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David Wayne Washer vs. Department of Safety

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

IN THE MATTER OF:

**One 1996 Chevrolet GC1
VIN: 1GCEC19MOTE179592
Seized from: David Washer
Seizure Date: 11/3/12
Claimed by : David Washer**

**DOCKET NO: 19.01-118076J
DOS Docket No. M1202**

INITIAL ORDER RETURNING PROPERTY

This matter currently pends on the Claimant's Motion to Dismiss and the State's Response thereto. Claimant seeks dismissal because no recording was made of the ex parte proceedings on the forfeiture warrant. Claimant also seeks dismissal because the forfeiture warrant at issue was issued and signed by a General Sessions judge from a county outside the county where the seizure at issue took place. Finding the Motion to Dismiss not well taken as to the recording issue, but finding the motion well taken on the warrant issue, it is hereby ORDERED that the subject property be returned. This determination is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. This is one of a number of cases where seizures were made in Smith County, and the forfeiture warrants were presented to a General Sessions judge in Trousdale County.¹ No reason has been given for the failure to have a Circuit Court judge of whatever county rule on the warrants, or why Smith County judges could not be used. The parties do not dispute that this

¹ The undersigned has seen this before. There is apparently some ill will, mutual or not, involving the law enforcement authorities and the Smith County judges. The actual circumstances are not known, nor are they relevant to the resolution of this issue; the issue of forum shopping will not be addressed.

General Sessions judge did not make the recording require by the statute of the ex parte proceedings, and no reason for this failure is known.

CONCLUSIONS OF LAW

1. T.C.A. §40-33-204(b) provides that the hearing on the forfeiture warrant “shall” be recorded. This was not done, and to judge from these cases, such failure is not unusual. Regardless, there has been no showing of prejudice relating to this failure. The State asserts that the only remedy is some unknown proceeding with the court that issued the warrant. This would be remarkable; a warrant with no remedy for failing to abide by the legal requirements of that warrant. Generally, where there is a right, there is a remedy. In this case, the General Assembly has provided a remedy. T.C.A. §40-33-204(a) provides that “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.”

2. There is no showing of any prejudice from this failure. This is a clerical matter, as opposed to the issuance of a warrant without legal authority, or upon faulty grounds. Without a showing of prejudice or willful failure to abide by the terms of the statute, the failure to make the recording is a clerical oversight for which the rather extreme remedy of dismissal of the forfeiture action is not proper.

3. The issue of the warrant’s signing is more problematic. It is quite clear that the authority of a General Sessions Judge stops at the county line, unlike that of a circuit judge. T.C.A. §16-15-401 specifically provides that the jurisdiction of a General Sessions Judge “shall be co-extensive with the County.” Thus, as a normal matter, no General Sessions Judge has jurisdiction to issue warrants outside his or her county. Jurisdiction of Circuit Court judges,

however, is general. T.C.A. §16-10-101. Moreover, circuit judges of one county are specifically authorized to exercise jurisdiction over a particular judicial district, in this case, the Fifteenth. T.C.A. §16-2-506(15). General Sessions Judges are not so authorized, and the exclusion is telling. A specific grant to one, and not the other, must lead to the conclusion that the General Assembly intended not to grant jurisdiction over a judicial circuit to General Sessions Judges.

4. The State argues that the General Sessions judges can sign forfeiture warrants for seizures statewide. That is, the State argues that its statute somehow confers jurisdiction apart from the general grant of jurisdiction given General Sessions Courts. It has filed an Order from the Commissioner of Safety which held that General Sessions judges can sign warrants within the judicial district within which the county lies, at least if the judge is in his own county when he signs the warrant, regardless of where the property is. Department of Safety v. Lisa Moore-Studer, Docket No. 19.05-116198J, (Final Order issued 8/22/12). The case cited by the State in that Order, Hassler v. Tennessee Dept. of Safety, 206 WL 47362, (Tenn. Ct. App), specifically deals with the jurisdiction of Circuit Court Judges. It does not find out of county jurisdiction for General Sessions Judges. Its holding is that “We conclude that [Tenn.Code Ann. § 40-33-204](#) is constitutional both on its face and as applied in this case. Mr. Hassler has presented no authority for the notion that a court of record cannot constitutionally issue a warrant for the forfeiture of property that is not located in its judicial district.” It is noted that General Sessions Courts are not courts of record. The cited Commissioner’s Order has no explanation of how the limitation of jurisdiction contained in the statute creating the General Sessions Courts has been expanded. It gives no basis for the holding that General Sessions Judges’ authority in forfeiture cases is not the county wide restriction found in the jurisdictional statute, but rather extends through the whole judicial district or even statewide. In short, while the Department may be able to interpret

its own statute, it has amended, by implication, the statute creating General Sessions Courts and setting forth their jurisdiction. This is not entitled to deference. The language in the forfeiture statute does not indicate any intent express or implied to modify the jurisdictional statute relating to General Sessions Courts. The Department's assertion of an amendment to a statute not its own, without any actual amendment of that statute or even a clear intent to amend, by implication, a statute so basic as a Court's jurisdictional grant of authority is rejected.

4. T.C.A. §40-33-105(a) provides that no forfeiture action can proceed unless a forfeiture warrant is issued in accordance with this section by, *inter alia*, a general sessions judge. The Department's assertion that since the language did not say "a general sessions judge with jurisdiction" it means, by implication, that jurisdiction is not required. It is concluded, however, that the phrase is more properly read to assume that there is jurisdiction.² Since these forfeiture warrants were signed by a judge without jurisdiction to act outside his county, they are void. Being void, this forfeiture action cannot proceed. It is therefore ORDERED that the subject property at issue be returned to the Claimants.

Marion P. Wall
Administrative Judge

² The statute does not expressly require that the judges be Tennessee judges either, but such is assumed.

Filed in the Administrative Procedures Division, Office of the Secretary of State, this
_____ day of _____, 2013.

J. Richard Collier, Director
Administrative Procedures Division