

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA : NO. 02-11,528  
: 02,11,533  
:  
:  
vs. : CRIMINAL DIVISION  
:  
CHAD ALLEN KELLY, :  
:  
:

OPINION AND ORDER

On December 20, 2002, the Court held a hearing on Defendant’s Petition for Return of Property in the above-captioned matters. At the time of the hearing, it was stipulated that the underlying criminal charges relating to the \$365.25 and the \$896.00 seized from Defendant had been dismissed at the District Justice hearing and Defendant established entitlement to lawful possession. The Commonwealth offered no evidence to establish the property was contraband. Thus, in accordance with U.S. v Premises Known as 608 Taylor Avenue, Apt. 302, Pittsburgh, PA, 584 F.2d 1297 (3d Cir. Pa. 1978), the Court entered an Order directing the return of the property seized. At the time of the hearing, the Court was unaware that civil forfeiture actions had been filed to Nos. 02-01,440 and 02-01,442 on August 22, 2002.

The Commonwealth now opines they will be able to demonstrate at the civil proceeding that the seized funds are contraband. Since it is arguable that both matters can be considered simultaneously ( See In re: Ten Thousand Six Hundred Eighty Dollars, 728 A.2d 403 (Pa. Commw. 1999)). and since neither the Commonwealth, the Defense nor the Court made any reference to the civil forfeiture case, the Court will stay the Order dated December 23, 2002 to ensure that all parties are aware of which case is at issue.

ORDER

AND NOW, this 24<sup>th</sup> day of January, 2003, the Order dated December 23, 2002, directing return of property, is stayed pending hearing on the civil forfeiture petitions filed by the Commonwealth to Nos. 02-01,440 and 02-01,442. Since the parties appear to be ready for trial on this matter, the Court Scheduling Technician is requested to immediately place this matter on the next available civil list so that any prejudice to Defendant is not exacerbated by the passage of time.

By the Court,

Dudley N. Anderson, Judge

cc: DA (HM)  
Peter Campana, Esq.  
Gary Weber, Esq.  
Hon. Dudley N. Anderson