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Tennessee Department of State, Opinions from the  
Administrative Procedures Division

Law

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11-5-2009

DEPARTMENT OF SAFETY vs. One 1995  
Oldsmobile 98, Vin: 1G3CX52K7S4324904, &  
\$445.00 in U.S. Currency, Seized From: Matthew J.  
Blackstone, Seized By: Johnson City Police  
Department, Date of Seizure: September 22, 2008,  
Claimant: Matthew J. Blackstone, Lienholder: N/A

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

<b>IN THE MATTER OF:</b>	)	
	)	
<b>DEPARTMENT OF SAFETY</b>	)	
	)	
<b>v.</b>	)	<b>DOCKET NO. 19.01-104105J</b>
	)	<b>DOS Case No. H7469</b>
<b>One 1995 Oldsmobile 98</b>	)	
<b>Vin: 1G3CX52K7S4324904</b>	)	
<b>&amp; \$445.00 in U.S. Currency</b>	)	
<b>Seized From: Matthew J. Blackstone</b>	)	
<b>Seized By: Johnson City Police Department</b>	)	
<b>Date of Seizure: September 22, 2008</b>	)	
<b>Claimant: Matthew J. Blackstone</b>	)	
<b>Lienholder: N/A</b>	)	

**INITIAL ORDER**

This matter was heard on November 5, 2009, at Highway Patrol Headquarter, in Fall Branch, Tennessee, before Steve R. Darnell, Administrative Law Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety. Attorney Nina Harris represented the Department of Safety. Claimant was present and not represented by counsel.

The issue presented for determination is whether the Department properly seized the above reference property from the Claimant on September 22, 2008 pursuant to T.C.A. sec. 53-11-201 et seq. and 40-33-201. It is **DETERMINED** this property was properly seized and the same should be forfeited to the seizing agency.

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

## FINDINGS OF FACT

1. On September 22, 2008 Officer Tony Ward with the Johnson City, Tennessee Police was on patrol in downtown Johnson City. At approximately 1 a.m. he observed a car in the rear parking lot of “Big G’s” bar. He observed a person inside the vehicle.

2. Big G’s was closed at the time, and the rear parking lot is dimly lit. Officer ward turned his patrol car around to investigate. Simultaneously, the vehicle exited the parking lot. Officer Ward initiated an investigatory stop of Claimant’s vehicle.

3. While making the stop, Officer Ward observed Claimant place something in the console of his car. As a safety precaution, Officer Ward asked Claimant to step out of the car and he also checked the console. He observed a crack cocaine pipe.

4. A drug dog was employed, and the K-9 alerted on the exterior and then the interior of the car. Upon search of the car 2.2 grams of crack cocaine was discovered.

5. Claimant was also in possession of \$445 in U.S. currency.

6. The drugs and money were laid on the hood of one of the cars at the scene.

Claimant grabbed the drugs and money and attempted to flee. He was caught, but some of the drugs were lost in the melee. Only 1 gram remained to be tested by the TBI lab. It tested positive as crack cocaine.

7. In April 2008, Claimant was charged with manufacturing a controlled substance. In 2007, Claimant’s vehicle was seized by the Department for its use in drug trafficking.

8. Claimant’s explanation of why he was parked behind Big G’s is not credible.

## 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. The following are subject to forfeiture:

(1) All controlled substances which have been manufactured, distributed, dispensed or acquired in violation of parts 3 and 4 of this chapter or title 39, chapter 17, part 4;

(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 or title 39, chapter 17, part 4;

(3) All property which is used, or intended for use, as a container for property described in subdivision (a)(1) or (2);

**(4) All conveyances, including aircraft, vehicles or vessels, which 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 (2), but:**

(A) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of parts 3 and 4 of this chapter or title 39, chapter 17, part 4;

(B) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without such owner's knowledge or consent;

(C) A conveyance is not subject to forfeiture for a violation of § 39-17- 418(a) or (b) or § 39-17-425.

