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10-16-2006

Department of Safety, Metro Nashville, Middle Division, vs. Denise Lynn Mock, Subject: 1994 Saturn SC1 4DR Auto, \$718.00 U.S. currency, VIN No: 1G8ZK5570RZ283331, Seized from: Denise Mock, Seized by: Metro Police, Taken on: March 28, 2006, Claimant: Denise Mock, Lienholder: None.

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

IN THE MATTER OF:

**Department of Safety,
Metro Nashville,
Middle Division,**

v.

Denise Lynn Mock,

**Subject: 1994 Saturn SC1 4DR Auto,
\$718.00 U.S. currency,
VIN No: 1G8ZK5570RZ283331,
Seized from: Denise Mock,
Seized by: Metro Police,
Taken on: March 28, 2006,
Claimant: Denise Mock,
Lienholder: None.**

**DOCKET NO. 19.01-093673J
DOS CASE NOS. F1342N**

INITIAL ORDER

PROCEDURAL MATTERS

THIS MATTER was heard in Nashville, Tennessee, on October 16, 2006, before William Jay Reynolds, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety. Ted Morrissey represented the Department. Claimant Denise Mock appeared *pro se* and testified on her own behalf. Officer Kurt Knapp with the Metro Narcotics Unit for Nashville, Davidson County testified on behalf of the Department. Exhibits accepted into evidence include the following: EXHIBIT 1 – Technical Record (on review by the parties and without objection).

THE SUBJECT of this hearing was the proposed forfeiture of the subject 1994 Saturn automobile and Seven Hundred Eighteen and No/100 (\$718.00) Dollars for violation of the Tennessee Drug Control Act.

THE ISSUE is whether the vehicle and currency seized are traceable to, or intended to facilitate, a drug transaction. After consideration of the record and the arguments of the parties, it is determined that the vehicle and currency should not be forfeited. This decision is based upon the following.

FINDINGS OF FACT

1. On March 28, 2006, Florida resident Denise Mock and her passenger, Michael Jackson, were sightseeing near public housing looking for the home of music star “Young Buck”.
2. The area has a reputation for offenses against persons and property, namely drugs and weapons.
3. Officer Kurt Knapp was on duty with the Metro Narcotics Unit in the area.
4. The Claimant’s vehicle was stopped because of suspected illegal window tint. This was the basis for the stop. The Claimant was charged with Criminal Trespass.
5. On approaching the Claimant’s vehicle the Officer testified to an odor of marijuana. This was the basis for the search of the vehicle. The Claimant vehemently denies personal use or use of marijuana in or around the vehicle.

6. Search of the vehicle revealed “6 Xanax Pills” on or about clothing belonging to the passenger. There was no prescription to either of the vehicle occupants.
7. Search of the person revealed Seven Hundred Eighteen and No/100 (\$718.00) Dollars on the Claimant.
8. The Claimant testified the pills belonged to the passenger and the money was her travel money. Further, she said the Passenger was arrested, charged, and entered a plea on possession of the controlled substance.
9. The Saturn SC1 and the Seven Hundred Eighteen and No/100 (\$718.00) Dollars were seized from the Claimant.
10. According to the Claimant, there was no connection between the narcotics and her car and money and she is an innocent owner of the property at issue.
11. According to the Department the claimant has violated Tennessee Code Annotated, §§ 53-11-201 et seq. and 40-33-201 et seq. and forfeiture is the appropriate remedy.

RELEVANT LAW

1. Tennessee Code Annotated, § 53-11-451(a) (6) states that the following property, along with other items not relevant to this matter, is subject to forfeiture, with certain exceptions:

(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 property described in subdivision (a)(1) or (2) [controlled substances, raw materials, and equipment], 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;

2. Tennessee Code Annotated, § 40-33-210 contains the following language:

(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; 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

. . .

(c)(1) The interest of a co-owner or co-owners who were not in possession of the property at the time it was seized may be forfeited if the co-owners:

(A) Were co-conspirators to the activity making the property subject to forfeiture;

(B) Knew the property was of a nature making its possession illegal; or

(C) Knew that it was being used in a manner making it subject to forfeiture and consented to such use.

ANALYSIS AND CONCLUSIONS OF LAW

Tennessee Code Annotated, § 53-11-451(a) (4) states in part "All conveyances, including aircraft, vehicles or vessels, which are used or are intended for use, to transport, or in any manner facilitate the transportation, sale or receipt of drugs of Part 3 and 4 of this chapter of Title 39, Chapter 17." Accordingly, the 1994 Saturn automobile is subject to forfeiture. Drug activity occurring in the vehicle subjected the vehicle to forfeiture. The transportation of any amount of illegal drugs comes within the letter of the statute requiring the forfeiture of a vehicle used to transport controlled substances. There was not proof the vehicle was purchased with drug proceeds or used to facilitate drug transactions, as none were witnessed or attested to occurring.

Tennessee Code Annotated, § 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...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”. Accordingly, the Seven Hundred Eighteen and No/100 (\$718.00) Dollars is subject to forfeiture. Drug activity occurring within the vicinity of the cash jeopardized its separate identity.

The Department must establish by preponderance of the evidence, or as a more probable conclusion, that the money to be forfeited was received in consideration for or in exchange for a controlled substance. Goldsmith v Roberts, 622 S.W.2d 438 (Tenn.Ct.App.1981). Here, the money was discovered on the claimant incident to a traffic stop. The circumstances may be suspicious, however, it was just as probable the money was from a legitimate source (e.g. travel money) as it was bartered or received in exchange of controlled substances.

Claimant argued she possessed the ownership interest in the vehicle and her interest should be protected. She insists the ownership interest is subject to forfeiture only if the evidence shows she was aware of and consented to the criminal use of the property. Claimant asserted she was unaware of her passenger’s drug activity and the facts of this case tend to corroborate her position. Additionally, there appears no proof the claimant had any prior knowledge of the criminal propensities of the passenger. On the contrary, she testified she had known the passenger only a few days.

In light of these factors, claimant has met the burden of proving she lacked knowledge or consent and was unaware of any illicit drug activity. Her testimony is found to be credible. In

light of these facts, it is clear the Claimant's interest in the subject vehicle and cash should not be forfeited.

DECISION

BASED UPON the foregoing, it is herein ordered the subject vehicle and currency be returned to the Claimant as soon as practicable.

ORDERED AND ENTERED this 30th day of January, 2007.

WILLIAM JAY REYNOLDS
ADMINISTRATIVE JUDGE

FILED in the Administrative Procedures Division, Office of the Secretary of State, this 30th day of January, 2007.



CHARLES C. SULLIVAN, II, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION