



5-25-2011

DEPARTMENT OF SAFETY vs. One 1999
Chevrolet Corvette VIN: 1G1YY22G6X5102961
One 2009 Honda Element VIN:
5J6YH18739L001426 & \$1,115 In U.S. Currency,
Seized from: William Wiley & Mark Wiley, Date of
Seizure: November 23, 2010, Claimants: William
Wiley & Mark Wiley, Lienholder: Frances June
Moody

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

IN THE MATTER OF:)	
)	
DEPARTMENT OF SAFETY)	
)	
v.)	DOCKET NO. 19.01-112676J
)	19.01-112675J
One 1999 Chevrolet Corvette)	DOS Case Nos. L1029, L1030
VIN: 1G1YY22G6X5102961)	
One 2009 Honda Element)	
VIN: 5J6YH18739L001426)	
& \$1,115 In U.S. Currency)	
Seized from: William Wiley & Mark Wiley)	
Date of Seizure: November 23, 2010)	
Claimants: William Wiley & Mark Wiley)	
Lienholder: Frances June Moody)	

INITIAL ORDER

This matter was heard on May 25, 2011, in Memphis, Tennessee, before Steve R. Darnell, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Attorney Joe Bartlett represented the Department of Safety, and both Claimants and the Lienholder were represented by attorney Thomas E. Hansom. The cases at the two docket numbers above were consolidated for trial.

ISSUES PRESENTED FOR CONSIDERATION

1. Who owns the 1999 Chevrolet Corvette?
2. Were both of the above vehicles used to facilitate the sale of illicit drugs rendering them subject to forfeiture?
3. Does Lienholder have a valid lien on these vehicles which is superior to the Department's possessory interest in the vehicles?
4. Was the \$1,115 in U.S. currency proceeds from illegal drug trafficking?

It is **DETERMINED** that the 1999 Chevrolet Corvette is the sole property of William Wiley. William Wiley used both of the above described vehicles to facilitate the sale of illegal drugs. The \$1,115 found on William Wiley is the proceeds of or intended to facilitate drug trafficking. Both vehicles and \$1,115 are properly subject to forfeiture to the seizing agency. This is subject to the liens of Frances June Moody of \$22,713.73 on the Honda Element and \$4,000 on the Chevrolet Corvette.

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

FINDINGS OF FACT

1. The Bartlett Police Department was conducting an ongoing drug trafficking investigation of William Wiley. Bartlett officers had facilitated controlled purchases of marijuana from William Wiley using third parties.
2. On one occasion, William Wiley arrived at the drug transaction in the above described Chevrolet Corvette. On other occasions he used the above described Honda Element as transportation to and from the scene of the drug transaction. Both vehicles were used to facilitate the sale of illegal drugs.
3. After making small purchases, the officers sought a larger purchase from William Wiley in hopes of surveilling him and discovering his supplier. On November 23, 2010, officers followed William Wiley, who was driving the Honda Element, to a tattoo shop. Wiley entered the tattoo shop then left shortly thereafter with two other males.
4. Officers observed the trio leave in another vehicle. Wiley was a passenger in this vehicle. Officers knew the driver of the vehicle and knew his driver's license was suspended. With this knowledge the vehicle was stopped.

5. Upon stopping the vehicle, officers smelled raw marijuana. Search of the vehicle revealed 762 grams of marijuana hidden in the vehicle and a backpack. Officers returned to Wiley's Honda Element and noticed a bag of marijuana in plain view. Search of Wiley's Honda Element turned up 147.8 grams of marijuana and drug paraphernalia.
6. Officers found 30 Oxycondone tablets and \$1,115 in U.S. currency in Wiley's pant pockets.
7. Wiley was arrested and the Honda Element and \$1,115 seized.
8. Officers secured a search warrant for Wiley's home which he shares with his parents. Search of Wiley's home turned up 99.4 grams of marijuana in his bedroom.
9. The Chevrolet Corvette is titled to Mark and Debra Wiley who are William Wiley's parents. Mark Wiley filed a claim for return of the Corvette. Mark Wiley told the officers that searched his home that although the Corvette title was in his and his wife's names it belonged to William Wiley. During the hearing the parties referred to the Corvette as William Wiley's vehicle. The above described Chevrolet Corvette is the sole property of William Wiley.
10. Frances June Moody is the grandmother of William Wiley. Ms. Moody is also known as Frances Moore Moody and also as June Moody.
11. Frances June Moody purchased the Honda Element with cash for William Wiley. She is notated on the Element's title as the lienholder. William Wiley was to make payments to Ms. Moody until he repaid the loan. Ms. Moody holds a lien on the Element in the amount of \$22,713.73.
12. Frances June Moody purchased the Chevrolet Corvette for her son, Mark Wiley, but Mark Wiley later gifted his interest to William Wiley. Ms. Moody's name is notated on the

