

VERIFIED MOTION FOR RETURN OF PROPERTY

The Defendant, by counsel, respectfully requests this Court to order the [insert law enforcement agency] to release and return the Defendant's personal property, specifically [insert seized property]. In support of the Motion, the Defendant states the following:

1. On [insert date], the Defendant was arrested for [insert offense(s)], and the [insert law enforcement agency] seized [insert property] from him.
2. This matter was resolved by [PICK ONE- dismissal, acquittal, plea agreement or conviction after trial], and the Defendant's property is no longer necessary as evidence of any crime.
3. I.C. 35-33-5-5(a) provides that "...property seized by any law enforcement agency as a result of an arrest, search warrant, or warrantless search, shall be securely held by the law enforcement agency under the order of the Court trying the cause" until final disposition.
4. I.C. 35-33-5-5(c)(1) states that: "Following final disposition of a cause at the trial level or any other final disposition, . . . [seized] property which may be lawfully possessed shall be returned to its rightful owner, if known."
5. The Defendant is the rightful owner of the property which he can lawfully possess.
6. The State has failed to file a forfeiture complaint within the time limits set forth by I.C. 34-24-1-3.

WHEREFORE, the Defendant, by counsel, respectfully requests this Court to order [insert law enforcement agency] to release and return the Defendant's personal property, specifically [insert seized property] to him, and for all other relief just and proper in the premises.

(Attorney Signature)

VERIFICATION

I swear or affirm under the penalties of perjury that the foregoing representations are true and correct to the best of my knowledge and belief.

(Signature of Defendant)

CASE LAW

Anderson v. State, 468 N.E.2d 569 (Ind. 1984) (denial of Defendant's sworn claim for return of seized property based on prosecutor's unsworn answer, asserting the Defendant was not the rightful owner violated the Defendant's due process rights; the Defendant was entitled to a hearing).

Merlington v. State, 839 N.E.2d 260 (Ind.Ct.App. 2005) (trial court lacked the statutory authority to retain \$641 found on Defendant's person, and used the money to pay court costs and fines following his conviction for possession of methamphetamine with intent to deliver).

Seel v. State, 739 N.E.2d 170 (Ind.Ct.App. 2000) (because I.C. 35-47-2-1 speaks specifically of carrying rather than possessing a handgun, fact that weapons were found in the Defendant's vehicle in rented storage facility is, as matter of law, insufficient to support inference that the Defendant at one time carried or will carry weapons on his person or in vehicle).

State v. Combs, 921 N.E.2d 846 (Ind.Ct.App. 2010) (Court affirmed order that directed State Police to pay fees for towing and storing of Combs' vehicles and ordered towing/storage company to release Combs' vehicles to Combs; moreover, because Madison County Prosecutor appeared for State and State Police and filed forfeiture action on their behalf, documents served on Madison County Prosecutor were properly served on State and State Police).

Tracy v. State, 655 N.E.2d 1232 (Ind.Ct.App. 1995) (money Defendant provided during a controlled buy was not "seized" and thus not subjected to I.C. 35-33-5-5).