

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CRIMINAL #2014-SUCR-10417
CRIMINAL #2015-SUCR-10384 ✓

2016 JAN 11 PM 12:53

COMMONWEALTH OF MASSACHUSETTS

v.

AARON HERNANDEZ

**Petitioner's Memorandum of Law in Support of the Motion to Intervene
and for Return Property**

I. Introduction

Petitioner, JANA Leasing and Rental Corporation and its related entity Fox Enterprises, Inc. d/b/a Fox Toyota (hereafter collectively "Petitioner" and/or "Fox Toyota"), which own and operate a car dealership and a related vehicle leasing company in Rhode Island. Petitioner is the owner of, *inter alia*, a 2006, Toyota 4Runner Ltd., Vehicle Identification No. (VIN) JTEBU17R768052996.¹ Petitioner remains liable and has been making monthly payments on this Vehicle which was leased to defendant Arron Hernandez sometime after its purchase in 2010. Mr. Hernandez was making monthly lease payments on the Vehicle, but on or about June 26, 2015, Mr. Hernandez was arrested and charged with murder. He has made no payments on the lease of the Vehicle since that time and none have been made by any person or entity since that time, despite the fact that Petitioner has continued to make its monthly payments on it.

In connection with this prosecution, on or about June 28, 2015, the Vehicle was seized by the Boston Police Department (hereafter "B.P.D.") pursuant to a warrant authorizing it.

Recently, counsel for Petitioner contacted the Commonwealth and was informed that it did not

¹ See Exhibit 1 to the Affidavit of Attorney Joshua Teverow filed herewith.

intend to use the Vehicle as evidence or for any other purpose in its prosecution of Mr. Hernandez. Petitioner is in the process of selling its automobile dealership located in Rhode Island and requires the return of the Vehicle in connection therewith.

Petitioner has violated no laws of the Commonwealth. Its rights to its property, the Vehicle, are guaranteed under the 5th Amendment of the United States Constitution, Article X of the Massachusetts Declaration of rights, and M.G.L.A. 276 § 3. As set forth below, Petitioner is entitled to the forthwith return of its property, since the Commonwealth has determined that there is no evidentiary value to the Vehicle and it will not be presented at or needed in the upcoming prosecution of Mr. Hernandez. Thus, the Commonwealth now holds the Vehicle, to Petitioners detriment, without cause to do so.

II. Relevant Facts²

Petitioner owns and operates an automobile dealership in Providence, Rhode Island. On or about October 30, 2010, Petitioner obtained title to the 2006, Toyota 4Runner Ltd., Vehicle Identification No. (VIN) JTEBU17R768052996, (hereafter the “Vehicle”) for the base purchase price of \$26050.00.³

The purchase was financed by Toyota Motor Credit Corp. (“TMCC”) who maintains a lien on the Vehicle, including delivery and finance charges, in the amount of \$28,285.00. Fox Toyota has been paying monthly installments of \$471.43 on this Vehicle since its purchase.⁴

Sometime in 2010, Fox Toyota entered into a contract to lease the Vehicle to Aaron Hernandez, through his agents Athletes First. According to the terms of their agreement, Mr. Hernandez was required to provide certain promotional services to Fox Toyota in exchange for his use of the Vehicle.

² These facts are attested to and set forth in the Affidavit of Attorney Joshua Teverow filed herewith.

³ See Exhibit 1 to the Affidavit of Attorney Joshua Teverow filed herewith.

⁴ See Exhibit 1 to the Affidavit of Attorney Joshua Teverow filed herewith.

Mr. Hernandez was in possession, custody and control of the Vehicle, pursuant to said lease until the date of his arrest on or about June 26, 2013.

On or about June 28, 2015, pursuant to a warrant, the Vehicle was seized by the Commonwealth of Massachusetts and turned over to the Boston Police Department. Since that time to present date, the Commonwealth of Massachusetts and the Boston Police Department have been in exclusive possession, custody and control of the Vehicle.

