



11-28-2005

DEPARTMENT OF SAFETY, Petitioner, vs. One
1989 Cadillac DeVille VIN
1G6CD1156K4318687, Seized from: Lorenzo
Hopkins, Date of Seizure: May 20, 2005, Claimant:
Sheila Hopkins

Follow this and additional works at: http://trace.tennessee.edu/utk_lawopinions

 Part of the [Administrative Law Commons](#)

This Initial Order by the Administrative Judges of the Administrative Procedures Division, Tennessee Department of State, is a public document made available by the College of Law Library, and the Tennessee Department of State, Administrative Procedures Division. For more information about this public document, please contact administrative.procedures@tn.gov

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

IN THE MATTER OF:

**DEPARTMENT OF SAFETY,
*Petitioner***

**DOCKET NO: 19.01-084225J
(D.O.S. Case No. E2214)**

v.

**One 1989 Cadillac DeVille
VIN 1G6CD1156K4318687
Seized from: Lorenzo Hopkins
Date of Seizure: May 20, 2005
Claimant: Sheila Hopkins**

INITIAL ORDER

This matter was heard in Nashville, Tennessee, on November 28, 2005, before Ann M. Johnson, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety. Orvil Orr, Staff Attorney for the Department of Safety (Department), represented the State. The Claimant Sheila Hopkins was present and represented herself, waiving legal counsel.

The subject of this hearing was the proposed forfeiture of the captioned vehicle for violation of the Tennessee Drug Control Act. After consideration of the record and the arguments of the parties, it is determined that the vehicle should be returned to the Claimant. This decision is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. In May of 2005, the LaVergne Police Department conducted an undercover investigation at the home of Lorenzo and Sheila Hopkins, during which a confidential informant made two purchases of marijuana. The first purchase consisted of about one and a half ounces and the second was of a smaller misdemeanor amount.

2. On May 20, 2005, Mike Mullin, a detective of the LaVergne Police Department, observed the informant's drug purchase of a misdemeanor amount of marijuana in the front yard of the Hopkins residence. The parties to this transaction did not enter the home or the subject vehicle, which was parked outside the home. At this time Mr. Hopkins was arrested and the vehicle was confiscated.

3. Detective Mullin testified that Mr. Hopkins had stated to another officer on the scene that he stored the marijuana in the car so that the children would not find it.

4. There was no testimony to show that any marijuana was found in the subject vehicle, or that the vehicle was used in connection with any drug transaction.

5. Sheila Hopkins, wife of Lorenzo Hopkins, filed a claim seeking the return of the vehicle.

6. About four months prior to the seizure Ms. Hopkins purchased the vehicle so that Mr. Hopkins could drive to his place of employment and so that he could take Ms. Hopkins' child for child care during working hours. The Claimant Sheila Hopkins normally drove a second vehicle.

7. The vehicle in question is titled in the name of the Claimant, who also purchased the insurance. The insurance policy lists Lorenzo Hopkins as an additional driver of the automobile. The Claimant stated that it was understood that she would pay for any needed

repairs, although she had not had occasion to do so since the vehicle was purchased only a few months prior to the time it was confiscated. The Claimant is the owner of the subject vehicle.

8. The Claimant stated that she had no knowledge of any drug use or sales by Mr. Hopkins, a contention that was not disputed by the State.

ANALYSIS and CONCLUSIONS OF LAW

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

(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 [illicit substances], but:

(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

(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 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)(A), 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

2. T.C.A. § 40-33-210 contains the following relevant provisions:

(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.

According to this language, the State bears the burden of proof in this matter to show two elements by a preponderance of the evidence: (1) that the subject vehicle was used in a manner making it subject to forfeiture, and (2) that the owner was aware of this use.

3. Before the seizure can be upheld under the provisions quoted above, the Department must first prove that the vehicle was used in some way to facilitate a drug transaction. Here, the Department failed to offer any such proof, aside from Detective Mullin's statement that Mr. Lorenzo told another officer, who later told the detective, that Mr. Lorenzo stored marijuana in the vehicle. This third-hand statement, standing alone, is scant evidence upon which to draw a conclusion that the vehicle was used to facilitate a drug transaction, and fails to satisfy the State's burden of proof.

4. However, even if it were concluded that the vehicle was used to facilitate a drug transaction, the second prong of the relevant statute requires knowledge of the illegal use by the owner. Implicit in this element is the determination of ownership. T.C.A. § 40-33-204(d) provides guidance on this issue:

(d) If the person in possession of the property is not the registered owner as determined from public records of titles, registration or other recorded documents, the judge may consider other indicia of ownership which proves that the possessor is nonetheless an owner of the property. Such other indicia of ownership shall include, but is not limited to, the following:

- (1) How the parties involved regarded ownership of the property in question;
- (2) The intentions of the parties relative to ownership of the property;
- (3) Who was responsible for originally purchasing the property;

- (4) Who pays any insurance, license or fees required to possess or operate the property;
- (5) Who maintains and repairs the property;
- (6) Who uses or operates the property;
- (7) Who has access to use of the property; and
- (8) Who acts as if they have a proprietary interest in the property.

In this case, it was the Claimant who originally purchased the vehicle, who paid insurance and licensing costs, and who intended to pay for repairs and maintenance. The car is registered in her name, and she intended to retain ownership of the vehicle. Even though it was purchased to provide transportation to work for Mr. Hopkins and he drove it most frequently, this use was also for the convenience of the Claimant since Mr. Hopkins took the Claimant's child to child care each day on his way to work. All of these factors indicate that the Claimant is the owner of the subject vehicle.

5. The primary factor supporting an alternative conclusion lies in Mr. Hopkins' frequent use of the vehicle. However, the Tennessee Court of Appeals addressed this issue by stating that "[t]his court, however, is unprepared to hold that a person using property with another's permission acquires some sort of ownership interest in the property," finding no legal precedent for such an "extreme conclusion." *Cunningham v. Dept. of Safety*, No. 01A01-9509-CH-00411 (Tenn. Ct. App. May 21, 1997), at Page 7.

6. Forfeitures are not favored in law and statutes that impose forfeitures must be strictly construed. *Goldsmith v. Roberts*, 622 S.W. 2d 438 (Tenn.App. 1981), *cert. denied*. Forfeitures must fall within the letter and spirit of the law in order to be upheld. *Blackmon v. Norris*, 775 S.W.2d 367 (Tenn. Ct. App. 1989).

7. In this case, the Claimant established that she is the owner of the subject vehicle and that she was unaware that its use could make it subject to forfeiture. The State failed to

present any evidence to show, or even to argue, that the Claimant had knowledge of her husband's drug dealings.

8. The State failed to carry its burden of proof as required by the statutory provision quoted above.

9. Based upon the foregoing, it is hereby **ordered** that the subject vehicle be **returned** to the Claimant.

This Initial Order entered and effective this 27th day of February 2006.

Ann M. Johnson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 27th day of February 2006.


Charles C. Sullivan, II, Director
Administrative Procedures Division