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Bennett C. Mahan vs. Safety

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**BEFORE THE COMMISSIONER OF THE
TENNESSEE DEPARTMENT OF SAFETY AND HOMELAND SECURITY**

**TENNESSEE DEPARTMENT
OF SAFETY**

VS.

**Docket No. 19.01-125598J
DOS No. N9387, 9388**

**ONE 2005 Volkswagen Jetta
VIN# 3VWSF71K45M612185, AND
\$936.00 in U.S. Currency
Seized from: Bennett C. Mahan
Date of Seizure: 6/1/2013
Claimant: Bennett C. Mahan**

ORDER GRANTING CLAIMANT'S MOTION TO SUPPRESS/DISMISS

This matter came to be heard on April 30, 2014, in Chattanooga, Tennessee before Rob Wilson, Administrative Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety and Homeland Security, upon Claimant's Motion to Suppress and Motion to Dismiss. Andy Peters Davis, Esq., represented Claimant Bennett Mahan. Patrick Rice, Esq., represented the Department. Counsel for each side presented oral argument at the motion hearing on April 30, 2014, and subsequently submitted written briefs. Counsel for Claimant argues that the seizure was performed unlawfully and without reasonable suspicion, in violation of the U.S. and Tennessee Constitutions. After consideration of the record in this matter, it is DETERMINED that Claimant's Motion to Suppress/Dismiss is well-taken and is GRANTED. This determination is based on the following:

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FACTUAL BACKGROUND

1. In a typed narrative in support of a forfeiture warrant, Trooper Tommy Lyles stated that the basis for the traffic stop of the Claimant was Claimant's failure to signal a lane change.

2. Claimant did not endanger himself or anyone else by changing lanes without signaling. There were no other vehicles near Claimant's vehicle at the time of the lane change.

3. The Honorable Judge Thomas W. Graham of the Franklin County Circuit Court granted the Motion to Suppress and dismissed all charges.

Shortly after receiving the order, the Claimant's Counsel provided the Tennessee Department of Safety and the Administrative Procedures Division with notice of the decision. The forfeiture hearing remained as scheduled, and Claimant's Counsel appeared.

ANALYSES

The Officer Lacked Probable Cause to Stop Mr. Mahan

The Fourth Amendment to the United States Constitution provides, in part, "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...." U.S. Const. amend. IV. Article I, section Seven of the Tennessee Constitution provides "the people shall be secure in their persons...from unreasonable searches and seizures...." Tenn. Const. art. I, § 7. In fact, Article I, § 7 has been held to afford greater protection than the Fourth Amendment. See *State v. Berrios*, 235 S.W.3d 99, 105 (Tenn. 2007) (citing *State v.*

Jacumin, 778 S.W.2d 430, 436 (Tenn. 1989); *State v. Lakin*, 588 S.W.2d 544, 549 (Tenn. 1979)). A warrantless seizure is presumed unlawful. *State v. Williamson*, 368 S.W.3d 468, 474 (Tenn. 2012) (other citations omitted). In such a case, evidence obtained via the unlawful seizure is subject to suppression unless a specific exception to the warrant requirement is shown. *Id.* (quoting *State v. Yeargan*, 958 S.W.2d 626, 629 (Tenn. 1997)).

One such exception could exist when a police officer makes an investigatory traffic stop. However, in order to qualify under the *Terry* stop exception to the warrant requirement, the traffic stop must be “based upon reasonable suspicion, supported by specific and articulable facts, [indicating] a criminal offense has been or is about to be committed.” *State v. Binette*, 33 S.W.3d 215, 218 (Tenn. 2000) (quoting *Terry v. Ohio*, 392 U.S. 1, 20–21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); *State v. Bridges*, 963 S.W.2d 487, 492 (Tenn. 1997). However, those specific and articulable facts must also show an objective basis for suspecting the particular defendant of criminal activity. *Binette*, 33 S.W.3d at 218.

In this case, it has been established that the sole basis for the traffic stop on June 1, 2013 was Claimant’s failure to use his turn signal. Claimant’s vehicle did not create any type of hazard or cause any type of accident. Failure to use a turn signal was insufficient to give Trooper Lyles reasonable suspicion or probable cause sufficient to stop Mr. Mahan’s vehicle. Accordingly, the stop, and all evidence emanating from it, should be suppressed.

When information that justifies a seizure and forfeiture is obtained unlawfully, the United States Supreme Court has declared such information is subject to the exclusionary

rule. In *One 1958 Plymouth Sedan v. Commonwealth of Pennsylvania*, 380 U.S. 693 (1965), the United States Supreme Court addressed the issue of whether the exclusionary rule applied to forfeiture proceedings.

In *One 1958 Plymouth Sedan*, two law enforcement officers witnessed a vehicle that appeared to be riding low in the rear end. The officers initiated a traffic stop and searched the vehicle. Thirty-one cases of liquor without the appropriate Pennsylvania seals were found in the trunk. In accordance with Pennsylvania law, authorities seized the vehicle and scheduled a forfeiture hearing. *Id.* at 694. Mr. McGonigle, the vehicle's owner, filed a motion to dismiss on the ground that the evidence acquired was done so in violation of the Fourth Amendment. The trial court granted Mr. McGonigle's motion. The State appealed and the Superior Court reversed. The Pennsylvania Supreme Court held that the exclusionary rule only applied to criminal prosecutions, and because the forfeiture was civil in nature, the rule was inapplicable. *Id.* at 695.

Ultimately, the case reached the Supreme Court of the United States. Justice Goldberg writing for the majority, declared that "the constitutional exclusionary rule does apply to such forfeiture proceedings." *Id.* at 696. (emphasis added). Accordingly, the Supreme Court reversed the Pennsylvania Supreme Court, and firmly set in place the principle that unlawfully obtained evidence may not be used in a forfeiture proceeding. *Id.* at 703.

In *Ware v. Greene*, 984 S.W. 610 (Tenn. Ct. App. 1998), the Tennessee Court of Appeals reaffirmed the solid principle articulated in *One 1958 Plymouth Sedan*. In *Ware*, the justices held that “the exclusionary rules used in criminal proceedings are equally applicable in forfeiture proceedings.” *Id.* at 613. Furthermore, “evidence obtained in violation of a defendant’s constitutional rights is not admissible.” *Id.*

Application of One 1958 Plymouth Sedan and Ware

Both *One 1958 Plymouth Sedan* and *Ware* stand for the principle that evidence acquired in violation of an individual’s Constitutional rights are neither admissible in criminal proceedings, nor in forfeiture hearings. The information law enforcement obtained during the illegal stop to charge the Claimant, Mr. Mahan, with Driving Under the Influence was obtained in violation of the Constitution. As such, this evidence, and evidence resulting from its unlawful accumulation is subject to the exclusionary rule.

CONCLUSION

The Tennessee Highway Patrol unlawfully and unconstitutionally seized Mr. Mahan’s vehicle. Any evidence obtained after the violation of Mr. Mahan’s fundamental rights is subject to the exclusionary rule. Thus, there is no admissible evidence which would subject Mr. Mahan or his property to Tenn. Code Ann. §55-10-401. Based on the foregoing, it is ORDERED that the subject 2005 Volkswagen Jetta and \$963.00 in U.S. Currency be returned to the Claimant, and this matter is DISMISSED.

Entered this _____ day of July, 2014.

Rob Wilson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this _____ day of _____ 2014.

J. Richard Collier

J. Richard Collier, Director
Administrative Procedures Division