No. 92828-2

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

RAFAEL GUTIERREZ MEZA,

Petitioner,

v.

STATE OF WASHINGTON,

Appellee.

PETITION FOR REVIEW

Timothy K. Ford, WSBA #5986
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A. IDENTITY OF PETITIONER

Rafael Meza, the defendant and appellant below, asks this Court to accept review of the Court of Appeals decision terminating review designated in Part B of this Petition.

B. COURT OF APPEALS DECISION

The Court of Appeals decision was issued December 15, 2015. *State v. Meza*, ___ Wn. App. ___ (Div. II No. 47315-1-II). A copy of the Court of Appeals opinion is attached as Appendix A-1 – A-9. The Court of Appeals reversed the Order of the trial court on one ground, but did not reach and reserve judgment on two additional challenges to the Order which would have produced a different and broader result. Mr. Meza moved for reconsideration, asking the Court of Appeals to address those issues, but his motion was denied by Order issued January 25, 2016. A copy of the Order Denying Petitioner's Motion for Reconsideration is in the Appendix at page A-10.

C. ISSUES PRESENTED FOR REVIEW

1. Was there probable cause to believe the funds in Petitioner's credit union account were evidence or proceeds of a crime?

a. Can electronic funds in a bank or credit union account—as opposed to the records of the source and amount of those funds and transactions related to them—be seized as relevant "evidence"?

b. Can a bank or credit union account be seized as an "instrumentality" of a crime simply because proceeds of an allegedly criminal transaction were once deposited into it?

2. Does the pretrial restraint of a criminal defendant's legitimate assets (not traceable to a criminal offense) which are needed to retain counsel of choice and fund his defense, violate the Sixth and Fourteenth Amendments or Article I, section 22 of the Washington Constitution?

D. STATEMENT OF THE CASE

1. Trial Court Proceedings.

On June 27, 2014, Petitioner Rafael Meza was charged with one count of first degree theft. CP 1–3. The affidavit of probable cause that accompanied the Information alleged that "Mr. Meza swindled $75,000 from Mr. [John] Armstrong, in that he sold to Mr. Armstrong an asphalt plant that he had, in fact, sold to another person almost six months earlier." CP 12.

The probable cause affidavit further alleged that in August 2013, Mr. Meza agreed to sell an asphalt plant to a Mr. Cliff Mansfield for $95,000, and that Mr. Mansfield made partial payments toward that purchase from October 2013 through January 2014. CP 9, 11. These payments were wired or deposited into Mr. Meza's account at Twin Star

Credit Union. CP 11. Then, in March 2014, after Mr. Mansfield failed to make payments for two months, Mr. Meza allegedly verbally agreed to sell the plant for $75,000 to Mr. Armstrong instead of Mr. Mansfield. CP 7. Mr. Armstrong wired a "security deposit" of $15,000 to Mr. Meza's account at Twin Star Credit Union on April 11, 2014. *Id.*

The affidavit further recited that Mr. Armstrong says he later flew to Seattle and paid Mr. Meza the remaining balance in cash,[1] although he has no receipt or other evidence of such a payment. CP 8. The affidavit alleges that, despite receiving this cash payment from Mr. Armstrong, Mr. Meza accepted additional payments from Mr. Mansfield, which were wired to the Twin Star Credit Union account. CP 11. Once the agreed upon price was paid by Mr. Mansfield on June 18, 2014, Mr. Meza gave Mr. Mansfield a bill of sale transferring ownership of the plant as agreed. CP 9.

In summary, the affidavit stated that Mr. Armstrong made one wire transfer of $15,000 to Mr. Meza's Twin Star Credit Union account. It is undisputed that the rest of the money in the account came from Mr.

[1] Although Mr. Armstrong told Lewis County Sheriff's Deputy Justin Rogers that he paid the "remaining amount" in cash, CP 8, he later claimed in a civil suit against Mr. Meza and Mr. Mansfield that he only paid $55,000 in cash, leaving $5,000 of the purchase price still to be paid. *See* CP 43.

There is no evidence that any money from this alleged cash payment ever entered the Twin Star account. A search warrant was issued for the records of the Twin Star account the day before the arrest, and showed no cash deposits of that amount or anything close. *See* CP 11. Nor was any such cash found in searches of Mr. Meza's business and home at the time of his arrest. RP 11:14–17.

