

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	DOCKET NO. 11-00,856
	:	
vs.	:	CIVIL ACTION
	:	
ONE BLACK CHEVROLET CORVETTE	:	FORFEITURE
VIN # 161YY26XYX65100132 and	:	
PA REGISTRATION H64525H	:	
REPUTED OWNER: GREGORY BARTO.	:	

OPINION AND ORDER

The above-captioned matter comes before the Court on the Commonwealth's Petition for Forfeiture and Condemnation, filed pursuant to the Crimes Code, 18 Pa. C.S. §§ 3121 and 3141-3144. A hearing was held on April 29, 2013. The Court now enters the following findings of fact and conclusions of law.

I. Findings of Fact

Mr. Barto's Rape Conviction

1. On May 7, 2007, Gregory Barto, in his capacity as sole proprietor of Greg Barto Motors, located at 2100 Route 405, Muncy, Lycoming County, Pennsylvania, purchased a black Chevrolet Corvette (the vehicle), bearing a vehicle identification number of 161YY26XYX65100132 and Pennsylvania registration number of H64525H, from Valley Chevrolet, located at 601 Kidder Street, Wilkes Barre, Pennsylvania. *See Ans.*, ¶ 5-6. *See also* Cmwlt. Ex. 1-3.
2. At the time Mr. Barto purchased the vehicle, he was married to Amber Barto. *See Ans.*, 5 (providing that Mr. Barto used marital funds to purchase the vehicle).
3. On June 7, 2008, the Bartos drove the vehicle to a graduation party at 215 Chestnut Street, Muncy, Lycoming County, Pennsylvania. *See* Cmwlt. Ex. 9.

4. This graduation party occurred at the home of Alexander Lichter. Alexander Lichter testified that the vehicle was indeed the vehicle that Mr. Barto drove to the graduation party because Mr. Lichter remembered the specific model of the car. The Court finds Mr. Lichter's testimony to be credible.
5. During the course of the graduation party, Mr. Barto took S.H. for a ride in the vehicle.
6. During the course of this ride, Mr. Barto took S.H. to Greg Barto Motors, his automobile shop and the trailer behind his automobile shop, located at 2100 and 2134 Route 405, Muncy, Lycoming County, Pennsylvania, respectively. *See* Cmwlt. Ex. 9.
7. The distance from the graduation party to the trailer behind Greg Barto Motors is approximately 2.3 miles. Cmwlt. Ex. 18.
8. Mr. Barto and S.H. were absent from the graduation party for approximately forty-five (45) minutes to one (1) hour.
9. Lycoming County Detective Alberto E. Diaz Sr. testified that it took him five (5) minutes to drive from the location of the graduation party to Greg Barto Motors; Detective Diaz estimated that it would take him twenty (20) to thirty (30) minutes to walk the route.
10. The Commonwealth charged Mr. Barto with one count of Rape, 18 Pa. C.S. § 3121(a)(1), for his dealings with S.H. on June 7, 2008, while on the Greg Barto Motors premises; the Commonwealth filed this criminal information at CR-896-2009. Cmwlt. Ex. 4, 6.
11. On May 7, 2010, a jury convicted Mr. Barto of raping S.H. Cmwlt. Ex. 5. *See also* Cmwlt. Ex. 9.
12. On September 30, 2010, the Court sentenced Mr. Barto at CR-896-2009 for Rape. *See* Cmwlt. Ex. 8, 60-61: 21-4.

13. Our Superior Court upheld Mr. Barto's conviction and sentence. Cmwth. Ex. 7, 10. *See Commonwealth v. Barto*, 32 A.3d 837 (Pa. Super. Ct. 2011).
14. Our Supreme Court denied Mr. Barto's petition for allowance of appeal on January 25, 2012. Cmwth. Ex. 11. *See Commonwealth v. Barto*, 32 A.2d 822 (Pa. 2012).
15. As a result of Mr. Barto's conviction at CR-896-2009 and pursuant to 18 Pa. C.S. §§ 9795.1-9795.2, he must register with the Pennsylvania State Police for the rest of his life.