Also since that time, Petitioner has been making payments on the lien but has not had access to, or use of, the vehicle. Ultimately, the lien was ultimately paid off on October 15, 2015.

Petitioner's Rhode Island counsel is currently in negotiations with a buyer for the purchase of Petitioner's dealership. In connection therewith, Petitioner has been conducting inventory and assembling all of its assets. During this inventory, it was discovered that the lease on the Vehicle is in default, but the Vehicle remains in the exclusive possession of the Boston Police Department. As a result, Petitioner's counsel has communicated with the Commonwealth, but has not been successful in obtaining the return of the Vehicle to its rightful owner, the Petitioner.⁵ As a result, Petitioner's Rhode Island counsel, who is not a trial lawyer, has obtained the undersigned trial counsel in Massachusetts to file formally for the return of this property.

Petitioner requires the return of its property prior to the closing on the sale of its dealership.

⁵ See Exhibit 2 to the Affidavit of Attorney Joshua Teverow filed herewith.

III. Argument

A. Petitioner Should Be Allowed To Intervene For The Limited Purpose Of Seeking The Return Of Its Property As Intervention is Timely, No Party Will Be Prejudiced By Such Intervention Nor Will It Delay The Upcoming Prosecution And Petitioner Will Be Irreparably Harmed Absent The Forthwith Return Of Its Property.

Petitioner seeks to intervene in this ongoing matter for the limited purpose of re-acquiring its property currently held by the Commonwealth. While intervention is not usual in criminal matters, Petitioner seeks to do so here in the interest of judicial economy, in lieu of filing his own civil action against the Commonwealth which will only further unnecessarily burden the Courts, the Commonwealth and the Petitioner. In ruling on motions to intervene, the Courts of the Commonwealth consider the following factors: 1) whether the applicant had the opportunity to intervene at an earlier stage of the litigation; 2) whether delay, endangered (engendered?) by intervention at the particular stage of litigation, will prejudice existing parties; and 3) the applicant's particular need to intervene. Peabody Federation of Teachers, Local 1289 v. School Committee of Peabody, 28 Mass.App.Ct. 410, 413, 551 N.E.2d 1207, 1209 (1990).

Petitioner's motion is timely as it has only recently learned that the Commonwealth does not plan to use its property (the Vehicle) as evidence at trial and the Commonwealth does not object to this Court ordering the release and return of the Vehicle to Petitioner. Further, such intervention for such a limited purpose will not delay or otherwise prejudice either party.⁶ Moreover, as discussed further below, Petitioner has a right to the return of its lawful property, because the Commonwealth has determined it has no evidentiary value or any need for retention of the Vehicle for trial, and it the property not subject to forfeiture. Lastly, Petitioner requires the swift return of the Vehicle, because it has been making payments on the lien without the

⁶ In fact it is the opposite, because allowing such intervention at this juncture will allow Petitioner to swiftly address the issue instead of having to go through the lengthy process of filing his own civil action.

benefit of being able to generate income from the vehicle and is in the process of consolidating all of its assets to sell its Rhode Island dealership.

Petitioner submits, for the reasons set forth above, this Honorable Court allow its intervention for the limited purpose of filing and being heard on a motion seeking the return of its property.

B. Petitioner Is Entitled To The Forthwith Return Of Its Property, Since It Has Constitutionally Protected Property Right In It And The Commonwealth Has Determined That The Vehicle Has No Evidentiary Value And No Other Need For The Vehicle In Its Upcoming Prosecution of Mr. Hernandez Or Otherwise.

Seizure and continuous custody by the Commonwealth constitutes a significant deprivation of a constitutionally protected property interest. Fuentes v. Shevin, 407 U.S. 67 (1972).

In an attempt to balance the rights of property owners and the right of the Commonwealth to protect its citizens from crime, the Commonwealth has enacted M.G.L. c. 276 § 3 which reads in pertinent part:

If an officer in the execution of a search warrant finds property or articles therein described, he shall seize and safely keep them, under the direction of the court or justice, so long as necessary to permit them to be produced or used as evidence in any trial. As soon as may be, thereafter, all property seized under clause First of section one shall be restored to the owners thereof; ...

