

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
v.	:	CR-253-2008
	:	CRIMINAL DIVISION
NATHAN CROWDER,	:	
Defendant	:	

OPINION AND ORDER

On October 22, 2008, Defendant filed a Motion for Return of Property. A Hearing on the Motion was held on June 18, 2008 and October 12, 2009.

Background

At the Hearing, the Defendant testified that on December 11, 2007, he was stopped by a police officer from the Williamsport Bureau of Police. The Defendant was then searched whereupon the police officer found \$569 in cash in his front pants pocket and 41 packets of crack cocaine in another pocket. The police seized both the cocaine and the currency.

The Defendant testified that he told the police when he was interrogated following his arrest that the money came from his construction job with Michael Bodner (Bodner). The Defendant explained at the Hearing that he would work for Bodner here and there, Bodner would always pay him in cash, and the amount depended on the type of job. Defendant testified that he had just gotten paid \$650 the week before his arrest. He also explained that the money he made from selling cocaine was used to purchase cocaine and that this money was strictly from his work with Bodner.

Discussion

Under Rule 588 of the Pennsylvania Rules of Criminal Procedure,

(A) A person aggrieved by a search and seizure, whether or not executed pursuant to a warrant, may move for the return of the property on the ground that he or she is entitled to lawful possession thereof. . . .

(B) The judge hearing such motion shall receive evidence on any issue of fact necessary to the decision thereon.”

According to Pennsylvania Courts, “the moving party on a motion for return of property has the burden of proving ownership or lawful possession of the item, and the burden then shifts to the Commonwealth to prove, by a preponderance, that the property is contraband.” Commonwealth v. Howard, 713 A.2d 89, 92 (Pa. 1998). The Trial Court is to “judge the credibility of the witnesses and weigh the testimony . . .” when determining ownership. Commonwealth v. Younge, 667 A.2d 739, 742 (Pa. Super. Ct. 1995).

In cases “where the property at issue is currency and the Commonwealth does not dispute that it was taken from the petitioner's possession, the petitioner need only allege that the money belongs to him.” Commonwealth v. Fontanez, 739 A.2d 152, 154 (Pa. 1999). See also Younge, 667 A.2d at 741. Further, the Superior Court in Younge stated that “In the few cases in which lawful possession or ownership of seized cash was at issue, invariably along with the contraband status of the money, the petitioner's right to lawful possession or ownership was either presumed, or at best, cursorily discussed. “ 667 A.2d at 741.

The Court finds that the Defendant proved that he was the owner or in lawful possession of the money which was seized from his person. The evidence shows that the money was taken from the Defendant's person and the Defendant alleged that the money belonged to him. The Court finds that Defendant's testimony that he was working for Bodner credible; not only did the Defendant allege that he worked for Bodner at the Return of Property Hearing, he had told the

police after his arrest that the money was earned while working for Bodner. As the Commonwealth has failed to refute the Defendant's testimony by the preponderance of the evidence, the Defendant is entitled to return of his money.

ORDER

AND NOW, this ____ day of October, 2009, after hearing and argument, it is ORDERED and DIRECTED that the Defendant's Motion for Return of Property is hereby GRANTED. The Williamsport Bureau of Police is hereby ORDERED and DIRECTED to return to the above-captioned Defendant the \$569.00 that was seized at the time of his arrest.

By the Court,

Nancy L. Butts, Judge

xc: DA (KO)
Edward J. Rymza, Esq.
Jody A. Miller
WBP