



2-2-2006

DEPARTMENT OF SAFETY, Petitioner, vs. One
2002 Chevrolet Tahoe VIN No.
1GNEC13Z2R12297722 Items of Personal
Property as listed in Exhibits 2 and 3, copies
attached, Seized From: Nakreeta Johnson, Date of
Seizure: February 4, 2005, Claimant: Nakreeta
Johnson

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

IN THE MATTER OF:

**DEPARTMENT OF SAFETY,
Petitioner**

**DOCKET NO: 19.01-087243J
(D.O.S. Case No. D9117)**

v.

**One 2002 Chevrolet Tahoe
VIN No. 1GNEC13Z2R122977
22 Items of Personal Property (as listed
in Exhibits 2 and 3, copies attached)
Seized From: Nakreeta Johnson
Date of Seizure: February 4, 2005
Claimant: Nakreeta Johnson**

INITIAL ORDER

This contested case was heard in Nashville, Tennessee, on February 2, 2006, before Robert Fellman, Administrative Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Benjamin Ford, Assistant District Attorney General, Davidson County, represented the State. Nakreeta Johnson, Claimant, was represented by Derrick Sretchen of the Nashville bar.

At issue was the proposed forfeiture of a Chevrolet Tahoe and 22 items of personal property seized as alleged proceeds from illegal drug transactions (49 items were seized but Claimant only claims 22 as her own). This matter became ready for consideration on May 25, 2006, when the hearing transcript and exhibits were filed in this office, the delay being caused by the court reporter's difficulties with the tape recording device she used at the February 2, 2006 hearing.

After consideration of the record in this matter, it is determined that all **property** claimed by Claimant should be **returned** to her. This determination is based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Phillip Taylor, an officer with the Twentieth Judicial Drug Task Force, became involved in a money laundering investigation against Franklin Motor Company and Kevin Frierson. Frierson has, what was termed as at the February 2, 2006 hearing, “a long record for drugs.”

2. One transaction at Franklin Motors that seemed to be suspicious was by Nakreeta Johnson (the claimant in this forfeiture proceeding). Claimant purchased a 1999 Chevrolet Tahoe from Franklin Motor on August 24, 2004, and made a cash down payment of \$3,000 from her savings. On October 11, 2004, Claimant traded in that Tahoe on a 2002 Tahoe.

3. Initial paperwork on the 2002 Tahoe, entitled Retail Buyers Order, listed 60 monthly payments of \$558 with a \$2,000 down payment. However, Claimant did not sign that Retail Buyers Order and Claimant gave credible and uncontradicted testimony at the hearing that she never made the \$2,000 down payment but did make monthly payments of “about 450 or 500 dollars” on the 2002 Tahoe.

4. On an application by Claimant to buy one of the vehicles at Franklin Motor, Claimant listed Kevin Frierson as one of several references on the application.

5. The owner of Franklin Motor told Officer Taylor that Claimant's purchase of one of the Tahoes (the testimony did not indicate which one) was a "straw purchase" in which Frierson was the real buyer and Claimant signed all the papers.¹

6. On an application at Franklin Motor, Claimant stated she had worked for Asuron for over two years and made \$40,800 per year. At some point subsequent, Officer Taylor checked out Claimant's employment records and determined that Claimant was making \$43,884 a year at Asuron. Claimant stopped working for Asuron on November 14, 2004.

7. On another application, Claimant stated she had worked for NBC Bank and made \$20,000 a year.

8. Officer Taylor learned that Claimant was receiving electric service at two residences - 300 Berkley Drive and 3301A Leslie Court.

9. The police established surveillance on the Leslie Court duplex over a two week period. The duplex had surveillance cameras outside and a burglar bar door on the entrance. Police observed cars stop by for a few minutes while people would enter the duplex and leave. Claimant was never observed at the Leslie Court address, although a green Tahoe was.

10. Because of this suspicious activity, the police obtained search warrants for both the residences of Claimant.

11. On February 4, 2005, just as they began executing the search warrant on the Leslie Court duplex, the police stopped the 2002 Tahoe at issue as it pulled away from the house. Claimant was not in it. Evidently the Tahoe was seized at that point.²

12. During their search of the Leslie Court duplex, police found in a kitchen cabinet a small set of electronic scales with a residue of marijuana and cocaine, although not enough to be

¹ The owner of Franklin Motor was not called as a witness at the hearing and there was no proof as to why he allegedly told the officer this.

