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2-10-2010

\$234.00 U.S. Currency One 2001 Pontiac Grand
Prix VIN: 1G2WP52K11F259407, Seized from:
LaTara Woods, Date of Seizure: August 6, 2009,
Claimant: LaTara Woods, Lienholder: Jackson Title
Loans 1

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

IN THE MATTER OF:

**\$234.00 U.S. Currency
One 2001 Pontiac Grand Prix
VIN: 1G2WP52K11F259407
Seized from: LaTara Woods
Date of Seizure: August 6, 2009
Claimant: LaTara Woods
Lienholder: Jackson Title Loans¹**

DOCKET NO: 19.01-106486J

INITIAL ORDER

This matter came on to be heard on February 10, 2010 in Jackson, Tennessee before Lynn M. England, Administrative Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Mr. Joe Bartlett, supervising attorney for the Department of Safety represented the State. Claimant Woods was present and not represented by counsel.

The subject of this hearing was the proposed forfeiture of \$234.00 in U.S. currency and a 2001 Pontiac Grand Prix, VIN - 1G2WP52K11F259407, for their alleged use in violation of the Tennessee Drug Control Act, T.C.A. § 39-17-401, *et seq.*, and T.C.A. § 53-11-451(a)(4).

¹ Claimant's testimony in the hearing was that the Title Loan has been paid off. However this Order should still be provided to Jackson Title Loan since they filed a claim.

After consideration of the evidence offered, the arguments of counsel, and the entire record in this matter it is **ORDERED** that the seized vehicle be immediately **FORFEITED** to the seizing agency and the \$234.00 in U.S. Currency be **RETURNED** to the Claimant. This decision is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On August 6, 2009 Officer Nathaniel Shoate of the Jackson, Madison County Metro Narcotics Unit, executed a search warrant on 97 O'Neal Street, Jackson, Tennessee.
2. Officer Shoate obtained the warrant after conducting several purchases of marijuana from Terry Spivey.
3. Officer Shoate conducted multiple purchases from Mr. Spivey at both the residence and from the vehicle, which is the subject of this hearing.
4. A search of the home yielded 84 grams of marijuana located in the attic crawl space. The marijuana was packaged for resale.
5. Mr. Spivey was staying at the home of Ms. Woods, the Claimant. Ms. Woods knew Mr. Spivey smoked marijuana, but claimed she was unaware he was a drug dealer. However, she did know he had one misdemeanor conviction for marijuana possession.²
6. Mr. Spivey drove Claimant's vehicle on numerous occasions with her permission.

² Mr. Spivey's arrest record introduced as Exhibit 4, indicates numerous drug related arrests.

7. Claimant is currently unemployed but is attending school. She also collects child support. She was drawing unemployment and child support in the amount of \$1,271.68 per month on the date of the seizure.

CONCLUSIONS OF LAW

1. The State has the burden of proving, by a preponderance of the evidence, that the seized vehicle was subject to forfeiture because it was being used or was intended to be used to violate the Tennessee Drug Control Act, T.C.A. §39-17-402. *See* T.C.A. §40-33-210 and T.C.A. §53-11-201(d)(2). Failure to carry the burden of proof operates as a bar to any forfeiture and the property shall be immediately returned to the Claimant. T.C.A. §40-33-210(b)(1).

2. T.C.A. §53-11-451(a)(2) provides that “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 the Tennessee Drug Control Act are subject to forfeiture.”

3. In the present case, Officer Shoate made a purchase of marijuana from Mr. Spivey while he was driving the vehicle.

4. T.C.A. §39-17-417 states as follows:

Criminal offenses and penalties. ---

(a) It is an offense for a defendant to knowingly:

(4) Possess a controlled substance [such as marijuana] **with intent to manufacture, deliver or sell** such controlled substance.

5. If the State presents a prima facie case for forfeiture, i.e., that the vehicle was used or intended to be used to facilitate a violation of the Tennessee Drug Control Act or drug laws, the burden of going forward with the evidence shifts to the claimant to prove either that the vehicle is not subject to forfeiture or that claimant has a good faith interest in the vehicle and that he or she did not know or have reason to know that the property was being used to facilitate a violation of the drug laws. T.C.A. § 53-11-201(f)(1). *See also, Urquhart v. Department of Safety*, 2008 WL 2019458 (Tenn. Ct. App. 2008).

6. Claimant did not show that she did not know or have reason to know that her vehicle was being used to facilitate a violation of Tennessee's drug laws. In fact, her testimony supports that she knew of some of Mr. Spivey's past criminal record and his drug use. Mr. Spivey used her vehicle on a regular basis.

7. Claimant cannot show that she is an "innocent owner" when she had knowledge of Mr. Blair's "drug activities." Further, the testimony of both Mr. Blair and Claimant supports that Mr. Blair can use the vehicle at his pleasure, which fulfills many of the indicia of ownership factors.

8. The evidence preponderates that Mr. Spivey was using the seized vehicle to transport and deliver marijuana for resale. Claimant has not shown that she is an "innocent owner".

9. The State has met its burden of proof in this case as to the vehicle. The seized vehicle is subject to forfeiture.

10. The State has not met its burden of proof as to the seized currency. Claimant showed satisfactory proof that she had sufficient weekly income to account for the \$234.00 in U.S. currency. Therefore the U.S. currency shall be returned to the Claimant.

Accordingly, it is **ORDERED** that the above captioned vehicle be immediately **FORFEITED** to the seizing agency and the \$234.00 in U.S. currency be returned to the **CLAIMANT**.

It is so ordered.

This Initial Order entered and effective this 18th day of March, 2010.

Lynn M. England
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 18th day of March, 2010.



Thomas G. Stovall, Director
Administrative Procedures Division