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IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA

AT KENAI, ALASKA

STATE OF ALASKA)
)
 Plaintiff,)
)
 vs.)
)
 DAVID HAEG,) Case No.: 4MC-S04-024 Cr.
)
 Defendant.)
 _____)

MOTION FOR RETURN OF PROPERTY & TO SUPPRESS EVIDENCE

COMES NOW Defendant, DAVID HAEG, in the above referenced case, and hereby files the following motion for return of property & to suppress evidence in accordance with Alaska Rules of Criminal Procedure Rule No. 37(c):

"A person aggrieved by an unlawful search and seizure may move the court in the judicial district in which the property was seized or the court in which the property may be used for the return of the property and to suppress for use as evidence anything so obtained on the ground that the property was illegally seized."

1. Trooper Gibbens committed intentionally misleading perjury on all search warrant affidavits to obtain all search warrants - stating on the search warrant affidavits that the suspicious sites he was investigating were in Unit 19C - (See Exhibit(s) #1, #5, #8). Yet according to Trooper Gibbens own GPS coordinates & map all of the suspicious sites are located in Unit 19D - the same unit in which the Wolf Control Program was being conducted - & not in Unit 19C as Trooper Gibbens states and in which he states Haeg's lodge is located (See Exhibit(s) #2 & #3). Further evidence of Trooper Gibbens malicious intention to

deceive the magistrate is proved by the fact that during two separate interviews that Trooper Gibbens conducted & taped he was told that the suspicious sites were in Unit 19D & not in Unit 19C (See Exhibit #4). After being told this Trooper Gibbens, while under oath & before a jury, again stated sites he investigated were in Unit 19C. (See Exhibit #4). This proves that Trooper Gibbens intentionally misled not only the magistrate issuing the search warrants but also tried to mislead the jury & magistrate/judge deciding guilt. The Wolf Control Program took place in Unit 19D & even Unit 19A is closer to the sites that Trooper Gibbens had on his map and GPS coordinates for than Unit 19C where my lodge is located. There is no doubt that Gibbens, by stating under penalty of perjury that the sites he found were in Unit 19C, the same unit as Haeg's lodge, was more likely to receive search warrants than if he stated they were not in the same GMU as Haeg's lodge - not even taking into account that there was even a third GMU that was closer to the sites or that the sites were in the same GMU as the Wolf Control Program.

See McLaughlin v. State, 818 P.2d 683, (Ak.,1991). "Search warrant based on inaccurate or incomplete information may be invalidated only when misstatements or omissions that led to its issuance were either intentionally or recklessly made."

Stavenjord v. State, 2003 WL1589519, (Ak.,2003). "In evaluating a defendant's claim that an application for a search warrant included material misstatements or omissions, a non-material omission or misstatement, one on which probable cause does not hinge, requires suppression only when the court finds a deliberate attempt to mislead the magistrate."

U.S. v. Hunt, 496 F.2d 888, C.A.5.Tex.,1974. If affiant intentionally makes false statements to mislead judicial officer on application for search warrant, falsehoods render warrant invalid whether or not statements are material to establishing probable cause.

Lewis v. State, 9 P.3d 1028. (Ak.,2000). "Once defendant has shown that specific statements in affidavit supporting search warrant are false, together with statement of reasons in support of assertion of falsehood, burden then shifts to State to show that statements were not intentionally or recklessly made." "If a false statement in affidavit in support of a search warrant was

intentionally made, then the search warrant is invalidated." "A non-material omission or misstatement in an affidavit in support of search warrant-one on which probable cause does not hinge-requires suppression only when the court finds a deliberate attempt to mislead the magistrate."

Gustafson v. State, 854 P.2d 751, (Ak.,1993). "Prosecutors and police officers applying for a warrant owe a duty of candor to the court; they may neither attempt to mislead the magistrate nor recklessly misrepresent facts material to the magistrate's decision to issue the warrant."

State v. Davenport, 510 P.2d 78, (Ak.,1973). "State & federal constitutional requirement that warrants issue only upon a showing of probable cause contains the implied mandate that the factual representations in the affidavit be truthful."

People v. Reagan, 235 N.W.2d 581, 587 (Mich. S.Ct. 1975). "The gravamen of our holding is that, law enforcement processes are committed to civilized courses of action. When mistakes of significant proportion are made, it is better that the consequences be suffered than that civilized standards be sacrificed." See also the seminal U.S. Supreme Court case Mapp v. Ohio, 367 U.S. 643 (1961) which forced all states to comply with the federal standard.

2. In addition the State failed to give notice & an unconditioned opportunity to contest the State's reasons for seizing the property within days, if not hours - & thus violated Haeg's rights to due process as guaranteed under Alaska & Federal Constitutions.

See F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980) "[W]hen the seized property is used by its owner in earning a livelihood, notice & an unconditioned opportunity to contest the state's reasons for seizing the property must follow the seizure within days, if not hours, to satisfy due process guarantees even where the government interest in the seizure is urgent."; Cleveland Bd. of Educ. V. Loudermill, 470 U.S. 532, 543, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985); State v. F/V Baranof, 677 P.2d 1245; Stypmann v. City & County of San Francisco, 557 F.2d 1338 (9th Cir. 1977); Lee v. Thorton, 538 F.2d 27 (2d Cir.1976); & Waiste v. State, 10 P.3d 1141 (Alaska 2000).

3. Civil Rule 89(n) was adopted to meet the specific holding established in F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980) - establishing that if notice of a hearing or

hearing was not provided within seven (7) business days all property must be returned.

4. All of the equipment & evidence seized in the above case was seized while it was being used to prepare for Haeg's bear-guiding season in which clients arrived in two days and Haeg's family's livelihood is provided almost exclusively by guiding. Because of the loss of this equipment Haeg was unable to service his clients properly - leading to serious financial harm to Haeg's family & himself.

5. Haeg requests a court order to return all evidence & equipment seized from the fruits of all search warrants, including but not limited to: 12 gauge Benelli Shotgun U233343; Ruger .223 Rifle 195-08482 with scope; 6 pairs bunny boots; all paperwork from office; Kodak Camera I2266311; Olympus Camera #987753; Iridium Satellite Phone (Motorola 9500); all snares & traps; Rand McNally Atlas of Alaska & all other maps; ADF&G Permit; all permit applications; all oil; oil samples; all cord/rope; PA-12 (Tail #4011M) Super Cruiser & electronic equipment in plane including 2 David Clark Headsets & panel mounted Garmin GPS 100; all magazines; ammo with casings; pellets; all photos & videos taken; CD-R copy of Haeg's website; CD disk(s); all mini DV video tape; all audio tape; sealing certificates; crime lab report; all lab results; all tail wheel & ski impressions; all parts of all animal carcasses; all skulls; all wolf hides; hair; paper towels; blood & swabs. (See Exhibit(s) #1, #6, #7, #8, #9, & #10)

6. Haeg humbly ask this court to grant this motion for return of property & to suppress evidence or to convene a hearing for sworn testimony upon this matter, which involve violations of my Constitutional Rights.

This motion is supported by the attached Affidavit of Defendant.

RESPECTFULLY SUBMITTED this _____ day of _____,
2006.

Defendant,

David S. Haeg

I HEREBY CERTIFY that a copy of the
foregoing was served on the District
Attorney's Office, in person on

By: _____