Mansfield, the legitimate eventual buyer of the asphalt plant, and from other customers of Mr. Meza's paving business.

The State originally charged Mr. Meza with one count of theft from John Armstrong. CP 1–2. The same day that it filed the Information containing that charge, the State filed a two-page "Motion for an Order Freezing and Holding Funds." CP 4–5. Without citation to any legal authority, the State asked the court to "freeze and hold all accounts in the name of Rafael Gutierrez Meza and specifically, all funds in account number 16632800," alleging the funds "are evidence in a felony offense." CP 4. The State represented that its request was based on "the facts contained in the affidavit of probable cause filed herewith." CP 5. The State cited no legal authority in support of its request, but simply alleged that the funds were "evidence." CP 4. The trial court granted the motion that same day, *ex parte*, and ordered the Credit Union to freeze and hold all funds in Mr. Meza's account "as evidence in a criminal proceeding." CP 14–15 (hereafter "Freeze Order").

After being arraigned and obtaining counsel, Mr. Meza filed a motion to vacate the Freeze Order. CP 16–21. In support of this Motion, Mr. Meza produced documentary evidence confirming that Mr. Mansfield had purchased the plant and that Mr. Meza had transferred and delivered the plant to Mr. Mansfield after he made the final installment payment of

the agreed upon purchase price. CP 36–61. In its response, the State produced nothing contrary. Instead, it abandoned its argument that the funds were "evidence" and—without any new proof or documentation—claimed claimed for the first time (and contrary to the language of the Freeze Order itself) that the funds were seized as "the fruits of crime." CP 62–67. It also newly claimed that all of the money from Mr. Armstrong *and* Mr. Mansfield (who now owns the asphalt plant) was "stolen property" that could properly be seized to be returned to its allegedly rightful owners. CP 64–65.

The trial court denied Mr. Meza's Motion to Vacate the Order freezing his funds, ruling that it was lawful to freeze all the money in that "particular account" because "[t]here was the probable cause to believe that it was related to the crime." CP 99–100. The court held that although the funds were not seized pursuant to a search warrant that complied with CrR 2.3, it nonetheless had constitutional authority to issue the Freeze Order based on the holding in *State v. Garcia-Salgado*, 170 Wn.2d 176, 240 P.3d 153 (2010). CP 101–102.

After the court's ruling on the Motion to Vacate, and Mr. Meza's rejection of its plea bargain offer, the State amended its Information to add one count of first degree theft, two counts of second degree theft, and one

count of money laundering with respect to the payments from Mr. Mansfield. The State did not file an additional affidavit of probable cause.

Mr. Meza moved to dismiss the counts related to payments from Mr. Mansfield under *State v. Knapstad*, 107 Wn.2d 346, 729 P.2d 48 (1985) and CrR 8.3(c). *See* Notice of Change of Circumstances filed by Respondent on May 16, 2015. On May 13, 2015, the trial court granted Mr. Meza's motion and dismissed all the charges related to Mr. Mansfield. *Id.*

Like the original charge, the pending charges against Mr. Meza therefore stem solely from the payments he allegedly received from Mr. Armstrong.

2. Court of Appeals Proceedings.

Mr. Meza sought and the Court of Appeals granted discretionary review of the trial court's orders and accelerated review. In his Petition and his arguments to that Court, Mr. Meza argued that the trial court's Freeze Order was unconstitutional and invalid, for three reasons: it was unauthorized by law; it was unsupported by probable cause; and it deprived Mr. Meza of his constitutional right to have counsel of his choice and to prepare a defense. See AOB 7-23. The Court of Appeals opinion ruled in Mr. Meza's favor on the first of these questions (legal authority), but declined to reach the second (probable cause) and expressly reserved

judgment on the third (right to counsel). App. A-3 n.1. Because the Court of Appeals' opinion did not afford Mr. Meza the full relief he requested and the relief necessary to prevent recurrence of this violation after remand, Mr. Meza moved for Reconsideration, but his motion was denied. App. A-10.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

Review should be granted because this case presents two significant questions under the Constitution of the State of Washington and the United States, which are issues of substantial public interest and should be determined by the Supreme Court. RAP 13.4(b)(3) and (4). Although Mr. Meza prevailed on the one issue decided below, that did not afford him all the relief he sought by the Petition; and his remaining arguments both present questions warranting this Court's review.

