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9-22-2009

Adam S. J1006 Mobley, 1993 Nissan Pathfinder,
V.I.N. JN8HD17S9PW108858, Seized from:
Adam S. Mobley, Seizure date: January 28, 2009,
Claimant: Adam S. Mobley, Seizing Agency: 10th
Judicial Dist. Task, Force

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

IN THE MATTER OF:

**Adam S. (J1006) Mobley
1993 Nissan Pathfinder
V.I.N. JN8HD17S9PW108858
Seized from: Adam S. Mobley
Seizure date: January 28, 2009
Claimant: Adam S. Mobley
Seizing Agency: 10th Judicial Dist.
Task
Force**

DOCKET NO: 19.01-104657J

INITIAL ORDER

This matter was heard on September 22, 2009 before Joyce Carter-Ball, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Lori Long, attorney for the Department of Safety, (hereafter "Department") represented the State. Claimant, Adam S. Mobley (hereafter "Claimant") was represented by his legal counsel, G. Scott Kanavos.

The subject of this hearing was the proposed forfeiture of the seized 1993 Nissan Pathfinder for its alleged use in violation of T.C.A. §53-11-201 et seq and 40-33-201 et seq.

After review of the record and arguments of the parties, it is DETERMINED that the seized vehicle at issue should **be returned to the Claimant.**

This conclusion is based on the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On January 29, 2009, while traveling southbound on I-75, Agent Russell Fredericks observed the subject vehicle traveling in excess of 70 mph. Agent Patterson paced the subject vehicle at 75 mph in a 70 mph zone.
2. While pacing the subject vehicle, the agents ran a check on the license tag, which revealed the registration had expired in 2008.
3. The agents stopped the subject vehicle on I-75, and approached Claimant, who was the driver. When Agent Fredericks asked Claimant for the registration, Claimant reached for the glove box, but then informed Agent Fredericks that he had no paper work for the subject vehicle.
4. Agent Fredericks asked Claimant to step to the rear of the subject vehicle so that he could explain why he had been stopped.
5. Claimant explained that he had been going to Sweetwater, Tennessee to visit a friend, but when he got to Athens, the friend called and said something had come up, so Claimant turned around to return to Chattanooga. Claimant wasn't in Athens very long.
6. While Agent Patterson was checking the status of Claimant's driver's license, Agent Fredericks asked Claimant for consent to search the subject vehicle. **Claimant granted consent** and a search of the subject vehicle was conducted.

7. Agent Fredericks located approximately 36 grams of marijuana inside the glove box. Agent Patterson located a set of digital scales with marijuana residue and plastic baggies underneath the driver's seat.

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. 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.
3. 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, are subject to forfeiture.
4. T.C.A. §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 of 1989.

ANALYSIS

1. The State of Tennessee has the burden to prove that the 36 grams of marijuana found in Claimant's vehicle was for the purpose of resale as opposed to personal use.

Digital scales and baggies are just as consistent with personal use of marijuana as with the resale of marijuana.

2. There was no testimony by law enforcement agents that Claimant has a history of selling drugs, and no large amount of cash was found on Claimant or in his vehicle. The amount of marijuana rolled up in the cigar that Claimant purchased suggests that the marijuana in the glove box was for Claimant's personal use.

4. There was no testimony that Claimant has ever had any drug related convictions, that he has ever been charged with any drug offenses, or that he has a reputation of being a drug dealer.

Based on the above, it is **ORDERED** that the subject 1993 Nissan Pathfinder be **RETURNED** to the Claimant.

IT IS SO ORDERED.

This Initial Order entered and effective this 7th day of October, 2009.

Joyce Carter-Ball
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 7th day of October, 2009.



Thomas G. Stovall, Director
Administrative Procedures Division