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July 2015

Blackwell, Deatrice; Holley, Jason & Auto Market Inc vs. Safety

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State of Tennessee
Department of State
Administrative Procedures Division
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8th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243-1102
Phone: (615) 741-7008/Fax: (615) 741-4472

July 7, 2015

Commissioner Bill Gibbons
Tennessee Department of Safety
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Nashville, TN 37243-1102

Deatrice Blackwell
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RE: In the Matter of: Deatrice Blackwell; Jason Holley and Auto Market, Inc. (P5037)
Docket No. 19.01-127172J

Enclosed is an Initial Order rendered in connection with the above-styled case.

Administrative Procedures Division
Tennessee Department of State

/aem
Enclosure

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

IN THE MATTER OF:

**DEATRICE BLACKWELL, JASON
HOLLEY AND AUTO MARKET, INC.**

DOCKET NO. 19.01-127172J

NOTICE

ATTACHED IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. THE ENROLLEE FILES A WRITTEN APPEAL, OR EITHER PARTY FILES A PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN **July 22, 2015**.

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE
ADMINISTRATIVE PROCEDURES DIVISION
WILLIAM R. SNODGRASS TOWER
312 ROSA PARKS AVENUE, 8th FLOOR
NASHVILLE, TENNESSEE 37243-1102

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, **615/741-7008 OR 741-5042, FAX 615/741-4472**. PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

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

IN THE MATTER OF:)
)
TENNESSEE DEPARTMENT)
OF SAFETY AND HOMELAND)
SECURITY)
)
v.)
)
One 2004 BMW X5)
VIN No.:5UXFB53584LV00452)
Six Hundred Twenty-Nine Dollars)
(\$629.00) in U.S. Currency)
Miscellaneous Property)
Seized from: Deatrice Blackwell)
Date of Seizure: January 9, 2014)
Claimants: Jason Holley and)
Deatrice Blackwell)
Lienholder: Auto Market Inc.)
)

DOCKET NO. 19.01-127172J
[D.O.S. Case No. P5037]

INITIAL ORDER

The hearing in this matter came forward on August 4, 2014 and on December 30, 2014, in Nashville, Tennessee, before Mattielyn B. Williams, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, sitting for the Commissioner of the Tennessee Department of Safety & Homeland Security. Ms. Karen Litwin, Staff Attorney III, Tennessee Department of Safety & Homeland Security, and Ms. Jennifer Cavanaugh Crim, Assistant Metropolitan Attorney, represented the State. Claimants Jason Holley and Deatrice Blackwell represented themselves.

This matter became ready for consideration after the Claimants' filing of their Opposition to the Department's Proposed Order on April 9, 2015.

The subject of this matter was the proposed forfeiture of the seized 2004 BMW, \$629.00 in US Currency, and miscellaneous property, which was seized for its use as transportation, as

funds or property obtained in an exchange, or used in any other manner to facilitate the receipt and sale of illegal narcotics in violation of the Tennessee Drug Control Act, thus making the vehicle, currency, and miscellaneous property subject to seizure, pursuant to T.C.A. §53-11-451.

After consideration of the record, it is **DETERMINED** that the subject vehicle, currency, and miscellaneous property should be forfeited to the seizing agency, the Metropolitan Nashville Police Department, for violation of the Tennessee Drug Control Act. The forfeiture of the vehicle should be subject to the lien of Auto Market Inc.

This conclusion is based on the following findings of fact and conclusions of law:

FINDINGS OF FACT

CRIMINAL BACKGROUND OF MR. HOLLEY AND MS. BLACKWELL

1. Mr. Jason Holley was convicted of passing a forged instrument in 2007, perjury in 2008, simple possession of drugs in 2008, and attempting to alter a tag in 2012. Mr. Holley was incarcerated at the time of the hearing.
2. Ms. Deatrice Blackwell initially testified that she had not been convicted of a crime of dishonesty, but then admitted that she had been convicted of theft, which is a crime that involves dishonesty.

BACKGROUND

3. Officers listened to multiple jail calls between Mr. Holley and Ms. Blackwell, prior to conducting the “knock and talk” on January 9, 2014, which led to the instant seizure and proposed forfeiture.

4. When Mr. Holley made phone calls from the jail, he had to enter his OCA number and identify himself on the calls. Mr. Holley also gave his birthday and social security number over the phone on occasion. Further, the officers recognized the voice on the calls as being that of Mr. Holley.
5. Officers listened to Mr. Holley discuss drug transactions, amounts, quantities, types of drugs, and types of bags that were to be used to package drugs for his clients.
6. There were three-way calls involving individuals that were planning to purchase drugs from Mr. Holley. Mr. Holley directed Ms. Blackwell to handle those drug transactions, since Mr. Holley was incarcerated in October of 2013.
7. Mr. Holley had discussions on the jail phone calls about “H” and “S,” which are street-slang terms for hard cocaine and soft cocaine. Mr. Holley also discussed the weight of cocaine, how much cocaine he was selling to each individual, and the price.
8. Mr. Holley directed Ms. Blackwell to put money on a Green Dot Card on several occasions. Ms. Blackwell told police that it was Mr. Holley’s money on the Green Dot Card.
9. Officers heard Mr. Holley speak with a representative from the Green Dot company the night of the seizure (January 9, 2014). Mr. Holley told the representative that he had lost his Green Dot card, and that he wanted to transfer the money on that card to a different card. Mr. Holley first gave the Green Dot representative his actual social security number, and subsequently gave the Green Dot representative a different social security number (which was not Mr. Holley’s actual social security number), which allowed Green Dot to locate the card in their system. It is **DETERMINED**

that Mr. Holley was using someone else's social security number in his transactions with the Green Dot company. This conduct raises questions as to Mr. Holley's credibility and truthfulness.

