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

COMMONWEALTH OF THE NORTHERN
MARIANAS ISLANDS

Civil Action No. 99-321A

Plaintiff,

v.

ORDER GRANTING
MOTION TO RELEASE
PROPERTY

MELVIN N. BASA, JEFFREY BASA and,
JERONIMO S. BASA,

Defendants.

I. INTRODUCTION

This matter came before the Court on September 28, 1999, at 1:30 p.m. on Defendant Melvin N. Basa's ("Basa") motion for release of property. Assistant Attorney General James J. Benedetto appeared on behalf of Plaintiff. Basa appeared through his counsel, Michael W. Dotts, Esq. The Court, having reviewed the memoranda, exhibits, affidavits, and having heard and considered the arguments of counsel, now renders its written decision.

AG
Dotts
S. Judge
Laws Rev.
Supreme Ct

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II. FACTS

In July 1999, the Defendants were arrested for an alleged crime spree. At the time of the Defendants' arrest, police seized Basa's truck, which had been used to transport the Defendants. The truck was later searched pursuant to a search warrant.

Subsequent to the seizure of the truck, Basa's father-in-law made several requests for the return of the truck asserting that the truck was the family's only mode of transportation. The Attorney General refused to release the truck unless the Defendants stipulated that they did not intend to make an issue at trial of any testing that might have been performed, but was not performed. Basa's attorney also wrote the Attorney General requesting the immediate return of the truck.

On August 27, 1999, Basa's attorney wrote the Attorney General requesting that the truck be examined for bloodstains. The test has not been performed to date and the truck is still in the possession of the government.

III. ISSUE

Whether Defendant is entitled to the release of lawfully seized property that is not considered evidence in the pending criminal case.

IV. ANALYSIS

Pursuant to Corn. R. Crim. P. 41(e), "[a] person aggrieved by an unlawful search and seizure or by the deprivation of property may move the court for the return of the property on the ground that such person is entitled to lawful possession of the property."

In the case at hand, Basa is the owner of the truck and entitled to lawful possession. See State v. Card, 741 P.2d 65, 70 (Wash. Ct. App. 1987) (seizure of property from someone is prima facie

¹ It should be noted that the government has urged a narrower construction of this of this language that only persons whose property has been unlawfully seized are entitled to move for its return. Such an interpretation is contrary to the express language of the Rule which provides that persons who have simply been deprived of their property may move for its return.

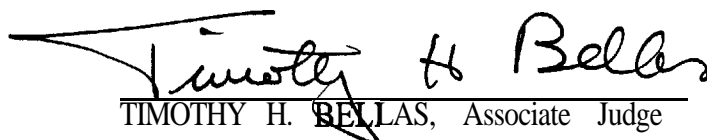
1 evidence of that person's right to the property). "[A] defendant has a right to property lawfully seized
2 where the government no longer has reason for its retention." See State of Hawaii v. Brighter, 6 17
3 P.2d 1226, 1228 (Haw. Ct. App. 1980). The government has reason to retain the property if such
4 property is contraband. Id. at 1229. The government fails to establish that **Basa's** truck is contraband
5 and makes no showing that the truck is itself evidence, although it may have contained evidence in
6 the impending criminal case. Furthermore, the government candidly admitted at oral argument, that
7 under the circumstances of this case, the truck is not subject to forfeiture pursuant to any
8 Commonwealth statute. Therefore, the government is not entitled to retain Basa's truck.

9 However, Defendant requested that the truck be tested for bloodstains. To complete the
10 test, the truck must remain within government possession. The government has held the truck
11 now for more than eighty days. It has been more than thirty days since Basa's request for the test.
12 Neither side has proffered any expert testimony as to how long such testing should take. Thus,
13 the court shall order the government to return the truck within a reasonable time. If possible, the
14 testing should be completed within this time frame. If the test cannot be performed within this
15 time period then the truck should be returned as soon as **possible**.²

16 V. CONCLUSION

17 For the reasons stated above, the motion to release property is GRANTED. If the
18 government is able to complete the requested testing within the time frame specified herein, then
19 the property shall be released within sixty days of this order. If not, then the vehicle is to be
20 released as soon as possible.

21 SO ORDERED this **5** day of October, 1999.

22 
23 _____
24 TIMOTHY H. ~~BELLAS~~, Associate Judge
25
26

27 ² The government has made reference to certain arguments which may be made by
28 the defense at trial. Those potential arguments can be the subject of a motion *in*
Zimine and need not be addressed here.