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5-21-2007

\$700.00 Seven hundred in U.S. Currency One 1995  
Nissan Maxima VIN: JN1CA21D9ST030464,  
Seized from: Terrance R. Hamilton, Seizure Date:  
October 18, 2006

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

**IN THE MATTER OF:**

**\$700.00 (Seven hundred) in U.S.  
Currency  
One 1995 Nissan Maxima  
VIN: JN1CA21D9ST030464  
Seized from: Terrance R. Hamilton  
Seizure Date: October 18, 2006**

**DOCKET NO: 19.01-095649J**

**INITIAL ORDER**

This matter was heard on May 21, 2007, 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. Cynthia Gross, attorney for the Department of Safety, represented the State. Claimant Elnora Mitchell was present and represented herself.

The State proved that the subject 1995 Nissan Maxima was used to facilitate an illegal drug transaction. There was no proof that Claimant had knowledge that her son was selling drugs. Therefore, the only issue presented for review is who has ownership of the subject 1995 Nissan Maxima.

After consideration of the record and arguments of the parties, it is **DETERMINED** that Terrance Hamilton owns the subject 1995 Nissan Maxima, which was **properly seized**, and the same 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 vehicle was seized on October 18, 2006 on the basis that Claimant used the vehicle to facilitate a drug transaction.
2. Officer Andrew Injaychock testified on behalf of the State.
3. Officer Injaychock testified that he was informed that when the subject 1995 Nissan Maxima was parked at the listed address, that's when Terrance Hamilton would be present with drugs. Terrance Hamilton does not live at this address.
4. Officer Injaychock testified that a search warrant was executed at the listed address, and 22 grams of marijuana, 4 grams of crack cocaine and 2.3 grams of powdered cocaine were found in a back pack next to Terrance Hamilton.
5. Officer Injaychock testified that, after the **Miranda Rights** were read, Terrance Hamilton said all the drugs were his.
6. The subject vehicle is registered in Terrance Hamilton's name.
7. The subject \$700.00 was found in Terrance Hamilton's wallet. There were six \$100 bills and five \$20 bills.
8. Terrance Hamilton was charged with possession of illegal drugs and drug paraphernalia.

9. Officer Injaychock testified that Terrance Hamilton gave no indication that he was not the owner of the car.

10. Claimant Elnora Mitchell, Terrance Hamilton's mother, testified that she lives in West Helena, Arkansas, and that she wired money to Terrance Hamilton for him to buy the subject vehicle for her.

11. Ms. Mitchell testified that Terrance Hamilton purchased the vehicle, kept and drove it until it was seized on October 18, 2006.

12. Ms. Mitchell testified that she had no problem with her son driving her vehicle.

13. The subject vehicle is Ms. Mitchell's second vehicle. Ms. Mitchell gave no explanation as to why she needed a second vehicle, or why she didn't come to Nashville to get the vehicle and take it with her.

14. The subject vehicle is registered in Terrance Hamilton's name.

15. Terrance Hamilton drove and maintained the car until it was seized.

16. The State alleges that Terrance Hamilton owns the subject 1995 Nissan Maxima, which was used to transport illegal drugs.

### **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. section 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.

4. 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, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of the Tennessee Drug Control Act of 1989.

5. It is **CONCLUDED** that the State **has carried** its burden of proof by a preponderance of the evidence, or as the more probable conclusion, that Terrance Hamilton owns the subject 1995 Nissan Maxima, which was used to facilitate a drug transaction, thus making the vehicle subject to forfeiture, pursuant to the provisions of T.C.A. section 53-11-451 (a) (4).

6. It seems more likely, under these circumstances, with these facts, that Ms. Mitchell’s intent was to buy the subject vehicle for Terrance Hamilton as a gift. Ms. Mitchell gave no persuasive testimony as to why she purchased a second vehicle in May, 2006, and did not come to pick it up.

7. It is **CONCLUDED** that the subject \$700.00 found in Terrance Hamilton's wallet is proceeds from an illegal drug transaction.

8. It is **CONCLUDED** that the State of Tennessee **has** carried its burden of proof and established by a preponderance of the evidence that Terrance Hamilton owns the subject vehicle, which was used to facilitate a drug transaction.

9. Therefore, it is **ORDERED** that the subject 1995 Nissan Maxima and \$700.00 be **forfeited to the Seizing Agency**.

This Initial Order entered and effective this 25th day of May, 2007.

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Joyce Carter-Ball  
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,  
this 25th day of May, 2007.

  
Charles C. Sullivan, II, Director  
Administrative Procedures Division