

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

|                                     |   |                          |
|-------------------------------------|---|--------------------------|
| <b>COMMONWEALTH OF PENNSYLVANIA</b> | : |                          |
|                                     | : |                          |
| <b>v.</b>                           | : | <b>No. 03-11, 219</b>    |
|                                     | : | <b>CRIMINAL DIVISION</b> |
| <b>KEITH W. TONER,</b>              | : |                          |
| <b>Defendant</b>                    | : |                          |

**OPINION AND ORDER**

Before this Honorable Court, is the Defendant’s Motion for Return of Property, initially filed on September 3, 2003. The Defendant contends that, because this Court suppressed the evidence at issue, he is entitled to the return of all non-contraband items illegally seized from his residence. In response, the Commonwealth argues that, unless and until the Defendant can prove ownership of the seized items and evidence that none of the seized items are forfeitable as derivative contraband, he is not entitled to return of the seized items<sup>1</sup>.

In August 2003, this Court issued a warrant for the Pennsylvania State Police to search the Defendant’s residence. After executing the search warrant and seizing numerous items, the Court, in November 2004, granted the Defendant’s Motion to Suppress said evidence after finding that the warrant was constitutionally deficient. The Defendant’s initial Motion to Return Property, filed in September 2003, sought the return of all property seized from his residence in 2003; instantly, the Defendant is only seeking the return of items numbered 3, 4, 6, 8, 9, 15, 20-23, 25-29, 33-40, and 49-51 on the Commonwealth’s inventory of seized property.

Pa.R.Crim.P. No. 588 permits “[a] person aggrieved by a search and seizure, whether or not executed pursuant to a warrant, to move for the return of the property on the ground that he

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<sup>1</sup> At the hearing on the matter, the Commonwealth limited its objection to the return of seized property to items numbered 26-36 and 38, all of which are firearms of varied sorts; the Commonwealth consented to the return of the remaining property sought to be returned (said property consists of \$402.00 cash money, miscellaneous paperwork, a cellular phone, and one firearm).

or she is entitled to lawful possession thereof. At the hearing on the matter, the court may entertain any issue of fact necessary to the decision thereon; if the motion is granted, the property shall be restored unless the court determines that such property is contraband, in which case the court may order the property to be forfeited.”

Instantly, the Defendant did establish that, based on the illegal seizure of the items at issue, the owner of said items is entitled to return of those items; however, the Defendant failed to establish that he in fact owned the majority of the items seized. More specifically, the Defendant failed to offer any evidence that he owned items numbered 26-36 and 38 on the Commonwealth’s inventory of seized property. Because the Defendant failed to meet this burden, the Commonwealth need not establish that the items sought are derivative contraband in order to maintain their objection to the return of said property.

**ORDER**

**AND NOW**, this \_\_\_\_\_ day of May 2006, the Court hereby **ORDERS** and **DIRECTS** as follows:

1. The Defendant’s Motion for Return of Property with respect to items numbered 3-4, 6, 8-9, 15, 20-23, 25, 37, 39-40, and 49-51 on the Commonwealth’s inventory of seized property is hereby **GRANTED**; the Commonwealth is directed to turn over said property within thirty (30) days; and
2. The Defendant’s Motion for Return of Property with respect to items numbered 26-36 and 38 on the Commonwealth’s inventory of seized property is hereby **DENIED**.

By the Court,

Nancy L. Butts, Judge