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Anthony L. Clark vs. Safety

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

IN THE MATTER OF:)
)
DEPARTMENT OF SAFETY)
)
v.) **Docket No. 19.01-128406J**
) **Safety No. P1048**
One 1997 Ford Expedition)
VIN: 1FMEU18W4VLB51224)
Seized from: Melissa Posey)
Date of Seizure: August 3, 2013)
Claimant: Estate of Harold Dean Hollingsworth)
James Dean Hollingsworth, Administrator)
Lienholder: N/A)

INITIAL ORDER

This matter was heard on October 20, 2014, in Jackson, Tennessee, before Steve R. Darnell, Administrative Law Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety and Homeland Security (Department). Attorney Joe Bartlett represented the Department and Claimant was represented by attorney Anthony L. Clark.

ISSUE FOR CONSIDERATION

Did the Department prove, by a preponderance of the evidence, that Claimant knew that the seized vehicle was being used in violation of Tennessee's drug trafficking law?

SUMMARY OF DETERMINATION

It is **DETERMINED** that the Department has failed to carry its burden of proof, and therefore, the seized vehicle must be returned to Claimant. This determination is based on the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The above described vehicle is titled in the names of Harold and Linda Hollingsworth. The Hollingsworths were married. Linda Hollingsworth passed away on August 14, 2012, leaving Harold Hollingsworth as the sole owner of the vehicle. Harold Hollingsworth passed away on March 20, 2013, and an estate was opened in Benton County Chancery Court. James D. Hollingsworth was named Administrator of the Estate of Harold D. Hollingsworth. The Estate of Harold D. Hollingsworth, James D. Hollingsworth, Administrator is the legal owner of the seized vehicle. The estate has filed a claim for the return of the vehicle.
2. One Main Financial was notated on the vehicle's title as a lienholder, but has since advised the Department that the lien was satisfied. There is no lien on this vehicle.
3. The Estate of Harold D. Hollingsworth sought to sell the vehicle to raise enough money to pay claims against the estate. Melissa Posey was allowed to drive the vehicle to determine whether she wanted to purchase the vehicle.
4. While Ms. Posey was driving the vehicle she was stopped for a traffic violation. During a search of the vehicle officers found drugs packaged for resale. The vehicle was seized by law enforcement.
5. Ms. Posey had no ownership interest in the vehicle, but was merely on an extended test drive at the time of the seizure. The Estate of Harold D. Hollingsworth filed a claim for the return of the vehicle claiming it is an innocent owner.
6. The Department offered no proof to indicate that the Administrator James D. Hollingsworth or anyone else involved with the Estate of Harold D. Hollingsworth knew that Ms. Posey was using the vehicle for illegal purposes.

7. The Department has failed to show, by a preponderance of the evidence, that anyone acting on behalf of the Estate of Harold D. Hollingsworth knew of Ms. Posey's illegal activities.

CONCLUSIONS OF LAW

1. The Department 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. The following are subject to forfeiture:

(1) All controlled substances which have been manufactured, distributed, dispensed or acquired in violation of parts 3 and 4 of this chapter or title 39, chapter 17, part 4;

(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 or title 39, chapter 17, part 4;

(3) All property which is used, or intended for use, as a container for property described in subdivision (a)(1) or (2);

(4) All conveyances, including aircraft, vehicles or vessels, which 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 (2), but:

(A) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of parts 3 and 4 of this chapter or title 39, chapter 17, part 4;

(B) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without such owner's knowledge or consent;

(C) A conveyance is not subject to forfeiture for a violation of [§ 39-17- 418\(a\)](#) or [\(b\)](#) or [§ 39-17-425](#).

(D) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission;

(5) All books, records, and research products and materials, including formulas, microfilm, tapes and data which are used, or intended for use, in violation of parts 3 and 4 of this chapter or title 39, chapter 17, part 4;

(6)(A) 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, as amended, compiled in parts 3 and 4 of this chapter and title 39, chapter 17, part 4, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of the Tennessee Drug Control Act, compiled in parts 3 and 4 of this chapter and title 39, chapter 17, part 4;

(B) No property shall be forfeited under subdivision (a) (6), to the extent of the interest of an owner, by reason of any act or omission established by such owner to have been committed or omitted without such owner's knowledge or consent; and

(7) All drug paraphernalia as defined by § 39-17-402.

(b) Property subject to forfeiture under parts 3 and 4 of this chapter or title 39, chapter 17, part 4, may be seized by the director of the Tennessee bureau of investigation or the director's authorized representative, agent or employee, the commissioner of safety or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer or constable upon process issued by any circuit or criminal court having jurisdiction over the property. Seizure without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon parts 3 and 4 of this chapter or title 39, chapter 17, part 4;

(3) The director or the director's authorized representative, agent or employee, the commissioner or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, or constable has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The director or the director's authorized representative, agent or employee, the commissioner or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, or constable has probable cause to believe that the property was used or is intended to be used in violation of parts 3 and 4 of this chapter or title 39, chapter 17, part 4.

