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3-4-2009

DEPARTMENT OF SAFETY vs. , One 2002
Chevrolet Blazer, VIN: 1GNDT13W22K177288,
SEIZED FROM: Jayne Cooper, SEIZURE DATE:
July 2, 2008, CLAIMANT: Jayne Cooper, LIEN:
None Filed

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

IN THE MATTER OF:]	
]	
DEPARTMENT OF SAFETY]	
]	
VS.]	DOCKET # 19.01-102071J
]	D.O.S. # H5094
One 2002 Chevrolet Blazer]	
VIN: 1GNDT13W22K177288]	
SEIZED FROM: Jayne Cooper]	
SEIZURE DATE: July 2, 2008]	
CLAIMANT: Jayne Cooper]	
LIEN: None Filed]	

INITIAL ORDER

This contested administrative case was heard in Nashville, Tennessee on March 4, 2009, before J. Randall LaFevor, Administrative Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Mr. Orvil Orr, Staff Attorney for the Department of Safety, represented the State. The Claimant, Jayne Collins, was represented by her attorney, Mr. Robert T. Vaughn.

The subject of this hearing was the proposed forfeiture of the Claimant's vehicle, a 2002 Chevrolet Blazer, based on allegations that it was used in a manner that violated the Tennessee Drug Control Act. Upon full consideration of the record, it is determined that the State failed to prove its case by a preponderance of the evidence, and that the subject vehicle should therefore be returned to the Claimant. This decision is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On July 2, 2008, an inspector with the U.S. Postal Service notified Agent Carlo Sguanci, with the 15th Judicial District Drug Task Force ("15th JDDTF"), that he had intercepted a package containing marijuana that was mailed from California, to be delivered to Jayne Collins ("Claimant") at her home address in Hartsville, Tennessee.

2. Agent Sguanci observed as the Postal Inspector delivered the package of marijuana to the Claimant at her home. He then approached the Claimant, and requested permission to search her house and vehicle for contraband. She agreed.

3. A search of the Claimant's home disclosed the marijuana that had just been delivered, as well as three marijuana plants, a set of scales and a number of baggies. No contraband was found in the Claimant's 2002 Chevrolet Blazer, but the searching officers did find a bank deposit ticket¹ printed with the Claimant's name and address, bearing the date "8-12-06" and the number "240.00" written on the front, and the words "Leviran Smith / 0045402185 / Bank of American [*sic*] / Acton, CA (236-0590)" written on the back. The deposit slip was issued by the Trousdale Bank & Trust, which is located directly across the street from the Claimant's home.

4. In response to questioning by the officers, the Claimant signed a written statement in which she admitted that she smoked marijuana three or more times daily, and that she had been ordering marijuana for mail delivery every two or three months during the previous year, from Leviran Smith, her sister's boyfriend. She said that she paid for the marijuana by sending cash, or wiring money to his account (#0045402185) at the Bank of America in Acton, California. During the same period of time, the Claimant admitted that she had been growing her own marijuana, using methods she had learned from internet sources.

5. On the basis of this investigation, Agent Sguanci seized the Claimant's car and mail box, and subsequently sought and obtained a Drug Asset Forfeiture Warrant for those items. The Claimant filed a claim for the return of her vehicle,² and this hearing was convened to consider her claim.

¹ Hearing Exhibit #4.

² The Claimant's claim did not request the return of her mail box.

CONCLUSIONS OF LAW and ANALYSIS

1. “All conveyances . . . that are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale or receipt of” controlled substances in violation of the Tennessee Drug Control Act, are subject to forfeiture under the law. TENN. CODE ANN. § 53-11-451(a).

2. The State bears the burden of proof in this case, and must therefore prove, by a preponderance of the evidence, that the seized property is subject to forfeiture, pursuant to the laws of this state. Failure to carry the burden of proof operates as a bar to the proposed forfeiture. TENN. CODE ANN. § 53-11-201(d)(2); *Rule 1340-2-2-.15*, TENN. COMP. R. & REGS., *Rules of the Tennessee Department of Safety*.

3. The State failed to meet its burden of proof. Although there was abundant evidence, including her own statement, that the Claimant had purchased marijuana, and grown and possessed it in her home, there was no evidence that the seized vehicle had been used to facilitate those activities. The marijuana that she ordered from California was delivered to her door by the U.S. Postal Service, so she did not have to transport it in her car. She conducted her monetary transactions by walking to the bank across the street from her home, so she did not need to drive her car to transfer payments to the seller. In fact, under vigorous cross-examination by the State, her sworn testimony was that she had never used her car for any activity that was related to her marijuana possession or use. And, no contradictory proof was offered by the seizing agent, who testified that he seized the car because he “assumed” that she must have used the car at some time to facilitate her marijuana transactions. Unfortunately, an officer’s assumptions, in and of themselves, are insufficient to prove contested facts in an administrative proceeding.

4. In short, the State failed to prove that there was any connection between the marijuana in the Claimant’s home and the car in her driveway. In the language of the State statute, no evidence established that the seized vehicle was “used, or intended for use, to transport, or in any manner to facilitate the transportation, sale or receipt of” a controlled substance in violation of the Tennessee Drug Control Act. As indicated above,

failure to carry the burden of proof operates as a bar to the proposed forfeiture. Consequently, the State's request to forfeit the seized vehicle must be denied.

Accordingly, IT IS HEREBY ORDERED that the seized vehicle, one 2002 Chevrolet Blazer, shall be RETURNED to the Claimant, Jayne Cooper.

Entered and effective this 10th day of March, 2009.

J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 10th day of March, 2009.



Thomas G. Stovall, Director
Administrative Procedures Division