

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	<b>CP-41-CR-1221-2020</b>
<b>v.</b>	:	
	:	
<b>MATTHEW DORSEY,</b>	:	<b>OMNIBUS MOTION</b>
<b>Defendant</b>	:	

**OPINION AND ORDER**

Matthew Dorsey (Defendant) was charged with Possession of Firearm<sup>1</sup>, Firearms not to be Carried without a License<sup>2</sup>, Marijuana—Small Amount<sup>3</sup>, Possession of Drug Paraphernalia<sup>4</sup>, Driving under the Influence: General Impairment, First Offense<sup>5</sup>, and several additional related summary offenses. The charges arise from a traffic stop conducted on Defendant's car. Defendant filed a Motion to Return Property on December 8, 2020. A hearing on the motion was scheduled for April 1, 2021. However, due to a miscommunication with counsel, the hearing was not held and the Court issued an order. According to this Court's order issued on April 1, instead of rescheduling the hearing, the parties agreed to stipulate to the facts as set forth in the affidavit of probable cause and to file briefs on the motion. Defendant filed his brief on April 30, 2021 and the Attorney General's Office filed their brief on May 27, 2021. In his motion, Defendant requests the return of approximately 9,520.00 dollars in U.S. currency seized from the Defendant.

**Background and Testimony**

On September 7, 2020, Defendant was pulled over in the city of Williamsport by Corporal Larue Stelene (Stelene) of the Pennsylvania State Police for alleged violations of the

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<sup>1</sup> 18 Pa.C.S. § 6105(a)(1).

<sup>2</sup> 18 Pa.C.S. § 6106(a)(1).

<sup>3</sup> 35 Pa.C.S. § 780-113(a)(31).

<sup>4</sup> 35 Pa.C.S. § 780-113(a)(32).

<sup>5</sup> 75 Pa.C.S. § 3802(a)(1).

Motor Vehicle Code. In addition to Defendant, a male passenger was sitting in the front seat and a female passenger was in the left rear seat. During the course of the stop, Stelene smelled alcohol and marijuana and could see that Defendant had items bulging out of his pants pockets. Stelene could see cigars sticking out of the pockets and Defendant was slurring his speech and had bloodshot eyes. Stelene asked Defendant to step out of his vehicle in order to perform field sobriety tests. Defendant consented to a pat down search for weapons, during which Stelene felt a bulge in Defendant's left front pocket that he believed to be paper currency. Defendant removed the item from his pocket and it was ninety-five (95) one hundred (100) dollar bills and one (1) twenty (20) dollar bill totaling \$9,520. Stelene believed Defendant to be under the influence following his performance during the tests and placed Defendant under arrest. Defendant refused to take a portable breath test and began repeatedly yelling to the passengers to make sure they got his belongings from his hotel room.

The other troopers on scene removed the other two (2) passengers from the car prior to conducting a probable cause search of the vehicle. The female passenger told Stelene that the Defendant had placed a gun in her purse. Stelene retrieved the gun which was a 9mm Glock pistol containing two (2) different serial numbers and had an extended magazine holding 32 rounds of 9mm ammunition. The search of Defendant's car yielded alcoholic drinks, cigars matching those Stelene could see in Defendant's pocket, Medibles THC Sour Patch Gummies, and more ammunition. A search warrant was obtained for Defendant's hotel room at the Genetti Hotel in Williamsport following his arrest. This hotel room was located less than a mile away from Defendant's residence. During the course of their search, law enforcement found and seized several items, including but not limited to bulk currency in the amount of \$79,960 in U.S. currency. The Commonwealth has not filed a forfeiture action and neither the currency

seized incident to Defendant's arrest nor the currency seized from Defendant's hotel room have been returned to Defendant.

## **Discussion**

According to the Pennsylvania Rules of Criminal Procedure, "[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." Pa.R.Crim.P. 588(A). 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. Pa.R.Crim.P. 588(B). The initial burden of proof is on the movant to establish that they are entitled to the property. Barren v. Commonwealth, 74 A.3d 250, 255 (Pa. Super. 2013). If the moving party is able to accomplish this, "the burden shifts to the Commonwealth to prove by a preponderance of the evidence that the property is contraband." Id. The Commonwealth "must make out more than simply demonstrating that the property was in the possession of someone who has engaged in criminal conduct. It must establish a specific nexus between the property and the criminal activity." Singleton v. Johnson, 929 A.2d 1224, 1227 (Pa. Cmwlth. 2007). If the Commonwealth sustains that burden, the burden of proof shifts once again to the movant to "disprove the Commonwealth's evidence or establish statutory defenses to avoid forfeiture." Id.

Defendant argues that if the property in question to be returned 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* Commonwealth v. Johnson, 931 A.2d 781 (Pa. Cmwlth. 2007) (holding that when the property in question is currency, the movant's initial burden is easier to meet). Defendant also argues that the "fungible nature of currency necessarily raises

an inference that the possessor is the lawful owner, absent proof of theft.” Commonwealth v. Younge, 667 A.2d 739, 746 (Pa. Super. 1995). The Defendant submits in his motion and brief that he is the true and lawful owner and believes this assertion is supported because the money was taken from his pocket at the scene of the traffic stop. Defendant also asserts in his brief that he operates an online business selling, “among other things, women’s perfumes and the like.” Defense Brief, at 8. As a result, Defendant believes he has met his initial burden. After reviewing the relevant case law, the Court finds that Defendant has not met his initial burden of alleging the seized money is rightfully his. The parties have agreed to stipulate to the facts as articulated in the affidavit of probable cause. Said affidavit includes no mention of Defendant’s assertion that the money belongs to him or any such evidence of Defendant’s online business. Though there are statements in the motion and Defendant’s brief, these statements have not been stipulated to and are not part of the record the Court was instructed to consider in this matter. Defendant relies on the lower burden for the movant when the property in question is money that a mere assertion is enough. However, for a mere assertion of ownership to be enough, the Commonwealth must also not dispute the money was taken from the movant’s possession. Nowhere in the affidavit or the brief does the Commonwealth concede that the money belongs to Defendant.

Courts that have examined the nature of the petitioner’s initial burden of establishing entitlement to lawful possession have held that the petitioner cannot rest on a bare allegation of lawful possession in the motion for return of property. Our recent decision in Commonwealth v. Johnson, 931 A.2d 781 (Pa. Cmwlth. 2007), holds that the criminal rules and the case law require that the petitioner allege under oath that he is entitled to lawful possession of the property in question. In Johnson, we recognize that when the property in question is currency, the petitioner’s burden is easier to meet, but we rejected the argument that a petitioner need not introduce actual testimony to show lawful possession.

Commonwealth v. Howard, 931 A.2d 129, 131-32 (Pa. Cmwlth. 2007). Since no testimony was presented, the Commonwealth has not conceded Defendant's ownership of the currency, and no evidence of Defendant's lawful possession, such as proof of an online business, were presented in the affidavit of probable cause, the Defendant has failed to meet his initial burden. A "failure to meet even this minimal burden is fatal to a petition for return of property under Rule 588." Commonwealth v. Johnson, 931 A.2d 781, 784 (Pa. Cmwlth. 2007).

### **Conclusion**

Therefore, based on the limited information contained in the stipulation before the Court on this matter, this Court finds that the Defendant failed to meet his initial burden of establishing his lawful possession of the seized currency. Accordingly, Defendant's Motion to Return Property shall be denied.

### **ORDER**

**AND NOW**, this 11th day of August, 2021, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that Defendant's Motion to Return Property is **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: Deputy AG Joseph May, Esq.  
Christian Lovecchio, Esq.  
Law Clerk (JMH)