

No. 15-0008

In The Supreme Court Of Appeals Of West Virginia

**PRISTINE PRE-OWNED AUTO, INC.,
a West Virginia Corporation,**

Petitioner,

v.

**JAMES W. COURRIER, JR.,
Prosecuting Attorney for Mineral County, West Virginia
TROOPER M.L. TRAVELPIECE, Individually and
in his Official Capacity as a West Virginia State Trooper,**

Respondents.

**Honorable Lynn A. Nelson
Circuit Court of Mineral County
Civil Action No. 14-C-137**

RESPONDENT TROOPER M.L. TRAVELPIECE'S SUMMARY RESPONSE TO BRIEF OF PETITIONER

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STATEMENT OF THE CASE

Pristine Pre-Owned Auto, Inc. (herein after Petitioner) at the time of the filing of the “Petition for Writ of Mandamus and Request for Injunction” was under criminal investigation for selling vehicles under false pretenses and grand larceny by Trooper M.L. Travelpiece (herein after Respondent Travelpiece). This criminal investigation stemmed from customer complaints made to the West Virginia Department of Motor Vehicles, and the ensuing administrative investigation, as well as complaints made to Respondent Travelpiece by other individuals concerning the purchase of reconstructed vehicles and refusal of Petitioner to transfer completed titles after the individuals had paid for their vehicles. In furtherance of his investigation, Respondent Travelpiece applied for a search warrant before Magistrate Carolyn S. Roby. Respondent Travelpiece requested to search the property located at 474 S. Mineral Street, Keyser, West Virginia. Respondent Travelpiece sought evidence relating to the crimes of false pretenses and grand larceny in conjunction with the sale and repossession of a Ford Freestyle automobile which had been purchased by the complaining witness, as well as misrepresentations of car conditions at sale and the failure of Petitioner to produce titles upon completion of payment for vehicles. Respondent Travelpiece made application for the search warrant as contained in the documents located in the appendix to this matter. Magistrate Roby issued the search warrant which was lawfully executed on October 23, 2014.

Upon execution of the search warrant, Trooper Travelpiece requested assistance from Petitioner to determine what items were responsive to the warrant that was issued. Petitioner refused to assist Respondent Travelpiece. Respondent should not be prohibited from conducting a full investigation because Petitioner’s files were poorly organized or because Petitioner deliberately mis-organized its files in order to avoid or obstruct a criminal investigation. Respondent Travelpiece testified that some of the documents did not belong in the files in which

they were located; other files were mislabeled to state that they contained personal documents when in fact they contained documents responsive to the warrant. Respondent Travelpiece seized property believed to be evidence of crime or property used as a means of committing criminal offenses, False Pretenses or Grand Larceny. The items that were seized are listed on four (4) Property Receipts. As Respondent reviews the items that were seized, it is obvious that some are not responsive to the warrant and irrelevant to any criminal actions that might have occurred. The West Virginia State Police, through the Mineral County Prosecuting Attorney, has returned some of those items and documents. Other items and documents are ready to be returned to Petitioner.¹ Those items which are evidence of the crimes committed have been retained as evidence in the pending criminal prosecution.

At the time of the filing of the “Petition for Writ of Mandamus and Request for Injunction” there was an ongoing criminal investigation. Petitioner attempted to obtain an injunction to stop the West Virginia State Police and Respondent Travelpiece from investigating any and all criminal allegations against Petitioner. Since the entry of the Order denying the Petition, the criminal investigation has resulted in Fernando Manvel Smith, Petitioner’s Chief Operating Officer, and Jamie Elizabeth Crabtree being indicted on Twenty-nine (29) Felony Counts each of False Pretenses in violation of W.Va. Code §61-3-24(a)(1) and Twenty-nine (29) Felony Counts each of Conspiracy in violation of W.Va. Code §61-10-31. Each of them has been charged with fifty-eight (58) felony charges based upon their criminal activity while engaged in Petitioner’s business. Those documents and items seized were instrumental in obtaining the indictments and the West Virginia Rules of Criminal Procedure should be followed

¹ The West Virginia State Police notifies the Mineral County Prosecuting Attorney when items are ready to be returned. The Prosecuting Attorney then notifies counsel for Petitioner and arrangements are made to return the items. As to the most recent items ready to be returned, counsel for Petitioner has not completed the arrangements for the return of those items

in making the determination as to whether the items of evidence were lawfully seized. Therefore the proper remedy at law lies within those criminal proceedings.

