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\$594.00 Five hundred ninety fourdollars in U.S.
CurrencyOne Keycera Cell Phone, Seized from:
Emmett Harvell, Seizure Date: November 10,
2006, Claimant: Emmett Harvell

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

IN THE MATTER OF:

**\$594.00 (Five hundred ninety four
dollars in U.S. Currency)
One Keycera Cell Phone
Seized from: Emmett Harvell
Seizure Date: November 10, 2006
Claimant: Emmett Harvell**

**DOCKET NO: 19.01-096654J
SAFETY NO: F7989**

INITIAL ORDER

This matter was heard on August 21, 2007, before Joyce Carter-Ball, Administrative Law Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety. Cynthia E. Gross, attorney for the Department of Safety, represented the State. Claimant was represented by legal counsel, Mr. Glenn R. Funk.

The issue presented for review is whether the State properly seized the above-referenced property from the Claimant on November 10, 2006.

After review of the record and arguments of the parties, it is **DETERMINED** that the subject property was **improperly** seized and the same 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 Gene Davis testified that on February 10, 2007 he observed a vehicle parked, occupied by three (3) individuals.
2. When he approached the vehicle, he could smell the odor of marijuana. Officer Davis asked Claimant if he had been smoking marijuana and Claimant admitted that he had been smoking marijuana.
3. After a probable cause search of the vehicle Claimant was operating, Officer Davis found 24.5 grams of marijuana. The marijuana was individually packaged in three (3) bags.
4. Claimant had \$574.00 in U.S. Currency on his person at the time of the stop and a Keyocera cell phone.
5. There was also a hand gun adjacent to where the drugs were.
6. Claimant was charged with possession with intent to sell and possession of a firearm.
7. Claimant testified that he and the two other individuals were parked across from the barber shop, waiting for their turn in the chair.
8. Claimant has no previous convictions for selling drugs.
9. Claimant has two (2) convictions for drug possession for his own personal use.
10. Claimant testified that his girlfriend loaned him the subject cell phone and that it was not used to sell drugs.

11. Claimant testified that he had a handgun because that neighborhood is known to be rough.

12. Claimant testified that he is self-employed and sells CDs, and that the subject \$594.00 came from the sale of CDs.

13. It is Officer Davis' opinion that Claimant could **either** have been smoking marijuana **or** selling it.

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.

3. T.C.A. § 39-17-418 (a) and (b) read as follows:

(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 (1/2) ounce (14.175 grams).

4. The exceptions found in T.C.A. § 39-17-425 address drug paraphernalia and are not relevant to the issues raised in this claim.

5. **T.C.A. § 53-11-451(C)** specifically **exempts** conveyances **from forfeiture** for violations of T.C.A. §39-17-418(a). T.C.A. §39-17-418(a) addresses possession of a controlled substance for **personal use**. There is no limitation on the amount that may be possessed for personal use in the statute. Since the possession of the marijuana in the

instant case was for **Claimant's personal use**, the subject \$594.00 and cell phone are **exempt** from forfeiture pursuant to the statute. See, Tenn. Op. Atty. Gen. No. 03-133, 2003 WL 22422451.

From the facts presented, it appears that Claimant was smoking marijuana with his friends, with no intent to sell illicit drugs. The marijuana was divided into three (3) bags for each individual.

It is **CONCLUDED** that the State of Tennessee has failed to carry its burden of proof and establish by a preponderance of the evidence that the subject \$594.00 and cell phone are subject to seizure and forfeiture.

It is therefore **ORDERED** that the subject \$594.00 and cell phone be **returned** to Claimant.

This Initial Order entered and effective this 7th day of September, 2007.

Joyce Carter-Ball
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 7th day of September, 2007.



Thomas G. Stovall, Director
Administrative Procedures Division