

FILED

UNITED STATES OF AMERICA
DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA 2010 JUL 16 P 12: 28

CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

UNITED STATES,

Plaintiff,

v.

CASE NO. 03:06-CR-211-J-32HTS

TONY HENDERSON,

JUDGE MONTE C. RICHARDSON,
MAGISTRATE

Defendant.

MOTION TO RETURN/DISPOSITION OF PROPERTY

The above defendant, Tony Henderson, pro se, files this Motion for the Return/Disposition of Property. This Motion seeks restoration of the non-possessory interest in property pursuant to U.S. v. Edward L. Brown and Elaine A. Brown, 2010 U.S. Dist. LEXIS 35358, April 9, 2010. In support thereof, the Defendant states the following:

1. On June 8, 2006, Judge Monte C. Richardson requested that I turn over all firearms in my possession to the FBI during the time criminal charges were pending against me.
2. On June 9, 2006, I was provided a property receipt for 19 firearms that were voluntarily turned over to the FBI. (Ex. 1)
3. The above firearms were never found to be involved in any criminal activity. The above firearms were never determined to be purchased from proceeds from criminal activity. No notice of seizure was ever provided citing any statute under which such firearms were to be seized.
4. Upon my plea and subsequent conviction, the FBI considered the property to be abandoned. On February 4, 2009, I transferred my non-possessory interest in the firearms to Robert Rosier. Mr. Rosier filed a claim for the property which was denied after the FBI alleged that I had no right to transfer title or direct a disposition of my firearms due to my conviction for Possession of Marijuana on April 22, 2008. (Ex. 2)
5. On June 3, 2010, I filed an appeal of that decision to the FBI in Washington, D.C. No decision has been made.

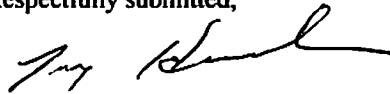
In U.S. v. Brown, In Re: Claim of Bernhard Bastian, Jr., 2010 U.S. Dis. LEXIS 35358 (April 9, 2010)(attached), see also U.S. v. 627 Firearms, 589 F. Supp. 2d 1129, 1140 (S.D. Iowa 2008), the facts are virtually identical to the facts in this case. In Brown, the court rejected "the proposition that firearms lawfully owned must, following the owner's unrelated felony conviction, sit wherever they may be, unalienable and wasting, not subject to forfeiture, not subject to confiscation as contraband and not subject to disposition by the owner, or by anyone else, or by the court for the owner's benefit." The court further rejected "that such property is subject to government confiscation and destruction in the absence of due process or payment of just compensation." The remedy fashioned by the Brown court, the judge exercised equitable powers and ordered the transfer of title to firearms lawfully owned, but later convicted of a felony (which were not subject to forfeiture or confiscation as contraband) for the felon-owner's benefit as outlined

Courts have fashioned solutions that preclude convicted felons from unilaterally dictating or directing disposition of their lawfully owned firearms while avoiding the serious constitutional issues under the *Takings Clause* while protecting the felon-owner's legitimate property interests.

Wherefore, I respectfully request that my spouse, Linda Henderson, be given possession and control of the firearms collection for the benefit of our adult children and heirs. In the alternative, I respectfully request that this court order that Robert Rosier be lawfully entitled to own the subject firearms collection and be awarded possession and control and direct that payment for the firearms be awarded to me as the lawful non-possessory owner.

Dated: June 13, 2010

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tony Henderson", written in a cursive style.

Tony Henderson, Pro Se
6195 Oakdale Lane
MacClenny, FL 32063
Phone: 904-259-1436
904-534-3377

Attachments

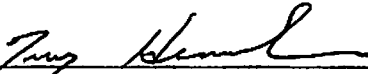
CERTIFICATE OF SERVICE

A copy of this Motion was served on the following persons on July 13, 2010 by regular U.S. Mail:

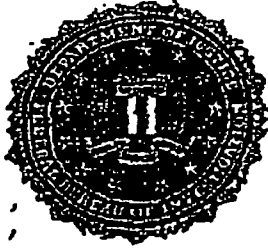
U.S. Magistrate Honorable Monte C. Richardson
U.S. District Court
Middle District of Florida
300 N. Hogan Street
Jacksonville, FL 32202

U.S. District Court
Clerk of the Court
Middle District of Florida
300 N. Hogan Street
Jacksonville, FL 32202

Russell Stoddard
Assistant U.S. Attorney
300 N. Hogan Street, Ste. 700
Jacksonville, FL 32202



Tony Henderson



FEDERAL BUREAU OF INVESTIGATION

Jacksonville, Florida Division

Facsimile Coversheet

(904)721-1211 (Main) / (904)727-6399 (Fax) 248-7000

Date: 6/12/06

Fax No.: (904) 829-5943

To: Alexander Christine, Jr

of Pages: 3 (Including this sheet)

