

IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

IN RE: :
: :
One Remington Model 700 MLS : C.A. No. 02M-10-119
Loader Rifle, Serial # ML111588 : :
: :
: :
Petitioner: Joseph Buoncuore, Sr. : :
: :

Submitted: January 10, 2003,
Decided: April 4, 2003.

ORDER

Upon consideration of Mr. Buoncuore's petition for the return of his property, the State's response, and the record in this case it appears that:

- (1) The petitioner, Joseph Buoncuore, Sr. (petitioner) is the father of Joseph Buoncuore, Jr. (Buoncuore) who was arrested on January 20, 2001, on charges associated with the State's belief that Buoncuore was hunting illegally, including Possession of a Firearm by a Person Prohibited.
- (2) Buoncuore is a convicted felon. The weapon charge arose from the fact that Buoncuore was seen exiting a car which was later discovered to have a rifle, in plain view, in the back.¹

¹ See *State v. Buoncuore*, 2001 WL 1739447, *1 (Del. Super.).

(3) A suppression hearing was conducted; evidence of the rifle was suppressed.²

Thereafter, Buoncuore entered a plea to trespass for parking in a private lot.

(4) The weapon in question was legally owned by the woman who was operating the vehicle containing the rifle, Kathy Carner.³ Subsequent to the seizure of the property, it was purchased by petitioner.⁴ The rifle is a Remington Model 700 MLS in-line black powder muzzle loader rifle. Petitioner seeks its return.

(5) The issue is whether a firearm, legally owned and registered to a citizen, is forfeited to the State under 11 Del. C. § 2311⁵ when it has been illegally seized from that citizen, who was not charged with a crime, and the seizure has subsequently been determined in a court of law to have been illegal.

(6) The answer to the question above is no. There is simply no legal basis for the continued detention of the rifle. Section 2311 permits the State to retain only "things validly seized"⁶ as evidence in any criminal trial. There is no trial

² See *Buoncuore*, 2001 WL 1739447.

³ Pet. Return Property, Ex.'s 1-4. The Court notes that the rifle was purchased by Kathy Carner at Dick's Sporting Goods, as evidenced by the notarized affidavit of the employee who sold the weapon. *Id.* Ms. Carner later had work done on the rifle, and thereafter sold it to petitioner. *Id.*

⁴ See *supra* note 2.

⁵ DEL. CODE ANN. tit. 11 §2311 (2001).

⁶ The statute reads in relevant part:

(a) The following disposition shall be made of... things *validly* seized:

associated with the weapon. It belonged to Ms. Carner and before it was sold to petitioner, it was detained unlawfully.

The State is directed to deliver the rifle to Joseph Buoncuore, Sr. within 7 days from the date of this order.

IT IS SO ORDERED.

Judge Susan C. Del Pesco

Original to Prothonotary

xc: Joseph Buoncuore, Sr.

James Rambo, Esq., Deputy Attorney General

(2) If the papers, articles or things were allegedly used in the commission of a crime, they shall be returned to the person from whom seized if such person is not thereafter duly convicted of the alleged crime...

DEL CODE ANN. Tit. 11 §2311 (2001)(*emphasis added*).