifting, some nuggets of truth may be found.

II. ASSIGNMENTS OF ERROR

1. The State's warrants permitting the search for "Any and all evidence of the crime" of Murder in the first degree, under RCW 9A.32.030 effectively authorized an unconstitutional general search.
2. The Department of Labor and Industries unlawfully paid Crime Victim's Compensation Act benefits on a claim that was ineligible.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. The provision permitting the search for "any and all evidence" combined with the statutory citation of the crime without listing the specific sub section of that crime as it applied, failed to demonstrate any meaningful guidance for the officers executing the search warrant. Did the search and seizure violate the defendant's rights under the First, Fourth and Fourteenth Amendments to the Constitution of the United States and under article 1, section 7 of the Constitution of the State of Washington? (Assignment of Error 1.)

2. Washington Law expressly prohibits compensation if injury or death results to a victim who engaged in the attempt to commit, or in the commission of a felony. Was the Department of Labor and Industries decision to pay CVCA benefits to the Slain's survivors a violation of state law and a manifest abuse of discretion? (Assignment of Error 2.)

III. STATEMENT OF THE CASE

On August 1st, 2015, Appellant Stephen Reichow met up with an acquaintance, the Decedent Brandon Maulding and a third man, Dennis McEachern, for an afternoon swimming at the river. (RP 524-26) Afterward the three went to Mr. Brad Hazen's residence, NORTH of Battle Ground, (RP 401) where Maulding rented a room. There they and another man engaged in archery and wrestling and had drinks. (RP 406-07)

Ms. Anne Tanninen, who admitted she had a sexual relationship with Maulding, (RP 578) arrived with a bottle of whiskey. She immediately brought up the topic of "gang stalking." (RP 1063) Tanninen testified she believes her ex husband threatened and stalked her, and she defines gang stalking as the collective, organized effort to intimidate and frighten. (RP 578-9) Mr. Hazen affirmed Ms. Tanninen had paranoia, discussed being stalked, and thought the mafia was after her. (RP 414) Ms. Carol Hazen, testified Ms. Tanninen felt that her ex husband had possibly hired some people to gang stalk her - to make her look less credible. (RP 334)

The homeowner Mr. Hazen requested guests leave at 9:00 pm. (RP 409) Mr. Reichow's keys were missing off the patio

table. After a fruitless search, (RP 410-11) Maulding called Tanninen, who agreed to give Reichow a ride home. Tanninen returned and picked up Maulding and Reichow. (RP 1063-64)

Tanninen's vehicle was full of stuff; she drove SOUTH to a warehouse she rents two blocks SOUTH of Main Street at 2nd and Grace in Battle Ground. She parked on the NORTH side of the warehouse and opened a large sliding door. There the vehicle, a white Ford Expedition was partially unloaded. (RP 1064-65) Maulding wanted to continue to drink. The three spent the next few hours there hanging out. (RP 1066) Mr. Reichow related to Tanninen he had been computer hacked too; and like her thought an ex may be responsible. (RP 1067-68)

The Declaration of Probable Cause states:

Tanninen said while at the storage facility, she, Maulding, and Reichow were talking about government, organized crime, and gang stalking. Tanninen then received a phone call from a Hispanic subject demanding \$5000.00. Upon completion of the call, Tanninen, who believed Reichow was somehow associated with it, confronted Reichow. Tanninen asked Reichow who he "really was" and for his identification. Maulding participated in the confrontation asking Reichow for his last name and who he was. At the time, Maulding was holding an aluminum bat that he retrieved from an umbrella stand inside the unit. (CP 3)

Reichow testified after the call Tanninen began acting dramatic and stated she was worried about the phone call. She stated she thought her ex husband was trying to make her look bad. (RP 1070)

Tanninen indicated to Sgt. Aaron Kanooth she was getting suspicious that Reichow was involved with the phone call. (RP 634-35)

Taylor Porter, a local teen, testified [after 11:00 PM] he was making noise outside in the street, waiting for a friend. Maulding came out carrying a baseball bat. (RP 365)

Reichow testified: later, inside the warehouse, Maulding picked up an ax and began marching through the space. Reichow, concerned for his safety, went outside through the NORTH side sliding door. (RP 1076) Crime Lab testing confirmed the presence of male DNA on the ax handle. (RP 889) Maulding and Tanninen followed and smoked cigarettes as Reichow waited for a ride home. (RP 1077) Maulding pulled a knife out of his pocket as if maybe he were getting ready for something. (RP 1078)