Ms. Barto's Sexual Abuse Conviction

16. Ms. Barto *was not charged* in reference to the actions taken by Mr. Barto against S.H. on June 7, 2008 while at Greg Barto Motors.
17. However, on May 7, 2010, a jury convicted Ms. Barto of two (2) counts of Sexual Abuse of Children, 18 Pa. C.S. § 6312, at CR-845-2009. *See* Cmwth. Ans. to Intervene, Ex. 1.
18. As a result of Ms. Barto's conviction at CR-845-2009 and pursuant to 18 Pa. C.S. §§ 9795.1-9795.2, she must register with the Pennsylvania State Police for a period of ten (10) years.
19. A divorce action is pending between the Bartos at Lycoming County Docket No. 11-20,345. Pet. to Intervene, ¶ 2.

Pending Forfeiture Action

20. Pursuant to 18 Pa. C.S. §§ 3141-42, the Commonwealth seized the vehicle on May 20, 2011. *See* Process for Seizure.
21. At the time of the seizure, the vehicle's title listed its owner as Valley Chevrolet. Cmwth. Ex. 2.
22. Despite the title owner of the vehicle being listed as Valley Chevrolet, at the time of the seizure, Mr. Barto owned the vehicle. Cmwth. Ex. 13. *See* Ans., ¶ 6 ("The vehicle is

still titled in the name of Valley Chevrolet but [Mr. Barto] paid the full purchase price for the vehicle.”).

23. The Commonwealth filed its Petition for Forfeiture and Condemnation of the vehicle on May 23, 2011. Cmwlth. Ex. 12.
24. On September 6, 2011, at the time scheduled for an oral argument on Ms. Barto’s Petition to Intervene, Ms. Barto’s then-counsel, Ms. Melody Protasio, withdrew Ms. Barto’s petition to intervene. The Court memorialized this withdraw by order dated September 6, 2011.
25. By order dated March 14, 2012, the Court reminded the parties that Ms. Barto was precluded from contesting the forfeiture in the above-captioned matter because she withdrew her petition to intervene.
26. On April 29, 2013, the Court held a non-jury trial in the above-captioned matter, pursuant to 18 Pa. C.S. § 3144 and 42 Pa. C.S. § 6802. Attorney Stewart represented the Commonwealth and Attorney James Protasio represented Mr. Barto. Mr. Barto appeared through the use of the Court’s two-way video conferencing system from SCI Rockview.
27. The Court entertained Ms. Barto’s telephonic testimony from SCI Cambridge Springs.
28. At no time during Ms. Barto’s testimony did she allege to have an interest in the vehicle.

II. Conclusions of Law

1. This matter is governed by the Crimes Code, 18 Pa. C.S. §§ 3141-44.
2. Section 3141 of the Crimes Code provides:

[a] person:

- (1) convicted under *section 3121 (relating to rape)*...; or
- (2) required to register with the Pennsylvania State Police under 42 Pa. C.S. § 9795.2 (*relating to registration procedures and applicability*);

may be required to forfeit property rights in any property or assets used to implement or facilitate commission of the crime or crimes of which the person has been convicted. Such property may include, but is not limited to, a computer or computers, telephone equipment, firearms, licit or illicit prescription drugs or controlled substances, *a motor vehicle* or such other property or assets as determined by the court of common pleas to have facilitated the person's criminal misconduct.

