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Law

6-29-2006

DEPARTMENT OF SAFETY vs. Four thousand four hundred and Seventy-three dollars in U.S. Currency (\$4,773.00), One 2000 Dodge Durango VIN 1B4HS28N8YF100992, Other items of personal property, Seized from: Lamarr Fletcher, Seizure date: 10/21/03,10/27/03, Claimed by: Lamarr Fletcher

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

IN THE MATTER OF:)	
)	
DEPARTMENT OF SAFETY)	
)	
v.)	
)	DOCKET NO. 19.01-092731J
)	DOS Case Nos. C6143, C6145
)	and C6149
Four thousand four hundred and)	
Seventy-three dollars in U.S.)	
Currency (\$4,773.00))	
One 2000 Dodge Durango)	
VIN 1B4HS28N8YF100992)	
Other items of personal property)	
Seized from: Lamarr Fletcher)	
Seizure date: 10/21/03, 10/27/03)	
Claimed by: Lamarr Fletcher)	

INITIAL ORDER

A contested administrative hearing was conducted by telephone¹ in this matter on June 29, 2006, before Marion P. Wall, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety in Chattanooga, Tennessee. Mr. Orvil Orr, Staff Attorney for the Department of Safety, represented the Department. The Claimant, Mr. Lamarr Fletcher, represented himself. The subject of this hearing was the proposed forfeiture of the subject currency and items of personal property as either proceeds from narcotics transactions or purchased with proceeds from narcotics transactions. This matter became ready for consideration on February 12, 2007, when the State filed a certified copy of the judgments of convictions involved in this matter.

After consideration of the entire record in this matter, it is determined that the State has shown by a preponderance of the evidence, that is, it is more likely than not, that the seized

¹ Claimant is currently incarcerated on charges related to the issues in this forfeiture proceeding. A hearing by telephone was the only practical option for having a hearing.

currency was the proceeds of illegal drug transactions. The proof also shows that the Dodge Durango was probably purchased with drug proceeds, and that it was certainly used to deliver drugs at a controlled buy. Finally, the proof does not show that the small television was likely purchased with drug proceeds. It is therefore ORDERED that the seized property, other than the small television, be FORFEITED to the seizing agency. It is further ORDERED that the small television be RETURNED to the Claimant.

This determination is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On October 20, 2003, Detective Sergeant John Edward of the Wilson County Sheriff's Department, Narcotics Division, arrested the Claimant at his home. Receiving consent to search, Detective Edward found slightly less than an ounce (27.3 grams) of cocaine on Claimant's person. An additional 84 grams of cocaine was found in the house, as well as about two pounds of marijuana. Three thousand dollars (\$3,000.00) was found on the person of Claimant's roommate, which Claimant stated was his. An additional \$1,473.00 was also seized from Claimant, as well as items of personal property consisting of gram scales, a cellular telephone, a Kodak camera, a Hewlett Packard computer with accessories, two televisions, and items of furniture. After monitoring jail conversations wherein Claimant stated that the police had missed some material, a search was conducted of a storage unit rented by Claimant. A kilo of cocaine was found there.

2. Money totaling \$9,313.92 was seized from Claimant's Credit Union Account on March 27, 2003. Further money in the amount of \$7,723.63 was seized from his bank account on that date, as well as a Dodge Durango.

3. Police had previously made a controlled buy from the Claimant in February of 2003. The Durango was used to deliver the purchased drugs.

4. Claimant only filed a claim for the \$4, 473.00 seized in the arrest, filing a claim referencing currency in the amounts of \$3,000.00 and \$1,473.00. His claim also sought return of the above listed items of personal property. In something never seen by the undersigned in almost twenty years of hearing drug forfeiture cases, he also requested return of the gram scales. Taken at its most expansive, the claim filed also requested return of the Dodge Durango. It would not encompass the funds seized from the bank accounts; even were it regarded to state a claim for those funds, it would not change the results of this decision.

5. Claimant asserts that he bought the Dodge Durango \$2,000.00 cash to fix up and re-sell. He stated that he had \$2,600.00 in his prison account when he was released in approximately the year 2000. He showed he received \$2,200.00 in settlement of a lawsuit in September of 2000, although the proof is silent regarding how much of that sum he actually received after payments of costs and attorney fees. He argues that there is proof, consisting of checks from FAB Construction, signed by Fred Bashaw, totaling some \$705.00. There is a pay stub from August of 2001 showing year to date earnings of \$1,895. There is an indication that he filed a tax return for the year 2001 claiming \$5,531.00 in wages. It is noted that the checks from FAB Construction were signed by a co-defendant of Claimant in his federal charges. It is further noted that the Social Security Administration has no record of any employment for Claimant since his release.

6. Claimant testified that he bought the furniture used. The large television was purchased new, as was the computer. The small television was his television while he was in prison, and still has his prison identification number on it. There was no explanation as to the source of the \$4,473.00 in cash seized on his person, or that of his roommate, on the day of the search.

7. At the time of the search, Claimant made a statement to the police. He stated that he and Ben Walter Bashaw had been selling cocaine together for several years. Claimant was

convicted of, *inter alia*, conspiracy to distribute or possess with intent to distribute 5 kilograms of cocaine and conspiracy to distribute or possess with intent to distribute 50 kilograms or more of cocaine base. In total, he was convicted of nine counts of drug offenses.

CONCLUSIONS OF LAW

1. The State bears the burden of proof in this matter by a preponderance of the evidence.

2. T.C.A. §53-11-451 provides in pertinent part:

(a) The following are subject to forfeiture:

(4) 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 property described in subdivision (a)(1) or (2), 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;

(C) A conveyance is not subject to forfeiture for a violation of §39-17-418(a) or (b) or §39-17-425.

(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 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, compiled in parts 3 and 4 of this chapter and title 39, chapter 17, part 4;

4. The proof, as accredited, shows that Claimant was a large scale drug dealer moving large amounts of cocaine and cocaine base, items involving large sums of money. The proof also shows little, if any, legal employment or other possible source of the funds with which he purchased the property seized. In short, it is far more likely than not that the personal property seized was purchased with drug proceeds. Likewise, it is far more likely than not that the money seized (including the money seized from bank accounts for which no claim was filed) represented drug proceeds. Money coming from someone dealing in kilos of cocaine, like the

Claimant, with little, if any, legal employment is, more likely than not, drug proceeds. The proof also shows that the Dodge Durango was probably purchased with drug proceeds, and that it was certainly used to deliver drugs at a controlled buy. On either basis, it is subject to forfeiture. Finally, the proof does not show that the small television was likely purchased with drug proceeds, and therefore it should be RETURNED. All other items seized, being the money (whether the claim be deemed to encompass the money in the bank accounts or merely the money found at the search of Claimant's residence), the Dodge Durango, and the other items of personal property should be, and hereby are, FORFEITED to the seizing agency.

6. It is therefore ORDERED that the seized property, other than the small television, be FORFEITED to the seizing agency. It is further ORDERED that the small television be RETURNED to the Claimant.

This Initial Order entered and effective this 15th day of May, 2007.

Marion P. Wall
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 15th day of May, 2007.

Charles C. Sullivan, II, Director
Administrative Procedures Division