

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

**IN RE 1976 ROLLS ROYCE,  
VIN #DRE25612**

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C.A. No. 01M-01-033

Submitted: August 10, 2001  
Decided: August 16, 2001

**ORDER**

Motion for Forfeiture. **Denied.**

Daniel R. Miller, Deputy Attorney General, Wilmington, Delaware, Attorney for the State.

Adam Balick, Balick & Balick, Wilmington, Delaware, Attorney for Respondent.

Goldstein, J.

This 16<sup>th</sup> day of August, 2001, upon consideration of the papers filed by the parties and the record in this case and in Criminal Action No. IN00-11-1741, it appears that:

(1) On October 31, 2000, Nicholas Johnson was arrested and subsequently charged with insurance fraud. Police also seized the above-captioned Rolls Royce. On January 12, 2001, the State filed a Motion for Forfeiture of the vehicle pursuant to 11 *Del. C.* § 2311(a)(2). On January 16, 2001, Johnson pleaded guilty to Insurance Fraud. On the same date, the Court sentenced Johnson to one year Level 5 incarceration, suspended for one year Level 2 probation.

(2) Eleven *Del. C.* § 2311 provides for the disposition of property validly seized. Section 2311(a)(2) provides:

If the papers, articles or things were obtained as the result of 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; but if such person is duly convicted of the alleged crime, the papers, articles and things shall be disposed of as the court directs.

In a forfeiture proceeding, the burden is upon the State to show by a preponderance of the evidence that the property in question was “used in the commission of a crime.” *State v. Rossitto*, Del. Supr. 331 A.2d 385, 388 (1974).

(3) The State argues that § 2311(a)(2) provides the Court with authority to forfeit the Rolls Royce to the State. In response, Johnson argues that the State has not met its burden to show that the property in this case was “used in the commission of a crime,” as required by § 2311. Defendant also argues that forfeiture of the vehicle in the instant case

would constitute an excessive fine in violation of the Eighth Amendment of the United States Constitution.

(4) The indictment against Johnson for insurance fraud, to which Johnson pleaded guilty, provides:

NICHOLAS JOHNSON, on or about the 19<sup>th</sup> day of October, 2000, in the County of New Castle, State of Delaware, with the intent to defraud the Phoenix Indemnity Insurance Company, did present or cause to be presented any written or oral statement(s) in support of a claim for payment or other benefit to an insurance policy, knowing that said statement contained false, incomplete or misleading information concerning any fact or thing material to such claim.

(5) The parties have submitted a joint stipulation, setting forth additional facts surrounding Johnson's crime. In summary, Nicholas Johnson made an automobile insurance claim to the Phoenix Indemnity Insurance Company regarding the Rolls Royce. Johnson stated to the insurance company that the Rolls Royce had been damaged in an automobile accident and that he would like to enforce the collision portion of his insurance coverage on the vehicle. The insurance company referred Johnson to an auto body shop in Wilmington, Delaware to obtain an estimate on the damage to the car.

(6) On October 25, 2000, an insurance claims consultant for the body shop was contacted by "Mark Denner" with regard to an insurance claim on the Rolls Royce.<sup>1</sup> Johnson filled out a claim form using the name "Mark Denner." "Mark Denner" also

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<sup>1</sup> The parties have stipulated that Nicholas Johnson and Mark Denner are actually the same person.

contacted a claims adjustor for the insurance company who was working on the claim for the Rolls Royce. On October 30, 2000, Johnson met the claims adjustor at the body shop. Johnson identified himself to both the claims adjustor and the manager of body shop as “Mark Denner.”

(7) While Johnson was at the body shop, a Wilmington Police officer, acting on a tip, also responded to the shop. The officer approached Johnson and asked him if the Rolls Royce was his. Johnson responded that he was not Mark Denner; rather, Mark Denner owned the car and had asked Johnson to bring the automobile in to get an estimate. When asked for identification, Johnson produced a Florida driver’s license bearing the name, “Nicholas Bailey.” Johnson was arrested for felony insurance fraud and subsequently indicted.

(8) Upon review of the facts of this case as contained in the record and the stipulation submitted by the parties, the Court cannot find that the Rolls Royce which is the subject of the Motion for Forfeiture was used by Johnson “in the commission” of the crime of insurance fraud. As set forth in 11 *Del. C.* § 913(a) and in the indictment as set forth above, a person is guilty of insurance fraud when, with the intent to defraud, that person:

presents or causes to be presented to any insurer, any written or oral statement including computer-generated documents as part of, or in support of, a claim for payment or other benefit to an insurance policy, knowing that said statement contains false, incomplete or misleading information concerning any fact or thing material to such claim.

The Court finds that, although the Rolls Royce was clearly involved in the commission of insurance fraud by Johnson, it was not “used in the commission” of the felony as intended by the statute. Rather, Johnson’s crime involved filing false statements to the insurance company in order to collect payments under an insurance policy. That the policy covered the Rolls Royce is incidental to the crime itself.

Therefore, for the foregoing reasons, the State’s Motion for Forfeiture is hereby **DENIED**. The above-captioned vehicle is to be returned to Johnson. Costs of storage are to be paid by the State.

**IT IS SO ORDERED.**

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Carl Goldstein, Judge

oc: Prothonotary