

Court of Appeals, State of Michigan

ORDER

People of MI v Ali Shabazz Paul

Docket No. 354754

LC No. 20-000370-01-FH

Thomas C. Cameron
Presiding Judge

Karen M. Fort Hood

Michael J. Riordan
Judges

This Court's September 10, 2020 order is hereby VACATED only to the extent that the order held the application in abeyance.

Pursuant to MCR 7.205(E)(2), and in lieu of granting the application, the trial court's September 9, 2020 orders denying defendant's motion to quash the search warrant and compelling defendant to tender a cell phone to the officer in charge are VACATED, and the matter is REMANDED for reconsideration. Based on defense counsel's beliefs regarding ownership of the cell phone, the trial court concluded that the cell phone belonged to defendant's employer, and for that reason alone, defendant lacked standing to challenge the search warrant. The trial court's analysis was incorrect. The standing inquiry focuses on whether the defendant has a reasonable expectation of privacy in the place or location searched. *People v Brown*, 279 Mich App 116, 130; 755 NW2d 664 (2008). Multiple factors must be considered, only one of which is ownership. *Id.* The fact that a cell phone is owned by the defendant's employer is thus not dispositive of the standing inquiry. See *State v Granville*, 423 SW3d 399, 406 n 17 (Tx Ct App, 2014) (collecting cases holding that an employee may have a reasonable expectation of privacy in an employer-owned cell phone). The trial court also should not have relied solely on counsel's beliefs regarding ownership of the cell phone before making a factual finding regarding ownership of the phone. Further, even if the warrant is not quashed, whether because defendant lacks standing to challenge it or otherwise, the remaining issues raised by defendant must be addressed by the trial court, as those issues exist independently of the question whether the search warrant should be quashed.

On remand, the trial court must first reconsider the question whether defendant has standing to challenge the search warrant, using the correct legal framework, and holding an evidentiary hearing if necessary. If the trial court concludes that defendant does have standing to challenge the search warrant, it shall then decide whether the warrant should be quashed. If the trial court does not quash the search warrant, whether for lack of standing or for other reasons, the court must still address defendant's remaining challenges to complying with the search warrant. In particular, the trial court should examine whether, by producing the cell phone, defendant would be compelled to testify in violation of the Fifth Amendment. See *Fisher v US*, 425 US 291; 96 S Ct 1569; 48 L Ed 2d 39 (1976); *United States v Hubbell*, 530 US 27, 36; 120

S Ct 2037; 147 L Ed 2d 24 (2000). See also *In re Grand Jury Subpoena Duces Tecum Dated March 25, 2011*, 670 F3d 1335, 1345-1346 (CA 11, 2012) (explaining exceptions to the act-of-production doctrine).

This order is to have immediate effect. MCR 7.215(F)(2). We do not retain jurisdiction.



Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

October 6, 2020

Date



Chief Clerk