



11-8-2010

DEPARTMENT OF SAFETY vs. One 1975  
Chevrolet Silverado C10 Truck VIN:  
CCZ145A106984, Seized From: Arthur Hall, Jr.,  
Seizure Date: 12/3/09, Claimant: Arthur Hall, Jr.  
Seizing Agency: Memphis P.D., Lienholder: None  
Filed

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

<b>IN THE MATTER OF:</b>	)	
<b>DEPARTMENT OF SAFETY</b>	)	<b>FORFEITURE PROCEEDING</b>
	)	
<b>v.</b>	)	
	)	
<b>One 1975 Chevrolet Silverado C10 Truck</b>	)	
<b>VIN: CCZ145A106984</b>	)	<b>DOCKET # 19.01-110468J</b>
<b>Seized From: Arthur Hall, Jr.</b>	)	<b>(D.O.S. # K0209)</b>
<b>Seizure Date: 12/3/09</b>	)	
<b>Claimant: Arthur Hall, Jr.</b>	)	
<b>Seizing Agency: Memphis P.D.</b>	)	
<b>Lienholder: None Filed</b>	)	

**INITIAL ORDER**

This contested administrative case was heard in Memphis, Tennessee, on November 8, 2010, before Margaret R. Robertson, Administrative Judge, assigned by the Secretary of State and sitting for the Commissioner of the Tennessee Department of Safety. Mr. Andre Thomas, Staff Attorney for the Tennessee Department of Safety, represented the State. The Claimant appeared *pro se*.

The hearing was convened to consider the proposed forfeiture of the described vehicle for its alleged use to transport or otherwise facilitate the sale or receipt of drugs. TENN. CODE ANN. §§ 53-11-201 & 40-33-201, *et seq.* Upon full consideration of the entire record in this matter, it is determined that the subject vehicle should be RETURNED to the Claimant. This decision is based on the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. On November 30, 2009, a Monday, Officer Michael Gehringer with the Memphis Police Department stopped the subject vehicle in Shelby County, Tennessee for a vehicle registration violation. The subject vehicle is an antique vehicle (a rebuilt 1975 Chevrolet Silverado C10 truck) which, on the date it was seized, bore an antique vehicle license plate. An

antique vehicle license plate permits the licensee to drive the vehicle on weekends and to car shows only. It may not be driven on public streets at other times or for other purposes.

2. When Officer Gehringer approached the driver, Arthur Hall, Jr., (“Claimant”) the officer noted the odor of marijuana. When the driver got out of the car, Officer Gehringer noted that the smell of marijuana got stronger and he noted a bulge in the Claimant’s jacket. He inquired about the bulge. In response, the Claimant pulled out a bag of marijuana, rolling papers and scales. Officer Gehringer field-tested the marijuana and later weighed it, finding it to test positive for THC and to weigh 29.29 grams (one ounce). He charged Claimant with possession of illegal drugs with intent to resell, based upon the amount of marijuana and the presence of scales which, in his experience, drug dealers use to measure out the amounts they sell. He also confiscated \$311 in currency held by the Claimant which the officer said he believed to be earned through drug transactions.<sup>1</sup>

3. Officer Gehringer asked the Claimant where he was going in the antique vehicle. The Claimant told him he was on his way to his aunt’s house. Officer Gehringer pointed out that use of the antique vehicle on a weekday for that purpose was in violation of the antique vehicle registration law. Claimant would need to have purchased regular registration to use the vehicle for that purpose. The Claimant also told him that he regularly used the vehicle as transportation to and from work. Claimant and his cousin worked at a plating manufacturing company and were on their way home from work that day.

4. Officer Gehringer gave Claimant his business card after asking Claimant for his help, presumably to disclose the source of the marijuana. Claimant called the officer several times but did not offer any helpful information. The officer characterized the Claimant’s calls as “belligerent or upset about wanting his car back.” Officer Gehringer denied Claimant told him about any employment, responding that if he had been told about it, it would have been in the report.

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<sup>1</sup> Claimant’s cousin Jonathan Lee was a passenger in the vehicle. Officer Gehringer testified that the passenger had two small bags of marijuana on his person as well. However, no information about the disposition of the passenger and the amount of marijuana he possessed was provided in this matter and is not within the scope of this hearing. .

