

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

OFFICE OF THE ATTORNEY GENERAL,)
)
Petitioner,)
)
v.)
)
ONE 1995 TOYOTA T-100 (LICENSE)
NO. ABW 121) SEIZED FROM LEE)
KWANG SUK,)
)
Respondent Property,)
)
LEE KWANG SUK and FUTURE)
ENTERPRISES INC.,)
)
Potential Claimants.)
_____)

Civil Action No. 98-1173

**ORDER GRANTING MOTION
FOR RETURN OF PROPERTY
AND DENYING MOTION TO
DISMISS**

I. PROCEDURAL BACKGROUND

This matter came before the Court on November 19, 1998, in Courtroom A on Potential Claimants' motion for return of property. Robert Goldberg, Esq., appeared on behalf of Petitioner. Joseph E. Horey, Esq. appeared on behalf of Potential Claimants. The Court, having reviewed the memoranda, declarations, and exhibits, having heard and considered the arguments of counsel, and being fully informed of the premises, now renders its written decision. [p. 2]

II. FACTS

On the evening of October 14, 1998, agents from the CNMI Department of Labor and Immigration (hereinafter referred to as "DOLI") conducted an immigration raid at the home of Potential Claimant Lee Kwang Suk in As Lito, Saipan. As a result of the raid, Lee Kwang Suk was arrested pursuant to a warrant. In addition, the DOLI agents seized Lee Kwang Suk's Toyota T-100 truck without a warrant pursuant to 3 CMC § 4365 and 6 CMC § 2150.

FOR PUBLICATION

On October 21, 1998, the Office of the Attorney General (hereinafter referred to as “Petitioner”) filed a Petition for Forfeiture of Personal Property seeking forfeiture of the Toyota truck.

On November 10, 1998, Lee Kwang Suk and Future Enterprises, Inc. (hereinafter referred to as “Potential Claimants”) filed the instant motion whereby they seek to have the truck returned pursuant to 6 CMC § 6204.

III. ISSUES

1. Whether the motion has a legal basis under 6 CMC § 6204?
2. Whether the seizure of the truck was lawful under the Fourth Amendment?
3. Whether the government has shown that, prior to seizing the truck, it had probable cause to believe that a substantial connection existed between the Toyota truck and the alleged immigration violations?

IV. ANALYSIS

A. 6 CMC § 6204

In support of the instant motion, Potential Claimants contend that the Toyota truck was unlawfully seized. As such, the truck must be returned pursuant to 6 CMC § 6204. In opposition, Petitioner contends that there is no legal basis for the return of seized property pending the resolution of a forfeiture case on the merits. In the alternative, Petitioner contends that the instant motion must [p. 3] be denied as Potential Claimants have not demonstrated a basis for extraordinary interlocutory equitable relief.¹

6 CMC § 6204 provides, in pertinent part, as follows:

“A person aggrieved by an unlawful search and seizure may make a motion in court for the return of the property and to suppress for use as evidence anything so obtained . . . The motion shall be made before trial or hearing . . . Upon such motion the court shall . . . receive evidence on any issue of fact necessary to the decision of the motion . . . “

In deciding this issue, the Court looks to decisions interpreting the applicability of Rule 41(e) of the Federal Rules of Criminal Procedure whose language is almost identical to that of 6 CMC §

¹ Petitioner opted not to address the merits of this motion in its opposing brief. *See* Opposition to Motion for Return of Property, dated November 18, 1998, at 4, n.3

6204. Accordingly, the United States Supreme Court has noted that in a civil forfeiture case, if a claimant believes that a seizure was improper the claimant may file a motion under Rule 41(e) for return of the seized property. United States v. \$8,850 in United States Currency, 461 U.S. 555, 569, 103 S.Ct. 2005, 2014, 76 L.Ed.2d 143 (1983). As such, since Potential Claimants contend that the forfeiture seizure was improper, the Court finds that the instant motion is legally grounded and is properly before the Court.

Based on the finding above, the Court will not address the issue of whether Potential Claimants are entitled to equitable relief.

B. Seizure

Potential Claimants contend that the seizure of the truck was unlawful and violative of the Fourth Amendment as it was made without a warrant and no exceptions to the warrant requirement were present.

Searches [and seizures] conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment - subject only to a few specifically established and well-delineated exceptions. Katz v. United States, 389 U.S. 347, 357, 88 S.Ct. 507, 514, 19 L.Ed.2d 576 (1967). The government has the burden of proving by a preponderance of the evidence whether a search [and seizure] comes within an exception. [p. 4] Commonwealth v. Pangelinan, 3 CR 357, 359 (N.M.I. Trial Ct. 1988). However, the mere fact of an illegal seizure, standing alone, does not immunize the goods from forfeiture. United States v. One 1971 Harley- Davidson Motorcycle, 508 F.2d 351, 351 (9th Cir.1974). In fact, although evidence derived from an illegal seizure must be excluded at trial, the forfeiture may proceed if the government has proof independent of the seizure that the property is subject to forfeiture. United States v. One 1977 Mercedes Benz, 708 F.2d 444, 450 (9th Cir.1983).

Courts have upheld the warrantless seizures of automobiles under the following exceptions: (1) the incident to arrest exception; (2) the automobile exception, and (3) the plain view exception. As such, the Court will apply the aforementioned exceptions to the instant facts to determine whether the warrantless seizure was authorized.

1. Incident to arrest exception

The seizure of Potential Claimants' truck does not qualify as a search and seizure incident to arrest as the truck was not in the area within Lee Kwang Suk's immediate control. Chimel v. California, 395 U.S. 752, 763, 89 S.Ct. 2034, 2040, 23 L.Ed.2d 685 (1969). The DOLI agents raided Lee Kwang Suk's home and immediately placed him under arrest. The truck remained in the driveway. Under these circumstances, the truck could not be considered under his immediate control.

