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Allan J. Aarons vs. safety

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**BEFORE THE COMMISSIONER OF THE
TENNESSEE DEPARTMENT OF SAFETY AND HOMELAND SECURITY**

IN THE MATTER OF:

Allan J. (N8633) Aarons
2007 Toyota Scion]
V.I.N. JTKDE177970215536]
Miscellaneous Property: Taurus Pistol
Seized from: Andrae Aarons
Seizure date: May 21, 2013
Claimant: Allan J. Aarons
Seizing Agency: TBI
Lienholder: N/A

DOCKET NO: 19.01-122946J
D.O.S. NO. N8633 & N8498

INITIAL ORDER

This matter was heard on January 7, 2014 before Joyce Carter-Ball, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Karen Litwin, Staff Attorney for the Department, represented the Seizing Agency. The Claimant, Allan J. Aarons, chose to proceed without counsel.

The subject of this hearing was the proposed forfeiture of the seized property for its alleged use in violation of T.C.A. §53-11-201 et seq and 40-33-201 et seq.

After review of the record and arguments of the parties, it is DETERMINED that the subject vehicle and pistol should be **returned to the Claimant**.

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

FINDINGS OF FACT

1. Officer Shannon Smith of the Cookeville Police Dept. testified that on May 21, 2013, he received information that there would be a drug transaction. Officer Smith observed the transaction in the subject vehicle.

2. Andrae Aarons, Claimant's brother, was found driving the subject vehicle. Andrae Aaron stated that the subject vehicle was his.
3. A receipt found in the vehicle showed that Andrae Aarons purchased tires for the vehicle the same day.
4. An ipod in the vehicle was hardwired into the vehicle and had Andrae Aarons' name on the screen.
5. Mohamed Danso was in the passenger seat of the subject vehicle.
6. A pistol was found in the glove compartment. Mr. Danso did not claim ownership of the pistol. Andrae Aarons made no statement about the pistol.
7. The subject vehicle is **titled to the Claimant**, Allan Aarons.
8. Officer Harold Eaton testified that the pistol was not stolen.
9. Claimant testified that he paid \$3,000 for the vehicle and that he pays the insurance. He further testified that Andrae Aarons used the vehicle from time to time.

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. Vehicles used in violation of the Tennessee Drug Control Act are subject to forfeiture pursuant to the provisions of T.C.A. §53-11-451.
3. T.C.A. §53-11-451 (a)(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, are subject to forfeiture.
4. **T.C.A. §53-11-451 (4) All conveyances, including aircraft, vehicles or vessels that 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 (a)(2)...**

5. **T.C.A. § 39-17-418: Simple possession; casual exchange**

(a) It is an offense for a person to knowingly possess or casually exchange a controlled substance, unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of professional practice.

(b) It is an offense for a person to distribute a small amount of marijuana not in excess of one-half (½) ounce (14.175 grams).

6. The Department of Safety bears the burden of proof in forfeiture proceedings and must prove, by a preponderance of the evidence, (1) that the seized property was used in a manner making it subject to forfeiture . . . and (2) the **owner** or co-owner of the property **knew** that the property was being used in a manner making it subject to forfeiture, or in the case of a secured party, that the standards set out in subsection (f) are met. T.C.A. §40-33-210(a) (2).

ANALYSIS

Officer James McCurry testified that Andrae Aarons stated that the subject vehicle belonged to him, that the car seat was his, and that he used the car frequently. Claimant, Allan Aarons, testified that the parties treated the vehicle as one that could be used by anyone in the family.

The subject vehicle is **titled to the Claimant**. Claimant testified that he paid \$3,000 for the vehicle and that **he pays the insurance**. He further testified that Andrae Aarons used the vehicle from time to time.

It is **concluded** that Claimant, Allan Aarons, owns the subject vehicle. The vehicle is registered in his name and he pays the insurance.

Based on the foregoing, it is determined that the State has not met its burden of proof of preponderance of the evidence that the **owner** of the property **knew** that the property was being used in a manner making it subject to forfeiture. Therefore, it is **ORDERED** that the subject vehicle and pistol be **returned to the Claimant**.

IT IS SO ORDERED.

This Initial Order is entered and effective this _____ day of _____,
2014.

Joyce Carter-Ball
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this _____ day of _____ 2013.



J. Richard Collier, Director
Administrative Procedures Division