1. The Probable Cause issue.

Mr. Meza's argued below that the seizure order was unlawful, and his account was not subject to seizure, because there was no probable cause to believe the funds in his account were either evidence or fruits of the crime. See AOB 12-14; ARB 9-10. That argument was primarily based on two points of law. The first was that the electronic funds themselves—as opposed to the account records, which the State had already seized—were not "evidence" of anything, because they were

neither probative nor admissible in court. See AOB 12. Mr. Meza's second point—made in response to the State's rerevised claim that the account was seizable not as evidence but as an "instrumentality" of a crime—was that a bank account is not made illegal and seizable simply because suspected proceeds of a crime were once deposited into it. See ARB 11-12. The Court of Appeals declined to address either issue; but both are of significant public interest.

a. The State's contention that the electronic credits in a bank or credit union account can be seized as "evidence," separate and distinct from the records of the account itself, raises an issue of substantial public interest.

In its application for the Order Freezing Funds, the State claimed that the funds in Mr. Meza's account were "evidence in a felony offense charged under this cause number" (CP 4) and the trial court entered the Freeze Order on that basis. See CP 14, 102. It did this despite the fact that, before it sought the Freeze Order, the State had already executed a search warrant and seized the account records for that same account. CP 11. The account records provided all of the information regarding deposits, wire transfers, and withdrawals that the State could seek to use as evidence in its case against Mr. Meza. *See* CP 4.

Mr. Meza objected to the Freeze Order in part on the ground that the funds in the account themselves were not evidence of anything. It was

uncontested that those funds were not held in marked bills or in any form that contains any information about their source. They were and are simply fungible electronic credits in a computer file under Mr. Meza's name. Mr. Meza pointed out to the lower courts that there is no possibility—and no physical way—the prosecution could ever place those credits (as opposed to the separately-seized account records) into evidence at a trial.

In response to Mr. Meza's arguments in the trial court, the State appeared to abandon this argument, but it attempted to revive the argument in its briefing in the Court of Appeals. Mr. Meza responded that the argument should be deemed waived, but even if it was not, and even if the electronic bits in the account could somehow be handed to the jury and perceived by it in some way, those bits could not make any material fact in the case more or less probable. See ER 401. The electronic funds were not traceable to any particular transaction, and their existence did not itself make the existence or legality of those transactions any more or less probable.

In response, the State claimed that a federal case, *United States v. Daccarett*, 6 F.3d 37 (2d Cir. 1993), stands for the proposition that fungible electronic currency may be seized as evidence of a crime. RB 11. But *Daccarett* was a civil forfeiture case, where the government sought to

seize electronic currency as property traceable to narcotics trafficking subject to civil forfeiture under 18 U.S.C. § 981. *See Daccarett*, 6 F.3d at 43. The decision in that case said nothing about the evidentiary value of electronic funds.

The State's specious argument is likely to be revived on remand, and it presents a question of substantial significance. If it were accepted, any time there was probable cause to search bank account records, the State could seize the finds in the target account as well. It could do so without any hope of actually presenting the electronic bits of information to a jury or judge, but could thereby deprive the defendant of his or her property for the duration of the case. This would invite abuse of the warrant power because that alone would interfere with defendants' right to counsel and increase the State's bargaining leverage. Such abuses are likely to escape appellate review in this case or others, after conviction. The pretrial posture of this case provides a unique opportunity to resolve this issue and reject this radical argument.

b. The State's alternative contention that a bank or credit union account can be seized as an "instrumentality" of an alleged crime transaction, simply because funds related to the transaction were once deposited into it, presents an issue of similar public import.

When the State initially backed off its claim that Mr. Meza's account could be seized as "evidence of a crime," it tried to argue instead

that the funds ion the account were seizeable as "proceeds" or "fruits" of the crime. To support this, the State filed an Amended Information adding several counts that alleged that the sale of the asphalt plant to Mr. Mansfield—who now owns the asphalt plant Mr. Meza sold him—was also a crime, because Mr. Meza "failed to correct Mr. Mansfield's impression that he had a valid purchase agreement" while Mr. Armstrong had an "adverse claim" to the asphalt plant after he gave Mr. Meza the security deposit. CP 64–65. But the State had no evidence to support this theory and these new counts, and the trial court accordingly dismissed them. See pages 5-6, above.