2. Automobile exception

Under the automobile exception to the warrant requirement, warrantless seizures of automobiles are authorized when two factors are present: (1) the arresting officer has probable cause to believe that the automobile contains contraband, and (2) there are exigent circumstances associated with the automobile. *See* United States v. Ross, 456 U.S. 798, 806-808, 102 S.Ct. 2163-2164, 72 L.Ed.2d 572 (1982); Carroll v. United States, 267 U.S. 132, 144, 45 S.Ct. 280, 285-286, 69 L.Ed.543 (1925). The existence of exigent circumstances are determined at the time the vehicle is seized. Chambers v. Maroney, 399 U.S. 42, 90 S.Ct.1975, reh. denied, 91 S.Ct. 23 (1970).

In the instant case, neither of the two key factors are present. This is not a case involving contraband and therefore the first factor does not apply. Moreover, facts supporting the second factor of exigent circumstances are likewise absent. The truck was parked in front of Lee Kwang Suk's [p. 5] residence when it was seized and the record is void of any evidence that it was being used at that time for any illegal purpose. Moreover, and most importantly, there is nothing to indicate that the agents had reason to believe that the mobility or exposure of the truck made it impracticable to seek a warrant. *See* United States v. Connolly, 479 F.2d 930, 935 (9th Cir.1973). As such, the automobile exception does not provide any relief from the warrant requirement under these facts.

3. Plain view exception

The seizure of the truck cannot be justified under the "plain view" exception to the warrant requirement, which allows the police to seize evidence in plain view without a warrant. As held by the United States Supreme Court, plain view *alone* is never enough to justify the warrantless seizure

of evidence . . . [E]ven where the object is contraband, . . . the police may not enter and make a warrantless seizure. Coolidge v. New Hampshire, 403 U.S. 443, 468, 91 S.Ct. 2022, 2039, 29 L.Ed.2d 564 (1971)(emphasis added).

As noted above, the record before the Court is void of any proof that the agents had no opportunity to obtain a warrant under the circumstances presented. Moreover, Potential Claimants note in their reply brief that discovery provided in the companion criminal case indicates that DOLI had information for Lee Kwang Suk's arrest warrant as early as August 4, 1998. Yet, apparently no attempt was made to obtain a warrant for the truck in the subsequent two months before he was arrested. Under these circumstances, the plain view exception cannot authorize the seizure of the truck.

Based on the foregoing, the Court finds that the seizure was unlawful as no relevant exception to the warrant requirement existed at the time of the seizure. However, pursuant to the holding above in One 1971Harley-Davidson Motorcycle, supra, the government may still proceed with the forfeiture action should it prove a case of probable cause for the forfeiture independent of the unlawful seizure.

C. Probable cause for forfeiture

Civil forfeiture actions require the government to provide the court with a showing of probable cause for belief that a substantial connection exists between the property forfeited and the criminal activity. United States v. One 1986 Ford Pickup, 56 F.3d 1181, 1187 (9th Cir.1995). The [p. 6] determination of probable cause is based on the aggregate facts and may be established by circumstantial evidence. United States v. U.S. Currency, \$30,060.00, 39 F.3d 1039, 1041 (9th Cir.1994). The government's belief that the property is subject to forfeiture must be more than mere suspicion but can be less than prima facie proof. United States v. \$191,910.00 in U.S. Currency, 16 F.3d 1051,1071 (9th Cir.1994). However, the government must have probable cause prior to effectuating the seizure of property subject to forfeiture. United States v. All Funds Presently on Deposit, 813 F.Supp.180, 186 (E.D.N.Y. 1993).

In the instant case, Petitioner offers no evidence to show that it possessed probable cause, prior to seizing the truck, that the vehicle was substantially connected to criminal activity. There is

no evidence that the truck was being used in the employment of any illegal aliens, nor is there anything to indicate that the truck was being used to harbor the same.² Seizing the truck pursuant to the arrest of Lee Kwang Suk, without more, does not rise above the level of “mere suspicion” that the truck was somehow used to violate the immigration laws of the CNMI.

Based on the foregoing, the Court finds that the warrantless seizure of the truck was unlawful as it failed to meet the relevant exceptions to the warrant requirement. Moreover, Petitioner has failed to show that it had probable cause to believe that the truck was substantially connected to any criminal activity prior to seizing the vehicle. Therefore, pursuant to 6 CMC § 6204, Potential Claimants are entitled to the return of the truck.

C. Motion to Dismiss

On December 17, 1998, Potential Claimants’ moved to dismiss the Petition for Forfeiture on the basis that 3 CMC § 4365 is vague and overbroad in violation of the CNMI and U.S. Constitutions. However, in light of the ruling above, the Potential Claimants no longer have standing to challenge the statute. Therefore, the Court will not address the constitutional issues raised by that motion. [p. 7]

V. CONCLUSION

For all the reasons stated above, Potential Claimants’ motion for return of property is **GRANTED** and the Petition for Forfeiture of Personal Property is hereby dismissed with prejudice. However, Potential Claimants’ motion to dismiss is **DENIED**. Petitioner shall immediately release the Toyota T-100 truck to Potential Claimant Lee Kwang Suk or to a representative of Potential Claimant Future Enterprises, Inc. at the Immigration Detention Facility in As Gonno, Saipan, or wherever the truck is currently being secured.

So ORDERED this 20 day of January, 1999.

/s/ Timothy H. Bellas
TIMOTHY H. BELLAS, Associate Judge

² The Petition for Forfeiture of Personal Property is based on alleged violations of 3 CMC § 4361(e)(Employment of Illegal Aliens) and 3 CMC § 4361(c)(Harboring Illegal Aliens).