



University of Tennessee, Knoxville
**Trace: Tennessee Research and Creative
Exchange**

Tennessee Department of State, Opinions from the
Administrative Procedures Division

Law

February 2015

Chiquita White vs. Safety

Follow this and additional works at: http://trace.tennessee.edu/utk_lawopinions

This Initial Order by the Administrative Judges of the Administrative Procedures Division, Tennessee Department of State, is a public document made available by the College of Law Library, and the Tennessee Department of State, Administrative Procedures Division. For more information about this public document, please contact administrative.procedures@tn.gov

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

IN THE MATTER OF:)	
)	
Dept. of Safety & Homeland Security,)	
)	
v.)	Docket No. 19.01-125642J
)	Safety No. P2743
One 1998 Chevrolet Silverado Truck)	
VIN: 2GCEK19R6W1114234)	
& \$32,240.00 in U.S. Currency)	
Seized from: Albert and Chiquita White)	
Date of Seizure: October 8, 2013)	
Claimant: Chiquita White)	
Lienholder: N/A)	

INITIAL ORDER

This matter was heard on December 2, 2014, in Memphis, Tennessee, before Steve R. Darnell, Administrative Law Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety. Attorney Joe Bartlett was present and represented the Department. Claimant was present for the hearing and represented by attorney Robert L. Thomas.

ISSUES FOR CONSIDERATION

1. Did the Department show that Claimant had actual knowledge that the above described vehicle was being used to facilitate a sale of marijuana?
2. Did the Department show that the \$32,240 in U.S. currency was proceeds from illegal drug trafficking?
3. What interest does Chiquita White have in this vehicle and currency?

SUMMARY OF DETERMINATION

It is **DETERMINED** that the Department has failed to show, by a preponderance of the evidence, that Claimant had actual knowledge that her vehicle was being used to facilitate the sale of marijuana. Additionally, the Department has failed to show, by a preponderance of the evidence, that the \$32,240 was proceeds from illegal drug trafficking. Chiquita White has asserted a valid claim to the vehicle and all the currency and is entitled to have both returned. This conclusion is based on the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Albert White has a previous history of simple possession and possession for resale of illegal drugs. The Tipton County Sheriff's Department used a confidential informant to purchase \$250 of marijuana from Mr. White. The marijuana purchase money consisted of one \$100 bill, seven \$20 bills, and one \$10 bill. This currency was photocopied to maintain a record of each bills' serial number.
2. Mr. White used the seized Chevrolet truck to travel to the location to sell marijuana to the confidential informant. Mr. White was alone in the truck at the time of this sale. There is no proof in the record that the vehicle was used by Mr. White other than this one occasion. This vehicle is titled solely in the name of Chiquita White who is married to Mr. White and the Claimant herein. There is no proof in the record indicating Mr. White had a legal or equitable interest in this vehicle. Claimant is the sole owner of the seized vehicle.
3. An arrest warrant was issued for Mr. White related to his sale of marijuana to the confidential informant. On the morning of October 7, 2013, at approximately 5 a.m. officers came to the Whites' home and arrested Albert White. A search warrant of the Whites' home was also executed.

4. During the search deputies found approximately 484 grams of marijuana located in an outbuilding on the property. This is just slightly more than one pound of marijuana and has a street value in Tipton County, Tennessee of \$850 to \$1,300 depending on its quality.

5. Deputies also seized a large steel combination safe from the family room in the Whites' home. The safe was locked and Mr. White denied knowing its combination. Claimant did not comment on the safe or its contents.¹ The \$32,240 was located inside the safe and a handgun. The \$100 bill used by the confidential informant to purchase the marijuana from Mr. White was also in the safe. This \$100 is not part of the \$32,240 that was seized. The other bills, seven \$20s and one \$10, were not in the safe.

6. There is no proof in the record that Claimant was involved in or had knowledge of Mr. White's sale of marijuana to the confidential informant.