Then, in the Court of Appeals, the State came up with a new argument: that the account itself could be seized as an "instrumentality" of the crime, because Mr. Meza deposited and withdrew money from it. RB 11. Under this theory, the State would have the authority to freeze all the funds in any bank account into which a criminal defendant deposited any amount of money alleged to be the proceeds of a crime. The same argument could be made about a car used to drive the stolen funds to a bank; or a house where they were hidden. There is no precedent in Washington law for this type of blanket authority to seize any bank account or other possession alleged to have once contained the proceeds of

a crime. This assertion of power raises a similar spectre of abuse that warrants this Court's review.

2. The Right to Counsel Issue.

The Court of Appeals also left unresolved the issue whether the pretrial restraint of a criminal defendant's legitimate assets (not traceable to a criminal offense) needed to retain counsel of choice and fund his defense, violates the Sixth and Fourteenth Amendments or Article I, section 22 of the Washington Constitution. This same question—though limited to the federal constitution—is currently pending decision in the Supreme Court of the United States. See *Luis v. United States*, U.S.S.Ct. No. 14-419 (argued November 9, 2015).

In granting discretionary review, Court of Appeals Commissioner Schmidt found that Mr. Meza satisfied the second prong of RAP 2.3(b)(2) because "[u]nder the freeze order, Meza cannot access any of the funds in his account, run his business, or pay for his defense counsel, substantially limiting his freedom to act outside this litigation." Ruling Granting Review and Accelerating Review at p. 6.

The State defended this by relying on *United States v. Monsanto*, 491 U.S. 600, 109 S. Ct. 2657, 105 L. Ed. 2d 512 (1989) and *Caplin & Drysdale, Chtd. v. United States*, 491 U.S. 617, 631, 109 S. Ct. 2646, 2648, 105 L. Ed. 2d 528 (1989). *See* CP 66–67; Response to Motion for

Discretionary Review at p. 18. But in those cases, the United States Supreme Court held that only a pre-trial freeze of traceable *tainted* assets in a federal criminal prosecution—where pretrial asset forfeiture is expressly authorized by statute—does not violate the Sixth Amendment. *See Monsanto*, 491 U.S. at 603–04; 21 U.S.C. § 853(e)(1)(A). There is no similar statutory authority here in Washington; and even the federal cases do not authorize a freeze on *untainted* assets. At least one federal circuit court has held that the Sixth Amendment prohibits the restraint of untainted assets when they are needed to retain counsel. *United States v. Farmer*, 274 F.3d 800, 804-06 (4th Cir. 2001). And as shown above, here there is no doubt that the State has frozen assets that are untainted.

As noted above, even the *Monsanto* and *Caplin* decisions do not authorize what the State did in this case, because there is a federal criminal forfeiture statute that allows for pre-trial restraint of forfeitable assets, and there is no analogous statute or other authority in Washington law. And even if there were such authority, the State has not shown that any of the money in Mr. Meza's account at the time of the freeze order was illegally obtained—by probable cause or any other standard. Because Mr. Meza needs his assets to prepare and present his defense, the most fundamental of a criminal defendant's constitutional rights, *In re Oliver*, 333 U.S. 257, 68 S.Ct. 495, 92 L.Ed.2d 682 (1998), the Freeze Order thus violated the

Sixth Amendment and Article I, Section 22 of the Washington Constitution, as well. The Supreme Court's grant of certiorari in *Luis* underscores the importance of this issue and the threat it presents to the right to counsel and a fair trial in criminal cases.

A determination that Mr. Meza's constitutional rights have been violated would have different consequences with regard to the remedies that are available and appropriate in the trial court, particularly if it turns out potentially exculpatory evidence has been lost while Mr. Meza's funds have been frozen and unavailable to fund investigation. *Compare, e.g, State v. Wittenbarger*, 124 Wash. 2d 467, 477, 880 P.2d 517 (1994) (standards for determining prejudice from loss or destruction of evidence), *with State v. Fedoruk*, 184 Wash. App. 866, 885, 339 P.3d 233 (2014) (standards for determining prejudice from counsel's failure or inability to investigate). For these reasons, too, review should be granted here.

