

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania :
 :
 v. : No. 389 C.D. 2010
 :
 Sherrie Shattenberg and : Submitted: February 18, 2011
 Kristie Shattenberg, :
 :
 Appellants :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
 HONORABLE MARY HANNAH LEAVITT, Judge
 HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
 BY SENIOR JUDGE KELLEY

FILED: March 30, 2011

Sherrie Shattenberg and Kristie Shattenberg appeal from the order of the Court of Common Pleas of Venango County (trial court) denying the Shattenbergs' motion for return of property, filed pursuant to the provisions of Rule 588 of the Pennsylvania Rules of Criminal Procedure.¹ We affirm.

¹ Rule 588 provides, in pertinent part:

(A) 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. Such a motion shall be filed in the court of common pleas for the judicial district in which the property was seized.

(Continued...)

In August of 2009, criminal charges were filed against the Shattenbergs pursuant to Section 5511(c)(1) of the Pennsylvania Crimes Code² based upon the deplorable conditions in which a number of animals were found to be living in and around their residence in Emlenton, Venango County. On September 5, 2009, Penny Dewoehrel, a Humane Society Police Officer, executed a search warrant on the Shattenbergs' residence. Over 200 animals were seized in the search of the Shattenbergs' residence, including cats, rabbits, rats, mice, guinea pigs, chinchillas, turtles, and a variety of fowl.³

As a result, on November 13, 2009, the Shattenbergs filed the instant motion for the return of their property pursuant to Rule 588.⁴ On January 28, 2010,

(B) The judge hearing such motion shall receive evidence on any issue of fact necessary to the decision thereon. 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(A), (B).

² 18 Pa.C.S. § 5511(c)(1). Section 5511(c)(1) provides:

(c) Cruelty to animals.—

(1) A person commits an offense if he wantonly or cruelly illtreats, overloads, beats, otherwise abuses any animal, or neglects any animal as to which he has a duty of care, whether belonging to himself or otherwise, or abandons any animal, or deprives any animal of necessary sustenance, drink, shelter or veterinary care, or access to clean and sanitary shelter which will protect the animal against inclement weather and preserve the animal's body heat and keep it dry.

³ Ultimately, a suppression motion was granted by a magisterial district judge with respect to the search executed on the Shattenbergs' property, and the Commonwealth withdrew its appeal of that suppression order.

⁴ It is well settled that proceedings on a motion for the return of property are distinct from forfeiture proceedings. Commonwealth v. Mosley, 549 Pa. 627, 702 A.2d 857 (1997); Commonwealth v. Johnson, 931 A.2d 781 (Pa. Cmwlth. 2007). The moving party has the initial

(Continued....)

a hearing was conducted before the trial court on the motion. See N.T. 1/28/10⁵ at 1-80. At the conclusion of the hearing, the trial court granted the motion for the return of a purple loose-leaf notebook, but denied the motion in all other respects. See id. at 79-80. The trial court subsequently filed an order granting in part, and denying in part, the Shattenbergs' motion in accordance with what was stated on the record. The Shattenbergs then filed the instant appeal from the trial court's order.⁶

In this appeal, the Shattenbergs claim that the trial court erred in denying their motion because: (1) their property is not contraband per se; (2) if their property is derivative contraband, there was no motion for forfeiture filed by the Commonwealth; and (3) the Commonwealth unconstitutionally seized their property.

With regards to the claims of error raised by the Shattenbergs in this appeal, we conclude that the trial court thoroughly and correctly analyzed these issues and this matter was ably disposed of in the comprehensive and well-reasoned opinion of the Honorable Fred P. Anthony. Accordingly, we affirm on

burden and must show by a preponderance of the evidence that she is entitled to lawful possession of the property. Mosley; Johnson. Once this burden is met, the Commonwealth can then defeat the motion by proving, by a preponderance of the evidence, that the property is either "contraband per se" or "derivative contraband" and, therefore, it should not be returned to the moving party. Commonwealth v. Personal Property of Abendroth, 929 A.2d 690 (Pa. Cmwlth. 2007), petition for allowance of appeal denied, 600 Pa. 747, 964 A.2d 896 (2009).

⁵ "N.T. 1/28/10" refers to the transcript of the hearing conducted before the trial court on January 28, 2010.

⁶ This Court's scope of review of a trial court's decision on a motion for the return of property is limited to determining whether the trial court's findings are supported by competent evidence and whether the trial court abused its discretion or committed an error of law. Commonwealth v. Reynolds, 876 A.2d 1088 (Pa. Cmwlth. 2005).

the basis of his opinion in Commonwealth v. Sherrie Shattenberg and Kristie Shattenberg, (MD No. 92-2009, filed April 16, 2010).

JAMES R. KELLEY, Senior Judge

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Appellants	:	

ORDER

AND NOW, this 30th day of March, 2011, the order of the Court of Common Pleas of Venango County, dated January 28, 2010 at MD No. 92-2009, is AFFIRMED.

JAMES R. KELLEY, Senior Judge