5. Claimant testified that he lived in his parents' house and worked at the time at D & W Plating Company, a copper and bronze plating company. He did not complete high school, but began working before leaving school. He had been working there for two months before the seizure. He bought the 1975 Silverado in July of 2009 and did part of the rebuilding himself. He testified that he and his cousin stopped by a store on the way home from work to see if someone his cousin knew could be found there to sell them marijuana. He wanted some marijuana to smoke and bought an ounce for \$80. Claimant said he had the scales because "when you buy, people try to cheat you." He had borrowed the scales from his cousin, but was waiting to get home before weighing the marijuana.

6. Claimant testified he pled guilty to simple possession of marijuana in the criminal court case. Because of the seizure of his truck, he no longer has transportation. His driver's license was suspended for one year, and he was unable to qualify for a restricted license. He denied selling drugs, and claimed that the currency he carried was from his job. He asserted that he has since ceased using marijuana.

### **CONCLUSIONS OF LAW & ANALYSIS**

1. The *Notice of Seizure and Drug Asset Forfeiture Warrant* in this case was issued pursuant to [1] TENN. CODE ANN. § 53-11-451(a)(4), which provides that, "All conveyances . . . which are used, or are intended for use, to transport, or in any manner facilitate the transportation, sale or receipt of drugs in violation of " the Tennessee Drug Control Act are subject to forfeiture under the law. Subsection (c) further provides that "A conveyance is not subject to forfeiture for a violation of §39-17-418(a) or (b) or §39-17-425."

2. TENN. CODE ANN. § 39-17-418(a) provides that "It is an offense for a person to knowingly possessor 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." TENN. CODE ANN. § 39-17-418(b) provides that "It is an

offense for a person to distribute a small amount of marijuana not in excess of one-half (1/2) ounce (14.175 grams).”

3. TENN. CODE ANN. § 40-33-210 provides:

(a) In order to forfeit any property or any person’s interest in such property pursuant to § . . . 53-11-451, . . . 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 . . .

(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.

4. The Department, acting under the purported authority of TENN. CODE ANN. § 53-11-451(a)(4), ordered the forfeiture of Mr. Hall’s vehicle on the grounds that the vehicle was a conveyance used to transport and to facilitate the purchase and/or sale of drugs in violation of TENN. CODE ANN. § 39-17-401, *et seq.* Officer Gehringer construed the amount of marijuana found as an amount intended for resale, basing his conclusion on the fact that the amount exceeded ½ ounce and there were scales present. On this basis, he seized both the vehicle and the currency carried by the Claimant.

5. In support of the State’s contentions, there is evidence that one ounce of marijuana was found in Claimant’s possession in the vehicle when he was stopped, that possession of marijuana without a prescription is illegal, and that Claimant admitted to having purchased the marijuana while on the way home from work in the vehicle. It is also true that the field-measured weight of the drug exceeded the amount (1/2 ounce) considered a misdemeanor amount in law. But this by no means ends the analysis.

6. The preponderance of the evidence available is that the marijuana found on the Claimant was obtained through a casual exchange for personal use only. Claimant has no history

of drug infractions, either purchases or sales. One ounce is still a very small quantity of marijuana, and within a reasonable amount for personal use. No sale or purchase was observed. Claimant gave a creditable explanation for having the scales; that they belonged to his cousin and he borrowed them to measure the amount he had purchased to be sure he received the amount paid for. There was no other drug paraphernalia. There was no evidence that the drugs were bundled in quantities for resale or that the currency was in denominations typical of drug sales. The amount of currency was not large, and Claimant had a good explanation for the source. The proof is more remarkable for what is not present than what is.

7. The current state of the law in Tennessee is that “[T]he simple possession of a small amount of drugs or drug paraphernalia cannot trigger a forfeiture action.” *Stuart v. State of Tennessee, Department of Safety*, 963 S.W. 2d 28, 35 (Tenn. 1998).

8. “Forfeitures are not favored in law and statutes that impose forfeitures must be strictly construed.” *Goldsmith v. Roberts*, 622 S.W. 2d 438, 440 (Tenn. Ct. App.) (returning vehicle to claimant based upon Safety’s failure to prove that the vehicle was used to “transport controlled substances for the purposes of resale”), *cert. denied* (1981).

