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Law

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12-12-2007

DEPARTMENT OF SAFETY vs. One 2006  
Chevrolet Truck VIN No. 2GCEK13V961332822,  
Seized from: Charles H. Stewart, Date of Seizure:  
April 26, 2007, Claimant: Stewart Trucking  
Company Leinholder: Citizens Auto Finance

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BEFORE THE COMMISSIONER OF THE  
TENNESSEE DEPARTMENT OF SAFETY

IN THE MATTER OF:	)	
	)	
DEPARTMENT OF SAFETY	)	
	)	
v.	)	DOCKET NO. 19.01-096669J
	)	DOS Case No. G2852
One 2006 Chevrolet Truck	)	
VIN No. 2GCEK13V961332822	)	
Seized from: Charles H. Stewart	)	
Date of Seizure: April 26, 2007	)	
Claimant: Stewart Trucking Company	)	
Leinholder: Citizens Auto Finance	)	

INITIAL ORDER

This matter was heard on December 12, 2007, in Chattanooga, Tennessee, before John Hicks, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety. Nina Harris, Staff Attorney for the Tennessee Department of Safety, represented the State. Claimant Stewart Trucking Company was represented by L. Thomas Austin of Dunlap.

The subject of this hearing was the proposed forfeiture of the subject 2006 Chevrolet Truck by the Tennessee Bureau of Investigation.

After consideration of the record, it is DETERMINED that the seized 2006 Chevrolet Truck should be RETURNED to the Claimant Stewart Trucking Company.

This decision is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On April 26, 2007, Special Agent Mark Delaney of the Tennessee Bureau of Investigation and Deputy Mark Martin of the Warren County Sheriff's Department seized the subject 2006 Chevrolet Truck at Stewart Trucking Company.

2. Special Agent Delaney and Deputy Martin conducted controlled purchases of cocaine from Charles H. Stewart on the following dates:

On October 24, 2006 in the amount of 11.7 grams  
On October 24, 2006 in the amount of 5.6 grams  
On November 13, 2006 in the amount of 22.5 grams

3. Charles H. Stewart was driving the subject 2006 Chevrolet Truck on each occasion.

4. Charles H. Stewart is the son of Charles D. Stewart, the owner of Claimant Stewart Trucking Company.

5. Owner Charles D. Stewart of Claimant Stewart Trucking Company testified that he did not have knowledge that the seized 2006 Chevrolet Truck was used to sale cocaine.

6. Charles D. Stewart did not testify.

#### CONCLUSIONS OF LAW

1. 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.

2. The State failed to carry its burden of proof by a preponderance of the evidence, or as the more probable conclusion, that Owner Charles D. Stewart was aware that the seized 2006 Chevrolet Truck was used to transport cocaine in violation of the Tennessee Drug Control Act, thus making the vehicle subject to forfeiture, pursuant to the provisions of T.C.A. § 53-11-451(a)(4).

3. T.C.A. 40-33-210 provides

(a) ...the state shall have the burden to prove by a preponderance of the evidence that ; ... (2) The owner or co-owner of the property knew that such property was of a nature making its possession illegal or was being used in a manner making it subject to forfeiture, ...

4. It is CONCLUDED that Owner Charles D. Stewart was unaware that the seized 2006 Chevrolet Truck was used to transport cocaine in violation of the Tennessee Drug Control Act, thus making the vehicle subject to forfeiture, pursuant to the provisions of T.C.A. § 53-11-451(a)(4).

5. It is CONCLUDED that the seized 2006 Chevrolet Truck should not be forfeited to the seizing agency pursuant to the provisions of T.C.A. § 53-11-451(a)(4).

6. It is CONCLUDED that Owner Charles D. Stewart was not aware that the seized 2006 Chevrolet Truck was used to transport cocaine in violation of the Tennessee Drug Control Act.

7. It is **ORDERED** that the seized 2006 Chevrolet Truck should be **RETURNED** to the Claimant Stewart Trucking Company.

This Initial Order entered and effective this 27th day of December, 2007.

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John Hicks  
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State this 27th day of December, 2007.

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Thomas G. Stovall, Director  
Administrative Procedures Division