



7-19-2007

DEPARTMENT OF SAFETY, Petitioner, vs. 9,
One 2002 Chevrolet Impala, VIN:
2G1WF52E929371724, SEIZED FROM: Joseph
Barker, SEIZURE DATE: February 15, 2007,
CLAIMANT: Joseph Barker, LIENHOLDER:
Credit Acceptance Corp

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

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,]	
<i>Petitioner</i>]	
]	
VS.]	DOCKET # 19.01-096251J
]	D.O.S. # G-0109
One 2002 Chevrolet Impala]	
VIN: 2G1WF52E929371724]	
SEIZED FROM: Joseph Barker]	
SEIZURE DATE: February 15, 2007]	
CLAIMANT: Joseph Barker]	
LIENHOLDER: Credit Acceptance Corp.]]	

INITIAL ORDER

This contested administrative case was heard in Memphis, Tennessee on July 19, 2007, before J. Randall LaFavor, Administrative Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Mr. Trey Phillips, Staff Attorney for the Department of Safety, represented the State. The Claimant was present and was represented by his attorney, Mr. Justin Gee.

The subject of this hearing was the proposed forfeiture of the Claimant's vehicle, one 2002 Chevrolet Impala, based on allegations that it was used in violation of the Tennessee Drug Control Act. Upon full consideration of the record in this case, it is determined that the subject vehicle should be forfeited to the Seizing Agency. This decision is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On February 4, 2007, an officer with the Memphis Police Department observed the subject vehicle speeding and driving recklessly in a Memphis residential area. After the officer activated his emergency equipment and a short pursuit, including additional reckless conduct by the driver, the vehicle pulled to the side of the road.

2. The officer approached the driver and, through the open car window, smelled the strong odor of marijuana. The driver, who identified himself as Joseph Barker (the “Claimant”), was arrested for reckless driving, and was removed from the car. (A passenger, after being cleared of any criminal involvement, was released, and left the scene.)

3. A search of the Claimant’s vehicle produced two bags of marijuana weighing a total of 86.7 grams, and two partial boxes of plastic bags similar to the ones in which the marijuana was packaged. During the hearing, the arresting officer testified that the amount of marijuana seized, and the manner in which it was packaged was similar to the circumstances surrounding his past arrests of drug dealers. Neither rolling papers, pipes, nor any other marijuana smoking paraphernalia was found in the Claimant’s car.

4. The Claimant testified that he had purchased the marijuana from his supplier in a neighboring community shortly before he was stopped. He drove the subject car to his supplier’s location, and transported the marijuana in the car after the purchase. He denied that he intended to resell the marijuana, and said that he planned to smoke it, himself. He stated that he understood that possessing and smoking marijuana is illegal, but said that was how he relaxes, since he chooses not to drink alcohol.

CONCLUSIONS OF LAW and ANALYSIS

1. On behalf of the seizing agency, the State of Tennessee Department of Safety bears the burden of proof in forfeiture proceedings, and must therefore prove, by a preponderance of the evidence, that the seized property is subject to forfeiture, pursuant to law. Failure to carry the burden of proof operates as a bar to the proposed forfeiture. TENN. CODE ANN. § 53-11-201(d)(2); *Rule 1340-2-2-.15*, TENN. COMP. R. & REGS., *Rules of the Tennessee Department of Safety*.

2. “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” controlled substances in violation of the Tennessee Drug Control Act, are subject to forfeiture under the law. TENN. CODE ANN. § 53-11-451(a)(4).

3. However, “a conveyance is not subject to forfeiture for a violation of Sec. § 39-17-418(a) or (b) or § 39-17-425.” (Emphasis added.) TENN. CODE ANN. § 53-11-451(a)(4)(C). TENN. CODE ANN. § 39-17-418 provides:

39-17-418. Simple possession or casual exchange.-- (a) It is an offense for a person to knowingly possess or 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.

(b) 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).

[Emphasis added.] TENN. CODE ANN. § 39-17-418(a)&(b).

By asserting that he only possessed the marijuana for personal consumption, the Claimant sought to invoke this exception to the general drug asset forfeiture laws.

4. The general rule, then, is that a vehicle that is used to facilitate the illegal sale of controlled substances will be subject to forfeiture. TENN. CODE ANN. § 53-11-451(a)(4). However, the law also provides for certain exceptions to this general rule. TENN. CODE ANN. § 53-11-451(a)(4)(A) - (D). The exception relevant to this case was enacted by the legislature in 1994 (1994 Tenn. Pub. Acts, Chapter 925, Sec. 2), and provides that *a vehicle which is used to facilitate the possession for personal use, or the sale of less than one-half ounce (14.175 grams) of marijuana is not subject to forfeiture.* [See, TENN. CODE ANN. § 53-11-451(a)(4)(C) and § 39-17-418(b).] The Claimant in this case used his car to purchase and transport 86.7 grams of marijuana. Once that fact was proven by the State, in order to take advantage of the claimed exception, the Claimant had to prove that the marijuana in his possession was for personal use. He failed to do so.

5. “It may be inferred from the amount of a controlled substance possessed by the offender, along with other relevant facts surrounding the arrest, that the controlled substance or substances were possessed with the purpose of selling or otherwise dispensing.” TENN. CODE ANN. § 39-17-419. In this case, the Claimant was found in possession of 86.7 grams of marijuana, a fairly substantial amount. Plastic baggies were found in his car – identical to the bags in which the marijuana was packaged. The amount of the drug found, the way it was packaged, the fact that packaging supplies were found

with the drugs, and the Claimant's failure to immediately stop when the officer activated his emergency equipment, all support an inference that the Claimant possessed the drugs for resale purposes. Additionally, the absence of rolling papers, pipes, or other paraphernalia evidencing an intent to immediately smoke the marijuana, also supports that inference.¹

6. It is therefore concluded that the Claimant used the seized vehicle to purchase and transport the drug in violation of the Drug Control Act. It is further concluded that the Claimant possessed the marijuana with intent to sell it. That conclusion prevents the application of the claimed exception to the facts of this case.

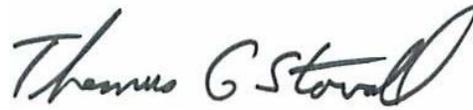
Accordingly, it is hereby ORDERED that the subject vehicle, one 2002 Chevrolet Impala, shall be forfeited to the Seizing Agency, the Memphis Police Department, for disposition as prescribed by law, subject to the interest of the lienholder, Credit Acceptance Corp.

Entered and effective this 8th day of August, 2007.

J. Randall LaFevor, Administrative Judge

¹ See *Lee v. State*, 498 S.W.2d 909, (Tenn. Crim. App. 1973). The issue of whether a felony or misdemeanor was committed is not controlled by the amount of marijuana actually possessed, but by the intent with which the substance was possessed, so that a statutory inference of possession for purpose of sale is authorized if justified from the amount possessed along with other relevant facts surrounding the arrest.; and *State v. Miller*, 2005 WL 3447707, (Tenn. Crim. App., 2005). Convictions for possession of controlled substances with intent to sell and deliver was affirmed based on amount of marijuana (over 85 grams), absence of drug paraphernalia in car, and evading police, supporting inference that defendant had intent to deliver marijuana.

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 8th day of August, 2007.

A handwritten signature in black ink that reads "Thomas G. Stovall". The signature is written in a cursive style with a large, looped initial "T".

Thomas G. Stovall, Director
Administrative Procedures Division