7. The Department has failed to show, by a preponderance of the evidence, that Claimant knew that Mr. White used her vehicle to sell marijuana to the confidential informant. Claimant is an innocent owner of the seized vehicle and is entitled to its return.

8. Mr. White works in the construction business and does not appear to report his earning to the IRS. Claimant, Ms. White, is employed as a tax preparer and does file her annual return. The Whites comingle their funds and have traditionally kept much of their savings in cash. In the past, their cash was hidden in their bedroom, but they started using the safe when Mr. White brought it home from a job. The Whites also maintain bank accounts.

9. In addition to their ordinary incomes in 2013, the Whites received the following extraordinary income:

¹ The digital video provided by the Department as a late filed exhibit has three vignettes. The first is inside the home and is focused on Mr. and Ms. White and their son. The second is of the safe being moved and the third of the marijuana discovery. Ms. White is only present in the first vignette. In the first vignette Mr. White is asked about the safe and denies having the combination. This is at location 35.25 through 36.25 of the recording. Ms. White never comments on the safe. The digital video is consistent with Ms. White's testimony.

1. Ms. White received a tax refund from the IRS for \$4,449.
 2. On April 23, 2013, the City of Covington returned \$10,500 seized by its police department from the Whites while responding to a domestic call at the Whites' home.
 3. Ms. White received an insurance settlement from State Farm Insurance Companies for \$6,900.25 on or about May 30, 2013 for damage to her 2001 Chevrolet Suburban.
 4. Mr. White constructed a house for Leona Jones and Patrick Watson. He was paid \$26,440.67 on May 31, 2013, \$26,440.67 on June 30, 2013, \$26,440.67 on August 24, 2013, and \$26,440.67 on September 21, 2013.²
10. The Department has failed to show, by a preponderance of the evidence, that any of the \$32,240 is proceeds from the sale of drugs. Under Tennessee law Claimant owns the whole of these funds as a tenant by the entireties with Mr. White and is entitled to the return of all of it.

CONCLUSIONS OF LAW

1. The Department as the moving party in this case has the burden to introduce evidence that would by a preponderance of the evidence prove the issues should be resolved in its favor.
Rule 1360-4-1-.02.
2. The following are subject to forfeiture:
 - (1) All controlled substances which have been manufactured, distributed, dispensed or acquired in violation of parts 3 and 4 of this chapter or title 39, chapter 17, part 4;
 - (2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of parts 3 and 4 of this chapter or title 39, chapter 17, part 4;
 - (3) All property which is used, or intended for use, as a container for property described in subdivision (a)(1) or (2);
 - (4) All conveyances, including aircraft, vehicles or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale or receipt of property described in subdivision (a)(1) or (2), but:**
 - (A) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that

² All four checks were exhibited at the standing hearing marked as exhibit 1.

the owner or other person in charge of the conveyance is a consenting party or privy to a violation of parts 3 and 4 of this chapter or title 39, chapter 17, part 4;

(B) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without such owner's knowledge or consent;

(C) A conveyance is not subject to forfeiture for a violation of § 39-17- 418(a) or (b) or § 39-17-425.

(D) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission;

(5) All books, records, and research products and materials, including formulas, microfilm, tapes and data which are used, or intended for use, in violation of parts 3 and 4 of this chapter or title 39, chapter 17, part 4;

(6)(A) Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of the Tennessee Drug Control Act of 1989, as amended, compiled in parts 3 and 4 of this chapter and title 39, chapter 17, part 4, 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, compiled in parts 3 and 4 of this chapter and title 39, chapter 17, part 4;

(B) No property shall be forfeited under subdivision (a) (6), to the extent of the interest of an owner, by reason of any act or omission established by such owner to have been committed or omitted without such owner's knowledge or consent; and

(7) All drug paraphernalia as defined by § 39-17-402.