Thus, where as here, seized property is no longer needed as evidence or for any other use at any trial, the property's rightful owner is entitled to its return, "as soon as may be" effected. M.G.L. c. 276 § 3; U.S. v. Pierre, 484 F.3d 75, (1st Cir. 2007).⁷ Here, the Vehicle was lawfully seized by the Commonwealth and has been safely kept by them long enough to determine whether it will be needed for or used as evidence at any trial. As can be seen from the documents filed herewith, the Commonwealth has determined that the Vehicle will not be used

⁷ Citing, *inter alia*, Fed. R. Crim. P. 41(g), which provides in part "[a] person aggrieved ... by the deprivation of property may move [the district court] for the property's return", nearly identical language to Superior Court Rule 61.

or needed as evidence at any trial including its upcoming prosecution of Mr. Hernandez. As a result, Petitioner respectfully submits that it should be restored to its rightful owner, the Petitioner, forthwith.

It is important to note that unlike many asset forfeiture cases, Mr. Hernandez is not charged with M.G.L. c.94C, § 47(d) and thus there is no presumption or even any articulable basis for claiming that the Vehicle is subject to forfeiture under Massachusetts law.

Given the absence of any evidentiary value or any need of any kind on the part of the Commonwealth for its continued retention of the Vehicle, the fact that the Vehicle is not subject to forfeiture, and the ongoing constitutional harm being suffered by Petitioner resulting from the continued detention of its property, Petitioner respectfully submits the Vehicle should be returned forthwith.

IV. Conclusion

For the reasons set forth herein, Petitioner respectfully submits that this Honorable Court should order the return of the Vehicle to the Petitioner forthwith.

Non-Party Petitioner,
JANA Leasing and Rental Corporation and Fox
Enterprises, Inc. d/b/a Fox Toyota

By their counsel,



Robert V. Ward, Jr., Esq.

BBO # 516080

Eric Booth, Esq.

BBO#686266

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Dated: January 8, 2016

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January 11, 2016

By Hand and Via First Class Mail

Suffolk County Superior Court for Criminal Business
Suffolk County Courthouse, 14th Floor
3 Pemberton Square
Boston, MA 02108

Re: Commonwealth v. Hernandez, #2014-SUCR-10417

Dear Sir/Madam:

Enclosed for filing in in the above captioned matter, please find the following documents:

1. Non-Party Petitioner's Motion to Intervene;
2. Non-Party Petitioner's Motion for Return of Property;
3. Petitioner's Memorandum of Law in Support of the Motion to Intervene and for Return of Property;
4. Affidavit of Attorney Joshua Teverow in Support of Non-Party Petitioner's Motion to Intervene and Motion for Return of Property;
5. Order for Return of Property (purposed); and
6. Certificate of Service.

Please bring these filings to the attention of the Court at your earliest convenience. This matter is marked for a status review hearing on January 19, 2016 and the petitioner respectfully requests to be heard on the issues at that time.

Should you require anything further from our office please do not hesitate to contact me.

Very truly yours,



Eric Booth

Enclosures

EJB/mr

Cc: Brian Murphy, Esq.
Charles W. Rankin, Esq.
James L. Sultan, Esq.
Janis DiLoreto Smith, Esq.
Clients

CERTIFICATE OF SERVICE

I hereby certify, I caused the following, to be served upon all counsel of record, by first class mail, postage prepaid, this 11th day of January, 2016.

1. Non-Party Petitioner's Motion to Intervene;
2. Non-Party Petitioner's Motion for Return of Property;
3. Petitioner's Memorandum of Law in Support of the Motion to Intervene and for Return of Property;
4. Affidavit of Attorney Joshua Teverow in Support of Non-Party Petitioner's Motion to Intervene and Motion for Return of Property; and,
5. Order for Return of Property (purposed).



Eric Booth