Psychologist Dr. Sabine Hyatt testified Ms. Tanninen is diagnosed with schitzo affective disorder, (RP 1006) with persecutory ideation, and paranoia. (RP 1001-02)

Reichow testified that Tanninen then began to accusitorily question Reichow who he really was, if he were

a "gang stalker", and demanded to know how he knew so much about gang stalking. (RP 1077) At that time Maulding was armed with a baseball bat. He joined in the confrontation demanding to know how Reichow knew so much about gang stalking. Maulding, swinging the bat and hitting his foot demanded "Come here boy, come here!" Reichow had his back to Grace Avenue and Maulding was about 8 feet away, facing Grace. (RP 1079) Reichow felt it unwise to approach and submit to the demands of the threatening, armed man. Reichow, perceived threat of the armed, aggressive and intoxicated Maulding, in fear for his life ran away, to the east, around the building, SOUTH, then west. (RP 1080-82)

Tanninen testified that Reichow "...just took off and ran." (RP 610) And that he "looked actually kind of afraid." (RP 613) When questioned by Sgt. Aaron Kanooth, Tanninen told him after Reichow ran away, Maulding may have been in her vehicle as she drove around to the SOUTH side of the storage facility. (RP 990-91)

Reichow hid for a moment under an RV trailer on the west side of the building, but didn't feel safe so he began west on 2nd Street. Reichow realized he didn't know the way, the street was dark; (2nd Street runs East-West) so he turned back east toward Grace Avenue, (which runs North-South). (RP 1087) While Reichow was in the gravel parking lot on the SOUTH side of the building, Tanninen's SUV came

driving SOUTH on Grace, turned right, west on to 2nd Street. (RP 1088) Tanninen stopped her vehicle and Maulding got out and closed the door. In Maulding's hand was a baseball bat. (RP 1089) A woman's scarf was found approximately where Tanninen stopped. (RP 240)

Maulding charged across the parking lot at Reichow with the bat raised. Reichow raised his hands; Maulding attempted to use the bat on Reichow, almost knocking Reichow down while simultaneously tearing Reichow's shirt. (RP 1089-93) Reichow intercepted the bat with his hands and wrenched it away from Maulding and as it appeared Maulding was reaching for his knife in his pocket, Reichow used the attacker's own bat to neutralize the attacker. (RP 1090)

State forensic scientist Heather Pyles testified the majority of the DNA on the handle of the bat was Maulding's. Mr. Reichow's DNA was present at a minor level. (RP 868) Reichow knelt down and checked Maulding for a pulse. Reichow then went to get emergency help. (RP1093)

Tanninen, who was impeached with a burglary conviction (RP 677) as well as multiple inconsistent statements, claims Maulding ran after Reichow, and indicated Reichow did not have a bat. She jumped in her vehicle. (RP 611-13) She drove to the intersection, "I'm looking around, - I could see up and down both - all streets... I didn't see anyone." (RP 614) She parked her vehicle next to a box truck that

blocked her view to the right. (RP 619) She heard the sound like a bat hitting the ground five times, "right close to me, behind my vehicle...". Tanninen attempted to call Darren Erickson, a "bodyguard" she hired which turned in to a relationship. (RP 334) She then abandoned her vehicle in the gravel parking lot. She fled the long way around the block, west, north, east, and ended up one block NORTH of the warehouse, at the back door of Main Street Tavern. (RP 652)

Bartender Elliot Sutherland testified Ms. Tanninen indicated that someone was attacked with a baseball bat and the other guy had taken the bat from the attacker. She "mentioned the bat had been taken from the man who had the bat and wanted to hide in the bar from the police." (RP 698-99)

Tanninen testified that while at the bar, "I don't want to call the cops because I don't need drama." (RP 620)

One block north Reichow found residents Tim and Amber Henley on their porch. Reichow approached them and said he had been attacked by someone who jumped out of a car with a baseball bat and that he managed to get the bat away and defend himself. Reichow asked them to call 9-1-1 and get an ambulance over there. (RP 902-03) Maulding later died from blunt head trauma. (RP 966)

V. ARGUMENT

1. The Search Warrant(s) were unconstitutionally overbroad; it authorized police to search for and seize items that were not described with sufficient particularity and for which the affidavit did not provide probable cause.

Standard of Review

"This court reviews de novo the issue of whether a warrant meets the particularity requirement of the Fourth Amendment." *State v. Munoz Garcia*, 143 Wn. App. 832, 843, 181 P.3d 843 (2007) (citing *State v. Clark* 143 Wn.2d 731)

The lawfulness of a search or seizure is reviewed de novo. See *United States v. Stafford*, 416 F.3d 1068, 1073 (9th Cir. 2005)

"Under the Fourth Amendment a warrant must describe with particularity the things to be seized." *State v. Higgins*, 136 Wn. App. 87, 92, 147, P.3d 649 (2006) (quoting *Groh v. Ramirez*, 540 U.S. 551, 557, 124, S. Ct. 1284 157 L. Ed. 1068 (2004)). Since the crime of Murder in the first degree under RCW 9A.32.030 can be committed by many different means, the search warrant that described the items to be

seized as "evidence of the crime of Murder in the first degree RCW 9A.32.030" is unconstitutionally overbroad. This is so because it authorized the seizure of illicit items along with the seizure of innocuous items and items for which there was no probable cause.

Unlike *State v. Reid* the warrant in this case in no way limited the officers' search to illicit items. By combining blood, saliva, bats, clothing with numerous cell phones (and cell phone data) belonging to multiple people along with documents, papers and photographs or videos, the warrant failed to differentiate between items subject to seizure nor offer any examples to help guide the officers' search.

Additionally, the warrants in question did not use the language of the statute; it simply listed the felony along with an RCW at the top of the warrants. Therefore, the warrants technically were only sufficiently limited to search for evidence related to that crime. However, even this is not sufficient under *State v. Higgins*, 136 Wn. App. 87, 92, 147 P.3d 649 (2006). The general reference to evidence of Murder 1 under RCW 9A.32.030 authorized the seizure of items for which there was no probable cause. RCW 9A.32.030 contains at least 10 separate means to commit Murder 1, a class A felony. For example, the broad reference to section .030 allowed officers to seek evidence

for the crimes of: Robbery in the first and second degree (9A.32.030(1)(c)(1)), Rape in the first and second degree (9A.32.030(1)(c)(2)), Burglary in the first and second degree (9A.32.030(1)(c)(3)), Arson in the first and second degree (9A.32.030(1)(c)(4)), Kidnapping in the first and second degree (9A.32.030(1)(c)(5)).

The warrants' provision permitting the search of "any and all evidence" effectively authorizes an unconstitutional general search. Even more so when authorized under such a broad reference to section .030. Murder in the first degree RCW 9A.32.030 does not provide any meaningful guidance for the officers executing the warrant under the facts of this case because it did not recite any of the circumstances underlying the suspected crime.

The warrant did not incorporate the affidavit and nothing in the record indicates that the affidavit was attached to the warrants. *Groh v. Ramirez*, 540 U.S. 551, 557, 124 S. Ct. 1284, 157 L. Ed. 1068 (2004). "Neither the officer's personal knowledge of the crime nor a proper execution of the search may cure an overbroad warrant." *State v. Higgins*, 136 at 91. Without some information illuminating the circumstances of the crime, the discretion of the officers to search for "any and all evidence" was limited only by their imagination. "an overbroad warrant is

invalid whether or not the executing officer abused his discretion." *State v. Riley*, 121 Wn.2d at 29 (citing *In re Application of Lafayette Acad., Inc.*, 610 F.2d 1, 5 (1st Cir. 1979))

The need for some contextual information about the crimes was necessary because most of the items to be seized are not inherently associated with the suspected crime. These relatively innocuous and unrelated items did not serve to focus or otherwise circumscribe the broad discretion to search for evidence of the crime. *State v. Chambers* 88 Wn. App. 640, 644, 945 P.2d 1172 (1997) tells us that items which are innocuous and not inherently illegal may require a greater degree of particularity to satisfy the Fourth Amendment. Because the warrants in the Appellant's case specified such broad, generic categories of items, no meaningful guidelines were provided to officers searching for "any and all evidence." Moreover, some of these items were presumptively protected by the First Amendment, triggering enhanced scrutiny of the particularity requirement.

