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DEPARTMENT OF SAFETY vs. Andrew F0297 Brelinski

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**BEFORE THE COMMISSIONER OF THE
TENNESSE DEPARTMENT OF FINANCE OF ADMINISTRATION**

IN THE MATTER OF:

Andrew (F0297) Brelinski

DOCKET NO: 19.01-093043J

INITIAL ORDER

This matter was heard on August 17, 2006, before Joyce Carter-Ball, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety. Orvil Orr, attorney for the Department of Safety, represented the State. Attorney Sharon E. Guffee represented Claimant Andrew Brelinski.

The issue to be determined is whether the subject \$2, 700.00 seized was traceable to, or proceeds from prior drug transactions.

After consideration of the record, it is **DETERMINED** that the money seized should be forfeited to the Seizing Agency.

This decision is based on the following findings of facts and conclusions of law:

FINDING OF FACTS

1. The subject \$2, 700.00 was seized on February 25, 2006, on the basis that the money is proceeds from prior drug sales.
2. Sgt. Kirby investigated a vehicle in the parking lot of 1200 Lakeview Drive on February 25, 2006.
3. Sgt. Kirby smelled the odor of burnt marijuana emanating from the interior of the vehicle.
4. When asked if he had anything to do with the vehicle, Claimant responded that the vehicle did not belong to him.
5. Sgt. Kirby asked Claimant if there were any drugs in the vehicle and Claimant responded that there was a “substantial” amount.
6. Claimant further stated that there were mushrooms and marijuana in the vehicle.
7. Detective Andrew Green testified that he was contacted by Sgt. Kirby on February 25, 2006 regarding an investigation in the parking lot of 1200 Lakeview Drive.
8. When Detective Green arrived, he was introduced to Claimant and 3 of his friends.
9. Sgt. Kirby testified that he witnessed Detective Green read Claimant his Miranda rights.
10. Claimant waived his rights and stated that the drugs in the knapsack were his.
11. Claimant gave information as to how much he bought the drugs for and how much he sold them for.

12. Claimant was charged with possession of marijuana and mushrooms for resale, and drug paraphernalia.

13 After being arrested, Claimant made a statement that he had \$2,200.00 in a drawer in his room at his father's house.

14. Claimant also stated that he made \$8.00 an hour buffing floors, and gave all of that money to his father to pay his bills.

15. Three officers went to Claimant's home and spoke with his father, Mr. Dean Brelinski. Detective Green advised Mr. Brelinski of the situation with his son. The officers asked permission to come inside but did not search the home.

16. Officer Marc Swain testified that he was called to the Franklin Bolling Alley at Sgt. Kirby's request on February 25, 2006. Officer Swain watched the individuals while waiting for Detective Green to arrive at the scene.

17. Officer Swain testified that Detective Green read the Miranda warnings from a card.

18. Officer Swain went to Mr. Brelinski's home and confirmed Detective Green's testimony as to what happened at the home.

19. Mr. Brelinski testified that Claimant has worked at DBS since October or November, and that Claimant does not have a checking account.

20. Mr. Brelinski testified that Claimant has given him money to keep (1,687.00) that Claimant has earned from his jobs, and that Claimant didn't have any bills at that time.

21. Mr. Brelinski testified that Claimant worked odd jobs in the summer around the neighborhood, such as cutting grass.

22. Mr. Brelinski testified that Claimant was paid in cash.

23. Mr. Brelinski searched through Claimant's drawers and found an envelope with (\$2,700.00) in his son's room. Mr. Brelinski didn't know who put the money in the envelope. Mr. Brelinski didn't know where the additional money came from.

24. Mr. Brelinski relinquished the envelope to Detective Green.

CONCLUSIONS OF LAW

1. The State of Tennessee, as the moving party in this case, has the burden to introduce evidence that would, by a preponderance of the evidence, prove the issues should be resolved in its favor. Rule 1360-4-1-.02.

2. T.C.A. section 53-11-451 (a)(6)(A) authorizes the forfeiture of "Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of the Tennessee Drug Control Act of 1989..., all proceeds traceable to such an exchange, and all moneys...used, or intended to be used, to facilitate any violation of the Tennessee Drug Control Act."

3. The State is not required to trace money or proceeds to specific drug sales, so long as there is some proven nexus to connect the seized property with illegal drug sales activity. Circumstantial evidence can be used to make this connection. Letter v.

Plummer, 559 S.W.2d 785 (Tenn. 1977); Goldsmith v. Roberts, 622 S.W. 2d (Tenn.Ct. App. 1981).

4. There is no proof that the \$1,687.00 Mr. Brelinski said he received from his son came from a legitimate source.

5. The \$2,700.00 that Mr. Brelinski **found** in his son's drawer was not cash that Mr. Brelinski was holding for his son, or, Mr. Brelinski would have known where the money was, as well as the amount in the envelope. .

6. It is **CONCLUDED** that the State carried its burden of proof by a preponderance of the evidence, or as the more probable conclusion, that the seized U. S. Currency (\$2,700.00) is subject to forfeiture, pursuant to the provisions of T.C.A. section 53-11-451 (a) (4).

7. It is **CONCLUDED** that there is both substantial and material evidence that the Claimant was engaged in the sale of illegal drugs, and that the seized \$2,700.00 was the proceeds of such sales.

8. It is **CONCLUDED** that the State of Tennessee has carried its burden of proof and established by a preponderance of the evidence that the seized U.S. Currency in the amount of \$2,700.00 is proceeds from Claimant's illegal drug trade.

9. Therefore, it is **ORDERED** that the seized U.S. Currency in the amount of **\$2,700.00 be forfeited to the Seizing Agency.**

This Initial Order entered and effective this 29th day of August 2006.

Joyce Carter-Ball
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 29th day of August 2006.


Charles C. Sullivan, II, Director
Administrative Procedures Division