(c) In the event of seizure pursuant to subsection (b), proceedings under subsection (d) shall be instituted promptly.

(d) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the director or the director's authorized representative, agent or employee, the commissioner or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, or constable, subject only to the orders and decrees of the circuit or criminal court. When property is seized under parts 3 and 4 of this chapter or title 39, chapter 17, part 4, the seizing authority may:

(1) Place the property under seal;

(2) Remove the property to a place designated by the seizing authority;

(3) Require the director or the director's authorized representative, agent or employee, the commissioner or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, or constable to take custody of the property and remove it to an appropriate location for disposition in accordance with law; or

(4) Regardless of any other method of disposition of property contained in this chapter, use the property taken or detained, with permission of the court and under such terms and conditions as are approved by the court, for use in the drug enforcement program of the county in which the goods are seized, and/or, with approval of the court having jurisdiction over the property, sell the

property and utilize the proceeds for the drug enforcement program of the county in which the property was seized.

(A) In the case of property seized by the Tennessee bureau of investigation, the director of the bureau is authorized to designate in writing any part thereof for use by the bureau for any period of time, subject to inventory, management and disposition as provided by law.

(B) In the case of an aircraft seized by the bureau, the director is also authorized to designate in writing any such property for transfer to and use by the department of general services subject to inventory, management and disposition as provided by law. If an aircraft is not sold, but is to be transferred to another state governmental entity, such transfer shall be approved by the commissioner of finance and administration.

(C) The proceeds from any sale conducted under this chapter of forfeited property seized by the bureau and not designated for its use, or not transferred to the department of general services as provided above, shall be paid to the state treasurer to be used only as appropriated by the general assembly.

(e) When property is forfeited under parts 3 and 4 of this chapter or title 39, chapter 17, part 4, the director or the director's authorized representative, agent or employee, the commissioner of safety or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, or constable shall remove it for disposition in accordance with law.

(f) Controlled substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of parts 3 and 4 of this chapter or title 39, chapter 17, part 4, are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

(g) Species of plants from which controlled substances in Schedules I, II and VI may be derived which have been planted or cultivated in violation of parts 3 and 4 of this chapter or title 39, chapter 17, part 4, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

(h) The failure, upon demand by the commissioner of safety, the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, or constable, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that such person is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

(i) Confiscation proceedings under parts 3 and 4 of this chapter or title 39, chapter 17, part 4, shall be conducted in accordance with the provisions set forth in part 2 of this chapter.

(j) Any property of the type set forth in subdivisions (a) (1) and (7) which is in the custody and possession of a clerk of any court of this state by virtue of the property having been held as evidence or exhibits in any criminal prosecution where all appeals or potential appeals of a judgment have ended, or when the case has been dismissed or otherwise brought to a conclusion, shall be disposed of as follows:

- (1) The clerk of the court having custody of the property to be disposed of shall, no less than once annually, inventory the same and prepare a list of the property proposed to be destroyed with references to the cases involved and the name of the case, the case number and date when such property was used;
- (2) The clerk shall submit the inventory list with a filed petition to the court and shall serve a copy of the petition upon the district attorney general. After determining that the listed property is not needed as evidence in any pending or potential judicial proceeding, the court shall order the property to be destroyed; and
- (3) The clerk, or such deputy clerk as the clerk may designate, shall completely destroy each item by cutting, crushing, burning or melting and shall file, together with the petition and order relating to the destroyed property, an affidavit concerning such destruction, showing a description of each item, the method of destruction, the date and place of destruction, and the names and addresses of all witnesses to the destruction. T.C.A. § 53-11-451.

3. Tennessee Code Annotated § 40-33-210 provides as follows:

(a) In order to forfeit any property or any person's interest in such property pursuant to [§§ 39-14-307](#), [47-25-1105](#), [53-11-451](#), [55-10-403\(k\)](#), [55-50-504\(h\)](#), [57-3-411](#), [57-5-409](#), [57-9-201](#), [67-4-1020](#) and [70-6-202](#), 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**, or, in the case of a secured party, that the standards set out in subsection (f) are met.
- (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.

The Department has the burden to prove by a preponderance of the evidence that Claimant **knew** that the property was being used “in a manner making it subject to forfeiture.” In the case at hand, it must prove that Claimant **knew** that Ms. Posey intended to use the vehicle to traffic drugs. The statute requires actual knowledge and constructive knowledge, i.e. should have known, is insufficient. The Department offers not proof to meet its burden.

IT IS THEREFORE ORDERED that the above described vehicle be returned to Claimant, the Estate of Harold D. Hollingsworth, James D. Hollingsworth, Administrator.

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

Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this _____ day of _____ 2014.



J. Richard Collier, Director
Administrative Procedures Division