ARGUMENT

A. **Petitioner is not entitled to the remedy of Mandamus in this matter.**

A writ of mandamus will not issue unless three elements coexist (1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of the respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy.” Syl. Pt. 2, *State ex rel. Kucera v. City of Wheeling*, 153 W.Va. 538, 170 S.E.2d 367 (1969); Syl. Pt. 10, *State ex rel. Marockie v. Wagoner*, 191 W.Va. 458, 446 S.E.2d 680 (1994). *State ex rel. Brown v. Corporation of Bolivar*, 209 W.Va. 138, 544 S.E.2d 65 (2000), *State ex rel. Brown v. Corporation of Bolivar*, 217 W.Va. 72, 614 S.E.2d 719 (2005). Petitioner did not demand performance of an act or duty which is subject to Mandamus.

The disposition of seized property is controlled by W.Va. Code §62-1A-7 which states that “Property taken pursuant to the warrant shall be preserved as directed by the court or magistrate for use as evidence and thereafter shall be returned, destroyed, or otherwise disposed of as the court or magistrate may direct.” Respondent Travelpiece has never received a directive from any Circuit Judge, Magistrate or any other lawful authority as to the disposition of any property seized pursuant to the search warrant executed on October 23, 2014. Therefore, the act or duty that the Petitioner seeks is not an imperative right or established duty created or imposed by law. The proper manner of obtaining the relief requested is for the Petitioner to file a Motion for the return of the seized property.

Petitioner has failed to show a clear legal right to the relief sought. Petitioner cannot show that the evidence is not fruits of the crimes committed and therefore, not specific to the

charges that are being investigated and prosecuted in Mineral County. Petitioner has failed to show that the seizure of the property was unlawful in any manner.

Petitioner has another adequate remedy at law by pursuing suppression and return of the evidence seized through the criminal action. Within the confines of the criminal action Petitioner may file a Motion for Return of Property and request that the Court make a determination as to the lawfulness of the seizure of the items pursuant to the search warrant. "A person aggrieved by an unlawful search and seizure may move the circuit court for the county in which the property was seized for the return of the property on the ground that he or she is entitled to lawful possession of the property." *W.Va. Rules of Crim. Proc. Rule 41(e)*. Based upon that fact that indictments have been returned, Petitioner may make a motion to suppress under Rule 12 of the Rules of Criminal Procedure. A motion for the return of property filed after an indictment or information has been filed will be treated also as motion to suppress under Rule 12. *W.Va. Rules of Crim. Proc. Rule 41(e) and (f)*. Petitioner argued that no criminal action had been filed. At the time of the hearing a criminal action could not be initiated until the temporary injunction was lifted. At this time there are pending felony charges in the Circuit Court of Mineral County. West Virginia Code, the Rules of Criminal Procedure and case law provide only for the return of property by a person who has been aggrieved by an unlawful search and seizure. *W.Va. Code 62-1A-6; W.Va. Rules of Crim. Pro. Rule 41 and White v. Melton, 166 W.Va. 249, 273 S.E.2d 81 (1980)*. Petitioner has not been aggrieved by an unlawful search and seizure. However, one aggrieved by an unlawful search and seizure may pursue the return of their property through a motion pursuant to W.Va. Code 62-1A-6 which states:

A person aggrieved by an unlawful search and seizure may move for the return of the property and to suppress for use as evidence anything so seized on the ground that (1) the property was illegally seized without a warrant, or (2) the warrant is insufficient on its

face, or (3) the property seized is not that described in the warrant, or (4) there was not probable cause for believing the existence of the grounds on which the warrant was issued, or (5) the warrant was illegally executed. If the offense giving rise to the issuance of the warrant be one which a magistrate has jurisdiction to hear and determine, the motion may be made to him. If the offense is cognizable only before a court of record the motion shall be made to the court having jurisdiction. The judge or magistrate shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be returned unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion may be made before trial or hearing upon three days' notice, or, the motion may be made or renewed at the trial or hearing. *W.Va. Code §62-1A-6.*

B. The search warrant in question is a valid search warrant and all items seized upon the execution of that warrant were lawfully seized.