Even where the constitution requires scrupulous exactitude, "[s]earch warrants are to be tested and interpreted in a common sense, practical manner, rather than in a hypertechnical sense." *State v. Perrone* 119 Wn.2d 549, 834 P.2d 611 (1992). However, neither common sense nor

practicality allows anyone to assume there are limitations

Review by

on a warrants' scope where such limitations are plainly absent. Here, the warrants' rote citation to the Murder Statute is at best ambiguous as to whether it limits the subsequent list of items to be seized. Because that ambiguity means the officers, rather than the judges, will decide the scope, it fails not just here, but the core purpose of the historically grounded particularity requirement.

The State's violation of Mr. Reichow's constitutional rights was not harmless. The prosecutor, by presenting dozens upon dozens of photographs of the apparently uninjured Defendant, used repetitious conditioning to create doubt in the mind's of the jury as to who was the aggressor and raise the required elements of lawful self defense that the slayer must actually sustain injury to use deadly force. Photo exhibits 256-292 were taken at the jail, under an overbroad warrant, and presented to the jury. A jury instruction will unlikely cure hours of graphic presentation upon the conscious.

In addition, the prosecutor used information gleaned from text messages on the defendant's phone to incinuate that he were "stressed out" to offer rage as an alterior motive to self-defense. The jurors could have used this speculated motive the Prosecutor introduced to displace the

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Defendants's assertion that he acted in self-defense. remove br

The Prosecutor could not have introduced this information with out an unlawful "physical dump" of the data on the Defendants phone, a search authorized by the warrant, for which there was no probable cause, and did not meet the particularity requirements of the Fourth Amendment.

Mr. Reichow's conviction should be reversed and the "fruit of the poisonous tree" evidence suppressed on retrial.

2. Under RCW 7.68.061, the Slain is not entitled to compensation. Maulding was in no way an innocent victim; rather his injuries and death is the result of the Defendant's resistance to his felonious assault.

Standard of Review

"We review questions of statutory interpretation de novo."
State v. J.P., 149 Wn.2d 444, 449, 69 P.3d 318 (2003).

The Department of Labor and Industries failed to interpret the statutes regarding victim's innocence properly. "When we interpret a statute, our goal is to carry out the legislature's intent." Burns v. City of Seattle, 161 Wn.2d 129, 140, 164 P.3d 475 (2007). For guidance of what the legislature meant when they created the

CVCA let us look to *Stafford v. Dep't of Labor & Industries*,

33 Wn. App 231, 653 P.2d 1350, (1982)(citations omitted);

Arguing that claimant must establish the victim's "innocence" as part of this strict proof, the Department first points to RCW 7.68.10: Intent. It is the intent of the legislature of the State of Washington to provide a method of compensating and assisting innocent victims of criminal acts who suffer bodily injury or death as a result or consequence thereof. To that end, it is the intention of the legislature to make certain of the benefits and services which are now or hereafter available to injured workmen under Title 51 RCW also available to innocent victims of crime as defined and provided for in this chapter. It contends that the term "innocent" is not superfluous and that it is a necessary element which claimant must prove in order to recover benefits.

The first step in interpreting a statute is to examine its plain language. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007).

Let us examine two statutes that prohibit those who are injured in the act of a felony from receiving benefits:

RCW 7.68.060(2) No person or spouse, child or dependent of such person is eligible for benefits under this chapter when the injury for which benefits are sought was (b) Sustained while the crime victim engaged in the attempt to commit, or in the commission of, a felony.

in dev RCW 7.68.061 Who not entitled to compensation:

If injury or death results to a victim from the deliberate intention of the victim himself or herself to produce such injury or death, or while the victim is engaged in the attempt to commit, or in the commission of a felony, neither the victim nor the widow, widower, child or dependent of the victim shall receive any payment under this chapter.

The first step in interpreting a statute is to examine its plain language. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). In context of what the legislature's intent, we see that the legislature meant for only innocent victims to receive benefits. If one intentionally feloniously assaults another he can not claim to be an "innocent victim." But what constitutes felony assault? Washington recognizes three common law definitions of "assault": "(1) an attempt, with unlawful force, to inflict bodily injury upon another (attempted battery); (2) an unlawful touching with criminal intent (battery); and (3) putting another in apprehension of harm whether or not the actor intends to inflict or is capable of inflicting that harm (common law assault)." *State v. Winings*, 126 Wn. App.

