



University of Tennessee, Knoxville
**Trace: Tennessee Research and Creative
Exchange**

Tennessee Department of State, Opinions from the
Administrative Procedures Division

Law

5-26-2009

DEPARTMENT OF SAFETY vs. and H7292,
\$5,000.00 in U.S. Currency, CLAIMED BY: Kyshia
Kennedy, SEIZED FROM: Kyshia Kennedy,
SEIZURE DATE: 9/20/08, \$605.00 in U.S.
Currency, CLAIMED BY: Kenneth W. Kennedy,
SEIZED FROM: Kenneth W. Kennedy, \$2,100.00
in U.S. Currency, CLAIMED BY: Kenneth S.
Kennedy, SEIZED FROM: Kenneth S. Kennedy

Follow this and additional works at: http://trace.tennessee.edu/utk_lawopinions

This Initial Order by the Administrative Judges of the Administrative Procedures Division, Tennessee Department of State, is a public document made available by the College of Law Library, and the Tennessee Department of State, Administrative Procedures Division. For more information about this public document, please contact administrative.procedures@tn.gov

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

IN THE MATTER OF:)	
)	
DEPARTMENT OF SAFETY)	
)	
v.)	
)	DOCKET NO. 19.01-103089J
)	DOS Case No. H7291 and H7292
)	
\$5,000.00 in U.S. Currency)	
CLAIMED BY: Kyshia Kennedy)	
SEIZED FROM: Kyshia Kennedy)	
SEIZURE DATE: 9/20/08)	
)	
\$605.00 in U.S. Currency)	
CLAIMED BY: Kenneth W. Kennedy)	
SEIZED FROM: Kenneth W. Kennedy)	
)	
\$2,100.00 in U.S. Currency)	
CLAIMED BY: Kenneth S. Kennedy)	
SEIZED FROM: Kenneth S. Kennedy)	

INITIAL ORDER

This matter came to be heard on May 26, 2009, before Marion P. Wall, Administrative Judge, Office of the Secretary of State, and sitting for the Commissioner of Safety in Chattanooga, Tennessee. The State was represented by Ms. Lori Long, Staff Attorney for the Department of Safety. Claimant Kyshia Kennedy was represented by Ms. Jean Brock of the McMinnville Bar. Claimants Kenneth S. Kennedy and Kenneth W. Kennedy were represented by Mr. Bud Sharp, also of the McMinnville Bar.

The issue in this hearing was the proposed forfeiture of \$7,705.00 in U.S. Currency seized from the Claimants on September 20, 2008.

After consideration of the entire record herein, including the evidence adduced at the hearing and the argument of the parties, it is determined that the State has shown by a preponderance of the evidence that the \$605.00 seized from Kenneth W. Kennedy is subject to seizure, and that the state has likewise shown that the \$2,100.00 seized from Kenneth S. Kennedy are subject to forfeiture. It is further concluded that the \$5,000.00 claimed by Kyshia Kennedy is not subject to forfeiture. It is therefore ORDERED that the 2,705.00 of the seized

currency be FORFEITED TO THE SEIZING AGENCY. It is further ORDERED that the \$5,000.00 claimed by Kyshia Kennedy be RETURNED to the Claimant. This determination is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. In the summer of 2008, a flyover noted a possible field of cultivated marijuana. The location was noted. Investigator James Ramsey of the Warren County Sheriff's Department went to the field. He found many immature marijuana plants. He checked the field later and found that the plants had been tended, and were apparently being closely cultivated. Surveillance was set up.

2. On the second day of surveillance, near dawn, two males were seen entering the marijuana field and began picking leaves. They were arrested. The two were Kenneth S. Kennedy and Kenneth W. Kennedy. Although the elder Kennedy (Kenneth W.) was wearing wading boots, and there were fishing poles down near the river, the pair had no tackle, lures, or bait. The pair said they were looking for turkeys and fishing.

3. A search of the residence of the pair found peat pots like those in which the plants in the field had been started, and then transplanted. There were stripped plants, and a total of 307 grams of marijuana in the house. There were also scales and burned marijuana cigarettes. Outside was potting soil and fertilizer, in addition to the peat pots to start the plants.

4. \$605.00 was seized from the person of Kenneth W. Kennedy. \$7,100.00 was seized from a safe in the house. This money was entirely in \$100.00 dollar bills. The elder Kennedy stated that the money was from his Social Security. The younger Kennedy said that the \$7,100.00 was for Christmas. \$5,000.00 of this money was later claimed by his wife, Kyshia Kennedy, who said that this money represented what was left of an inheritance.

5. The claim of Kyshia Kennedy is credited. She presented a certified copy of a will naming her as a beneficiary of the estate of her aunt. She also presented a copy of a check for

\$17,000.00, payable to her, that represented her share of the estate, paid in July of 2007. She testified that the \$5,000.00 was all that was left, and that she kept the money in the safe as she did not have, nor has she ever had, a bank account. She accounted for the expenditure of the other amounts. Her testimony was carefully scrutinized, and is believed. It is noted that she was particular in stating that only \$5,000.00, and not the whole amount seized, was hers.

6. Neither of the Kenneth Kennedys testified. Neither is employed. Both are facing charges, so the fact that they did not testify does not lead to an adverse inference. There was, however, no explanation of the money offered, other than the statements made at the time the two Kennedys were arrested. Those statements are not credited. It is clear that the two were in the business of selling marijuana. They took large amounts of plants, stripped them, and were found with almost a pound of marijuana. Although they told the officers that they had just found the field themselves two weeks before, whether they were the ones who planted the field makes no difference. Selling stolen marijuana does not make the proceeds of the sales any less subject to seizure. That claim is also not believed. The peat pots give it the lie. They were growing the marijuana. The claim regarding the social security money is not believed. There was no proof of how much social security money he receives, but he contends that he had \$605.00 of it left on the 20th of the month. There is no explanation whatsoever of the \$2,100.00 claimed by the younger Kennedy. It is not known why the money was in \$100 dollar bills, as opposed to various denominations¹, but it is determined that the money is likely drug sale proceeds, given the lack of other sources for the money and the large amount of marijuana found.

ANALYSIS AND CONCLUSIONS OF LAW

1. T.C.A. §53-11-451 provides in pertinent part:
 - (a) The following are subject to forfeiture:

¹ Counsel attempted to argue that various denominations are usual with drug dealers. This case, however, may involve wholesale sales, as opposed to retail, which would explain the denominations of the currency.

(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 4;

(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;

2. The proof establishes that the Claimants were found with a large amount of marijuana which they were either cultivating, or stealing, in quantity. The proof also establishes no other source for the seized currency, other than the rejected claim of social security money still around at the end of the month. It is determined that, more likely than not, the money seized, other than the \$5,000.00, represented drug sale proceeds, and is therefore subject to forfeiture.

3. The proof, as accredited, also establishes that \$5,000.00 of the seized money was, more likely than not, the remaining amounts left from an inheritance. As such, it is not subject to forfeiture.

It is therefore ORDERED that the 2,705.00 of the seized currency be FORFEITED TO THE SEIZING AGENCY. It is further ORDERED that the \$5,000.00 claimed by Kyshia Kennedy be RETURNED to the Claimant.

Entered and effective this 25th day of August, 2009.

Marion P. Wall
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this
25th day of August, 2009.

Thomas G. Stovall, Director
Administrative Procedures Division