² There was no proof as to this at the hearing but the Tahoe was listed as property seized from Leslie Court.

sent to the crime lab for weighing and analysis, so there was no lab report entered into evidence at the hearing. Baggies used to package drugs were also found.

13. While the police were searching the Leslie Court house, Claimant arrived driving a gold Lexus. Officer Taylor asked her where she lived. At first, she told him at Leslie Court. When asked about her apartment at Berkley Drive, she then stated she lived at both places, staying at whichever place was closest when she turned in for the night.

14. Claimant told Officer Taylor she was in the process of purchasing the gold Lexus she was driving by trading in her Tahoe and making a down payment of a thousand or two thousand dollars. (Officer Taylor could not remember which figure she stated.)

15. Police seized 29 items of personal property from the Leslie Court duplex, from jewelry to a Pyrex dish. Of these items, Claimant explained at the hearing that she only claims ownership of the 60" RCA TV seized and the Tahoe.

16. One item seized was a Sony Playstation II. Metro Police Officer Aaron Thomas testified at the hearing the Playstation was indicative of drug dealing because big time drug dealers "spend most of their time just playing Playstation games."

17. The police then executed a search warrant on the Berkley Hills apartment and seized 20 items of personal property, all of which Claimant claims as hers. No drugs, drug paraphernalia, or sums of money were found at this residence. There was no indication of drug dealing found at the apartment on Berkley Drive.

18. All the personal property seized by the police was seized on the basis that they found no paperwork in Claimant's Berkley Hills apartment to show she had a legitimate income source, such that she could afford her rent, her furnishings, or appliances.

19. The Tahoe was seized on the basis that most people do not carry around \$3,000 in cash for a vehicle down payment and because cocaine was being sold from the duplex at Leslie Court listed in her name.

20. At the hearing, Claimant and/or her mother gave very credible and uncontradicted testimony, summarized as follows.

21. Since July 2004, Claimant has lived at Berkley Drive in a two-bedroom apartment with her daughter and nineteen-year-old sister. Her sister and she split the \$563 monthly rent and all other expenses. Claimant's parents also provided help with Claimant's living expenses.

22. At the time of the seizure, Claimant was working at NBC Bank full time and J.C. Penney part time. She was making about \$28,000 a year from both. She had also recently received a settlement of about \$6,000 from a lawsuit.

23. Claimant and Kevin Frierson are friends and once dated. She agreed to put the Leslie Court Drive duplex in her name for Frierson's benefit because his credit was not good. Frierson sold music for a living.

24. Claimant had a key to the duplex.³ She did not pay any of the bills to maintain the duplex. She had no items of clothing at the duplex.

25. Claimant once rented the 60 inch RCA television seized from the duplex for \$400 a month before buying it outright. There was no proof how many rental payments she made, or how much the TV cost to buy, or whether the \$400 rental payments went toward the final purchase.

26. Of the items seized from the Berkley Drive apartment, Claimant spent \$1,500 for the chair, love seat and sofa (all of which are actually vinyl, despite the property receipt listing them as leather). She used an income tax refund for their purchase.

³ This finding of fact is made despite testimony by Claimant to the contrary.

27. The waterfall painting seized was given to Claimant as a Christmas gift in 2004. Claimant bought for herself the seized microwave oven and silver floor lamp.

28. Claimant's mother bought several of the items seized from Berkley Drive, including: the Emerson DVD player, keyboard, Sanyo TV, Lypan water lamp, RCA audio system, speakers, valances, and comforter lamp. Claimant's grandmother bought her the 2005 freezer seized.

29. Claimant has no criminal record. She denies that any seized property was bought with drug proceeds or that she knew Frierson was a drug dealer.

CONCLUSIONS OF LAW AND ANALYSIS

1. T.C.A. §53-11-451(a)(6)(A) authorizes the forfeiture of:

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.

2. T.C.A. §53-11-451(a)(4) authorizes the forfeiture of:

All conveyances . . . which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale or receipt of property [in violation of the Tennessee Drug Control Act].

3. Although the State did not even argue that the seized 2002 Tahoe was used to facilitate a drug transaction, the notice of seizure did list, T.C.A. §53-11-451(a)(4) as a legal basis for seizure, which, therefore, must be addressed: There was no proof the Tahoe was used to facilitate a drug transaction.

4. The State argued that there was a “nexus between the drug trade” and all the property seized because Claimant was involved in drug trafficking by renting the house in which there were drug sales and she knew Frierson was a drug dealer.

5. However, there is no law that allows for forfeiture of a person’s property merely because he or she has knowledge of another person’s drug dealing.

6. The only issue before this judge is whether the property seized was bought with drug proceeds. The State argued that “it just doesn’t add up as far as where the money was coming from to pay for . . . the stuff that was found”

7. The first problem with the State’s case is that it failed to prove the extent of drug sales. The whole two week time the police conducted a surveillance of Frierson’s apartment, they did not stop any person leaving the apartment to see if that person had drugs. The police never did a controlled buy. When the apartment was searched, the police did not find large amounts of drugs or any money. In fact, the only proof of drugs was an officer’s testimony that he observed a trace amount of cocaine and marijuana in the apartment.

8. While the evidence preponderated that Frierson sold drugs, he also had a legitimate source of income. There simply was no proof that Frierson made large amounts of money by drug trafficking.

9. Even if the State had proven that Frierson was a major drug dealer, there was not sufficient proof that the items seized at Berkley Hills and the Tahoe were drug proceeds.

10. The police seized Claimant’s personal property and vehicle because, when they searched her residence, they could find no paperwork to show she has a legitimate income source. Officer Taylor later checked out Claimant’s employment records and discovered that

Claimant was making almost \$44,000 a year up until November 14, 2004, less than three months before the seizure.

11. Counsel for the State argues that Claimant bought the seized property with drug money provided by Frierson.

12. The very fact that Claimant works two jobs tends to prove she is not receiving drug money, as few people are likely to work two jobs unless forced to for financial reasons. Nor did the proof show that the property seized was not bought by Claimant with her own legitimate sources of income and outside help.

13. Even without Claimant's showing a legitimate means to afford the property seized, the State did not prove that it was, more likely than not, bought with drug proceeds.

14. There was no proof Claimant ever sold drugs or used the money of Frierson to buy the seized property.

15. There was no proof to show that Frierson was the real owner, or co-owner of the seized Tahoe: There was no proof he paid for any portion of the vehicle, that he paid any fees or upkeep, that he ever operated the vehicle, or that even he had access to the vehicle (despite a two week stakeout of his residence).

16. While it is suspicious that Claimant made a \$3,000 cash down payment on the Tahoe and \$500 monthly payments, she has a sister and parents who are helping her with expenses.

17. Claimant's purchase of the 60 inch TV is certainly suspicious also. But barring proof of what the TV cost, or that Frierson helped with the purchase, or that if Frierson helped with the purchase, it was with drug proceeds, the TV cannot be forfeited.

18. Most suspicious of all was Claimant's statement to Officer Taylor that she was in the process of buying a Lexus, despite income of \$28,000 a year. But that Lexus is not at issue here, as it was not seized. For that matter, there was no proof that Claimant had actually signed any papers to buy the car.

19. Claimant made inconsistent statements to this judge and the investigating police officers. But given the weaknesses of the State's case, these inconsistent statements are not enough to sustain a ruling in favor of the State.

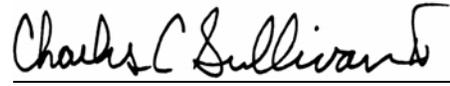
20. This judge is not so naïve that he does not strongly suspect that Frierson could be a big time drug dealer and that Claimant is benefiting from that drug money. But the State has the burden of proving by a preponderance of the evidence that the property seized was bought with drug proceeds. That burden was not approached under the facts presented before this judge.

21. For these reasons, it is **ordered** that all the **property** claimed by Claimant be **returned** to her, namely, the Tahoe, 60 inch RCA TV, and all property seized from Berkley Drive.

This Initial Order entered and effective this 16th day of August 2006.

Robert Fellman
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this
16th day of August 2006.

Handwritten signature of Charles C. Sullivan, II in cursive script.

Charles C. Sullivan, II, Director
Administrative Procedures Division