F. CONCLUSION

The Petition for Review should be granted.

DATED this ___ day of February, 2016.

Respectfully submitted,

MacDONALD HOAGUE & BAYLESS

By_____
Timothy K. Ford, WSBA #5986
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I certify that on the date noted below I caused to be filed electronically this forgoing document entitled **PETITION FOR REVIEW** with the Clerk of the Court, and I also served a copy on all parties or their counsel of record as follows:

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DATED this _____ day of February, 2016, at Seattle, Washington.

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APPENDIX A

Filed
Washington State
Court of Appeals
Division Two

December 15, 2015

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. RAFAEL GUTIERREZ MEZA, Appellant.	No. 47315-1-II PUBLISHED OPINION

MAXA, J. — Rafael Meza appeals the trial court's denial of his motion to vacate an ex parte order entered after he was charged with first degree theft, which required his credit union to freeze and hold his account. We hold that the trial court's order was not a search warrant or the functional equivalent of a search warrant, and therefore did not satisfy the warrant requirement for the seizure of Meza's funds. Accordingly, we reverse and vacate the trial court's order requiring that the credit union freeze and hold Meza's account.

FACTS

In June 2014, John Armstrong spoke with the Lewis County sheriff's office and alleged that Meza had swindled money from him. Armstrong claimed that he paid Meza $75,000 to purchase Meza's asphalt plant, but then discovered that Meza already had sold the asphalt plant to someone named Cliff Mansfield.

Deputy Justin Rogers investigated Armstrong's allegations. Rogers contacted the Twin Star Credit Union and verified that Meza held an account that had received large wire transfers

recently. Rogers also learned from Mansfield that Meza recently had informed him that he was planning to go to Mexico.

Rogers served Twin Star Credit Union with a valid search warrant for Meza's account information. Meza's bank statements showed a check and four wire transfers from Mansfield totaling $105,000, with the last transfer on June 18. They also showed a single wire transfer from Armstrong in the amount of $15,000 on April 11. Meza's checking account showed that between October 2013 and June 2014, he withdrew approximately $89,000 in cash in 41 transactions involving between $3,000 and $5,000 each.

On June 27, 2014, the State charged Meza with one count of first degree theft. On the same day, the State presented an ex parte "Motion for an Order Freezing and Holding Funds" to the trial court. Clerk's Papers (CP) at 25-26. The State asserted that the funds in Meza's credit union accounts were "evidence in a felony offense." CP at 25. The State's motion was based on the probable cause affidavit filed with the information and asserted that there was "a high likelihood, based on [the affidavit regarding probable cause], that [Meza] will remove said funds and leave the country." CP at 26. The State did not request a search warrant for the credit union funds or reference CrR 2.3 in its motion.

The trial court signed an order directing Twin Star Credit Union to "freeze and hold all accounts in the name of . . . Meza . . . as evidence in a criminal proceeding, until further order of this Court." CP at 14. Neither the motion nor the order cited any legal authority for freezing Meza's accounts.

In January 2015, Meza filed a motion to vacate the trial court's order. Meza argued that there was no legal authority for the order. The State contended that the trial court could seize the fruits of a crime under CrR 2.3.

The trial court denied Meza's motion to vacate the order, ruling that there was probable cause to believe that Meza's account was related to the charged crime. The court concluded that it had the authority to freeze Meza's funds under CrR 2.3. In addition, the trial court ruled that Meza's account qualified as both evidence of a crime and the proceeds of a crime.

Meza filed a motion for discretionary review. The commissioner granted discretionary expedited review on the basis that the trial court committed probable error.

ANALYSIS

Meza argues that the trial court lacked the legal authority to order the credit union to freeze his account because (1) the account lawfully could be seized only pursuant to a warrant that complied with CrR 2.3, and (2) the trial court's order was not a warrant.[1] The State argues that the trial court's order was either a warrant or the functional equivalent of a warrant, and therefore the trial court had the authority under CrR 2.3 to order the seizure of Meza's account. We agree with Meza.

