

“On any motion for return of property, the moving party must first establish entitlement to lawful possession, Rule [588(A)], before any obligation is placed upon the Commonwealth to prove that the property at issue is contraband. Rule [588(B)].” *Commonwealth v. Pomerantz*, 393 Pa.Super. 186, 189, 573 A.2d 1149, 1150-51 (1989). “Where the trial court is not provided with credible evidence as to ownership or entitlement, a motion for return of money should not be granted.” 573 A.2d at 1152, *citing Grossman v. Commissioner of Police*, 318 Pa.Super. 584, 588, 465 A.2d 1007, 1009-10 (1983) (failure of movant to show he is the real owner of money seized).

In the present case, Defendant has not established lawful possession of the contents of the wallet. That the wallet was taken from the Defendant’s person may lead to a common-sense presumption that the wallet itself is his lawful property. The Commonwealth admits however that the wallet itself is not at issue and would agree to return it. More precisely, the dispute revolves around the money found in the wallet. Defendant was found with a controlled substance and drug paraphernalia on his person. The Commonwealth is not bound to concede that the money on Defendant’s person was uninvolved with the contraband found on Defendant and therefore lawfully possessed. Defendant has failed to provide the Court with credible evidence as to Defendant’s lawful ownership or entitlement to the contents of the wallet.

ORDER

AND NOW, this ____ day of April, 2005, after hearing on the Defendant’s Motion to Return Property, and for the reasons set forth above, Defendant’s Motion is hereby DENIED with respect to the contents of Defendant’s wallet. The Commonwealth is

ORDERED and DIRECTED to return the wallet to the extent that it was admitted at the time of the hearing that lawful possession was not at issue.

By the Court,

Nancy L. Butts, Judge

xc: DA (KO)
J. Cleland, Esq.
Honorable Nancy L. Butts
Law Clerk
Gary Weber, Esq.