



11-3-2008

DEPARTMENT OF SAFETY, MIDDLE
DIVISION, vs. PROPERTY: USD \$2,312.00,
Seized From: Bryan Douglas Brannon, Claimant:
Bryan Douglas Brannon, Date of Seizure: 04
February 2008, Agency: DeKalb County Sheriff's
Office

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 FOR THE
TENNESSEE DEPARTMENT OF SAFETY**

IN THE MATTER OF:

**DEPARTMENT OF SAFETY,
MIDDLE DIVISION,**

v.

PROPERTY: USD \$2,312.00

**Seized From: Bryan Douglas Brannon
Claimant: Bryan Douglas Brannon
Date of Seizure: 04 February 2008
Agency: Dekalb County Sheriff's Office**

**DOCKET NO: 19.01-100914J
D.O.S. Case No. H0940**

ORDER GRANTING CLAIMANT'S MOTION TO DISMISS

THIS MATTER came to be heard on November 3, 2008 in Cookeville, Tennessee, before William Jay Reynolds, Administrative Judge, assigned by the Secretary of State and sitting for the Commissioner of the Tennessee Department of Safety. Orvil Orr represented the Department. Bryan Douglas Brannon, the Claimant, appeared with his attorney, G. Jeff Cherry. Deputy Jody Johnson appeared on behalf of the agency, Dekalb County Sheriff's Office.

AS A PRELIMINARY MATTER, the Claimant, by and through counsel, Moved to Dismiss, pursuant to *Tennessee Code Annotated*, § 40-33-204 (g). A review of the Technical Record revealed the required finding of probable cause to support the forfeiture warrant, by the General Sessions Judge, was not affirmed and forwarded in compliance with the statute.

WHEREUPON, the court made the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On February 4, 2008, Bryan Douglas Brannon was arrested on a Narcotics Related matter for an alleged violation of *Tennessee Code Annotated*, § 53-11-201 et seq, and § 40-33-201 et seq.
2. Two Thousand, Three Hundred Twelve and No/100 (\$2,312.00) Dollars were seized from Bryan Douglas Brannon.
3. On February 7, 2008, The Honorable Bratten Cook II, General Sessions Judge of Dekalb County, issued a Forfeiture Warrant based on the affidavit of Deputy Jody Johnson.
4. The affidavit acknowledges the seizure of the Two Thousand, Three Hundred Twelve and No/100 (\$2,312.00) Dollars and alludes to probable cause. However, the statement of probable cause cites as the basis, without attachment or exhibit: “see narrative.”
5. On February 11, 2008, Bryan Douglas Brannon timely filed a Petition for Hearing making claim for the Two Thousand, Three Hundred Twelve and No/100 (\$2,312.00) Dollars seized.
6. No narrative is attached or filed with the Technical Record.

CONCLUSIONS OF LAW AND ANALYSIS

The Court has considered the following legal authorities and precedents in making a determination and ruling in this cause.

1. (a) Once personal property is seized pursuant to an applicable provision of law, no forfeiture action shall proceed unless a forfeiture warrant is issued in accordance with this section by a general sessions, circuit, criminal court or popularly elected city judge. The forfeiture warrant shall authorize the institution of a forfeiture proceeding under this part. . . (b) . . . The forfeiture warrant shall be based upon proof by affidavit and shall have attached to it a copy of the notice of seizure. . . The affidavit in support of a forfeiture warrant shall be sworn to and state the following: (1) The legal and Factual basis making the property subject to forfeiture. . . (C) (1) The judge shall issue the forfeiture warrant if the judge finds that the offered proof establishes probable cause to believe that: (A) The property is subject to forfeiture: and. . . upon issuance of the forfeiture warrant, the judge shall retain the affidavit relied upon in support of the warrant and the officer shall, within seven (7) working days, send the warrant, a copy of the affidavit and the notice of seizure to the applicable agency. By signing and issuing the forfeiture warrant, the judge is affirming that the required finding of probable cause necessary to issue the warrant has been made. . .

Tennessee Code Annotated §40-33-204

A review of the technical record reveals no affidavit attached in support of the forfeiture warrant as required by the statute, *supra*. There are no legal or factual statements, relied upon by the Judge, substantiating the reason making the property subject to forfeiture.

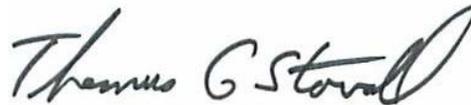
Accordingly, the Claimant presents at the hearing without the ability to prepare, particularly as to the issue of probable cause, *inter alia*. It appears the Officer did not send, or the applicable agency did not receive, the warrant, a copy of the affidavit and the notice of seizure as provided by the statute, *supra*. The absence of the affidavit makes it impossible to determine the facts supporting the probable cause finding. As a consequence, the Claimant will be unduly prejudiced by proceeding in this forum.

THE MOTION TO DISMISS IS GRANTED for failure to follow the requirements of *Tennessee Code Annotated* §40-33-204; and the property shall immediately be return to the owner and his attorney.

ORDERED AND ENTERED this 26th day of February, 2009.

WILLIAM J. REYNOLDS
ADMINISTRATIVE JUDGE

FILED in the Administrative Procedures Division, Office of the Secretary of State, this 26th day of February, 2009.



THOMAS G. STOVALL, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION