

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-1571-2013
 :
 DARNELL KIRKLAND, :
 Defendant : **Petition for Return of Property**

OPINION AND ORDER

By Information filed on October 18, 2013, Defendant was charged with Receiving Stolen Property. Specifically, Defendant was accused of receiving an Apple Macbook Pro Computer knowing or believing that it had probably been stolen with no intent to restore such to the computer's alleged owner, Jason Koch. The value of the computer was alleged to be \$1,800.00.

Defendant denied any criminal culpability in connection with his acquisition of the computer. Ultimately, the Commonwealth nol prossed the charges. The Court entered an Order on June 5, 2014.

On July 7, 2014, Mr. Kirkland filed a Petition for Return of Property. In connection with the initial charges, the Williamsport Bureau of Police seized the computer from Mr. Kirkland.

A hearing on Mr. Kirkland's Petition for Return of the computer was held before the Court on August 19, 2014.

Mr. Kirkland testified that he works as a DJ and uses computers to download and play music. He testified that in December of 2011, he purchased the computer from a

Mr. Williams for the price of \$200.00. Admitted in evidence was a written receipt confirming the purchase and the purchase price.

Concerned that the \$200.00 price for the computer was low, he inquired from Mr. Williams as to who he purchased it from and whether it was stolen. Mr. Williams assured Mr. Kirkland that it was not stolen and that he in fact purchased it from Jason Koch.

A few days after the computer was purchased by Mr. Kirkland from Mr. Williams, Mr. Kirkland discovered that he could not access the computer because it was password protected. Accordingly, he obtained Mr. Koch's telephone number from Mr. Williams and called Mr. Koch. Mr. Koch provided the password to Mr. Kirkland.

Subsequently, Mr. Koch notified police that the computer was stolen. The charges were brought against Mr. Kirkland.

Mr. Kirkland happened to see Mr. Koch at a body shop/garage where Mr. Koch worked. He confronted Mr. Koch about "lying" to the police. Mr. Koch admitted that he lied, that he sold the computer to Mr. Williams to support his then heroin habit, and that he did not want the police to file false report charges against him. Mr. Koch assured Mr. Kirkland, however, that he would take care of the matter and tell the police the truth.

On a later date, Mr. Kirkland again saw Mr. Koch. Mr. Koch made it a point to speak with Mr. Kirkland. He again explained that he told the police that it was stolen because he wanted to obtain reimbursement. He had sold it to support his drug habit. He did not want to tell the police that he lied because he was on probation, did not want to get new charges and did not want to go to jail. Unfortunately, despite Mr. Koch's prior assurance that

he would take care of the matter, he didn't.

Mr. Koch testified on behalf of the Commonwealth. He testified that prior to attending a five to seven day drug detox at White Deer Run in Allenwood, he took the computer and some related items, and stored them in his attic. A few days after he returned from detox, he noticed that the items were missing and he contacted the police.

He testified that he purchased the computer for a price of \$3,200.00. Apparently, the purchase price was included in his tuition for school and he was repaying his tuition loan which included repayment for the computer. He denied that the computer was password protected but it did have what he described as "low jack tracking" software which identified the location of the computer.

In describing how the computer must have been stolen, he indicated that the attic was a shared attic with the other residents in the double house where he resided with his girlfriend and their son. He suspected that someone from the other house went into the attic and then stole the computer and related items.

Mr. Koch admitted that he went to detox because of a heroin habit. He described his heroin habit, however, as an on and off addiction. He indicated that he used one or two bags a week but that he went to detox because he was "tired of using" and that if he "stopped using" he would "feel sick." He indicated that he did not need to sell any of his property to support his habit.

The Court finds the testimony of Mr. Kirkland credible and the testimony of Mr. Koch not credible. Mr. Kirkland's testimony made sense. It was consistent. As well, his

demeanor was such that it supported his credibility. On the other hand, Mr. Koch's testimony made no sense whatsoever. His testimony was fraught with both internal and external inconsistencies. For example, in this Court's vast experience dealing with substance abusers, one is not an on and off again heroin addict. The Court finds it incredible that he was only using one or two bags a week yet when he stopped he became "dope sick."

Moreover, the Court finds it incredible that Mr. Williams would have apparently entered the neighbor's home, went to the attic and then steal the items without being seen. Moreover, it makes no sense that Mr. Williams would just steal those items and not other items. Curiously, Mr. Koch conceded that he never saw Mr. Williams or Mr. Kirkland with his neighbor.

Finally, Mr. Koch's explanation, that when he spoke with Mr. Kirkland he was just trying to avoid any conflict, is entirely incredible. In essence, he stated that he was conceding that he lied so as to avoid any conflict in his work place. There was no reason to concede anything under the circumstances.

The real scenario is clear to the Court. Mr. Koch was actively involved in a heroin addiction such that he needed to support such by selling items of personal property. His addiction was such that if he stopped using he became sick and ultimately ended up at a five to seven day detox. It is very common for heroin addicts to sell items of personal property at a much lower value than what they are worth in order to support their habit. Mr. Koch sold the computer to Mr. Williams as admitted by him to Mr. Kirkland. If Mr. Koch had not sold it, there is no reason for him to have given the password to Mr. Kirkland. Once

Mr. Koch returned from detox, he continued in his manipulative behaviors by lying to the police about the items being stolen. He conceded such to Mr. Kirkland.

The Defendant, Mr. Kirkland, is the rightful owner of the computer. Mr. Koch sold it to Mr. Williams and Mr. Williams sold it to Mr. Kirkland. There was no credible evidence to support any conclusion otherwise. Further, there is no credible evidence to support any argument that the Commonwealth is entitled to keep the computer, such as it being contraband or evidence of a crime.

Remarkably, following this Court's oral decision as provided to the parties following the hearing, the Commonwealth indicated that the Williamsport Bureau of Police no longer have the computer in that they returned it to Mr. Koch. Mr. Koch, who was still under oath, indicated that the computer was given by him to his girlfriend and that she sold it. Again, the Court has little faith in the credibility of Mr. Koch.

Furthermore, under the circumstances, the Court does not know what remedies if any are available to Mr. Kirkland. The Court will, however, enter an Order consistent with the law. Mr. Kirkland may need to consult with counsel in light of the Order.

ORDER

AND NOW, this 2nd day of September 2014, following a hearing and argument, the Court GRANTS the Defendant's Motion for Return of Property. The Williamsport Bureau of Police and Commonwealth are ORDERED to Return to Mr. Kirkland the computer which was the subject of the charges previously brought against him. To the extent the Williamsport Bureau of Police and/or Commonwealth returned the

computer to Mr. Koch, they are DIRECTED to retrieve the computer. Since Mr. Koch in essence stole the computer from Mr. Kirkland by filing a false police report, the police are DIRECTED to utilize the “lowjack tracking software” to locate the computer. They are authorized to seize the computer and return it to Mr. Kirkland.

By The Court,

Marc F. Lovecchio, Judge

cc: DA (MK)
PD (JL)
Williamsport Bureau of Police
Gary Weber (Lycoming Reporter)
Work File