(b) Property subject to forfeiture under parts 3 and 4 of this chapter or title 39, chapter 17, part 4, may be seized by the director of the Tennessee bureau of investigation or the director's authorized representative, agent or employee, the commissioner of safety or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer or constable upon process issued by any circuit or criminal court having jurisdiction over the property. Seizure without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon parts 3 and 4 of this chapter or title 39, chapter 17, part 4;

(3) The director or the director's authorized representative, agent or employee, the commissioner or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, or constable has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The director or the director's authorized representative, agent or employee, the commissioner or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, or constable has probable cause to believe that the property was used or is intended to be used in violation of parts 3 and 4 of this chapter or title 39, chapter 17, part 4.

(c) In the event of seizure pursuant to subsection (b), proceedings under subsection (d) shall be instituted promptly.

(d) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the director or the director's authorized representative, agent or employee, the commissioner or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, or constable, subject only to the orders and decrees of the circuit or criminal court. When property is seized under parts 3 and 4 of this chapter or title 39, chapter 17, part 4, the seizing authority may:

(1) Place the property under seal;

(2) Remove the property to a place designated by the seizing authority;

(3) Require the director or the director's authorized representative, agent or employee, the commissioner or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, or constable to take custody of the property and remove it to an appropriate location for disposition in accordance with law; or

(4) Regardless of any other method of disposition of property contained in this chapter, use the property taken or detained, with permission of the court and under such terms and conditions as are approved by the court, for use in the drug enforcement program of the county in which the goods are seized, and/or, with approval of the court having jurisdiction over the property, sell the property and utilize the proceeds for the drug enforcement program of the county in which the property was seized.

(A) In the case of property seized by the Tennessee bureau of investigation, the director of the bureau is authorized to designate in writing any part thereof for use by the bureau for any period of time, subject to inventory, management and disposition as provided by law.

(B) In the case of an aircraft seized by the bureau, the director is also authorized to designate in writing any such property for transfer to and use by the department of general services subject to inventory, management and disposition as provided by law. If an aircraft is not sold, but is to be transferred to another state governmental entity, such transfer shall be approved by the commissioner of finance and administration.

(C) The proceeds from any sale conducted under this chapter of forfeited property seized by the bureau and not designated for its use, or not transferred to the department of general services as provided above, shall be paid to the state treasurer to be used only as appropriated by the general assembly.

(e) When property is forfeited under parts 3 and 4 of this chapter or title 39, chapter 17, part 4, the director or the director's authorized representative, agent or employee, the commissioner of safety or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, or constable shall remove it for disposition in accordance with law.

(f) Controlled substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of parts 3 and 4 of this chapter or title 39, chapter 17, part 4, are contraband and shall be seized and summarily forfeited to the state. Controlled substances

listed in Schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

(g) Species of plants from which controlled substances in Schedules I, II and VI may be derived which have been planted or cultivated in violation of parts 3 and 4 of this chapter or title 39, chapter 17, part 4, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

(h) The failure, upon demand by the commissioner of safety, the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, or constable, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that such person is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

(i) Confiscation proceedings under parts 3 and 4 of this chapter or title 39, chapter 17, part 4, shall be conducted in accordance with the provisions set forth in part 2 of this chapter.

(j) Any property of the type set forth in subdivisions (a) (1) and (7) which is in the custody and possession of a clerk of any court of this state by virtue of the property having been held as evidence or exhibits in any criminal prosecution where all appeals or potential appeals of a judgment have ended, or when the case has been dismissed or otherwise brought to a conclusion, shall be disposed of as follows:

(1) The clerk of the court having custody of the property to be disposed of shall, no less than once annually, inventory the same and prepare a list of the property proposed to be destroyed with references to the cases involved and the name of the case, the case number and date when such property was used;

(2) The clerk shall submit the inventory list with a filed petition to the court and shall serve a copy of the petition upon the district attorney general. After determining that the listed property is not needed as evidence in any pending or potential judicial proceeding, the court shall order the property to be destroyed; and

(3) The clerk, or such deputy clerk as the clerk may designate, shall completely destroy each item by cutting, crushing, burning or melting and shall file, together with the petition and order relating to the destroyed property, an affidavit concerning such destruction, showing a description of each item, the method of destruction, the date and place of destruction, and the names and addresses of all witnesses to the destruction.