Contrary to Petitioner's assertions, Respondent Travelpiece did not obtain a "general search warrant." Respondent Travelpiece obtained a valid warrant for the criminal activity he was investigating. Allegations of false pretenses and allegations of misrepresentations of the conditions and titles of vehicles at sale are not the same as allegations of burglary or murder. To investigate these types of allegations, the investigating officer must review all the documents that could be related to such a criminal enterprise.

The West Virginia Code contains an entire chapter dedicated to criminal procedure and within that chapter, an entire article dedicated to search and seizure. "A search warrant authorized by this article may be issued by a judge of a court having jurisdiction to try criminal cases in the county, or by a justice of the county, or by the mayor or judge of the police court of the municipality, wherein the property sought is located." *W.Va. Code §62-1A-1.* In this instance, Magistrate Roby is a duly elected Magistrate in and for Mineral County and the property to be searched is located in Keyser, Mineral County, West Virginia. Further, the property to be searched and the property to be seized were specific to the allegations of first, a

vehicle being stolen by Petitioner, specifically that the vehicle was unlawfully repossessed because the victim was not in default on her payments and second, that Petitioner was selling reconstructed vehicles that were not stated to be reconstructed and third, that Petitioner was not transferring titles to vehicles upon retirement of the liens against said vehicles. These instances specifically meet the grounds for issuance of a search warrant.

A warrant may be issued under this article to search for and seize any property (a) Stolen, embezzled or obtained by false pretenses; or (b) Designed or intended for use or which is or has been used as a means of committing a criminal offense; or (c) Manufactured, sold, kept, concealed, possessed, controlled, or designed or intended for use or which is or has been used, in violation of the criminal laws of this state heretofore or hereinafter enacted. The term "property" shall include documents, books and papers and any other tangible objects.

W.Va. Code §62-1A-2.

As to the issuance of a warrant and its contents, the procedure for obtaining a warrant and information required is specifically set out in W.Va. Code §61-1A-3.

A warrant shall issue only upon complaint on oath or affirmation supported by affidavit sworn to or affirmed before the judge or magistrate setting forth the facts establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that there is probable cause to believe that grounds therefor exist, he shall issue a warrant identifying the property and particularly describing the place, or naming or particularly describing the person, to be searched. The warrant shall be directed to the sheriff or any deputy sheriff or constable of the county, to any member of the department of public safety or to any police officer of the municipality wherein the property sought is located, or to any other officer authorized by law to execute search warrants. It shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. It shall command the officer to search forthwith the person or place named for the property specified, to seize such property and bring the same before the judge or magistrate issuing the warrant. Such warrant may be executed either in the day or night. *W.Va. Code §62-1A-3.*

Respondent Travelpiece complied with the requirements by presenting Magistrate Roby with a search warrant which contained an affidavit, described the property to be searched, and the reasons for searching the property. Respondent Travelpiece swore to the contents of the warrant and affidavit and Magistrate Roby, finding probable cause issued the search warrant requested. Respondent Travelpiece executed the warrant within the appropriate timeframes as set out in W.Va. Code §62-1A-4. *Amended Appendix of Record, pages 21 through 31.*

The warrant may be executed and returned only within ten days after its date. The officer taking property under the warrant shall give to the person from whom or from whose premises the property is taken a copy of the warrant and a receipt for the property taken; or if the person from whose premises the property is taken is not present at the time, the officer shall leave the copy and receipt at the place from which the property is taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The judge or magistrate shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken.”
W.Va. Code §62-1A-4.

