

<b>Property Clerk, NYC Police Dept. v Wiggan</b>
2013 NY Slip Op 32065(U)
September 3, 2013
Supreme Court, New York County
Docket Number: 401752/11
Judge: Martin Shulman
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 1

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PROPERTY CLERK, NEW YORK CITY POLICE  
DEPARTMENT,

Plaintiff,

Index No: 401752/11

-against-

**Decision, Order & Judgment**

DAMION WIGGAN,

Defendant.

-----X  
**Hon. Martin Shulman, J.:**

In this civil forfeiture proceeding commenced pursuant to NYC Adm. Code §14-140, plaintiff, Property Clerk, New York City Police Department ("Property Clerk" or "plaintiff"), seeks forfeiture of the subject vehicle, a 2000 Nissan automobile bearing Vehicle Identification Number JM1CA31D6YT511156 (the "subject vehicle"), which was seized from defendant Damion Wiggan ("Wiggan" or "defendant") and vouchered under Property Clerk Invoice Number B329636V as a result of defendant's August 31, 2010 arrest for allegedly committing a laundry list of offenses, including burglary, robbery, criminal use of a firearm, criminal possession of a weapon, criminal trespass, assault, menacing, petit larceny, harassment and criminal possession of stolen property. Defendant, who is presently incarcerated, opposes this motion *pro se* by submitting an unnotarized and undated written statement.

On May 16, 2011, Wiggan pleaded guilty to violating Penal Law §160.15 (first degree robbery). In support of its motion, the Property Clerk contends that defendant used the subject vehicle to flee the scene of the robbery and to transport two (2) loaded firearms which were recovered inside the subject vehicle, one (1) of which had been

brandished during the robbery. Wiggan's answer to the complaint (Motion at Exh. 11), also undated and unnotarized,<sup>1</sup> consists of a general denial.

Defendant makes two (2) arguments in opposition to summary judgment. First, Wiggan contends that the complaint should be dismissed because plaintiff "did not effect service of process in a timely manner within the 15 days requirement time after the 25-day statute of limitations for commencing a civil forfeiture action . . ."

Where a timely demand for the return of seized property has been made, the Property Clerk has twenty-five (25) days within which to commence a forfeiture proceeding. RCNY §12-36(a). Here, defendant does not allege when he claims this time period began to run. However, the earliest possible date indicated in the motion papers is June 7, 2011, the date plaintiff received Wiggan's request for a hearing before the Office of Administrative Trials and Hearings ("OATH") (see Motion at Exh. 5). Plaintiff timely commenced this action by filing the summons with notice on July 1, 2011, within 25 days of defendant's demand. Thereafter, the Property Clerk personally served the summons with notice on Wiggan on July 15, 2011, within 15 days of the expiration of the 25 day limitations period as CPLR § 306-b requires. Accordingly, this court can discern no merit to defendant's first argument.

Next, Wiggan argues that by pleading guilty to first degree robbery, he admitted only the elements of that crime, which do not include operation or involvement of a

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<sup>1</sup> Both defendant's answer and his opposition state that he did not have access to a notary public at the correctional facility in which he is currently incarcerated. For purposes of this decision, this court will assume that Wiggan's submissions are in proper form.

motor vehicle. More specifically, defendant states that his plea allocution in the criminal matter contains no reference to the subject vehicle or any other motor vehicle.

It is well settled that a criminal conviction, whether by plea or after trial, is conclusive proof of its underlying facts. *Grayes v DiStasio*, 166 AD2d 261, 262-263 (1<sup>st</sup> Dept 1990). Therefore, a defendant who pleads guilty to a criminal charge is collaterally estopped from relitigating, in a subsequent civil action, the facts upon which the conviction is based. *Id.*; *S.T. Grand, Inc. v City of New York*, 32 NY2d 300 (1973). Wiggan thus cannot and does not deny his conviction for armed robbery.

Defendant is correct that the crime of first degree robbery does not require use of a vehicle, unlike a crime such as driving while intoxicated wherein a vehicle is necessarily involved. However, that is not the end of the inquiry. The use of a vehicle as a "get away car" to flee the scene of a crime furthers the crime's commission, thus rendering such a vehicle an instrumentality thereof. *See, e.g., Property Clerk of New York City Police Dept. v Negron*, 157 AD2d 602, 603 (1<sup>st</sup> Dept 1990); *Property Clerk of New York City Police Dept. v Amato*, 171 AD2d 550, 550 (1<sup>st</sup> Dept 1991).

In the case herein, Wiggan does not expressly deny use of the subject vehicle to flee the robbery scene, nor does he deny transporting weapons within the subject vehicle. Indeed, defendant offers no explanation whatsoever with respect to the subject vehicle. Wiggan's mere general denial is insufficient to raise issues of fact on a summary judgment motion. *Gruen v. Deyo*, 218 AD2d 865 (3d Dept 1995); *Offset Paperback Mfrs., Inc. v. Banner Press, Inc.*, 47 AD2d 733 (1st Dept 1975); *Iandoli v. Lange*, 35 AD2d 793 (1st Dept 1970).

In accordance with NYC Admin. Code § 14-140 and 38-A RCNY §§ 12-35 and 12-36, plaintiff has established by a preponderance of the evidence that Wiggan is the registered and titled owner of the subject vehicle and that defendant used the subject vehicle as the instrumentality of committing the crime of first degree robbery.

Defendant's guilty plea in the underlying criminal proceeding collaterally estops defendant from asserting his innocence in the instant action. The court has considered defendant's remaining arguments and finds them unavailing. Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment is granted; and it is further

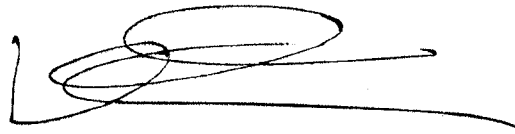
ORDERED, ADJUDGED, and DECREED that the subject vehicle, a 2000 Nissan, bearing Vehicle Identification Number JM1CA31D6YT511156, seized from defendant Damion Wiggan and vouchered under Property Clerk Invoice Number B329636V, is forfeited pursuant to the provisions of the Administrative Code of the City of New York §14-140; and it is further

ORDERED, ADJUDGED, and DECREED that defendant may not lawfully possess the subject vehicle; and it is further

ORDERED, ADJUDGED, and DECREED that plaintiff's custody and retention of the subject is both lawful and proper.

This constitutes this court's decision, order and judgment. Courtesy copies of same have been provided to the parties.

Dated: New York, New York  
September 3, 2013



HON. MARTIN SHULMAN, J.S.C.