

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN THE INTEREST OF A WHITE DODGE : NO. MD-191-2021
2008 CALIBER :
: :
RAZZAAQ TAYLOR, :
PURPORTED OWNER : Motion for Return of Property

OPINION AND ORDER

The matter before the Court is a Motion for Return of Property filed by Petitioner, Razzaaq Taylor (Petitioner). A hearing in this matter was initially held before the Honorable Marc F. Lovecchio on June 3, 2021. After the hearing, the parties agreed that since charges had now been filed against Petitioner as a result of the seizure of the vehicle, pretrial motions needed to be decided before a decision could be made in this matter. N.T. 6/3/2021, at 42. Since this Court rendered a decision on the Habeas Corpus motion on March 11, 2022, this Motion is now ripe for decision.

Petitioner testified initially that he is the owner of the 2008 white Dodge Caliber with PA registration JMY5514. Id. at 4. Detective Curtis Loudenslager (Loudenslager) of the Narcotics Enforcement Unit (NEU) of the Lycoming County District Attorney's Office testified that he was involved in an investigation concerning the vehicle with Petitioner as the operator, possibly engaged in illegal activity. He was conducting a roving plain-clothes patrol in the city of Williamsport in the area of Wildwood Boulevard and High Street. Id. at 7. He observed Petitioner leaning inside a tan vehicle that was parked at the gas pumps. Id. at 8. Loudenslager testified that Petitioner was conversing with the driver of the tan vehicle close enough to hand something through the rear passenger door. Id. at 9. Loudenslager believed

this to be a drug transaction in progress. Id. He did clarify that he did not see an exchange of something but merely believed that it could have occurred because of how close Petitioner and the driver were together. Id. at 10.

Officer Clinton Gardner (Gardner) of the Williamsport Bureau of Police was a specially assigned member of the NEU and testified that Loudenslager told him that he had witnessed what he believed to be a drug transaction and attempted to make contact with Petitioner. Id. at 12. Gardner observed the Dodge Caliber pulling into a parking lot and pulled in behind him. Id. When he saw Petitioner exit the vehicle, Gardner took a photograph so that he could tie Petitioner to the vehicle. Id. at 13. Gardner related that immediately after taking the photograph he made a traffic stop on the driver of the tan sedan that Petitioner was seen interacting with at the gas station during the alleged drug deal. Id. After pulling the tan sedan over, Gardner observed the tan vehicle had three (3) occupants. Id. at 14. Following this stop, 250 bags of fentanyl, 1/2 ounce of crack cocaine, as well as marijuana were found within that vehicle. Id.

Gardner also testified that Detective Tyson Havens (Havens) of the NEU as well as Captain Bell of the Williamsport Bureau of Police made contact with Petitioner shortly after Gardner stopped the tan sedan. Id. at 15. As a result of that stop on April 19th, marijuana was seized from Petitioner. Id. Gardner testified that the packaging held by Petitioner matched the packaging of the marijuana seized from the tan sedan. Id. All of these events occurred on April 19th of 2021, the same date that Loudenslager saw the Petitioner at the gas station. Id. at 16. Gardner then testified that on May 19th, approximately one month later, he observed Petitioner running errands, getting gas and taking his car to the Fairfield Ford service center on 4th Street. Id. at 16. While he spoke to Petitioner at Fairfield Ford, he did

not observe him involved in any criminal activity and did not subject Petitioner to a search or arrest him. Id. Gardner testified that the events of April 19th involving the tan sedan and the items seized from Petitioner on that day formed the basis of the seizure of the vehicle from Fairfield Ford on May 19th, 2021 with a search warrant subsequently obtained on May 20th. Id. at 17-20.

Discussion

Pursuant to Rule 588, 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. Rule 588. On such a motion, “it is the movant’s burden to establish by a preponderance of the evidence that he is entitled to lawful possession of the property at issue.” Commonwealth v. Morelli, 55 A.3d 177, (Pa. Cmwlth. 2012); *See also* Commonwealth v. Johnson, 931 A.2d 781, 783 (Pa. Cmwlth. 2007). A “mere allegation of entitlement” is enough to satisfy this burden. Johnson, 931 A.2d at 783. “Once the moving party provides sufficient proof, the burden shifts to the Commonwealth to resist the return of property by proving the property is contraband.” Id. at 784. However, to meet its burden, “the Commonwealth must make out more than simply demonstrating that the property was in the possession of someone who has engaged in criminal conduct.” Singleton v. Johnson, 929 A.2d 1224, 1227 (Pa. Cmwlth. 2007) (*en banc*); *See also* Beaston v. Ebersole, 986 A.2d 876 (Pa. Super. 2009). “It must establish a specific nexus between the property and the criminal activity.” Id. If the Commonwealth can establish this burden, “the burden of proof shifts to the property owner to disprove the Commonwealth’s evidence or establish statutory defenses to avoid forfeiture.” Id.

In this case, the Petitioner established without dispute that he was the owner of the

vehicle. As a result, the Commonwealth must present evidence that the vehicle was involved in a crime and not merely possessed by the Petitioner who may have been engaged in criminal activity. The Commonwealth's evidence fails to establish any nexus between Petitioner's vehicle and criminal activity. In fact, much of the Commonwealth's testimony involved following Petitioner while he was essentially running errands. There was no testimony that the Petitioner was engaged in any criminal activity immediately before the vehicle was seized. In actuality, the vehicle was seized by the police after the Petitioner had attempted to have his car inspected at a local business. Law enforcement neither received the keys directly from Petitioner nor pursuant to a lawful arrest. The police unlawfully obtained the keys and towed the vehicle from the business after the Petitioner left it there for service. Based upon the testimony presented, the Commonwealth has failed to establish its burden, and the petition shall be granted.

ORDER

AND NOW, this 21st day of March 2022, the Petitioners Motion for Return Property is **GRANTED**. The vehicle, his 2008 white Dodge Caliber, was unlawfully seized from Petitioner and shall be returned without delay.

By The Court,

Nancy L. Butts, President Judge

cc: Ryan Gardner, Esquire, (DA)
Nicole Spring, Esquire (PD)