9. A vehicle is not subject to forfeiture if the only connection between the vehicle and the illegal substance is as a mode of transportation, or if the driver or passenger of the vehicle is simply in possession of a controlled substance in the vehicle. *Hughes v. State*, 776 S.W.2d 111, 115 (Tenn. Ct. App.), *p.t.a. denied* (1989); Tenn. Atty. Gen. Op. No. 03-133 (Oct. 8, 2003); Tenn. Atty. Gen. Op. No. 04-109 (July 9, 2004).

10. In *Hughes*, a vehicle used in a trip to purchase marijuana for the vehicle owner’s personal use was confiscated. *Id.* In reversing the forfeiture, the court held:

We think that TENN.CODE Ann. § 53-11-409(a)(4)(C) could prevent the forfeiture of a vehicle when the operator is found guilty of simple possession of a small amount of a controlled substance and the vehicle’s only connection with the substance is as a means of transportation. Arguably, then, forfeiture would not occur when the vehicle is used only to transport the illegal drug.

*Hughes*, 776 S.W.2d at 115 (citing previous code section for TENN. CODE ANN. § 53-11-451(a)(4)(C)).

11. In response to an opinion request from the Commissioner of Safety, the Tennessee Attorney General has determined that *Hughes* cannot be read to permit the forfeiture of a vehicle involved in the casual exchange of a controlled substance. Tenn. Atty. Gen. Op. No. 04-109 (July 9, 2004) at 7. Similarly, the Tennessee Attorney General has emphasized that a conveyance is not subject to seizure if its only connection to a controlled substance is as a means of facilitating simple possession of a controlled substance. Tenn. Atty. Gen. Op. No. 03-133 (Oct. 8, 2003) at 2. TENN. CODE ANN. § 53-11-451(a)(C) excludes such conveyances from forfeiture. The Tennessee Supreme Court considered the General Assembly's intent when enacting TENN. CODE ANN. § 53-11-451(a)(4)(C) in *Stuart v. State of Tennessee, Department of Safety*, 963 S.W. 2d 28 (Tenn. 1998). The statutes embrace a proportionality approach such that the simple possession of a small amount of drugs cannot trigger a forfeiture action. *Id.* at 35. The legislature determined that the forfeiture would be disproportionate to the crime. *Id.* As the *Stuart* court wrote, courts using the proportionality test under the excessive fines analysis "consistently utilize the following factors:

- (1) the harshness of the penalty compared with the gravity of the underlying offense;
- (2) the harshness of the penalty compared with the culpability of the claimant; and
- (3) the relationship between the property and the offense, including whether use of the property was (a) important to the success of the crime, (b) deliberate and planned or merely incidental and fortuitous, and (c) extensive in terms of time and spatial use. *Id.*

12. It is clear in the present case that the offense of purchase and possession of such a small amount of marijuana for personal use is of comparatively low gravity among the continuum of drug offenses. The use of the vehicle is more incidental than purposeful and instrumental. The only evidence of drug activity at all is the presence of one ounce of marijuana and the Claimant's admission that it was purchased while on the way home from work. The importance of the vehicle to the purchase is minimal. Claimant could as readily have walked or ridden a bus to make the purchase. The Claimant is culpable for the illegal purchase and

possession, but forfeiture of his vehicle is disproportionate to the weight of his offense. Claimant is employed, but at a low-salaried position at a plating company. Some of the value of his vehicle was achieved by his own sweat equity. When deprived of his vehicle by the seizure, he was financially challenged to replace it. Thus the penalty of forfeiture would bear unduly harshly on the Claimant.

13. In conclusion, application of the proportionality test in this case would not support forfeiture of the vehicle, because the amount of the drug is so small, there is no other evidence connecting the vehicle or the Claimant to drug activity, there is no evidence of the Claimant being engaged in the selling of drugs, and, when the monetary value of the property is considered in light of Claimant's financial resources, the forfeiture would be considered excessive.

Based upon the foregoing, the vehicle should be returned to Mr. Hall.

Accordingly, it is hereby ORDERED that the 1975 Chevrolet Silverado be RETURNED to the Claimant, Arthur Hall, by the Memphis Police Department.

This Initial Order entered and effective this 28th day of April, 2011.

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Margaret R. Robertson  
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 28th day of April, 2011.



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Thomas G. Stovall, Director  
Administrative Procedures Division