75, 89, 107 P.3d 141 (2005)

Maulding was also armed with a baseball bat and a knife, as Tanninen told police she and Maulding confronted Reichow while armed with the bat. Maulding was in violation of:

RCW 9.41.270 Weapons apparently capable of producing bodily harm. (1) It shall be unlawful for any person to carry, exhibit, display, or draw any firearm, dagger, sword, knife, or other cutting instrument, club, or other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at the time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of the other person.

Maulding's acts and conduct constituted felony assault. Maulding's prior convictions for assault and Unlawful Display of a weapon are probative of Maulding's intent, motive, and lack of accident in brandishing the weapon. (CP 103)

A short summary adapted from police Reports (CP 66):

- Per both Ms. Tanninen and Mr. Reichow, the incident began with the victim handling a bat, and being verbally aggressive toward Mr. Reichow.

- A close acquaintance of the victim described him as "having a mouth" and "wouldn't shut up sometimes,"

which "had gotten him in trouble before. Ms. Tanninen noted the victim was known as "a bad dude."

- Ms. Tanninen consistently emphasized that Mr. Reichow looked "fear struck" and had "pure fear" in his expression before he fled from the armed and belligerent Maulding. She further noted that Mr. Reichow did not appear to be a potential aggressor in a fight because he was "very afraid."

- Based on Mr. Reichow's reactions, the victim's pursuit of Mr. Reichow, and her knowledge of the victim, Ms. Tanninen had reportedly assumed that Mr. Reichow had been the one harmed.

- The Henleys reported that Mr. Reichow "seemed really shaken up." Mr. Henley observed that Mr. Reichow's shirt was "ripped and torn from him," and Mr. Reichow's breathing was "pretty heavy." Mr. Henley described him as "very shaken, and very cooperative."

- he was in fear for his life and was attempting to avoid serious harm. By all accounts, he began by fleeing the situation in an attempt to avoid harm."

The state's witnesses report Maulding had the bat, Reichow ran away unarmed, Maulding pursued him to the SOUTH parking lot, even though Maulding lives over a mile NORTH of battle ground. Maulding had no business SOUTH of the building other than to hunt down, pursue, and attempt to assault Mr. Reichow. Maulding was found injured in the SOUTH side parking lot, this corroborates Mr. Reichow's story. Mr.

Reichow's torn shirt is evidence of Maulding's assault. If Maulding were trying to get away from me, wouldn't his shirt be ripped? Seems like the one doing the aggression is going to tear the other's clothes. The majority of the DNA on the bat handle was Mauldings, further corroborating Mr. Reichow's account. If Mr. Reichow ran away from Maulding, how did he end up with the bat? Because Maulding initiated an act of aggression, Maulding pursued and made contact with Reichow.

A jury verdict cannot be used to speculate about whether the Decedent committed a felony. The two are separate, for example the claim in this instance was paid nearly a year and a half before the trial. In Stafford, the Slayer's First Degree Murder conviction was set aside and replaced with a suspended sentence of Manslaughter. That court decided that a CVCA claimant had the burden of proving the innocence of the crime victim. In addition, the court concluded that because there was ample evidence suggesting that the victim had prepared an ambush for the murderer and had fired first, the examiner did not make a mistake. The court held that in light of the legislative intent that CVC benefits go to innocent victims, the board did not act unreasonably.

In the Appellant's case, the Department of Labor and Industries administrative decision was arbitrary and capricious because it lacks support in the record and is a

willful and unreasonable action in disregard of the facts and circumstances. This court should dismiss CVCA restitution, with prejudice.

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STATE OF WASHINGTON

DECLARATION

BY I, Stephen Reichow, declare that, on June 11, 2018, I
^{DEPUTY}
deposited the foregoing STATEMENT OF ADDITIONAL GROUNDS, or
a copy thereof, in the internal mail system of Washington
State Penitentiary and made arrangements for postage,
addressed to:

Derek M. Byrne, Clerk/Administrator
Washington State Court of Appeals, Division II
950 Broadway, Suite 300
TACOMA WA 98402-4454

I declare under penalty of perjury under the laws of the
State of Washington that the foregoing is true and correct.
DATED at Walla Walla, WA on June 11, 2018.



Declaration pursuant to GR 3.1, RAP 18.6