Since the seizure of this property, Respondent Travelpiece has maintained the property in evidence as directed, releasing those items he deems not to have evidentiary value. “Property taken pursuant to the warrant shall be preserved as directed by the court or magistrate for use as evidence and thereafter shall be returned, destroyed or otherwise disposed of as the court or magistrate may direct.” *W.Va. Code §62-1A-7.*

C. A lawful search of the property and seizure of the items in question was conducted pursuant to a valid search warrant. Therefore, the Court should not exclude the evidence obtained during the execution of that warrant.

Respondent Travelpiece was investigating whether Petitioner was illegally repossessing vehicles, whether Petitioner was selling salvaged vehicles with clean titles and whether Petitioner was transferring titles upon retirement of the liens. Respondent Travelpiece, in furtherance of his criminal investigation into the alleged criminal conduct by Petitioner, filled out

an application for search warrant with appropriate attachments and affidavit. The above mentioned documents were presented to the Magistrate who found probable cause existed to issue the warrant. The search warrant was then issued by the Magistrate who had jurisdictional control over the property to be searched. Respondent Travelpiece and other law enforcement officers then executed the search warrant on Petitioner's property. Based upon the facts and law set forth above, the search warrant was valid and the evidence was seized in a lawful manner. Therefore, it would have been improper for the Court to exclude the evidence from the investigative process. Subsequently, two individuals have been indicted based upon that evidence. Therefore, the proper forum for challenging the validity of the search warrant, the seizure and the admission of evidence is within the confines of the criminal matters.

CONCLUSION

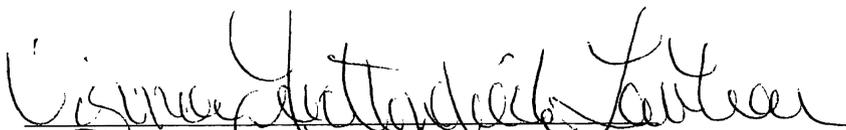
Judge Nelson correctly held that the search of the premises located at 474 S. Mineral Street, Keyser, West Virginia was lawful; that the items seized pursuant to the search warrant were appropriate given the nature of the offenses under investigation; and that Respondents have a continuing interest in the property taken. Finally Judge Nelson correctly ruled that the "overtaking" of items due to the fact that Respondent Travelpiece was unfamiliar with Petitioner's organizational habits and the lack of cooperation by Petitioner can be cured by the return of that property as Respondent recognizes that the items are not of evidentiary value. The evidence obtained by the seizure of documents pursuant to the search warrant at issue has resulted in indictments returned against Fernando Manvel Smith and Jamie Elizabeth Crabtree for criminal conduct in which they were engaging on behalf of Petitioner. Therefore, there is no absence of another adequate remedy at law.

Petitioner is not entitled to have a writ of mandamus issued. Accordingly, Respondent, Trooper M.L. Travelpiece, prays that the Court **DENY** Pristine Pre-Owned Auto, Inc.'s Appeal in its entirety.

Respectfully submitted May 28, 2015.

TROOPER M.L. TRAVELPIECE
Respondent

By counsel,



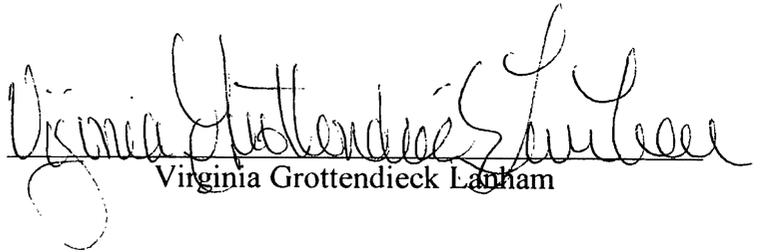
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CERTIFICATE OF SERVICE

I, Virginia Grottendieck Lanham, Assistant Attorney General and counsel for the Respondent Trooper M.L. Travelpiece herein, do hereby certify that on May 28, 2015 I have served a true copy of the forgoing ***Respondent Trooper M.L. Travelpiece's Summary Response To Brief Of Petitioner*** upon all counsel of record, by depositing a true copy thereof in the United States mail, postage prepaid, in envelopes addressed as follows:

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