

Police Dep't v. Rodriguez

OATH Index No. 581/10, mem. dec. (Sept. 8, 2009)

Police Department entitled to retain vehicle pending outcome of forfeiture proceeding. Evidence failed to show that continued retention of the vehicle would substantially interfere with co-owner's ability to obtain critical life necessities.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
POLICE DEPARTMENT
Petitioner
- against -
YOSELIN RODRIGUEZ
Respondent

MEMORANDUM DECISION

KEVIN F. CASEY, *Administrative Law Judge*

Petitioner, the Police Department, brought this proceeding under section 14-140 of the Administrative Code to determine its right to retain a vehicle seized as the alleged instrumentality of a crime. Respondent, Yoselin Rodriguez, and her son, Jonathan Corneielle, are titled and registered co-owners of the vehicle. At the time of the seizure, Corneielle was driving the vehicle. Respondent seeks release of the vehicle and contends that she is an innocent co-owner. This proceeding is mandated by *Krimstock v. Kelly*, 99 Civ. 12041 (HB), third amended order and judgment (S.D.N.Y. Sept. 27, 2007) (the "*Krimstock Order*"). *See generally Krimstock v. Kelly*, 306 F.3d 40 (2d Cir. 2002), *cert. denied sub nom. Kelly v. Krimstock*, 539 U.S. 969 (2003); *County of Nassau v. Canavan*, 1 N.Y.3d 134 (2003).

On May 1, 2009, petitioner seized a 2008 Toyota Scion following Corneielle's arrest for criminal possession of a weapon in the second degree and reckless endangerment in the first degree (Pet. Ex. 2; Voucher No. B207804V). Petitioner received respondent's demand for a hearing on August 24, 2009. At the hearing, on September 4, 2009, petitioner relied upon documentary evidence. Respondent and her nephew, Eric Rodriguez, testified. For the reasons below, petitioner is entitled to retain the vehicle pending a civil forfeiture proceeding.

ANALYSIS

To prevail, petitioner must prove by a preponderance of the evidence that: (i) there was probable cause for the arrest that resulted in the vehicle's seizure; (ii) it is likely to succeed in a civil action for forfeiture of the vehicle; and (iii) it is necessary that the vehicle remain impounded pending final judgment in the forfeiture action. *Krimstock* Order, at ¶ 3. Due process requires an initial testing of the petitioner's case rather than a full-blown forfeiture hearing. *Krimstock*, 306 F.3d at 70, *Canavan*, 1 N.Y.3d at 144-45.

Petitioner satisfied *Krimstock's* first prong. The evidence showed that the police arrested Corneielle after he was spotted driving the wrong way on a one-way street, speeding towards a police officer, and colliding with a parked car. An officer also saw Corneielle removing a loaded handgun from his waistband and placing the weapon under the driver's seat (Pet. Ex. 7). For the purpose of a *Krimstock* hearing, this evidence established probable cause for the arrest.

Krimstock's second prong requires a showing that the vehicle was used in "furtherance of a crime" and that the owner "permitted or suffered such use." NYC Admin. Code § 14-140(e)(1). Petitioner satisfied this prong by showing that Corneielle, a co-owner, used the vehicle in furtherance of the crimes of criminal possession of a weapon in the second degree and reckless endangerment in the first degree. The undisputed evidence established that Corneielle possessed a loaded weapon in the vehicle and drove the vehicle recklessly, endangering a police officer.

Petitioner also satisfied *Krimstock's* third prong by showing that retention of the vehicle is necessary to protect against a heightened risk to public safety. *Canavan*, 1 N.Y.3d at 144-45. A heightened risk to the public may be found based upon the nature of the offense or the nature of the offender. *See, e.g., Police Dep't v. Alickaj*, OATH Index No. 221/06, mem. dec., at 4 (Aug. 3, 2005) (heightened risk found where respondent possessed loaded firearm in a vehicle); *Police Dep't v. Pupa*, OATH Index No. 1650/05, mem. dec., at 3 (Apr. 6, 2005) (third prong established by respondent's criminal history which included five recent convictions for criminal possession of narcotics and one conviction for the sale of controlled substances, as well as a conviction for criminal mischief with an intent to damage property and criminal contempt).

Corneielle's arrest for criminal possession of a weapon in the second degree occurred after he drove at a high rate of speed, the wrong way on a one-way street, and endangered a police officer. This tribunal has repeatedly held that possession of a loaded firearm inside a

vehicle is the type of crime that poses a heightened risk to the public. See *Police Dep't v. Smith*, OATH Index No. 539/08, mem. dec. (Nov. 7, 2007); *Police Dep't v. Chan*, OATH Index No. 197/08, mem. dec. (Aug 14, 2007); and *Police Dep't v. Von Rossum*, OATH Index No. 2115/07, mem. dec. (June 12, 2007). Based upon the serious nature of crimes charged and the absence of mitigating evidence, returning the vehicle to Corneielle would pose a risk to the public.

Ordinarily, where a respondent raises a claim of innocent ownership, petitioner bears the burden of disproving that defense to show likelihood of success at a civil forfeiture proceeding under the second prong of *Krimstock*. See *Police Dep't v. Wollmer*, OATH Index No. 1806/07, mem. dec. at 4 (Apr. 24, 2007), citing *Property Clerk of the Police Dep't of the City of New York v. Pagano*, 170 A.D.2d 30 (1st Dep't 1991). Where a respondent claims to be an innocent co-owner, however, the Court of Appeals has applied a different analysis. After petitioner makes a *prima facie* showing of probable cause, likelihood of success at a forfeiture proceeding, and the need for continued impoundment, the burden shifts to the co-owner to show that “a present possessory interest outweighs” petitioner’s need to retain the vehicle. *Property Clerk of the Police Dep't of the City of New York v. Harris*, 9 N.Y.3d 237, 244, 249 (2007). To meet that burden, respondent must show that she:

- (i) is a registered and/or titled co-owner; (ii) was not a “participant or accomplice” in the underlying offense and did not “permit []” or “suffer[]” the vehicle to be “used as a means of committing crime or employed in aid or furtherance of a crime”... and that (iii) continued deprivation would substantially interfere with ... her ability to obtain critical life necessities, such as earning a livelihood, obtaining an education, or receiving necessary medical care.

Id. at 248 (citations omitted).

Here, respondent failed to meet her burden. Although she is a titled and registered co-owner, and there was no evidence that she participated in or was aware of Corneielle’s criminal activity, respondent did not establish that continued deprivation would substantially interfere with her ability to obtain critical life necessities. To begin with, I did not credit respondent’s testimony that she was the vehicle’s primary driver and that Corneielle used it occasionally and only if he asked for permission. The evidence established that Corneielle purchased the vehicle in Florida and insured it in Maryland. During her testimony, respondent had difficulty recalling

the make and model of the vehicle, a Scion manufactured by Toyota. It appears that Corneille, and not respondent, was the primary driver.

Moreover, respondent offered implausible testimony regarding payments for the vehicle. According to respondent, her weekly take-home pay was \$265, or \$1,060 per month, and she was somehow able to pay \$450 per month loan payments for the vehicle along with \$400 per month for car insurance. It did not make sense that respondent spent more than 80% of her monthly net income for the vehicle. Asked if she had any other source of income, respondent said that Corneille helped her out by giving her \$100 to \$200 per month. Even assuming that Corneille made such payments, that would hardly leave respondent with enough money to pay for housing, food, and utilities. *See Police Dep't v. Rice*, OATH Index No. 1709/05, mem. dec. at 9 (Apr. 21, 2005) (testimony that owner paid nearly half of monthly income for vehicle raised questions about sources of income). Thus, it seemed unlikely that respondent was primarily responsible for the loan payments and car insurance. Indeed, respondent offered no documents to show that she paid for the vehicle's loan, insurance, or upkeep.

Finally, respondent did not show that petitioner's continued retention of the vehicle would substantially interfere with her ability to obtain critical life necessities. Respondent testified that she used the vehicle to drive from her home in the Bronx to work in Brooklyn and her nephew confirmed that he saw her driving to work in the morning. But respondent conceded that, without the vehicle, she rode the subway to work and that her commute was a little more than an hour. Although respondent also mentioned that she occasionally used her vehicle to go to medical appointments, there was no evidence that she had an unusual number of such appointments or that alternative means of transportation were unavailable.

In sum, petitioner satisfied each of *Krimstock's* three prongs and respondent failed to show that she had a present possessory interest that outweighed petitioner's interest in retaining the vehicle. Respondent's testimony was not credible, it was not supported by documentary evidence, and it did not show that her access to life's necessities would suffer substantially as a result of continued impoundment. *See Harris*, 9 N.Y.3d at 249.

ORDER

The Department may retain the vehicle pending the civil forfeiture proceeding.

Kevin F. Casey
Administrative Law Judge

September 8, 2009

APPEARANCES:

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Attorney for Petitioner

YOSELIN RODRIGUEZ
Respondent, pro se