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December 2014

## Kenneth R. Jones vs. Safety

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subject to forfeiture to the seizing agency. This conclusion is based on the following findings of fact and conclusions of law:

### **Findings of Fact**

1. On March 20, 2014, authorities arrested Mr. Kenneth Ray Jones for drug violations. Officers also seized the currency in question as a result of their arrest.

2. Based upon the officers' findings, the officers seized the currency pursuant to T.C.A. §53-11-451(a)(4).

3. Claimant testified that the currency was her currency. Claimant further testified that the cash found in Mr. Jones' vehicle was a portion of a \$5,625 tax refund that Claimant had received on February 18, 2014. Claimant further testified that she had given the currency to Mr. Jones, her fiancé, for the purpose of purchasing a vehicle.

4. At the hearing, Claimant offered a print off of her bank statement showing that she received the tax refund on February 18, 2014, and that she withdrew a total of \$3,600 on that same day as proof of her ownership of the currency at issue in this matter. The banking information supports Claimant's testimony in that they list Claimant's name as the owner of the currency.

### **Legal Analysis and Decision**

1. T.C.A. §53-11-201(f)(1)(A) states as follows:

Whenever, in any proceeding under this section, a claim is filed for any property seized, as provided in this section, by an owner or other person asserting the interest of the owner, the commissioner shall not

allow the claim unless and until the claimant proves that the claimant:

- (A) **Has an interest in such property which the claimant acquired in good faith;**

2. The doctrine of “standing” is a judge-made doctrine used to determine whether a party asserting the claim has a sufficiently personal stake in the outcome of the action to warrant judicial resolution of the dispute or relief. *Suntrust Bank v. Johnson*, 46 S.W. 3d 216, 222 (Tenn. Ct. App. 2001).

3. T.C.A. §53-11-201(f)(1)(A) codifies the “standing” requirement to require that the claimant prove he or she has an interest in the property at issue, with the interest being acquired in good faith. The Claimant has the burden of proof as to “standing”, as to any motions or other pleadings advanced by the Claimant, and as to any matter set forth in the [Drug Control] Act whereby the burden of proof is placed on the Claimant. 1340-2-2-.15(3), RULES OF PROCEDURE FOR ASSET FORFEITURE HEARINGS, RULES AND REGULATIONS OF THE DEPARTMENT OF SAFETY.

4. In order for Claimant to prevail on the issue of “standing” as set forth in T.C.A. §53-11-201(f)(1)(A), Claimant must show that she is a credible witness and her claim of ownership is believable. *Gordon v. Greene*, 1996 WL 346674, p. 2 (Tenn. Ct. App. 1996). The Claimant’s burden of proof at a hearing on “standing” includes proving the requisites of T.C.A. §53-11-201(f)(1)(excluding T.C.A. §53-11-201(f)(1)(B) ).

5. While Claimant's testimony is credible regarding her withdrawal of \$3,600, she could not prove that the currency she claims to have given Mr. Jones was the same currency that was found in the vehicle. Given her relationship with Mr. Jones while he was in prison on narcotics violations, she had full knowledge of his potential to re-engage in similar conduct. In addition, her filings with the Department of Safety indicated that she considered Mr. Jones to be a co-owner of the currency.

Accordingly, the State's "Motion to Dismiss" Claimant's claim for lack of standing is **GRANTED**, as set forth above.

All other matters are reserved.

It is so ordered.

This Order entered and effective this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Michael Begley  
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