A. WARRANT REQUIREMENT

The Fourth Amendment to the United States Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches

[1] Meza also argues that the trial court's order violates his constitutional right to counsel because he needs the frozen funds to pay for his defense. Because we reverse on other grounds, we do not address this issue.

and seizures, shall not be violated." Similarly, article I, section 7 of the Washington Constitution provides that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law." These provisions generally prohibit warrantless searches and seizures unless one of the narrow exceptions to the warrant requirement applies. *State v. Garvin*, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009).

A person's banking records fall within the constitutional protection of private affairs under article I, section 7. *State v. Miles*, 160 Wn.2d 236, 244-47, 156 P.3d 864 (2007); *see also State v. McCray*, 15 Wn. App. 810, 814, 551 P.2d 1376 (1976) (holding that both the federal and state constitutions protect a person's bank account against unwarranted searches and seizures).[2] Although no Washington case has addressed whether *funds* in a bank account can be seized without a warrant, it defies reason to extend constitutional protection to bank account records but not to the funds reflected in those records. The seizure of funds is as much a threat to security in a person's effects and a disturbance of a person's private affairs as the seizure of the records regarding those funds. Therefore, we hold that funds in a bank account cannot be seized without a valid warrant.[3]

The Fourth Amendment sets forth the constitutional requirements of a warrant: "[N]o Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. CONST. amend. IV.

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[2] In *Peters v. Sjoholm*, the Supreme Court refrained from deciding whether the Fourth Amendment applied to bank accounts and deposits. 95 Wn.2d 871, 877, 631 P.2d 937 (1981). However, that case involved federal tax liens and is not applicable here.

[3] The State does not contend that an exception to the warrant requirement applies here.

CrR 2.3 outlines the requirements of a valid search warrant in Washington. CrR 2.3(b) provides that "[a] warrant may be issued under this rule to search for and seize any (1) evidence of a crime; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) weapons or other things by means of which a crime has been committed . . . ; or (4) person for whose arrest there is probable cause, or who is unlawfully restrained." Under CrR 2.3(c), there must be probable cause to issue a warrant, the warrant must identify the property and describe the place to be searched, and the warrant must be directed to and executed by a peace officer.[4]

B. NATURE OF THE TRIAL COURT'S ORDER

The State concedes that it did not expressly request a warrant under CrR 2.3 and that the trial court did not issue the order freezing Meza's account under CrR 2.3. However, the State argues that the trial court's order is a warrant or the functional equivalent of a warrant because it met the requirements of CrR 2.3, citing *State v. Garcia-Salgado*, 170 Wn.2d 176, 240 P.3d 153 (2010). We disagree.

1. *Garcia-Salgado*

In *Garcia-Salgado*, the trial court ordered the defendant to provide a cheek swab for DNA as authorized by CrR 4.7(b)(2)(vi).[5] 170 Wn.2d at 181-82. The Supreme Court acknowledged that swabbing a cheek to obtain a DNA sample is a search and that such a search

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[4] RCW 10.79.020 and RCW 10.79.035 contain similar requirements for search warrants.

[5] CrR 4.7(b)(2)(vi) states that a court may order, subject to constitutional limitations, a defendant to permit the taking of samples from the defendant's blood, hair, and other materials of the defendant's body.

must be supported by a warrant unless the search fell into one of the exceptions to the warrant requirement. *Id.* at 184. The court recited the constitutional requirements of a warrant set forth in the Fourth Amendment: "(1) a neutral and detached magistrate (2) makes a determination of probable cause based on oath or affirmation and (3) the warrant particularly describes the place to be searched and the items to be seized." *Id.* at 184-85. The court then addressed the warrant requirement:

> Normally, a warrant in Washington State is issued under CrR 2.3, but neither the state constitution nor federal constitution limits warrants to only those issued under CrR 2.3. *A court order may function as a warrant* as long as it meets constitutional requirements.

Id. at 186 (emphasis added). Therefore, the court concluded that "the warrant requirement of the Fourth Amendment and article I, section 7 may be satisfied by a court order." *Id.*

The court held that a search pursuant to an order issued under CrR 4.7(b)(2)(vi) is valid if the order meets the constitutional requirements of a search warrant. *Id.* The order must "be entered by a neutral and detached magistrate; must describe the place to be searched and items to be seized; [and] must be supported by probable cause based on oath or affirmation." *Id.*[6] The court did not address whether a court order also must meet the requirements of CrR 2.3 to function as a warrant.