18 Pa. C.S. § 3141 (emphasis added).

3. In any forfeiture under the Act, the Commonwealth bears the initial burden of proof. *Commonwealth v. \$259.00 Cash U.S. Currency*, 860 A.2d 228, 231 (Pa. Cmwlth. Ct. 2004) (en banc). Pursuant to the statute, the Commonwealth must “produce evidence that the property in question was unlawfully used, possessed or otherwise subject to forfeiture....” 42 Pa. C.S. § 6802(j). If the Commonwealth produces this evidence, the burden shifts to the reputed owner to establish that he owns the property, that the property was lawfully acquired by him, and that he did not use the property unlawfully. *Id.*
4. Mr. Barto is a person who was convicted of Rape pursuant to 18 Pa. C.S. § 3121. This conviction of rape pertained to the actions taken by Mr. Barto on June 7, 2008, against S.H.
5. Mr. Barto used the vehicle to facilitate the commission of this rape. The Court finds that through the use of the vehicle, Mr. Barto was able to get S.H. alone at his business, approximately 2.3 miles away from the graduation party. By using the vehicle to get S.H. away from the graduation party, Mr. Barto was afforded the opportunity to rape S.H.
6. Pursuant to the Divorce Code, 23 Pa. C.S. §§ 3101-3904, marital property is defined as “all property acquired by either party during the marriage....” 23 Pa. C.S. § 3501(a).
7. Section 3501 of the Divorce Code provides that a presumption exists that:

[a]ll real or personal property acquired by either [husband or wife] during the marriage is presumed to be marital property regardless of whether title is held individually or by the parties in some form of co-ownership such as joint tenancy, tenancy in common or tenancy by the entirety. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection (a).

23 Pa. C.S. § 3501(b).

8. Subsection (a) of Section 3501 of the Divorce Code outlines property that is excluded from “marital property,” including property acquired prior to marriage, property excluded by a valid pre or antenuptial agreement, property acquired by gift, property acquired after final separation, property that was disposed of, in good faith, prior to the date of separation, property to the extent it was mortgaged, and any payment received as a result of a settlement. *See* 23 Pa. C.S. § 3501(a).
9. The vehicle is marital property because it was purchased by Mr. Barto during the course of his marriage to Ms. Barto.
10. Pa. R. Crim. P. 588 provides the procedure for the return of seized property; specifically, the rule states:

(A) A person aggrieved by a search and seizure, whether or not executed pursuant to a warrant, may move for the return of property on the ground that he or she is entitled to lawful possession thereof. Such motion shall be filed in the court of common pleas for the judicial district where the property was seized.

(B) The judge hearing such motion shall receive evidence on any issue of fact necessary for 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.

* * * * *

Id.

11. Ms. Barto did not file a motion for return of property pursuant to Pa. R. Crim. P. 588.

12. Ms. Barto waived her interest in the vehicle by withdrawing her petition to intervene in the above-captioned matter.

13. Mr. Barto does not have standing to raise Ms. Barto's claimed interest in the vehicle that she herself, after conversations with independent counsel, waived.

III. Discussion

The Court finds that the forfeiture of the black Chevrolet Corvette seized from Mr. Barto is justified. The Commonwealth provided evidence that Mr. Barto was convicted and sentenced for raping S.H. on June 7, 2008. The Commonwealth also provided evidence that Mr. Barto used the vehicle to facilitate the commission of the rape; specifically, the Commonwealth provided evidence that through the use of the vehicle Mr. Barto was able to get S.H. approximately 2.3 miles away from the graduation party and alone on his business premises. While Mr. Barto was alone with S.H. on this premises, he raped her. After raping S.H., he drove S.H. back to the graduation party in the vehicle.

Mr. Barto's argument against the Commonwealth's forfeiture arises out of the Bartos' marriage. Specifically, Mr. Barto argues that the Commonwealth's attempted forfeiture is improper because the vehicle is marital property. Mr. Barto argues that his wife has an interest in the property, and, since she was not convicted of being an accomplice or conspirator in the June 7, 2008 rape, the Commonwealth cannot forfeit the vehicle because it legally belongs to Ms. Barto as marital property. The Court agrees that the vehicle is marital property. However, the Court finds that Ms. Barto waived her claim to the vehicle, after conferring with her own independent counsel. The Court finds that it is improper for Mr. Barto to raise Ms. Barto's claim

in an attempt to overcome the forfeiture proceeding against him when Ms. Barto waived her interest in the vehicle in the same forfeiture proceeding.