Attn:

From: SA James Pellicano (904) 727-6120 / (904) 626-8766 (A)

6-22-09 2:30 Duty Agent RUSKY - 4-22-09 - Duty Agent 4-30 11am 5-13-09

Subject: Property List - Guns

Message: Alex Here are the list of guns we took from Tony Henderson Any problems let me know. Hopefully we will prefer today! J. Pellicano

Privacy Notice: This information is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, exempt or protected from disclosure under applicable Federal or State law(s). If the reader of this information is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this information is strictly prohibited. If you received this communication in error, please immediately call (904) 721-1211.

6-22-09 Skinner

(Exhibit 1)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
Receipt for Property Received/Returned/Released/Seized

Page 1 of 2

On (date) 6/9/06

- Item(s) listed below were:
- Received From
 - Returned To
 - Released To
 - Seized

(Name) Tony Henderson
 (Street Address) 6195 Oakdale Ln
 (City) Maitland, FL 32063-5509

Description of Item(s):

- ① Rugger Special 101 Serial # 571-46662
5 shot Revolver
- ② Jennings Firearms .22 (J-22) & Magazine - serial # 187827
- ③ Smith & Wesson .357 magnum Serial # 72954
- ④ Foremost Model 40 - 12 gauge shotgun # 3078949
- ⑤ Champion - 16 gauge rifle - Serial # 628504H
- ⑥ Iver Johnson Slide Action 22 w/ Bushnell scope
Serial # 003561
- ⑦ Smith & Wesson - Berdan Patrol .357 Magnum
Serial # USBP 1243 & case
- ⑧ Chymwick .22 Bolt Action - Serial # 62724
- ⑨ M1 Garand Rifle (w/ WIP) - Serial # 05432
- ⑩ Remington Crossbow - no serial #
- ⑪ Little Bear 410 - Rifle - serial #

Received by: [Signature] 9P 6/9/06 Received from: [Signature]
 (Signature) (Signature)

(Exhibit 1)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
Receipt for Property Received/Returned/Released/Seized

Page 2 of 2

On (date) 6/9/06

- Item(s) listed below were:
- Received From
- Returned To
- Released To
- Seized

(Name) Tony Henderson
 (Street Address) 6195 Oakdale Ln
 (City) Macedonny, FL 32063-5509

Description of Item(s):

- (11) M1 (Chatman) - serial # 10667
- (12) Remington 550 .22LR Semi-Auto Serial # 550-6
- (13) Mosburg Made 152K .22 long Rifle - Serial # + magazine
- (14) M1 Grad .22 # H499 + Magazine
- (15) Black Powder - small Hanger - Panacea # 53-126855
- (16) Greenfield - Model 60 .22 - Serial # 24275308 + Scope
- (17) Rossi Junior Arms .22 # 10023232
- (18) Keltec .40 cal - serial # 06581 + magazine
- (19) 3 M4 magazines

[Large diagonal line with handwritten "JP 6/9/06" across the page]

Seized by: JP Palla
(Signature)

Received from: Tony Henderson

(Exhibit 1)



U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No.

May 21, 2010

CERTIFIED RETURN RECEIPT

Tony Henderson
6195 Oakdale Lane
Macclenny, Florida 32063

RE: MISCELLANEOUS FIREARMS - SEE ATTACHED LIST

SEIZURE NUMBER: 3330-10-A-0002

ASSET ID NUMBER: A06-FBI-00141

Dear Mr. Henderson:

Reference the claim for the return of the above referenced property that you filed on January 4, 2010. Your claim has been reviewed and is hereby denied.

A claim for property being abandoned shall not be granted unless the claimant establishes a valid, good faith interest in the property. Title 41, Code of Federal Regulations (C.F.R.), Section 128-48.503(b). The claim must be sworn, must state the interest of the claimant in the property as owner, mortgagee, or otherwise, must be supported by satisfactory documentary evidence, and must include the facts and circumstances justifying the granting of the claim. 41 C.F.R. § 128-48.503(a).

You have failed to satisfy the regulatory requirements. Assuming *arguendo* that you are the owner of the firearms, our investigation into the merits of your claim confirms your status as a convicted felon. Any firearm possession, actual or constructive, by a convicted felon is prohibited by law. See Title 18, United States Code (U.S.C.), Sections 922(g) and 3665. Therefore, the release of the firearms to you or your designee, Robert Rosier, as you have requested, would place you in violation of federal law, as it would amount to constructive possession. See United States v. Howell, 425 F.3d 971, (11th Cir. 2005); United States v. Felici, 208 F.3d 667, 670 (8th Cir. 2000), cert. denied 516 U.S. 897 (1995), citing United States v. Sample, 136 F.3d 562 (8th Cir. 1998). Moreover, as you do not have the authority to legally possess firearms, you cannot

(Exhibit 2)

Tony Henderson

delegate the authority to any other person. See Howell, 136 F.3d at 977. Consequently, your claim for the release of the subject firearms to Robert Rosier must be denied, as you have failed to establish a valid, good faith interest in the property as required by 41 C.F.R. § 128-48.503.

