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Abigail E. L6635 Hendrix One hundred five
\$105.00 in U.S. Currency Seized from:
Abigail E. Hendrix, Seizure date: May 31, 2011,
Claimant: Abigail E. Hendrix Seizing Agency:
DeKalb Co. Sheriff's Dept.

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**BEFORE THE COMMISSIONER OF THE
TENNESSEE DEPARTMENT OF SAFETY**

IN THE MATTER OF:

**Abigail E. (L6635) Hendrix
One hundred five (\$105.00)
in U.S. Currency
Seized from: Abigail E. Hendrix
Seizure date: May 31, 2011
Claimant: Abigail E. Hendrix
Seizing Agency: Dekalb Co.
 Sheriff's Dept.**

**DOCKET NO: 19.01-115271J
D.O.S. NO. L6635**

INITIAL ORDER

This matter was heard on January 4, 2012 before Joyce Carter-Ball, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Jacob Wilson, Staff Attorney for the Department, represented the Seizing Agency. Claimant, Abigail E. Hendrix, was represented by legal counsel, Gayla C. Hendrix.

The subject of this hearing was the proposed forfeiture of the seized property for its alleged use in violation of T.C.A. §53-11-201 et seq and 40-33-201 et seq.

After review of the record and arguments of the parties, it is DETERMINED that the subject **\$105.00 should be returned to the Claimant.**

This conclusion is based on the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Officer Jeremy Taylor and Sheriff Ray conducted a controlled drug buy on Claimant's boyfriend, Matthew J. Wilbur.
2. On May 31, 2011, the officers met with Mr. Wilbur again and conducted another controlled buy. Claimant, Mr. Wilbur and the Informant were in the vehicle.

3. The total amount of marijuana was one pound. After the buy was completed, Officer Taylor searched Mr. Wilbur and Claimant.
4. Officer Taylor found the marked money in Mr. Wilbur's front pocket and an additional \$23.57.
5. Officer Taylor searched Claimant's purse and found the subject \$105.00.
6. Claimant and Mr. Wilbur were placed under arrest.

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. Vehicles used in violation of the Tennessee Drug Control Act are subject to forfeiture pursuant to the provisions of T.C.A. §53-11-451.
3. T.C.A. §53-11-451 (a)(2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of parts 3 and 4 of this chapter, are subject to forfeiture.
4. T.C.A. §53-11-451 (4) All conveyances, including aircraft, vehicles or vessels that are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale or receipt of property described in subdivision (a)(1) or (a)(2)...
5. **T.C.A. § 39-17-418: Simple possession; casual exchange**
 - (a) It is an offense for a person to knowingly possess or casually exchange a controlled substance, unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of professional practice.
 - (b) It is an offense for a person to distribute a small amount of marijuana not in excess of one-half (½) ounce (14.175 grams).

6. T.C.A. §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**, negotiable instruments, and securities used, **or intended** to be used, to facilitate any violation of the Tennessee Drug Control Act of 1989.

7. The Department of Safety bears the burden of proof in forfeiture proceedings and must prove, by a preponderance of the evidence, (1) that the seized property was used in a manner making it subject to forfeiture . . . and (2) the owner or co-owner of the property knew that the property was being used in a manner making it subject to forfeiture, or, in the case of a secured party, that the standards set out in subsection (f) are met. T.C.A. §40-33-210(a) (2).

ANALYSIS

Claimant testified that her father gave her the subject \$105.00 for food and gas because her parents would be out of town for a week. Claimant further testified that she did not participate in the drug sale. Claimant received a diversion because she is a minor and has never been in trouble.

Officer Taylor testified that he heard Claimant speaking in the vehicle, but he does not recall what she said. Officer Taylor would not disclose any of the statements that Claimant was involved in the drug sale.

Although Claimant was in the vehicle with Mr. Wilbur and the Informant, no actual evidence was presented to show that Claimant was involved in the drug sale.

Based on the above, it is **ORDERED** that the subject \$105.00 be **RETURNED** to the Claimant.

IT IS SO ORDERED.

This Initial Order entered and effective this 20 day of January, 2012

Joyce Carter-Ball
Administrative Judge