[6] Because the search intruded into the defendant's body, the court also required the order to meet additional requirements regarding those searches set forth in *Schmerber v. California,* 384 U.S. 757, 769-70, 86 S. Ct. 1826, 16 L. Ed. 2d 908 (1966). *Garcia- Salgado*, 170 Wn.2d at 185-87.

2. Trial Court's Order as a Warrant

The State argues that under *Garcia-Salgado*, the trial court's order actually is a search warrant. However, it is undisputed that the trial court did not issue its order under CrR 4.7(b)(2)(vi). And *Garcia-Salgado* does not support this argument. The court held that a court order may function as a warrant and may satisfy the warrant requirements, but did not state that a court order *is* a warrant. *Id.* at 186. Therefore, we hold that the trial court's order was not a search warrant.

3. Functional Equivalent of a Warrant

The State also argues that under *Garcia-Salgado*, the trial court's order is the functional equivalent of a search warrant. A broad reading of *Garcia-Salgado* provides some support for the State's position. The court in *Garcia-Salgado* expressly stated that a court order can satisfy the warrant requirement for a search and seizure if it meets the constitutional requirements of a search warrant. 170 Wn.2d at 186.

However, the court in *Garcia-Salgado* did not hold that *any* trial court order that satisfies the warrant requirements could function as a warrant. The court allowed a trial court order to function as a warrant because the trial court had authority *independent of CrR 2.3* to issue the order. *See id.* In *Garcia-Salgado*, the trial court's order was issued under CrR 4.7(b)(2)(vi), which expressly authorized the search. *Id.* at 181-82, 183. The court held that a trial court order authorizing a search *under CrR 4.7(b)(2)(vi)* could function as a court order. *Id.* at 186.

We hold that the *Garcia-Salgado* holding is limited to cases where the trial court's order is authorized by law. Allowing a court order to function as a warrant when there is no independent authority for a seizure would render CrR 2.3 meaningless. Limiting the scope of *Garcia-Salgado* preserves the integrity of CrR 2.3.

Here, the State cites no statute, court rule, or other authority allowing the seizure of a defendant's bank account in these circumstances.[7] Therefore, the seizure was not authorized by law. We hold that *Garcia-Salgado* is inapplicable and that the trial court's order cannot be treated as the functional equivalent of a warrant.[8]

We hold that the trial court's order requiring the credit union to freeze Meza's account was not a warrant and was not the functional equivalent of a warrant that satisfied the warrant requirement under *Garcia-Salgado*. Accordingly, we hold that the trial court erred in ordering the seizure of Meza's credit union account.

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[7] Under RCW 10.105.010(1), money obtained as a result of any felony is "subject to seizure and forfeiture," although "[n]o property may be forfeited under this section until after there has been a superior court conviction of the owner of the property for the felony in connection with which the property was employed, furnished, or acquired." The State did not argue in the trial court or on appeal that RCW 10.105.010(1) authorized the seizure here, so we do not address this statute.

[8] Because of our holding, we do not address whether the trial court's order substantially complied with the requirements of a search warrant under the United States and Washington Constitutions and/or CrR 2.3. However, we note that the trial court's order did not comply with the requirement in CrR 2.3(c) that a warrant be directed to and executed by a peace officer.

We reverse and vacate the trial court's order directing the Twin Star Credit Union to freeze and hold Meza's account.

MAXA, J.

We concur:

BJORGEN, A.C.J.

LEE, J.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

RAFAEL MEZA,

Petitioner.

No. 47315-1-II

ORDER DENYING MOTION FOR RECONSIDERATION

PETITIONER moves for reconsideration of the Court's **December 15, 2015** opinion.

Upon consideration, the Court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj. Bjorgen, Maxa, Sutton

DATED this 27th day of January 2016.

FOR THE COURT:

Bjorgen, A.C.J.
ACTING CHIEF JUDGE

FILED
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DIVISION II
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STATE OF WASHINGTON
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