T.C.A. § 53-11-451.

3. The forfeiture statute does not require the Department to trace the seized property to a specific transaction. Lettner vs. Plummer, 559 S.W.2d 785 (1977). But the Department must show some nexus between the seized money and the drug trade. Goldsmith v. Dept. of Safety, 622 S.W.2d 438 (1981).

4. Tennessee Code Annotated § 40-33-210 provides as follows:

(a) In order to forfeit any property or any person's interest in such property pursuant to [§§ 39-14-307](#), [47-25-1105](#), [53-11-451](#), [55-10-403\(k\)](#), [55-50-504\(h\)](#), [57-3-411](#), [57-5-409](#), [57-9-201](#), [67-4-1020](#) and [70-6-202](#), the **state shall have the burden to prove by a preponderance of evidence** that:

(1) The seized property was of a nature making its possession illegal or was used in a manner making it subject to forfeiture under the sections set out in this subsection (a); and

(2) The **owner or co-owner of the property knew that such property was of a nature making its possession illegal or was being used in a manner making it subject to forfeiture**, or, in the case of a secured party, that the standards set out in subsection (f) are met.

(b)(1) Failure to carry the burden of proof **shall operate as a bar** to any forfeiture and the property shall be immediately returned to the claimant. (emphasis added).

The Department has the burden to prove, by a preponderance of the evidence, that Claimant **knew** that the property was being used “in a manner making it subject to forfeiture.” The Department must prove that Claimant **knew** that Mr. White was using her vehicle to sell marijuana. This requires a showing of actual knowledge on Claimant’s behalf. The only proof offered by the Department is Claimant’s knowledge of Mr. White’s previous drug convictions. Constructive knowledge is insufficient under the forfeiture statute. If allowed it would expand an innocent owner’s liability to owners who “knew or should have known” the vehicle was being used to violate Tennessee’s drug laws. Such an interpretation would be contrary to a plain reading of the forfeiture statute.

5. Married persons may hold personal property, including cash, as tenants by the entireties.

The following discussion by the Tennessee Court of Appeals (2001 WL 77560) explains

Tennessee’s law:

In determining the proprietary interests in certificates of deposit and a joint bank account our Supreme Court in *Grahl v. Davis*, 971 S.W.2d 373 (Tenn.1998) stated:

[W]e begin with the well-settled proposition that tenancy by the entirety is a form of property ownership which is unique to married persons. *Griffin v. Prince*, 632 S.W.2d 532, 534 (Tenn.1982). The essential characteristic of a tenancy by the entirety is that “each spouse is seized of the whole or the entirety and not of a share, moiety, or divisible part.” *Sloan v. Jones*, 192 Tenn. 400, 241 S.W.2d 506, 507 (1951). Upon the death of one spouse, ownership of tenancy by the entirety property immediately vests in the survivor, and the laws of descent and distribution do not apply. *Id.* 241 S.W.2d at 509. It is well-settled in this state that personal property as well as realty may be owned by spouses by the entirety. *Griffin*, 632 S.W.2d at 535. It has also been expressly held that a tenancy by the entirety with the right of survivorship may exist in certificates of deposit and bank accounts. *White v. Watson*, 571 S.W.2d 493, 495 (Tenn.App.1978); *Smith v. Haire*, 133 Tenn. 343, 181 S.W. 161 (1915) (certificates of deposit); *Sloan*, *supra*, and *Griffin*, *supra*, (bank accounts). In fact, there is clear authority in this state that a bank account or negotiable instrument in the name of “husband or wife” will be deemed to create a tenancy by the entirety with right of survivorship, in the absence of proof to the contrary. *Griffin*, 632 S.W.2d at 536.

