



7-28-2009

TENNESSEE, DEPARTMENT OF SAFETY vs.  
One 2004 Dodge Stratus SE, VIN:  
1B3EL36XX4N107876, Seized From: Janet  
Aguon, Seizure Date: September 26, 2008,  
Claimant: Janet Aguon, Lienholder: Security  
National Automotive

Follow this and additional works at: [http://trace.tennessee.edu/utk\\_lawopinions](http://trace.tennessee.edu/utk_lawopinions)

---

This Initial Order by the Administrative Judges of the Administrative Procedures Division, Tennessee Department of State, is a public document made available by the College of Law Library, and the Tennessee Department of State, Administrative Procedures Division. For more information about this public document, please contact [administrative.procedures@tn.gov](mailto:administrative.procedures@tn.gov)

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

**IN THE MATTER OF:**

**TENNESSEE**

**DEPARTMENT OF SAFETY**

**v.**

**One 2004 Dodge Stratus SE  
VIN: 1B3EL36XX4N107876  
Seized From: Janet Aguon  
Seizure Date: September 26, 2008  
Claimant: Janet Aguon  
Lienholder: Security National  
Automotive**

**DOCKET NO: 19.01-103904J  
DOS CASE NO. H7562**

**INITIAL ORDER**

This matter came to be heard on July 28, 2009, before Rob Wilson, Administrative Judge, assigned by the Secretary of State and sitting for the Commissioner of the Tennessee Department of Safety in Nashville, Tennessee. Mr. Orvil Orr, Staff Attorney for the Tennessee Department of Safety (“Department” or “Safety”), represented the Department. The Claimant, Janet Aguon, was present and represented herself without the assistance of legal counsel.

The subject of this hearing was the proposed forfeiture of a **2004 Dodge Stratus SE, VIN: 1B3EL36XX4N107876** for violation of the TENNESSEE DRUG CONTROL ACT. The issue is whether the vehicle seized was used or intended to be used to transport, or in any manner facilitate the transportation, sale, or receipt of drugs in violation of the TENNESSEE DRUG CONTROL ACT. After consideration of the entire record and the

arguments of the parties, it is determined that forfeiture is not allowed in this case and that the vehicle should be returned to the Claimant. This decision is based upon the following.

### **SUMMARY OF EVIDENCE**

Four witnesses testified at the hearing: (1) Officer David Johnson, Clarksville Police Department; (2) Officer Steven Hamilton, Clarksville Police Department; and (3) Janet Aguon, the Claimant.

One (1) exhibit was entered into evidence during the hearing:

EXHIBIT 1 – Official Forensic Chemistry Report

### **FINDINGS OF FACT**

1. On September 26, 2008, the Claimant, Janet Aguon, received a telephone call from her husband. Either Ms. Aguon's husband or one of his friends needed a ride home.
2. Officer David Johnson saw Ms. Aguon arrive in her vehicle and approached her. Officer Johnson stated that Ms. Aguon seemed intoxicated and asked her to step out of the vehicle. Janet Aguon gave Officer Johnson permission to search her vehicle.
3. Officer Johnson found digital scales and approximately 3.7 grams of cocaine in the vehicle. Based on his findings, Officer Johnson concluded that the vehicle had been used to transport controlled substances.
4. Janet Aguon testified that she did not know that the scales and cocaine were in the car.

## APPLICABLE LAW

1. The Department of Safety, as the party seeking to seize the vehicle, has the burden of proof under TENN. CODE ANN. § 40-33-210 to prove by a preponderance of the evidence that the seized property was of a nature making its possession illegal or was used in a manner making it subject to forfeiture, and that 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.

2. Safety contends that the Claimant violated TENN. CODE ANN. § 53-11-451(a)(4) which subjects to forfeiture “[a]ll conveyances, including aircraft, vehicles or vessels, which are used, or are intended for use, to transport, or in any manner facilitate the transportation, sale or receipt of property described in subdivision (a)(1) or (2) . . .,” which in this case is cocaine.

3. TENN. CODE ANN. § 40-33-210 provides:

(a) In order to forfeit any property or any person’s interest in such property pursuant to § . . . 53-11-451, . . . the state shall have the burden to prove by a preponderance of evidence that:

(1) The seized property was of a nature making its possession illegal or was used in a manner making it subject to forfeiture under the sections set out in this subsection (a); and

(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 . . .

(b)(1) Failure to carry the burden of proof shall operate as a bar to any forfeiture and the property shall be immediately returned to the claimant.

Thus, the Department bears the burden of proof in this matter to show two elements by a preponderance of the evidence: (1) that the subject vehicle was used in a manner making it subject to forfeiture; and (2) that the owner was aware of this use.

4. “[T]he simple possession of a small amount of drugs or drug paraphernalia cannot trigger a forfeiture action.” *Stuart v. State of Tennessee, Department of Safety*, 963 S.W. 2d 28, 35 (Tenn. 1998).

5. A vehicle is not subject to forfeiture if the only connection between the vehicle and the illegal substance is as a mode of transportation, or if the driver or passenger of the vehicle is simply in possession of a controlled substance in the vehicle. *Hughes v. State*, 776 S.W.2d 111, 115 (Tenn. Ct. App.), *p.t.a. denied* (1989); Tenn. Atty. Gen. Op. No. 03-133 (Oct. 8, 2003); Tenn. Atty. Gen. Op. No. 04-109 (July 9, 2004)

6. “Forfeitures are not favored in law and statutes that impose forfeitures must be strictly construed.” *Goldsmith v. Roberts*, 622 S.W. 2d 438, 440 (Tenn. Ct. App.) (returning vehicle to claimant based upon Safety’s failure to prove that the vehicle was used to “transport controlled substances for the purposes of resale”), *cert. denied* (1981).

