



7-9-2008

TENNESSEE DEPARTMENT OF SAFETY,  
Petitioner, vs. \$585.00 in U.S. Currency, Seized  
from: Jeffery S. Ponder, Seizure date: December 8,  
2007, Claimant: Jeffery S. Ponder

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

**IN THE MATTER OF:**

**TENNESSEE DEPARTMENT OF  
SAFETY,**  
*Petitioner*

v.

**\$585.00 in U.S. Currency  
Seized from: Jeffery S. Ponder  
Seizure date: December 8, 2007  
Claimant: Jeffery S. Ponder**

**DOCKET NO: 19.01-099019J  
DOS NO: G9096**

**CORRECTED<sup>1</sup> INITIAL ORDER**

This contested case was heard in Cookeville, Tennessee, on July 9, 2008, before Ann M. Johnson, Administrative Judge, assigned by the Secretary of State to sit for the Commissioner of the Tennessee Department of Safety. Orvil Orr, Staff Attorney, represented the Department of Safety. Jeffery Ponder appeared on his own behalf, waiving legal counsel. The record was left open for the Claimant to submit a copy of the check to him from Dekalb Title. This document was submitted on December 5, 2008, when the record closed.

The issue in this matter concerned the proposed forfeiture of the subject currency. The evidence included five exhibits. After consideration of the evidence and the arguments of the

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<sup>1</sup> The Initial Order was originally entered on January 29, 2009. Because of a clerical error, the Initial Order was misdirected and apparently was not received by the parties. For this reason, the Initial Order has been re-issued in its original form; all appeal dates shall begin to run with the entry of the Corrected Initial Order.

parties, it is determined that the currency should be returned to the Claimant. This decision is based upon the following Findings of Fact and Conclusions of Law.

### **SUMMARY OF THE EVIDENCE**

Evidence includes the following: (1) Official Forensic Chemistry Report – EXHIBIT 1; Warranty Deed and Real Estate Transaction - EXHIBIT 2; Discharge Documents, Dekalb County Sheriffs Office - EXHIBIT 3; Conviction Record, Simple Possession - EXHIBIT 4; Copy of check from Dekalb Title – EXHIBIT 5 (Late Filed).

### **FINDINGS OF FACT**

1. On December 7, 2007, the Claimant was a passenger in a vehicle which was stopped for a traffic violation. Incident to the arrest, the Claimant was subjected to a search, which produced several tablets in a small plastic bag. There were also between 15 and 20 empty small baggies in the floorboard of the car.

2. According to the chemistry report (EXHIBIT 1), the tablets retrieved from the Claimant consisted of seven Alprazoam (Schedule IV) and three Buprenorphine (Schedule III).

3. Because drugs were recovered from the Claimant, currency in the amount of \$585.00 was seized after a search of the Claimant's person. Included in this amount, there were five \$100.00 bills and other currency.

4. The Claimant asserted that the currency came from occasional employment and the sale of his property in July of 2007. Since the Claimant was incarcerated at the time of the sale, his mother took possession of the money, and transferred it to the Claimant after his release in September of 2007.

5. If the Claimant were engaged in the sale of illegal drugs, he most likely would have been found with small denominations rather than \$100.00 bills.

6. The Claimant submitted proof of the sale of his property (EXHIBITS 2 and 5). He also showed that he was convicted of the criminal offense of simple possession, not possession for resale (EXHIBIT 4).

### **ANALYSIS and CONCLUSIONS OF LAW**

1. The Department of Safety bears the burden of proof in forfeiture proceedings, and must prove, by a preponderance of the evidence, that the seized property is subject to forfeiture pursuant to law. 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.

2. TENN. CODE ANN. 53-11-451(6)(A) states that the following is subject to forfeiture:

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, compiled in part 3 of this chapter, this part and title 39, chapter 17, part 4, all proceeds traceable to the exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of the Tennessee Drug Control Act.

The Department of Safety has failed to prove that the currency at issue should be forfeited, since it did not show that the money was used in any way to facilitate a drug transaction. Although a small amount of drugs was found on the Claimant's person, there was no proof to show that he was selling these drugs, or had sold drugs in the past. His criminal charge was reduced to simple possession. Additionally, the Claimant offered a credible and plausible explanation for his possession of the subject currency. He also showed that the denominations involved, \$100.00 bills, do not suggest drug transactions. The Department failed to offer any proof to show that the currency at issue was involved in any way in a drug transaction.

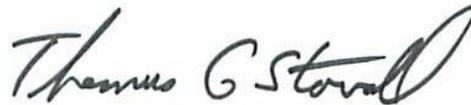
For all of these reasons, it is determined that the Department of Safety has failed to carry the burden of proof, to show by a preponderance of the evidence that the currency at issue should be forfeited. Accordingly, it is hereby **ordered** that the subject currency should be returned to the Claimant.

This Initial Order entered and effective this 10th day of February, 2009.

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Ann M. Johnson  
Administrative Judge

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



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Thomas G. Stovall, Director  
Administrative Procedures Division