(D) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission;

(5) All books, records, and research products and materials, including formulas, microfilm, tapes and data which are used, or intended for use, in violation of parts 3 and 4 of this chapter or title 39, chapter 17, part 4;

**(6)(A) 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, as amended, compiled in parts 3 and 4 of this chapter and title 39, chapter**

**17, part 4, 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, compiled in parts 3 and 4 of this chapter and title 39, chapter 17, part 4;**

(B) No property shall be forfeited under subdivision (a) (6), to the extent of the interest of an owner, by reason of any act or omission established by such owner to have been committed or omitted without such owner's knowledge or consent; and  
(7) All drug paraphernalia as defined by § 39-17-402.

(b) Property subject to forfeiture under parts 3 and 4 of this chapter or title 39, chapter 17, part 4, may be seized by the director of the Tennessee bureau of investigation or the director's authorized representative, agent or employee, the commissioner of safety or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer or constable upon process issued by any circuit or criminal court having jurisdiction over the property. Seizure without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon parts 3 and 4 of this chapter or title 39, chapter 17, part 4;

(3) The director or the director's authorized representative, agent or employee, the commissioner or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, or constable has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The director or the director's authorized representative, agent or employee, the commissioner or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, or constable has probable cause to believe that the property was used or is intended to be used in violation of parts 3 and 4 of this chapter or title 39, chapter 17, part 4.

(c) In the event of seizure pursuant to subsection (b), proceedings under subsection (d) shall be instituted promptly.

(d) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the director or the director's authorized representative, agent or employee, the commissioner or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, or constable, subject only to the orders and decrees of the circuit or criminal court. When property is seized under parts 3 and 4 of this chapter or title 39, chapter 17, part 4, the seizing authority may:

(1) Place the property under seal;

- (2) Remove the property to a place designated by the seizing authority;
- (3) Require the director or the director's authorized representative, agent or employee, the commissioner or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, or constable to take custody of the property and remove it to an appropriate location for disposition in accordance with law; or
- (4) Regardless of any other method of disposition of property contained in this chapter, use the property taken or detained, with permission of the court and under such terms and conditions as are approved by the court, for use in the drug enforcement program of the county in which the goods are seized, and/or, with approval of the court having jurisdiction over the property, sell the property and utilize the proceeds for the drug enforcement program of the county in which the property was seized.

(A) In the case of property seized by the Tennessee bureau of investigation, the director of the bureau is authorized to designate in writing any part thereof for use by the bureau for any period of time, subject to inventory, management and disposition as provided by law.

(B) In the case of an aircraft seized by the bureau, the director is also authorized to designate in writing any such property for transfer to and use by the department of general services subject to inventory, management and disposition as provided by law. If an aircraft is not sold, but is to be transferred to another state governmental entity, such transfer shall be approved by the commissioner of finance and administration.

(C) The proceeds from any sale conducted under this chapter of forfeited property seized by the bureau and not designated for its use, or not transferred to the department of general services as provided above, shall be paid to the state treasurer to be used only as appropriated by the general assembly.

(e) When property is forfeited under parts 3 and 4 of this chapter or title 39, chapter 17, part 4, the director or the director's authorized representative, agent or employee, the commissioner of safety or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, or constable shall remove it for disposition in accordance with law.

(f) Controlled substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of parts 3 and 4 of this chapter or title 39, chapter 17, part 4, are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

(g) Species of plants from which controlled substances in Schedules I, II and VI may be derived which have been planted or cultivated in violation of parts 3 and 4 of this chapter or title 39, chapter 17, part 4, or of which the owners or cultivators are

unknown, or which are wild growths, may be seized and summarily forfeited to the state.

(h) The failure, upon demand by the commissioner of safety, the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, or constable, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that such person is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

(i) Confiscation proceedings under parts 3 and 4 of this chapter or title 39, chapter 17, part 4, shall be conducted in accordance with the provisions set forth in part 2 of this chapter.

