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5-22-2012

DEPARTMENT OF SAFETY vs. \$3,592.00 in U.S.
Currency, Seized from: William B. Gudger, Date of
Seizure: May 28, 2011, Claimant: William B.
Gudger, Seizing Agency: Greene County, Sheriff's
Department

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

IN THE MATTER OF:

**\$3,592.00 in U.S. Currency
Seized from: William B. Gudger
Date of Seizure: May 28, 2011
Claimant: William B. Gudger
Seizing Agency: Greene County
Sheriff's Department**

**DOCKET NO: 19.01-117014J
DOS CASE No.: L8898**

INITIAL ORDER

This matter was heard on May 22, 2012, in Fall Branch, Tennessee, before Lynn M. England, Administrative Law Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety. Nina Harris, attorney for the Department of Safety, represented the State. Claimant was present and represented by attorney Duncan Cave of Greeneville, Tennessee.

The issue presented for review is whether the State properly seized the above referenced currency from the Claimant on May 28, 2011, as proceeds used or intended to be used to facilitate any violation of the Tennessee Drug Control Act.

After further consideration it is **DETERMINED** that Claimant's \$3,592.00 was not properly seized and the same should be returned to him.

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

FINDINGS OF FACT

1. On May 28, 2011, David Love, an officer with the Greene County Sheriff's Department stopped Claimant's vehicle during a safety checkpoint.

2. As a result of the traffic stop, Officer Love cited the Claimant for a seatbelt violation, no proof of insurance and driving on a suspended driver's license.

3. Officer Love requested the Claimant pull over to the side of the road and step out of the car. Officer Love arrested Claimant for driving on a suspended license.

4. Officer Love asked the Claimant if he had any drugs or weapons or anything that would hurt him to which he replied he did not. A search of the Claimant yielded \$3,592.00 in cash in his pocket.

5. Officer Love performed a criminal history search where he discovered Claimant had a prior drug charge.¹ However, Officer Love was unable to provide any information regarding the prior charge. No information was presented by the state as to the prior charge.

6. Officer Love also smelled a strong odor of marijuana in the vehicle. A search of the vehicle revealed no drugs or drug paraphernalia.

7. Officer Love then seized the Claimant's vehicle based on the prior drug charges.

8. Claimant's testimony was that the money was from a vehicle he had recently sold.

Claimant's testimony was found to be credible.

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. The relevant portions of T.C.A. § 53-11-451 provides the following are subject to forfeiture:

(1) All controlled substances which have been manufactured, distributed, dispensed or acquired in violation of parts 3 and 4 of this chapter or title 39, chapter 17, part 4;

¹ According to the Claimant the drug charge was in 1998, 13 years prior.

(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;

(3) All property which is used, or intended for use, as a container for property described in subdivision (a)(1) or (2);

(4) All conveyances, including aircraft, vehicles or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale or receipt of property described in subdivision (a)(1) or (2), but:

(A) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of parts 3 and 4 of this chapter or title 39, chapter 17, part 4;

(B) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without such owner's knowledge or consent;

(C) A conveyance is not subject to forfeiture for a violation of [§ 39-17- 418\(a\)](#) or [\(b\)](#) or [§ 39-17-425](#).

(D) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission;

(5) All books, records, and research products and materials, including formulas, microfilm, tapes and data which are used, or intended for use, 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;

(B) No property shall be forfeited under subdivision (a) (6), to the extent of the interest of an owner, by reason of any act or omission established by such owner to have been committed or omitted without such owner's knowledge or consent; and

(7) All drug paraphernalia as defined by § 39-17-402.

ANALYSIS

The State offered insufficient proof to show by a preponderance of the evidence that the money found in the Claimant's pocket was a result of the sale of drugs. Further, there was insufficient foundation laid at the hearing to support the State's assertion that Claimant was involved in the drug trade or had such a reputation.

IT IS THEREFORE ORDERED that the \$3,592.00 in U.S. currency shall be
RETURNED to the Claimant.

This Initial Order entered and effective this
4 day of June, 2012 England
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 4 day of
June, 2012 Stovall, Director

Administrative Procedures Division