titled of the Corvette as the lienholder. She holds a valid lien on the Corvette in the amount of \$4,000.

13. Ms. Moody's testimony was credible. Ms. Moody presented ledgers of payments made by William Wiley on both vehicles which were also credible.

14. Ms. Moody had no knowledge of William Wiley's drug trafficking activities.

15. The proof supports a finding that William Wiley was involved in a robust drug trafficking enterprise. His possession of a large amount of cash, \$1,115, while he held and routinely used a bank account indicates that this was proceeds of or intended to facilitate his drug selling activities.

16. William Wiley's interest in both the Honda Element and the Chevrolet Corvette should be forfeited to the seizing agency subject to Ms. Moody's liens. The \$1,115 in U.S. currency is also properly subject to forfeiture to the seizing agency.

CONCLUSIONS OF LAW

1. The Department has the burden to introduce evidence that would, by a preponderance of the evidence, prove the vehicles and cash were used to facilitate illicit drug trafficking or proceeds thereof. 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. (emphasis added) T.C.A. § 53-11-451.

3. Although the admissibility of evidence is normally controlled by the Tennessee Rules of Evidence, the Administrative Procedures Act provides “when necessary to ascertain facts not reasonably susceptible to proof under the rules of court, evidence not admissible thereunder may be admitted if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. T.C.A. §4-5-313(1), Lettner vs. Plummer, 559 S.W.2d 785 (1977).

4. The Claimant’s prior activities in the manufacture and sale of illegal drugs in relevant and admissible evidence in a forfeiture hearing. Lettner vs. Plummer, 559 S.W.2d 785 (1977), Young vs. Tennessee Department of Safety, 911 S.W.2d 729 (Tenn.App. 1995).

5. The forfeiture statute does not require the Department to trace the seized property to a specific transaction. Lettner vs. Plummer, 559 S.W.2d 785 (1977). But the Department must

show some nexus between the seized money and the drug trade. Goldsmith v. Dept. of Safety, 622 S.W.2d 438 (1981).

6. Funds intended to be used to further illicit drug transactions are subject to forfeiture even if a substantial amount of drugs are not present. Louisiana vs. Douglas, 541 So.2d 285 (La. App. 1989).

7. Proof that property subject to forfeiture is related to illicit drug activities may be wholly circumstantial. U.S. v. Dusenbury, 80 F.Supp.2d 744 (N.D. Ohio 1998).

8. Aggregation of facts, each one insufficient standing alone, may suffice to meet the government's burden in forfeiture proceeding involving money alleged to be proceeds of an illegal drug transaction. U.S. v. \$67,220.00 in United States Currency, 957 F.2d 280 (6th Cir. 1992).

9. Carrying large sums of cash is strong evidence of some relationship with illegal drugs for purposes of forfeiture. U.S. v. \$67,220.00 in United States Currency, 957 F.2d 280 (6th Cir. 1992).

10. Claimant's record of drug activity is highly probative factor in the forfeiture calculus. U.S. v. \$67,220.00 in United States Currency, 957 F.2d 280 (6th Cir. 1992).

11. It is probative that property is being used in illegal drug activities when the property is found in close proximity to illicit drugs and drug paraphernalia. Richardson v. One 1972 GMC Pickup, 826 P.2d 1311 (Idaho 1992), See also, 167 A.L.R. Fed. 365, J.B. Benimow

12. The presence of drugs, scales, drug manufacturing materials, residue, etc. with the seized property is probative of its connection to illicit drug trade. U. S. v. U. S. Currency Amounting to Sum of \$20,294.00 More or Less, 495 F. Supp. 147 (E.D.N.Y. 1980).

