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1-27-2011

Tennessee Department of Safety, Petitioner, vs.
\$733.00 in U.S. Currency, Seized From: Robbie
Kendrick, Claimant: Robbie Kendrick, Seizure
Date: May 7, 2010

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

IN THE MATTER OF:

**Tennessee Department of Safety,
*Petitioner***

v.

**\$733.00 in U.S. Currency
Seized From: Robbie Kendrick
Claimant: Robbie Kendrick
Seizure Date: May 7, 2010**

**DOCKET NO: 19.01-111144J
DOS No: K4920**

INITIAL ORDER

This matter was heard in Memphis, Tennessee, on January 27, 2011, before Ann M. Johnson, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Commissioner of the Tennessee Department of Safety. Andre Thomas, Staff Attorney for the Department of Safety, represented the State. The Claimant appeared on her own behalf, waiving legal counsel.

The subject of this hearing was the proposed forfeiture of \$733.00 in U.S. currency for violation of the Tennessee Drug Control Act. The issue is whether the money seized was traceable to, or intended to facilitate, a drug transaction. After consideration of the record and the arguments of the parties, it is determined that the currency should be forfeited. This decision is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. In the spring of 2010, the Organized Crime Unit (OCU) of the Memphis Police Department received information from a confidential informant that drugs were sold out of a house located at 340 Edith in Memphis, Tennessee.

2. According to the confidential informant, drugs were sold by Reginald Kendrick; if he were absent, drugs were sold by his wife Robbie Kendrick at this location.

3. On May 7, 2010, Officer Otis Edwards, with the Memphis Police Department OCU, executed a search warrant along with other officers at 340 Edith in Memphis, Tennessee.

4. When the officers entered the house, they noticed a strong smell of marijuana and saw a clear jar containing marijuana in plain view.

5. The search also produced other items: a total of 51.38 grams of marijuana, 111.5 Xanax pills, digital scales, and \$733.00 in U.S. currency. The money was found in a bedroom dresser drawer.

6. During the course of the search, the Claimant Robbie Kendrick appeared at the house. She stated that she was the owner of the house and lived there. She also admitted that she was aware of the presence of the marijuana and that she used marijuana.

7. The Claimant denied that she sold drugs, and denied that any of the seized property belonged to her, except for the money in the amount of \$733.00. Ms. Kendrick further claimed that the money came from her daughter's disability check, which amounts to \$674.00 each month. The Claimant also receives \$120.00 a month in child support payments, although she further stated that the payments were in arrears.

8. The Claimant is unemployed. Her total monthly income is \$794.00 a month, consisting of the disability and child support payments; at least some of the time, the Claimant's

monthly income is less because she stated that she does not always receive the child support payments.

9. The Claimant explained that she and Mr. Kendrick do not share incomes and living expenses. Mr. Kendrick is also unemployed but, according to the Claimant, his mother helps him.

10. The Claimant listed some of her monthly expenses: \$280.00 for car payments; \$50.00 for her children's insurance; \$35.00 for her hairdresser; \$112.00 for cable; \$50.00 for her cellular telephone; \$100.00 for utilities; and miscellaneous sums for her children's clothing and other needs.

11. The Claimant also said that the home is owned by her mother-in-law, who allows the Claimant, her husband, and her four children to live there rent-free.

12. The Claimant also explained that on May 7, 2010, she was still in possession of \$733.00, in spite of her monthly expenses, because she had cashed her checks on the first of the month and had not yet paid any bills. Although she normally paid her car note and several other expenses at the beginning of the month, she had not done so by May 7, 2010.

13. The Claimant admitted that she knew her husband sold "a little" drugs, but stated that she had no specific information about his illegal activities.

RELEVANT LAW

1. T.C.A. § 53-11-451(a)(6) states that the following property, along with other items not relevant to this matter, is subject to forfeiture:

(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, 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

2. T.C.A. § 40-33-210 provides that the State has the burden to prove by a preponderance of the evidence that “[t]he seized property was of a nature making its possession illegal or was used in a manner making it subject to forfeiture

ANALYSIS and CONCLUSIONS OF LAW

The State has carried its burden of proof to show that the confiscated funds were more likely than not used, or intended for use, in illegal drug sales. A confidential informant provided information that both the Claimant and her husband sold drugs from the residence. A large amount of drugs, as well as drug paraphernalia, were found in the house. The Claimant admitted that she knew her husband sold “a little” drugs; indeed, there was marijuana in plain sight. The most logical conclusion is that the money at issue resulted from illegal drug transactions.

The Claimant’s assertion that the money resulted from disability and child support payments is not credible. The Claimant was not employed at this time, she did not always receive child support payments, and she stated that her funds and expenses were separate from those of her husband. The Claimant listed monthly expenses in an amount over \$570.00, as well as other miscellaneous costs not specified, and is responsible for the support of four children. It is unlikely, in light of these and other expenses, the she could live on a monthly sum of \$794.00 or less, and still accumulate currency amounting to \$733.00.

The Claimant’s assertion that this sum resulted from her daughter’s disability payments is not credible: her account of her monthly income and expenses is illogical and unbelievable; her testimony was disjointed and at times contradictory; and her demeanor at the hearing indicated a lack of credibility.

All these circumstances indicate that the money at issue should be forfeited. Although some of the funds may be derived from a legal source, payments from the federal government, they are so intermingled with the illicit funds that any attempt to divide them would be impossible and purely speculative. Furthermore, monthly living expenses would quickly deplete the small government payment. The evidence, in combination with the Claimant's lack of credibility, requires the conclusion that the funds were used in a manner making them subject to forfeiture.

Accordingly, based upon the foregoing, it is hereby **ordered** that the subject \$733.00 in U.S. funds be **forfeited** to the seizing agency, for disposition as provided by law.

This Initial Order entered and effective this 11th day of July, 2011.

Ann M. Johnson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 11th day of July, 2011.



Thomas G. Stovall, Director
Administrative Procedures Division