(j) Any property of the type set forth in subdivisions (a) (1) and (7) which is in the custody and possession of a clerk of any court of this state by virtue of the property having been held as evidence or exhibits in any criminal prosecution where all appeals or potential appeals of a judgment have ended, or when the case has been dismissed or otherwise brought to a conclusion, shall be disposed of as follows:

(1) The clerk of the court having custody of the property to be disposed of shall, no less than once annually, inventory the same and prepare a list of the property proposed to be destroyed with references to the cases involved and the name of the case, the case number and date when such property was used;

(2) The clerk shall submit the inventory list with a filed petition to the court and shall serve a copy of the petition upon the district attorney general. After determining that the listed property is not needed as evidence in any pending or potential judicial proceeding, the court shall order the property to be destroyed; and

(3) The clerk, or such deputy clerk as the clerk may designate, shall completely destroy each item by cutting, crushing, burning or melting and shall file, together with the petition and order relating to the destroyed property, an affidavit concerning such destruction, showing a description of each item, the method of destruction, the date and place of destruction, and the names and addresses of all witnesses to the destruction. T.C.A. § 53-11-451.

3. Although the admissibility of evidence is normally controlled by the Tennessee Rules of Evidence, the Administrative Procedures Act provides “when necessary to ascertain facts not reasonably susceptible to proof under the rules of court, evidence not admissible thereunder may be admitted if it is of a type commonly

relied upon by reasonably prudent men in the conduct of their affairs. T.C.A. §4-5-313(1), Lettner vs. Plummer, 559 S.W.2d 785 (1977).

4. The Claimant's prior activities in the manufacture and sale of illegal drugs in relevant and admissible evidence in a forfeiture hearing. Lettner vs. Plummer, 559 S.W.2d 785 (1977), Young vs. Tennessee Department of Safety, 911 S.W.2d 729 (Tenn.App. 1995).

5. The forfeiture statute does not require the State to trace the seized property to a specific transaction. Lettner vs. Plummer, 559 S.W.2d 785 (1977).

6. Funds intended to be used to further illicit drug transactions are subject to forfeiture even if a substantial amount of drugs are not present. Louisiana vs. Douglas, 541 So.2d 285 (La. App. 1989).

7. Proof that property subject to forfeiture is related to illicit drug activities may be wholly circumstantial. U.S. v. Dusenbury, 80 F.Supp.2d 744 (N.D. Ohio 1998).

8. Aggregation of facts, each one insufficient standing alone, may suffice to meet government's burden in forfeiture proceeding involving money allegedly involved in illegal drug transaction. U.S. v. \$67,220.00 in United States Currency, 957 F.2d 280 (6<sup>th</sup> Cir. 1992).

9. Carrying large sums of cash is strong evidence of some relationship with illegal drugs for purposes of forfeiture. U.S. v. \$67,220.00 in United States Currency, 957 F.2d 280 (6<sup>th</sup> Cir. 1992).

10. Claimant's record of drug activity is highly probative factor in the forfeiture calculus. U.S. v. \$67,220.00 in United States Currency, 957 F.2d 280 (6<sup>th</sup> Cir. 1992).

11. It is probative that property is being used in illegal drug activities when the property is found in close proximity to illicit drugs and drug paraphernalia.

Richardson v. One 1972 GMC Pickup, 826 P.2d 1311 (Idaho 1992), See also, 167 A.L.R. Fed. 365, J.B. Benimow

12. The presents of drugs, scales, drug manufacturing materials, residue, etc. with the seized property is probative of its connection to illicit drug trade. U. S. v. U. S. Currency Amounting to Sum of \$20,294.00 More or Less, 495 F. Supp. 147 (E.D.N.Y. 1980)

13. Motions to suppress evidence must be made at least 10 days prior to the hearing date or they will be denied. Rule 1340-2-2.10 (3) (b).

In light of the entire record there is both substantial and material evidence that the Claimant intended to engage in the purchase, manufacture, and resale of illegal drugs.

It is **CONCLUDED** that the Department has carried its burden of proof and established by a preponderance of the evidence that the above described currency was proceeds of drug trafficking, and the above described vehicle was used to carry out Claimant's drug trafficking. Claimant's motion to suppress is denied because he failed to comply with Safety Rule 1340-2-2-.10 (3) (b).

As such this currency and vehicle are subject to forfeiture under the statute, and the same is **HEREBY ORDERED** forfeited to the seizing agency.

This Initial Order entered and effective this 14th day of December, 2009.

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Steve R. Darnell  
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,  
this 14th day of December, 2009.



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Thomas G. Stovall, Director  
Administrative Procedures Division