13. T.C.A. §40-33-205 provides as follows:

(a) If a secured party **with a duly perfected security interest** receives notification pursuant to [§ 40-33-204\(g\)](#) that a forfeiture warrant has been issued with regard to the secured property, the secured party must submit proof of the security interest to the applicable agency within thirty (30) days of receipt of the notification in order for the provisions of this subsection (a) to apply. A **secured party with a duly perfected interest** or any successor in interest to the secured party who does not receive notice of intent to forfeit the interest pursuant to [§ 40-33-204\(b\)\(3\)](#), need not file a claim to preserve any right the party may have to the property.

(b) **Any secured party, other than one described in subsection (a)**, or any successor in interest to the secured party **may file a claim** for seized property by complying with the provisions of [§ 40-33-206](#), within thirty (30) days of the date the forfeiture warrant is issued. (emphasis added).

This section addresses not only perfected lienholders, but also “unperfected” lienholders.

Section (b) makes it clear that the legislature anticipated giving “unperfected” lienholders the right to present claims and protect their interest above the Department’s mere possession of a vehicle.

14. “Even though the motor vehicle title and registration statutes control the filing requirements for perfecting security interests in automobiles, the **Uniform Commercial Code still provides the rules for determining priorities among persons claiming an interest in the same automobile**. Secured parties, **even unperfected secured parties**, have greater rights in collateral than any other creditor unless Article Nine provides otherwise. While T.C.A. § 47-9-312 governs the priorities among competing security interests in the same collateral, T.C.A. § 47-9-301 governs the priorities among unperfected security interests and other types of claims.” Keep Fresh Filters, Inc. vs. Reguli, 888 S.W. 2d (Tenn. Ct. App. 1994). Citations omitted.

15. The Department claims to hold a possessory lien on this vehicle pursuant to T.C.A. § 47-9-333(b). However, “a lien in its broadest sense, is a legal claim or charge on real or personal property used as security for the payment of some debt or obligation.” *Id* at 443, citing Shipley vs. Metropolitan Life Ins. Co, 158 S.W.2d 739 (1941). The comments to the official text of

T.C.A. § 47-9-333(b) states: “This section governs the relative priority of security interest arising under this article and “possessory liens,” i.e., common-law and statutory liens whose effectiveness depends on the lienor’s possession of the goods with respect to which the lienor provided services or furnished material in the ordinary course of its business.” Examples given include artisan’s liens, warehouseman’s liens, and repairman’s liens. No authority is offered by the Department to support its contention that it holds a “lien” on the vehicle as that term is used in the U.C.C.

16. The Commissioner of the Department of Safety has recognized that a legitimate, but unperfected lienholder has priority over the Department’s mere possession of a seized vehicle. Department vs. Joseph A. Ditto, Docket No. 19.05-098953J, DOS No. G7857, Commissioner’s Amended Final Order entered Dec. 29, 2008.

It is **CONCLUDED** that the Department has shown, by a preponderance of the evidence, that both of the above described vehicles were used to facilitate the sale of illegal drugs and therefore subject to forfeitures. Further, the Department has shown, by a preponderance of the evidence that the \$1,115 in U.S. currency was proceeds from or intended to facilitate drug trafficking. Accordingly, both vehicles and the \$1,115 in U.S. currency are forfeited to the seizing agency.

The lienholder has shown, by a preponderance of the evidence, that she held valid, but unperfected liens on the above described vehicles at the time of their seizure. Even though her liens are unperfected, both liens still has priority over any claim made by the Department. Frances June Moody held a valid lien on the Chevrolet Corvette in the amount of \$4,000, and a valid lien on the Honda Element in the amount of \$22,713.73.

IT IS THEREFORE ORDERED that the 1999 Chevrolet Corvette is forfeited to the seizing agency subject to Frances J. Moody's lien of \$4,000. The 2009 Honda Element is forfeited to the seizing agency subject to Frances J. Moody's lien of \$22,713.73. The \$1,115 in U.S. currency is forfeited to the seizing agency.

This Initial Order entered and effective this 26th day of July, 2011.

Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 26th day of July, 2011.



Thomas G. Stovall, Director
Administrative Procedures Division