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DEPARTMENT OF SAFETY vs. \$1,482.00 in US
Currency, Seized from: Christopher Heady, Date of
Seizure: 7/22/07, Claimant: Christopher Heady

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

IN THE MATTER OF:)	
)	
DEPARTMENT OF SAFETY)	
)	
v.)	DOCKET NO. 19.01-097857J
)	DOS Case No. G5326
\$1,482.00 in US Currency)	
Seized from: Christopher Heady)	
Date of Seizure: 7/22/07)	
Claimant: Christopher Heady)	

INITIAL ORDER

This administrative proceeding was conducted on January 9, 2008, in Cookeville, Tennessee, before Lynn M. England, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Orville Orr, attorney for the Department of Safety, 20th Judicial Drug Task Force represented the Tennessee Department of Safety. Claimant, Christopher Heady, was represented by Michael Giaimo of the Cookeville Bar.

The subject of the hearing was the proposed forfeiture of one \$1,482.00 in currency for violation of T.C.A. § 53-11-451(a)(6)(A). After consideration of the record, it is **ORDERED** that the subject currency be RETURNED to the Claimant. This determination is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Officer Tim Porter of the Livingston Police Department testified that on July 22, 2007, he observed the Claimant driving a silver station wagon.

Claimant left Fred's Parking Lot and pulled into McDonalds.

2. Officer Porter was aware that Claimant's driver's license had been revoked. As a result, Officer Porter stopped Claimant and placed him under arrest for Driving on Revoked.

3. Upon search of the Claimant, Officer Porter found a cigarette pack with 8 blue pills in his left shorts' pocket. He also had \$1,482.00 in currency in his wallet.

4. The TBI lab report determined the pills were Alprazolam, a Schedule IV controlled substance.

5. Officer Porter did not witness any purchase or sale of any controlled substances.

6. Officer Porter's testimony was determined to be credible.

7. Claimant testified that he did have 8 blue pills (Xanax) in his pocket along with \$1,482.00 in currency. His mother is an attorney and she pays him in cash to perform bookkeeping and billing. He stated he was using the currency to pay tuition to attend Volunteer State Community College.

8. Claimant further testified that he had recently completed a substance abuse program and had been “clean” for ninety eight (98) days.

CONCLUSIONS OF LAW

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. T.C.A §53-11-451(a)(6)(A), in relevant part, 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.

The Claimant admitted that he was in possession of Xanax . However, there was no proof presented that the money seized was traceable to the Xanax. In fact, the Claimant’s testimony regarding his mother providing him the money to pay for his Community College tuition is deemed credible and no testimony to the contrary was offered.

It is therefore Ordered, that the seized currency in the amount of \$1,482.00 shall be RETURNED to the Claimant.

This Order entered and effective this 29th day of July, 2008.

Lynn M. England
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 29th day of July, 2008.

Thomas G. Stovall, Director
Administrative Procedures Division