

**[J-68-2014] [MO: Baer, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

COMMONWEALTH OF PENNSYLVANIA,	:	No. 40 EAP 2013
	:	
Appellant	:	Appeal from the order of the
	:	Commonwealth Court entered on
	:	December 18, 2012 at No. 1345 CD 2011,
v.	:	affirming the order of the Court of
	:	Common Pleas of Philadelphia County,
TODD ALLEN,	:	Criminal Division, entered on April 28,
	:	2011 at No CP-51-MD-0009453-2010.
	:	
Appellee	:	ARGUED: September 9, 2014

DISSENTING OPINION

MADAME JUSTICE TODD

DECIDED: December 29, 2014

I join Justice Saylor’s erudite and thoughtful dissent in full. I write separately to emphasize the fact that the majority’s construction of Pa.R.Crim.P. 588 (“Rule 588”) — a rule of procedure drafted and promulgated by our Court — seemingly contravenes a fundamental tenet of our jurisprudence — namely that “[t]he rulemaking power of this court is not for the purpose of defining new rights of litigants but rather to provide the procedure by which established rights are to be effectuated.” Commonwealth v. Morris, 771 A.2d 721, 737 (Pa. 2001); Commonwealth v. Fowler, 304 A.2d 124, 127 (Pa. 1973).

As Justice Saylor emphasizes, the right of property ownership is an important constitutional right which cannot be deprived by the government without the owner being afforded due process of law. The legislature, to augment the protections against unlawful taking of personal property by the government enshrined in our state and federal constitutions, has crafted a substantive legal framework in the Controlled

Substances Forfeiture Act, 42 Pa.C.S. § 6801 (“Forfeiture Act”), and the Disposition of Abandoned and Unclaimed Property Act, 72 P.S. § 1301.1, *et. seq.* (“Unclaimed Property Act”), to limit the circumstances under which the Commonwealth may terminate a person’s ownership interest in property in its possession. These protections, in my view, are undermined by the majority’s interpretation of Rule 588.

Pursuant to the Forfeiture Act, only money which has been furnished, or intended to be furnished, in exchange for a controlled substance in violation of the Controlled Substance, Drug, Device and Cosmetic Act (“CSDDCA”)¹, or intended to be used to facilitate a violation of the CSDDCA, is subject to forfeiture thereunder. 42 Pa.C.S.A. § 6801(a)(6)(i)(A) and (B). Pending the institution of forfeiture proceedings, money “taken or detained under [the Forfeiture Act] shall not be subject to replevin, but is deemed to be **in the custody** of the law enforcement authority subject only to the orders and decrees of the court of common pleas having jurisdiction over the forfeiture proceedings.” 42 Pa.C.S.A. § 6801(d) (emphasis added).² This legislative framework reflects the foundational principle that title for all property seized by the police during a search and seizure remains with the owner, unless and until the Commonwealth obtains an order of forfeiture from the Court of Common Pleas which has jurisdiction over such a proceeding. In the instant matter, the Commonwealth had the opportunity to file a petition for forfeiture of the \$1,060.00 in cash in the Court of Common Pleas of Philadelphia within 2 years after police confiscated it from Appellee.³ See 42 Pa.C.S.A. § 5524(5) (providing that an action upon a statute for a forfeiture must be commenced

¹ 35 P.S. § 780-101, *et. seq.*

² Section 6801(d)(2) allows the law enforcement authority to turn custody of the property over to the District Attorney.

³ I presume for purposes of this appeal that Appellee was the owner of the cash which was recovered from the vehicle in which Appellee was a passenger.

within 2 years). Had the Commonwealth done so, it would have been afforded an opportunity to demonstrate the required nexus between this money and a violation of the CSDDCA, so as to extinguish Appellee's property rights to the money, and Appellee would, concomitantly, have been able to contest the matter, and provide evidence related to this issue. See Commonwealth v. \$6,425.00, 880 A.2d 523, 529 (Pa. 2005).

Accepting as true the assertions of the parties with respect to what transpired below, the Commonwealth did not commence a forfeiture proceeding within 2 years after seizure of Appellee's money; thus, under the plain terms of Section 6801(d), the Commonwealth, at present, continues to be merely the custodian of this money. The effect of the majority's interpretation of Rule 588, however, appears to be the creation of a new substantive right of ownership in the Commonwealth of seized property whenever a person from whom the property is seized by police fails, for whatever reason, to file a motion for return of property under Pa.R.Crim.P. 588 within a 30-day period after seizure, and, as here, neither criminal charges nor forfeiture proceedings are ever commenced by the Commonwealth.

From my perspective, the creation of such a right of ownership in the Commonwealth under these circumstances would contravene the Unclaimed Property Act, which from 2002-2014 required that, whenever money was held by a public officer, or political subdivision of the Commonwealth, and the rightful owner did not make a claim for its return within 5 years, the public officer or political subdivision became the custodian of the money for the 5-year period and did not, even after expiration of the 5-year period, acquire legal title thereto. See 72 P.S. § 1301.9.1 (West 2013) (providing that property held by a public officer or political subdivision for the owner, which the owner does not request returned, is "presumed abandoned and unclaimed" after a

period of 5 years)⁴; Id., § 1301.2(a) (providing that all abandoned and unclaimed property is “subject to the **custody and control** of the Commonwealth.” (emphasis added)). Further, the Unclaimed Property Act requires that all property in the custody of a public officer or political subdivision which has become abandoned and unclaimed be physically transferred to our state Treasurer, who is obligated to publish annual lists of such property in order to facilitate an owner’s claim for its return. Id., §§ 1301.11-1301.13. Consequently, in the absence of a forfeiture proceeding or pending criminal matter, the money seized from Appellee should have been turned over to the Treasurer 5 years after it was seized from Appellee. However, apparently these procedures were not followed in this case.

Under these circumstances, then, the majority’s restrictive construction of Rule 588, *de hors* its text, and in opposition to the principle that our Rules of Criminal Procedure should be administered in a manner as to secure fundamental fairness, see Pa.R.Crim.P. 101(B), has essentially foreclosed Appellee’s ability to use the judicial process to seek return of his property, thereby effectively transferring legal title therein to the Commonwealth. Consequently, as the practical effect of the majority’s interpretation is to bestow upon the Commonwealth a substantive right to the acquisition of seized property under these circumstances, contrary to the Forfeiture Act and the Unclaimed Property Act, it conflicts with the principle that our rules are to be construed only to **effectuate** the exercise of substantive rights, and not for the diminution of those rights. Morris, Fowler, supra.

I must, therefore, respectfully dissent.

⁴ Effective July 10, 2014, the 5 year period was reduced to 3 years. See Act of July 10, 2014, P.L. 1053, § 7.