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8-1-2012

DEPARTMENT OF SAFETY vs. \$1,975.00 in U.S.
Currency, Seized From: Demarco Terry, Seizure
Date: 2/29/12, Claimant: Demarco Terry, Seizing
Agency: Memphis P.D.

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

IN THE MATTER OF:]	
DEPARTMENT OF SAFETY]	
]	
v.]	DOCKET # 19.01-117688J
]	D.O.S. Case # M4502
]	
\$1,975.00 in U.S. Currency]	
Seized From: Demarco Terry]	
Seizure Date: 2/29/12]	
Claimant: Demarco Terry]	
Seizing Agency: Memphis P.D.]	

INITIAL ORDER DISMISSING CLAIM

This contested administrative case was scheduled for hearing in Memphis, Tennessee on August 1, 2012, before J. Randall LaFevor, Administrative Judge assigned by the Secretary of State, Administrative Procedures Division, sitting for the Commissioner of the Tennessee Department of Safety. The Seizing Agency was represented by Mr. Andre Thomas, Staff Attorney for the Tennessee Department of Safety. The Claimant appeared *pro se*.

This hearing was convened to consider the proposed forfeiture of the subject currency, upon the Seizing Agency's allegation that it was used in violation of the State drug laws. After a Forfeiture Warrant was issued, the Claimant filed a claim for the money, and this hearing was scheduled to consider that claim. As a preliminary matter, the Seizing Agency challenged the Claimant's legal standing to file a claim for the seized money. Upon full consideration of the record, it is determined that the Claimant failed to establish his legal standing to pursue the claim filed in this case, and that his claim should therefore be dismissed. This decision is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On February 23, 2012, officers with the Memphis Police Department served a warrant on the home of Demarco Terry (“Claimant”), and found quantities of powder and crack cocaine. On February 29, 2012, the Claimant was detained as a suspect in a burglary, and consented to a search of the car he was driving. In a wallet found in the center console was \$1,975.00. Based on the investigating officer’s belief that the money was possessed or used in violation of the State drug laws, the currency was seized. Following the issuance of a Forfeiture Warrant, the Claimant filed a Petition for the money, and this hearing was convened to consider his claim.

2. At the hearing, the Claimant testified that the car and the wallet belonged to his girlfriend. He said that the money in the wallet was also his girlfriend’s, that it was the proceeds of her income tax refund, and that she had withdrawn it from the bank to give it to him.¹ The Claimant’s unnamed girlfriend was not at the hearing and did not testify.

CONCLUSIONS OF LAW and ANALYSIS

1. The State challenged the Claimant’s legal standing to assert his claim for the seized currency. The Department of Safety’s *Rules of Procedure for Asset Forfeiture Hearings* provide that, once the issue is raised, the Claimant has the burden of proving legal standing to pursue a claim. Rule 1340-2-2-.15(3), TENN. COMP. R. & REGS.; *see also* TENN. CODE ANN. §53-11-201(f)(A). Also pursuant to Departmental Regulations, once it is properly raised, the issue of legal standing must be determined prior to a ruling on the merits of a contested case. If standing is not proven, the claim may be dismissed, and, when no other valid claims have been filed, the property may be forfeited to the Seizing Agency. Rule 1340-2-2-.16(1)(g)(3), TENN. COMP. R. & REGS.; *See also, Jones v. Greene*, 946 S.W.2d 817 (Tenn. App. 1996).

¹ The Claimant’s testimony was somewhat fluid, changing when confronted by testimony of the State’s witness about statements made by the Claimant after he arrived at the hearing location. Based on his alterations of his testimony, he was not found to be a credible witness. The Findings of Fact in paragraph #2 reflect the most probable version of his testimony.

2. Even though the money was seized from the Claimant's constructive possession, mere physical possession of property is not sufficient, in and of itself, to confer standing to contest a proposed forfeiture. *U.S. v. \$515,060.42 in U.S. Currency*, 152 F.3d at 497; see also Am. Jur. 2d *Forfeitures and Penalties*, § 38. To prove legal standing, the Claimant must establish an ownership² interest in the seized property that was acquired in good faith. TENN. CODE ANN. § 53-11-201(f)(1) & *Urquhart v. Department of Safety*, 2008 WL 2019458 (Tenn. Ct. App.)³ Without such an *ownership* interest, a party lacks standing to challenge the forfeiture. See *Jones v. Greene, supra*; *U.S. v. \$515,060.42 in U.S. Currency*, 152 F.3d 491, 497(6th Circuit 1998).

3. From the state of the record, it cannot be concluded that the Claimant is the owner of the money that was seized on February 29, 2012, as he asserts. The Claimant's testimony alone, unsupported by other proof, established that his girlfriend, and not the Claimant. The money was found in his girlfriend's wallet, in his girlfriend's car. It came from her bank account, where she deposited it after receiving her income tax refund. The Claimant's own testimony proved that he owned no interest in the money seized by the officers. Without a proven ownership interest in the seized currency, the Claimant is without legal standing to pursue a claim for the money under the State's Forfeiture Laws.

Accordingly, it is hereby determined that the Claimant failed to prove that he owned any legal interest in the money when it was seized, and therefore failed to prove that he is entitled to file and pursue a claim for its return.

² Black's Law Dictionary [4th Ed., Rev.] defines "ownership" as "The complete dominion, title or proprietary right in a thing or claim. The entirety of the powers of use and disposal allowed by law."

³ Although TENN. CODE ANN. § 53-11-201(f)(1) merely requires that the Claimant "Has an interest in such property which the claimant acquired in good faith," the Court in *Urquhart* made it clear that the interest referred to is an ownership interest.

IT IS THEREFORE ORDERED that the Claimant's Claim (*Petition for Hearing*) is hereby DISMISSED, and, since there are no other claims pending, the seized currency is hereby forfeited to the Seizing Agency, the Memphis Police Department.

This Order is entered and effective this 6 day of August, 2012

J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 6 day of August, 2012



Thomas G. Stovall, Director
Administrative Procedures Division