



5-28-2009

TENNESSEE DEPARTMENT OF SAFETY vs.
1998 GMC Jimmy VIN No.
1GKDT13W2W2566757, Seized from: Terrance
Freeman Seized by: Memphis PD / OCU, Date of
Seizure: November 7, 2008, Claimant: Eugenia
Clayton & Toneka Thomas Leinholder: Did Not
File

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

IN THE MATTER OF:)	
)	FORFEITURE PROCEEDING
TENNESSEE DEPARTMENT OF SAFETY)	
)	
v.)	DOCKET NO. 19.01-102868J
)	DOS Case No. H8336
1998 GMC Jimmy)	
VIN No. 1GKDT13W2W2566757)	
Seized from: Terrance Freeman)	
Seized by: Memphis PD / OCU)	
Date of Seizure: November 7, 2008)	
Claimant: Eugenia Clayton & Toneka Thomas)	
Leinholder: Did Not File)	

INITIAL ORDER

This matter was heard on May 28, 2009, in Memphis, Tennessee, before John Hicks, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety. Andre Thomas, Staff Attorney for the Tennessee Department of Safety, represented the State. Claimants Eugenia Clayton & Toneka Thomas appeared *pro se*.

The subject of this hearing was the proposed forfeiture of the subject 1998 GMC Jimmy seized from Terrance Freeman by the Memphis PD / OCU.

After consideration of the record, it is DETERMINED that the subject 1998 GMC Jimmy should be RETURNED to Claimants Eugenia Clayton & Toneka Thomas.

This decision is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On October 28, 2008, Claimant Toneka Thomas left her place of employment at approximately noon and drove the subject 1998 GMC Jimmy to see her friend Terrance Freeman at his home on Ballew. Claimant pulled into the drive way and parked behind a blue Cavalier.

2. Upon entering the house, Terrance Freeman asked Claimant for permission to drive the subject 1998 GMC Jimmy to the store two blocks away.

3. At 12:25 p.m. Terrance Freeman had not returned with the subject 1998 GMC Jimmy. Claimant called a coworker for a ride back to work.

4. Officer Willie Mathena of the Memphis Police Department stopped the subject 1998 GMC Jimmy for three different traffic violations. Terrance Freeman was driving the subject 1998 GMC Jimmy.

5. Officer Mathena smelled a strong odor of raw marijuana. A search of the subject 1998 GMC Jimmy revealed four bags of marijuana that field tested positive.

6. Terrance Freeman was arrested.

7. The subject 1998 GMC Jimmy was seized.

8. Claimant Toneka Thomas is the owner of the seized 1998 GMC Jimmy. Claimant Eugenia Clayton is a cosigner on the loan to purchase the subject 1998 GMC Jimmy.

9. Claimant Toneka Thomas became aware of the seizure at approximately 5 p.m.

10. Officer Mathena testified as follows: "She [Toneka Thomas] stated to me that she didn't know what he was doing before she met him but she said that at a later time she heard or she figured out what he does and what his occupation was which to me, of course, gave me the impression she knew he was probably a bad guy or he was doing bad things and she heard what

he did. She just didn't think he would do certain things in her truck or a truck belonging to her mother."

CONCLUSIONS OF LAW

1. Vehicles used in violation of the Tennessee Drug Control Act are subject to forfeiture pursuant to the provisions of T.C.A. 53-11-451.

2. T.C.A. § 53-11-451(a)(2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of parts 3 and 4 of this chapter or Title 39, Chapter 17, Part.

3. The State carried its burden of proof by a preponderance of the evidence, or as the more probable conclusion, that the seized 1998 GMC Jimmy was used to transport marijuana in violation of the Tennessee Drug Control Act, thus making the vehicle subject to forfeiture, pursuant to the provisions of T.C.A. § 53-11-451(a)(4).

4. It is CONCLUDED that Terrance Freeman drove the seized 1998 GMC Jimmy while transporting marijuana in violation of the Tennessee Drug Control Act, thus making the vehicle subject to forfeiture, pursuant to the provisions of T.C.A. § 53-11-451(a)(4).

5. T.C.A. 40-33-210 provides

(a) ...the state shall have the burden to prove by a preponderance of the evidence that ; ... (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, ...

6. The State failed to carry its burden of proof by a preponderance of the evidence, or as the more probable conclusion, that Claimants Eugenia Clayton or Toneka Thomas had any knowledge that the seized 1998 GMC Jimmy was being used in a manner making it subject to forfeiture.

7. It is CONCLUDED that Officer Mathena's testimony that Claimants Toneka Thomas had knowledge that the seized 1998 GMC Jimmy was being used in a manner making it subject to forfeiture was at best a mere impression that he personally drew from circumstantial evidence.

8. It is CONCLUDED that under the circumstances of this case, that Claimants Eugenia Clayton & Toneka Thomas had no knowledge that Terrance Freeman would use the seized 1998 GMC Jimmy to transport marijuana.

9. It is ORDERED that the seized 1998 GMC Jimmy is RETURNED to Claimants Eugenia Clayton & Toneka Thomas.

This Initial Order entered and effective this 31st day of August, 2009.

John Hicks
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State this 31st day of August, 2009.

Thomas G. Stovall, Director
Administrative Procedures Division