The only case that the Court found to be partially instructive in the instant matter is *In Re: Firearms, Eleven*, 922 A.2d 906 (Pa. Super. Ct. 2007), *appeal denied*, 932 A.2d 1289 (Pa. 2007). In that case, the police seized eleven (11) firearms from the home of Mr. and Ms. McCrae. *Id.* at 908. The police executed a search warrant of the McCrae residence after they received information that Mr. McCrae, who was prohibited under 18 Pa. C.S. § 6105 from possessing firearms, was hunting with a firearm. *Id.* In the forfeiture proceeding related to that seizure, Mr. McCrae denied that his firearms were subject to forfeiture and requested to designate a third party to receive the firearms; additionally, Mr. McCrae argued that his wife also possessed the guns because they were located within the marital home. *Id.* at 908-09. In addition to Mr. McCrae's response to the Commonwealth's forfeiture petition, Ms. McCrae herself filed her own motion for the return of the firearms. *Id.* at 909. *See* Pa. R. Crim. P. 588. After a hearing, the trial court held that forfeiture was appropriate on only the gun that was used by Mr. McCrae to commit the gaming violation; the rest of the guns were returned to Ms. McCrae for her disposal. *Id.*

On appeal, our Superior Court had to determine whether the trial court properly granted Ms. McCrae's petition for return of the seized firearms. *Id.* at 910. The Court found that Ms. McCrae's petition was improperly granted. *Id.* at 912. Citing to Pa. R. Crim. P. 588, the Court provided:

a prerequisite for seeking the return of property is an ownership interest by the person who files the petition. Case law interpreting this rule mandates that in order to seek return of an item seized by the Commonwealth, the petitioner must make a preliminary showing that the property belongs to him or her.... On any

motion for return of property, the moving party must first establish entitlement to lawful possession, Rule 324(a) [now Rule 588(A)], before any obligation is placed on the Commonwealth to prove that the property at issue is contraband.... 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.

Id. at 912 (citations omitted). Based upon that standard, the Court found that Ms. McCrea did not make a facial showing that she owned the guns, either solely or jointly with her husband. *Id.* at 913.

The instant matter is distinguishable from the McCrae forfeiture matter. In this matter, there is no wife claiming ownership interest in the forfeited property. There is no motion for return of property before the Court. Indeed, Ms. Barto filed a petition to intervene, upon advice of independent counsel, and then subsequently withdrew that petition, upon advice of independent counsel. Also, the Court heard testimony from Ms. Barto during the non-jury trial; at no time during Ms. Barto's testimony did she raise the claim that she had an ownership interest in the property. The only defense that Mr. Barto raised to the forfeiture was his wife's partial interest in the vehicle, an interest that he lacks standing to raise.

Pa. R. Crim. P. 588 specifically provides that one seeking the return of seized property must establish an ownership interest to that property. In this matter, Ms. Barto is not seeking the return of the seized vehicle nor has *she* established her ownership interest in the vehicle. The Court finds that it is improper for Mr. Barto to raise Ms. Barto's ownership interest in the property as a means to thwart the instant forfeiture. Ms. Barto was afforded multiple opportunities to raise her interest in the vehicle and she consciously waived this interest after conferring with independent counsel. The Court will abide by Ms. Barto's decision.

The Court enters the following Order.

ORDER

AND NOW, this 6th day of May, 2013, for the reasons stated above and pursuant to the Crimes Code, 18 Pa. C.S. §§ 3141-44, it is hereby ORDERED and DIRECTED that the Commonwealth's Petition for Forfeiture is GRANTED. One black Chevrolet Corvette bearing the VIN 161YY26XYX65100132 and Pennsylvania registration number H64525H is adjudged FORFEITED to the Commonwealth to be used as prescribed by law.

BY THE COURT,

Date

Richard A. Gray, J.

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