You may request that the Federal Bureau of Investigation reconsider the denial of your claim. A request for reconsideration must be based on evidence recently developed or not previously considered and must be submitted within ten days of the receipt of this letter denying your claim. See 41 C.F.R. § 128-48.502(e). The request must be addressed to the Director, Federal Bureau of Investigation, Finance Division, Forfeiture and Seized Property Unit, Suite 510, 935 Pennsylvania Avenue, N W Washington, D.C. 20535, Attention: Lisa Curry

Sincerely,

Lisa Curry
Lisa Curry

Property Management Officer

- 1 - AGC Stephanie Woods
- 1 - Jacksonville (58A-JK-49943)
Attention: PS Sharon Snow
- 1 - FSPU Abandonment File (3330-10-A-0002)

ITEM CONTENTS LIST

<u>Item Seq. No.</u>	<u>Count</u>	<u>Item Description/Serial Number/Condition/Item Type/Disposition Type</u>	<u>Item Value</u>
1	1	Ruger model SP101 5-shot revolver Item Type: Firearms Revolver Condition: Fair Serial No: 571-46662	\$237.51
2	1	Jennings model J-22 pistol Item Type: Firearms Pistol Condition: Fair Serial No: 187827	\$523.84
3	1	Smith & Wesson model 66-2 revolver Item Type: Firearms Revolver Condition: Fair Serial No: AHJ0991	\$136.44
4	1	High Standard Foremost model 4011 12-gauge shotgun Item Type: Firearms Shotgun Condition: Fair Serial No: 3078949	\$82.10
5	1	Iver Johnson's Arms model Champion 16-gauge shotgun Item Type: Firearms Shotgun Condition: Fair Serial No: 62850XH	\$57.67
6	1	Erma Werke GMBH model EW22 .22-caliber rifle, with Bushnell scope (imported by Iver Johnson's Arms) Item Type: Firearms Rifle Condition: Fair Serial No: 003561	\$76.77
7	1	Smith & Wesson model 66 6-shot revolver, US Border Patrol #1243 Item Type: Firearms Revolver Condition: Fair Serial No: 7K49862	\$136.44
8	1	Rogue Rifle Co. model Chipmunk Actra bolt-action rifle Item Type: Firearms Rifle Condition: Fair Serial No: 62724	\$47.31
9	1	Japanese Arisika 6.5mm rifle, nonfunctional Item Type: Firearms Rifle Condition: Poor Serial No: C5432	\$10.00
10	1	Powermaster crossbow Item Type: Firearms Other Condition: Poor Serial No: none	\$50.00
11	1	Savage .410 bore shotgun, engraved "Little Pet" Item Type: Firearms Shotgun Condition: Fair Serial No: 429HY	\$34.83

(Exhibit 2)

12	1	U.S. Rifle Arms Corp. USA, Model M1A1 Garand, .308 caliber semi-automatic rifle with three magazines		\$1,613.40
		Item Type: Firearms Rifle	Serial No: 10667	
		Condition: Fair		
13	1	Remington model 550-I semi-automatic rifle		\$118.03
		Item Type: Firearms Rifle	Serial No: none	
		Condition: Fair		
14	1	O.F. Mossberg & Sons model 152K rifle, with one magazine		\$76.88
		Item Type: Firearms Rifle	Serial No: none	
		Condition: Fair		
15	1	RFI Enfield Mark III* 7.62 caliber rifle and one magazine		\$50.00
		Item Type: Firearms Rifle	Serial No: H4991	
		Condition: Poor		
16	1	Homemade percussion cap muzzle-loading rifle, nonfunctional		\$10.00
		Item Type: Firearms Other	Serial No: 83-126855	
		Condition: Poor		
17	1	Marlin Firearms Greenfield model 60 rifle with scope		\$33.19
		Item Type: Firearms Rifle	Serial No: 24275308	
		Condition: Fair		
18	1	Rossi model M92 rifle (imported by Interarms)		\$160.20
		Item Type: Firearms Rifle	Serial No: K023232	
		Condition: Fair		
19	1	Kel Tec model SUB-2000 semi-automatic submachine gun		\$252.75
		Item Type: Firearms Machinegun	Serial No: 06581	
		Condition: Fair		

(Exhibit 7)