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Jacob D. Whittle vs. Safety

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

In the matter of:)	
)	
TENNESSEE DEPARTMENT OF SAFETY,)	Docket No. 19.01-121690J
)	
)	Department of Safety
)	Case No. N2452
)	
v.)	
)	
\$475.00 in U.S. CURRENCY)	
SEIZED FROM: JACOB WHITTLE)	
SEIZURE DATE: NOVEMBER 9, 2012)	
CLAIMANT: JACOB WHITTLE)	

INITIAL ORDER

This matter came on to be heard on August 28, 2013 in Nashville, Tennessee before Joyce Grimes Safley, Administrative Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Ms. Karen Litwin, attorney for the Department of Safety, represented the State. Claimant was not present at the hearing but was represented by Mr. Glenn Funk, Attorney at Law, of the Nashville, Tennessee Bar.

The subject of this hearing was the proposed forfeiture of \$475.00 in United States Currency, for the seized property's alleged use in violation of the Tennessee Drug Control Act, T.C.A. §53-11-451(a)(6)(A). Specifically, the State asserted that the seized currency was proceeds from illegal drug sales.

After consideration of the evidence offered, the arguments of counsel, and the entire record in this matter, it is determined that the Department of Safety failed to meet its burden of proof in this case, and it is **ORDERED** that the seized currency be **RETURNED** to the Claimant forthwith.

This decision is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Detective James Kendrick of the Robertson County Sheriff's Department, Tennessee Police Department testified on behalf of the State

2. On November 9, 2012, Detective Kendrick was conducting a routine patrol in Springfield, Tennessee as part of his duties with the Robertson County Sheriff's Department. Detective Kendrick initiated a traffic stop on Claimant when he observed Claimant's vehicle exceeding the speed limit.

3. Detective Kendrick testified that he "smelled alcohol" on Claimant's breath. This lead Detective Kendrick to ask Claimant to get out of his car for the purpose of conducting field sobriety tests. When Claimant got out of the car and walked to the rear of the vehicle, Detective Kendrick saw a knife in Claimant's pocket, and "patted him down" for "officer safety" purposes.

4. When Detective Kendrick did the "pat down", the Detective felt what he believed to be a pill bottle in Claimant's left pocket. Claimant told Detective Kendrick that the pill bottle contained "his marijuana."

5. Claimant also told Detective Kendrick that the “rest of it” was in the “glove box.” Detective Kendrick found “approximately 16.2 grams” of marijuana in a plastic bag in the console of the care, in addition to the 3.3 grams of marijuana contained in the pill bottle.

6. Claimant had \$475.00 in cash on his person. Claimant told Detective Kendrick that he had cashed his paycheck, which was the source of the currency.

7. Detective Kendrick testified that he believed the \$475.00 in cash “could have been” drug proceeds, and further testified that Claimant “possibly could have been trying to sell the marijuana eventually.”

8. For these reasons, Detective Kendrick seized the \$475.00 in currency from Claimant.

9. Detective Kendrick admitted at the hearing that he had no proof that the seized currency was proceeds from the sale of illegal drugs, nor did he have any proof that claimant intended to use any of the seized currency to purchase illegal drugs.

10. The forensic chemistry entered into evidence at the hearing of this matter confirmed that Detective Kendrick had seized 15.95 grams of marijuana (a schedule IV illegal drug).

CONCLUSIONS OF LAW

1. The State has the burden of proving, by a preponderance of the evidence, that the seized currency and property was subject to forfeiture because it was being used or was intended to be used to violate the Tennessee

Drug Control Act, T.C.A. §39-17-402. See T.C.A. §40-33-210 and T.C.A. §53-11-201(d)(2). Failure to carry the burden of proof operates as a bar to any forfeiture and the property shall be immediately returned to the Claimant. T.C.A. §40-33-210(b)(1).

3. 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 controlled substance, 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.”

4. The State is not required to trace money or proceeds to specific drug sales; as long as there is some proven nexus to connect the seized property with illegal drug sales activity. Circumstantial evidence can be used to make this connection. *Lettner v. Plummer*, 559 S.W.2d 785 (Tenn. 1977); *Goldsmith v. Roberts*, 622 S.W. 2d 438 (Tenn.Ct. App. 1981).

5. Among the factors which may be considered in determining whether the State has met its burden are whether the money/property was found in close proximity to the illegal controlled substance; whether marked money was found with other money; whether the Claimant was unemployed; whether there is evidence or records of a large-scale drug operation; whether the Claimant is associated with known traffickers or users; the quantity of the money involved; the quantity of the drugs involved; the packaging of the drugs; and the prior records of those involved. *Lettner v. Plummer*, 559 S.W.2d 785 (Tenn. 1977); *Goldsmith v. Roberts*, 622 S.W. 2d 438 (Tenn.Ct. App. 1981).

6. T.C.A. §39-17-419 permits an inference “from the amount of controlled substance or substances possessed by an offender, along with other relevant facts surrounding the arrest, that the controlled substance or substances were possessed with the purpose of selling or otherwise dispensing.”

8. Possession of marijuana is a Class B felony if the amount involved is 14.75 grams or more of any substance containing marijuana. T.C.A. § 39-17-417 (g) (1). Here, the amount of marijuana seized exceeded 14.75 grams by a mere 1.2 grams.

9. T.C.A. §39-17-417 states as follows:

Criminal offenses and penalties. ---

(a) It is an offense for a defendant to knowingly:

(4) Possess a controlled substance [such as marijuana] with intent to manufacture, deliver or sell such controlled substance.

10. It is noted that Claimant’s vehicle was not seized by the State.

11. Detective Kendrick testified that he believed the \$475.00 in cash “*could have been*” drug proceeds, and further testified that Claimant “*possibly* could have been trying to sell the marijuana eventually. Detective Kendrick’s testimony amounted to speculation, rather than evidence supporting a conclusion that the seized currency was drug proceeds.

12. Mere speculation does not fulfill the “preponderance of the evidence” burden of proof which the State must meet.

For the above reasons, the State did not meet its burden of proof in this case.

Accordingly, it is **ORDERED** that the above captioned property be returned to Claimant forthwith.

It is so ordered.

This Order entered and effective this _____day of November, 2013.

Joyce Grimes Safley
Administrative Judge

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



J. Richard Collier, Director
Administrative Procedures Division