

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CRIMINAL #2014-SUCR-10417
CRIMINAL #2015-SUCR-10384 ✓

2016 JAN 11 PM 12:57

COMMONWEALTH OF MASSACHUSETTS

v.

AARON HERNANDEZ

Non-Party Petitioner's Motion to Intervene

The Non-Party Petitioner, JANA Leasing and Rental Corporation and its related entity Fox Enterprises, Inc. d/b/a Fox Toyota (hereafter collectively "Petitioner" and/or "Fox Toyota") moves pursuant to Mass.R.Civ.P. 24 (a)(2), to intervene¹ for the limited purpose of filing and being heard on a motion for return of property, the 2006 Toyota 4 Runner Ltd., Vehicle Identification No. JTEBU17R768052996, seized by the Boston Police Department and the Suffolk County District Attorney's Office in connection with the arrest and prosecution of Mr. Hernandez , and currently in its possession.

In support hereof, the non-party Petitioner states as follows:

1. On or about October 30, 2010, Fox Toyota, located at 415 Taunton Avenue, East Providence, Rhode Island obtained title to a 2006 Toyota 4Runner Ltd., Vehicle

¹ Petitioner is cognizant that such a motion is normally improper in a criminal matter, however in the interest of judicial economy, Petitioner seeks to intervene in this matter for the sole purpose of seeking the return of its property, now held, but not needed, by the Commonwealth in connection with this ongoing criminal matter, in lieu of filing its own civil suit which would only further burden the Courts of this Commonwealth as well as the Petitioner, who has already been greatly burdened here.

1/19/16 Allowed for purposes of litigation motion for return of property. A. Co. &

Identification No. (VIN) JTEBU17R768052996 (the “Vehicle”) for the purchase price of \$26,050.00.²

2. The purchase was financed by Toyota Motor Credit Corp. (“TMCC”) who maintains a lien on the Vehicle, including delivery and finance charges, in the amount of \$28,285.00. Fox Toyota has been paying monthly installments of \$471.43 on this Vehicle since its purchase.³
3. Sometime in 2010, Fox Toyota entered into a contract to lease the Vehicle to Aaron Hernandez, through his agents Athletes First. According to the terms of their agreement, Mr. Hernandez was required to provide certain promotional services to Fox Toyota in exchange for his use of the Vehicle.
4. On or about June 26, 2013, Mr. Hernandez was arrested and Fox Toyota’s Vehicle was seized by the Commonwealth of Massachusetts.
5. Since that time to the present date, the Commonwealth of Massachusetts has been in possession, custody and control of the Vehicle, and Fox Toyota has received no payments from Mr. Hernandez, his agents, or anyone else on his behalf, and Fox Toyota has not had access to or use of the Vehicle, despite continuing its obligation to make its monthly installment payments on it. The lien was ultimately paid off on October 15, 2015.
6. Fox Toyota is represented in the State of Rhode Island by Joshua Teverow Esq., who is, and has continuous been, licensed to practice law in both Massachusetts and Rhode Island since 1978. Mr. Teverow is currently in the process of negotiating the sale of the Petitioner, which is conducting inventory and assembling all of its assets in

² See Exhibit 1 to the Affidavit of Attorney Joshua Teverow filed herewith.

³ See Exhibit 1 to the Affidavit of Attorney Joshua Teverow filed herewith.

anticipation of the sale. Fox Toyota is in need of the Vehicle prior to the sale, the closing on which is not currently scheduled.

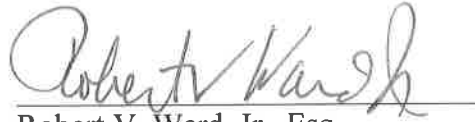
7. As can be seen from his Affidavit filed herewith, Mr. Teverow has attempted to recover the Vehicle for the Petitioner, his client, without this Court's intervention, but to date has been unable to do so. As a result, the undersigned counsel has been requested to file formal action to obtain the return of the Vehicle.
8. Petitioner's counsel has contacted the Commonwealth and has been informed that the Commonwealth does not plan to and has no need to use the Vehicle in its upcoming prosecution of Mr. Hernandez. As a result, the Vehicle is languishing in the possession of the Commonwealth, to the ongoing detriment of Petitioner.
9. Petitioner's interest is directly related to the property which is being held by the Commonwealth despite its lack of need for its retention. Disposition of this action may, as a practical matter, impair or impede Petitioner's ability to protect its property interest absent this Court's allowance of its motion to intervene for the limited purpose of filing and being heard on a motion for return of its property.
10. The Commonwealth does not object to the non-party Petitioner's intervention for the limited purpose of filing his motion for the return of property, as set forth in the Proposed Order respectfully submitted herewith.

In further support hereof, Petitioner submits the Affidavit of Petitioner's Rhode Island counsel, Mr. Teverow and a Memorandum of Law in support of both of its motions.

WHEREFORE, Petitioner respectfully requests this Honorable Court allow it to intervene in this ongoing matter for the limited purpose of filing and being heard on a motion for the return of its property, which is now being withheld from it, to its financial detriment, without just cause.

Non-Party Petitioner,
JANA Leasing and Rental Corporation and Fox
Enterprises, Inc. d/b/a Fox Toyota

By their counsel,



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Dated: January 8, 2016