In a tenancy by the entirety, each party owns the whole, and on the death of either party, the survivor takes no new title or estate as the survivor is in possession of the whole from its inception. *Hull v. Johnson*, No. W1999-02011-COA-R3-CV, 1999 WL 1336086 at * 4 (Tenn.Ct.App. Dec. 15, 1999) (citing *Catt v. Catt*, 866 S.W.2d 570 (Tenn.Ct.App.1993) and *Moore v. Cole*, 200 Tenn. 43, 289 S.W.2d 695 (1956)). Furthermore, the law presumes that when a husband and wife create a joint bank account, they have created a tenancy by the entireties with the right of survivorship. *Grahl v. Davis*, 971 S.W.2d at 378; *Edwards v. Edward*, 713 S.W.2d 642, 647 (Tenn.1986); *Griffin v. Prince*, 632 S.W.2d at 536-37; and *Sloan v. Jones*, 241 S.W.2d at 508-09.

Tennessee courts have long held in will construction cases to determine intent of the testator, a will must be considered in reference to the circumstances which existed at the time of its execution. *Nashville Trust Co. v. Grimes*, 179 Tenn. 567, 167 S.W.2d 994, 996, (Tenn.1943). Likewise, intent in the form of ownership of a bank account, circumstances existing at the time of its establishment, shall control. Our Supreme Court indicated as much in *Lowry v. Lowry*, 541 S.W.2d 128 (Tenn.1976), stating:

Absent clear and convincing evidence of contrary intent expressed at the time of its execution, we hold that a bank signature card containing an agreement in clear and unambiguous language that a joint account with rights of survivorship is intended, creates a joint tenancy enforceable according to its terms; and upon the death of one of the joint tenants, the proceeds pass to the survivor.

In *Lambert v. S & L Plumbing*, 935 S.W.2d 411 (Tenn.Ct.App.1996) the Middle Section of this Court, in holding that the widow of the sole stockholder in an incorporated plumbing company did not own the company as a surviving

tenant by the entirety given the absence of evidence that the widow and her husband intended to hold the shares jointly, stated:

Creation of an estate by the entireties is a question of intent; it may be inferred from the circumstances, “but should rest upon convincing evidence and never upon conjecture.” *Oliphant v. McAmis*, 197 Tenn. 367 at 373, 273 S.W.2d 151 at 154 (1954).

It is **CONCLUDED** that the Department has failed to show, by a preponderance of the evidence, that Claimant had actual knowledge of Mr. White’s use of her vehicle to sell marijuana. Additionally, the Department has failed to show any nexus between the seized currency and drug trafficking. The Department relies on Mr. White’s previous drug convictions and the one sale to the confidential informant. When this scant evidence is weighed against Claimant’s credible testimony and the documentation of other non-drug sources of the currency, it is insufficient to carry the Department’s burden.

The Department argues, *inter alia*, that it is entitled to forfeiture of Mr. White’s interest in the currency because he did not file a claim. However, as the Tennessee law cited above makes abundantly clear Claimant owned this currency as tenants by the entireties with Mr. White. As such she has a claim to the whole of the property not just a proportional share. The Department offers no legal authority as to why currency should not be treated as any other personal property. If the Department could demonstrate all or some part of this currency is from drug trafficking then it could be forfeited regardless of its tenancy by the entireties ownership. However, this was not the case and Claimant’s interest is clearly superior to the Department’s mere possessory interest.

IT IS THEREFORE ORDERED that the above described vehicle and \$32,240 in U.S. currency is to be returned to Claimant.

This Initial Order entered and effective this _____ day of _____ 2015.

Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this _____ day of _____ 2015.



J. Richard Collier, Director
Administrative Procedures Division