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5-21-2007

\$5,994.00 five thousand nine hundred ninety-four
in U.S. Currency, Seized from: Timothy D. Sebree,
Claimant: Darrell K. Sebree, Seizure Date:
September 7, 2006

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

IN THE MATTER OF:

**\$5,994.00 (five thousand nine hundred
ninety-four in U.S. Currency
Seized from: Timothy D. Sebree
Claimant: Darrell K. Sebree
Seizure Date: September 7, 2006**

DOCKET NO: 19.01-095642J

INITIAL ORDER

This matter was heard on May 21, 2007, before Joyce Carter-Ball, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety. Cynthia E. Gross, attorney for the Department of Safety, represented the State. Claimant Darrell K. Sebree was represented by Attorney Joy S. Kimbrough.

The issue presented for review is whether the subject \$5,994.00 in U. S. Currency is proceeds from a controlled substance, and traceable to such an exchange.

After consideration of the record and arguments of the parties, it is **DETERMINED** that the subject \$5,994.00 in U. S. Currency was **improperly seized** and should be **returned** to Claimant.

This decision is based on the following findings of fact and conclusions of law.

FINDING OF FACTS

1. The subject \$5,994.00 in U. S. Currency was seized on September 7, 2006 on the basis that it was received in exchange for a controlled substance, and is traceable to such an exchange.

2. Detective Tim Szymanski of the Metropolitan Nashville Davidson County Police Department testified on behalf of the State. Detective Szymanski is assigned to the Metro Narcotics Unit.

3. Detective Szymanski testified that he was informed that cocaine could be purchased at Claimant's address, 1612 Rice Hill Court, Antioch, 37072.

4. Detective Szymanski testified that a Confidential Informant (CI) called Timothy Sebree, Claimant's brother, and ordered cocaine.

5. Detective Szymanski testified that surveillance of Claimant's address had been established.

6. Detective Szymanski testified that Timothy Sebree met the description that the CI had given as the person to purchase drugs from.

7. Detective Szymanski testified that a quarter of an ounce of crack cocaine was found in Timothy Sebree's possession at Claimant's address. Timothy D. Sebree was later taken into custody.

8. Detective Szymanski testified that Timothy Sebree consented to a search of the location.

9. Detective Szymanski testified that 44 grams of crack cocaine, 50.8 grams of powder cocaine, a handgun and the subject \$5,9994.00 were found at Claimant's residence. The drugs were stored in plastic bags. A digital scale was also found.

10. The officers did not use a drug dog to determine if the confiscated currency had any drugs on it.

11. Claimant Darrell K. Sebree was not present in the home at the time of the search.

12. No proof was offered as to the denominations of the currency.

13. Claimant Darrell K. Sebree testified that his mother, sister and daughter live in the house with him, but that Timothy D. Sebree does not live at the listed address.

14. Claimant testified that the house is in his name, not Timothy D. Sebree's name.

15. Claimant testified that Timothy D. Sebree comes in and out of the house.

16. Claimant testified that the room where the subject \$5,994.00 was found is his room.

17. Claimant testified that he had counted out the money earlier and left it on the bed. He was saving the money to buy his daughter a car.

18. Claimant offered the Bill of Sale for the car as exhibit 1.

16. Claimant testified that he works for Brandon Company and has been employed there for 8 years.

17. Claimant testified that he works from 6:00 to 6:00 five days a week.

CONCLUSIONS OF LAW

1. The State of Tennessee, as the moving party in this case, has the burden to introduce evidence that would, by a preponderance of the evidence, prove the issues should be resolved in its favor. Rule 1360-4-1-.02.

2. T.C.A. section 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.

3. This case boils down to credibility. The evidence is strictly circumstantial. The subject \$5,994.00 was not found in Timothy D. Sebree’s possession.

4. Although it is highly unusual that anyone would count out \$5,994.00 and leave it on his bed, Claimant Darrell K. Sebree appeared to be credible.

5. Claimant clearly has the ability to generate this amount of money through his employment. Also, Claimant gave a credible explanation for the money – the purchase of a car for his daughter.

6. The police failed to use the drug dog to detect if drugs were on the money.

7. The State did not offer proof of the denominations of the currency.

8. While the evidence preponderated that Claimant was involved in the sale of illegal drugs, there was testimony that Claimant had a legitimate source of income.

9. Although Timothy D. Sebree came in and out of Claimant's house, he did not live there. There was not sufficient proof that the subject \$5,994.00 is proceeds from illegal drug transactions.

10. Although it is highly unusual to leave \$5,994.00 lying on a bed, in the open, the State did not prove that the money is proceeds from illegal drug transactions.

11. The crack cocaine and powder cocaine that were found in Claimant's house could be indicative of Claimant's involvement in the sale of illegal drugs, but, certainly not proof of this.

12. While it is suspicious that the drugs were stored in plastic bags, barring proof that the subject money was received in exchange for drugs, the subject \$5,994.00 cannot be forfeited to the seizing agent.

13. It is **CONCLUDED** that the State **has not carried** its burden of proof by a preponderance of the evidence, or as the more probable conclusion, that the seized \$5,994.00 in U.S. Currency was received in exchange for a controlled substance, thus making the property subject to forfeiture, pursuant to the provisions of T.C.A. section 53-11-451 (6)(A).

14. It is **CONCLUDED** that the State of Tennessee **has not** carried its burden of proof and established by a preponderance of the evidence that the subject \$5,994.00 was received in exchange for a controlled substance.

15. Therefore, it is **ORDERED** that the subject \$5,994.00 in U.S. Currency be **returned to the Claimant.**

This Initial Order entered and effective this 30th day of May, 2007.

Joyce Carter-Ball
Administrative Judge

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



Charles C. Sullivan, II, Director
Administrative Procedures Division