

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

COMMONWEALTH OF PENNSYLVANIA	:
	: CRIMINAL DIVISION
vs.	:
	:
JHALIL KIYAM MOORE,	: No. CR-488-2011
Defendant	:

OPINION AND ORDER

Background

Mr. Moore filed a Motion for Return of Property Pursuant to Rule 558 on March 26th, 2013. The Motion listed \$2,467.00 cash and two cell phones as the property seized. A hearing on the Motion was held on August 29th, 2013. At the hearing, Officer Jason Snyder testified regarding the incidents related to the arrest of Jhalil Kiyam Moore. The Attorney for the Commonwealth raised the issue of Forfeiture pursuant to the Controlled Substances Forfeiture Act, 42 Pa. C. S.A. 6801 et seq. during closing arguments. The Commonwealth did not object to the return of the two cell phones.

Findings of Fact

On March 17th, 2011, Officer Snyder, as a member of the Williamsport Police Department Drug Task Force approached an address to execute a search warrant. Upon his approach of the residence, two males fled the scene. Officers pursued the men as they resembled the subject of the search warrant. Mr. Moore was apprehended by the police.

Officer Snyder testified to drugs being located along Mr. Moore's flight path. The drugs were identified as 11.4 grams of cocaine. When Mr. Moore was taken into custody, Officers found \$2,412.00 in his right front pocket and \$55.00 in his left front pocket. Additionally, Officers found baggies normally used for the packaging of narcotics in Mr. Moore's sweatshirt pocket. Officers also found two cell phones. Mr. Moore was properly Mirandized at the Williamsport Police headquarters on March 17, 2011. At that time, Mr. Moore provided Officer Snyder with basic biographical information. Mr. Moore reported he was unemployed. Mr. Moore told Officer Snyder the packaging materials were for his button collection. Mr. Moore explained to the officer that the money he had on his person was for his rent. He also told Officer Snyder the money was from mother or grandmother.

Jahlil K. Moore entered a guilty plea to Possession with Intent to Deliver on March 30th, 2012.

Discussion

Under Rule 588 of the Pennsylvania Rule 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. Such motion shall be filed in the court of common pleas for the judicial district in which the property was seized.

(B) The judge hearing such motion shall receive evidence on 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.

“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 weight the testimony...” when determining ownership.

Commonwealth v. Younge, 667 A.2d 739, 742 (Pa. Super. Ct. 1995).

“Two distinct classifications of contraband have been developed: contraband per se, and derivative contraband. Contraband per se is property the mere possession of which is unlawful. . . . Heroin and 'moonshine' whiskey are examples of contraband per se. Derivative contraband is property innocent by itself, but used in the perpetration of an unlawful act. An example of derivative contraband is a truck used to transport illicit goods.” *Commonwealth v. Howard*, 713 A.2d 89, 92 (Pa. 1998).

In case “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).

Mr. Moore has met his initial burden of proving ownership of the property. Mr. Moore alleged ownership of the \$2,467.00 through his verified Motion for Return of Property. The burden therefore shifts to the Commonwealth to prove such property is contraband. In the case of money, if in the form of cash, the Commonwealth must assert that such money is derivative contraband.

At the time Mr. Moore was arrested he did not agree with the Officer’s assumption that the packaging materials were meant for the sale of the cocaine found along his flight path. Mr. Moore reported the packaging materials were for his button collection. Mr. Moore later plead guilty to possession with the intent to deliver. Mr. Moore did not report that he had any employment or any other source of income to explain the substantial amount of cash

in his pocket. The testimony of Officer Snyder, that Mr. Moore changed his explanation for the purpose of the cash for rent or from his mother or grandmother, was credible. The Commonwealth has met its burden by a preponderance of the evidence that the cash held by Mr. Moore at the time of his arrest was derivative contraband. Mr. Moore admitted guilt to possession with intent to deliver at the time the money was found on his person. Additionally, packaging materials used for the sale of drugs were found on his person during the same incident where the police located the cocaine and money. The money shall not be returned to Mr. Moore and should be forfeited. The cell phones should be returned to Mr. Moore.

ORDER

AND NOW, this _____ day of September, 2013, after hearing the Defendant's Motion to Return Property, and for the reasons set forth above, Defendant's Motion is hereby DENIED with respect to the \$2,467.00. The Commonwealth is ORDERED and DIRECTED to return the two cell phones.

By The Court,

Joy Reynolds McCoy, Judge