### **ANALYSIS AND CONCLUSIONS OF LAW**

The testimony in this matter was somewhat contradictory. The affidavit in support of the forfeiture warrant states that Janet *and* Joseph Aguon arrived on the lot of McDonald’s; the testimony revealed that Janet Aguon arrived alone. The Department, acting under the purported authority of TENN. CODE ANN. § 53-11-451(a)(4), ordered the forfeiture of Ms. Aguon’s vehicle on the grounds that the vehicle was a conveyance used

to transport or facilitate the transportation of drugs in violation of TENN. CODE ANN. § 39-17-401, *et seq.*

Janet Aguon drove to the scene of this incident for the sole purpose of picking up a friend who was too intoxicated to drive. Apparently Ms. Aguon had been drinking as well and probably shouldn't have attempted to help her friends. When Officer Johnson asked Ms. Aguon if he could search her vehicle she readily gave permission. Ms. Aguon stated that she did not know the scales and cocaine were in her car. Her testimony was believable and uncontested. Before the seizure can be upheld under TENN. CODE ANN. § 53-11-451(a)(4), the Department must first prove by a preponderance of the evidence that the vehicle was used in some way to transport Ms. Aguon to or facilitate a drug transaction. Here, the Department failed to offer any such proof, aside from the fact that the cocaine and scales were discovered in the vehicle. Given the circumstances, the simple fact that the cocaine and scales were in the car is not enough evidence upon which to draw a conclusion that the vehicle was used by Ms. Aguon to transport herself to a drug transaction or to in anyway facilitate a drug transaction, and fails to satisfy the Department's burden of proof.

The Tennessee Supreme Court has stated, "the simple possession of a small amount of drugs or drug paraphernalia cannot trigger a forfeiture action." *Stuart v. State of Tennessee, Department of Safety*, 963 S.W. 2d 28, 35 (Tenn. 1998) (discussing TENN. CODE ANN. § 53-11-451(a)(4)(C)). Therefore, the Department must still prove by a preponderance of the evidence that the seized vehicle was used to transport Janet Aguon to or to facilitate a drug transaction in violation of the TENNESSEE DRUG CONTROL ACT;

otherwise, the vehicle is not subject to forfeiture under TENN. CODE ANN. § 53-11-451(a)(4). TENN. CODE ANN. § 53-11-451(a)(C) specifically provides that a conveyance is not subject to forfeiture for simple possession of a controlled substance without the intent to manufacture, deliver or sell.

A vehicle is not subject to forfeiture if, as in this case, the only connection between the vehicle and the illegal substance is as a mode of transportation, or if the driver or passenger of the vehicle is simply in possession of a controlled substance in the vehicle. *Hughes v. State*, 776 S.W.2d 111, 115 (Tenn. Ct. App. 1989), *p.t.a. denied* (1989); Tenn. Atty. Gen. Op. No. 03-133 (Oct. 8, 2003); Tenn. Atty. Gen. Op. No. 04-109 (July 9, 2004). In *Hughes*, a vehicle used in a trip to purchase marijuana for the vehicle owner's personal use was confiscated. *Id.* In reversing the forfeiture, the court held,

We think that TENN.CODE Ann. § 53-11-409(a)(4)(C) could prevent the forfeiture of a vehicle when the operator is found guilty of simple possession of a small amount of a controlled substance and the vehicle's only connection with the substance is as a means of transportation. Arguably, then, forfeiture would not occur when the vehicle is used only to transport the illegal drug.

*Hughes*, 776 S.W.2d at 115 (citing previous code section for TENN. CODE ANN. § 53-11-451(a)(4)(C)). In response to an opinion request from the Commissioner of Safety, the Tennessee Attorney General has determined that *Hughes* cannot be read to permit the forfeiture of a vehicle involved in the casual exchange of a controlled substance. Tenn. Atty. Gen. Op. No. 04-109 (July 9, 2004) at 7. Similarly, the Tennessee Attorney General has emphasized that a conveyance is not subject to seizure if its only connection

to a controlled substance is as a means of facilitating simple possession of a controlled substance. Tenn. Atty. Gen. Op. No. 03-133 (Oct. 8, 2003) at 2. TENN. CODE ANN. § 53-11-451(a)(C) excludes such conveyances from forfeiture. The Tennessee Supreme Court considered the General Assembly's intent when enacting TENN. CODE ANN. § 53-11-451(a)(4)(C) in *Stuart v. State of Tennessee, Department of Safety*, 963 S.W. 2d 28 (Tenn. 1998). The statutes embrace a proportionality approach such that the simple possession of a small amount of drugs cannot trigger a forfeiture action. *Id.* at 35. The legislature determined that the forfeiture would be disproportionate to the crime. *Id.*

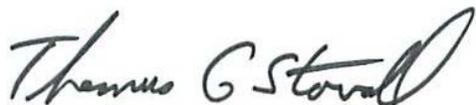
Based upon the foregoing, the vehicle should be returned to Ms. Aguon. Accordingly, it is hereby ORDERED that the 2004 Dodge Stratus SE be RETURNED to the Claimant, Janet Aguon.

This Initial Order entered and effective this 9th day of September, 2009.

---

Rob Wilson  
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,  
this 9th day of September, 2009.



---

Thomas G. Stovall, Director  
Administrative Procedures Division