10. Mr. Holley instructed the Green Dot representative to deactivate the card so that no funds could be taken from it. He asked that the money be placed on a new card and mailed to Ms. Kathy Lewis.
11. Between November 20, 2013, and January 2, 2014, there were approximately eight deposits on the Green Dot card ranging from \$55.00 to \$500.00. The deposits totaled \$2635.00.
12. Prior to Mr. Holley's arrest in October, there were, approximately twenty deposits in the range of \$60.00 to \$1000.00, totaling \$5,883.00.
13. Mr. Holley presented a document at the contested case hearing, which appeared to show that an insurance check was cashed on November 20, 2013 for \$2654.27. However, the subpoenaed records from the Green Dot company do not indicate that the money from the check was placed on the Green Dot card, as Mr. Holley alleges.
14. Officers listened to hours of jail phone calls and learned that Ms. Blackwell's daily routine was to wake up, take her daughter to school, talk to Mr. Holley over the phone, and conduct transactions for Mr. Holley when he asked. Ms. Blackwell's routine from October 2013 to January 2014, seemingly, did not involve a legitimate job.
15. Mr. Holley told individuals who wanted to purchase drugs from him that Ms. Blackwell only conducted transactions for him while her child was at school and before dark.

16. Officers conducted surveillance on Ms. Blackwell numerous times and saw the vehicle that she drove, the 2004 BMW at issue in this matter, parked at her house during the day. Officers generally conducted surveillance during normal business hours, but also observed the vehicle at her house when they worked past their shift into the early morning hours.
17. This vehicle was registered to “Corey Owens” and “Jason Hunt.” “Jason Hunt” is an alias for Mr. Jason Holley.
18. Ms. Blackwell appeared to only drive the vehicle to drop off her daughter at school and to conduct transactions for Mr. Holley. Driving the vehicle to conduct illegal drug transactions subjects the vehicle to forfeiture.
19. Ms. Blackwell was involved in a prior drug seizure. In January of 2013, MNPD Officer Jaime Rice seized a 2008 Dodge Durango from Ms. Blackwell, which was subject to forfeiture under the Tennessee Drug Control Act due to the presence of crack cocaine. The vehicle was registered to a “Corey Owens,¹” and was forfeited to the seizing agency.
20. During the time that Mr. Holley was incarcerated in the Davidson County jail, he instructed Ms. Blackwell to contact Auto Market, the lienholder on the 2004 BMW.
21. Mr. Holley told the representative from Auto Market that he was involved in an accident in another state, that he was currently hospitalized, and unable to travel to Auto Market to make a current payment on the vehicle. In reality, Mr. Holley was incarcerated at the Davidson County jail at the time. It is **DETERMINED** that this

¹ This is presumably the same “Corey Owens” who is co-owner of the 2004 BMW at issue in this hearing. Corey Owens did not file a claim on the 2004 BMW.

incident of Mr. Holley stating that he was in an accident, when actually he was in jail, raises questions as to Mr. Holley's credibility.

22. Mr. Holley told the representative from Auto Market that Ms. Blackwell would be making a payment for him. After Mr. Holley ended the phone call with Auto Market, he instructed Ms. Blackwell to make a payment on the vehicle. Mr. Holley told Ms. Blackwell to "use a little bit from what you got."
23. From the time that the insurance check was cashed, through January 2, 2014, Mr. Holley only paid \$262.00 on the vehicle in various amounts. Mr. Holley did not make consistent payments on the vehicle at consistent times.

THE INSTANT SEIZURE

24. On January 9, 2014, Officers William Clemons, Conrad Straub, and John Tuberville of the Metropolitan Nashville Police Department conducted a "knock and talk" as part of an ongoing narcotics investigation at the residence of Claimants Jason Holley and Deatrice Blackwell, located at 438 Shelby Avenue, Nashville, Tennessee.
25. Ms. Blackwell gave the officers verbal consent to enter the home and written consent to search the premises. Ms. Blackwell read and signed a "Consent to Search" form.
26. Ms. Blackwell admitted that she had a handgun, with a permit, in the bedroom of the residence.
27. Officers searched the residence and found a lid of a digital scale in the bedroom that appeared to have cocaine residue on it; officers found a second set of digital scales in the kitchen, with what appeared to be cocaine residue on it. Officers field-tested the residue from both sets of digital scales. The residue field-tested positive for cocaine.

28. Officers found a plastic Kroger bag with 10.6 grams of cocaine, located inside the paper tray of a printer in the kitchen area. 10.6 grams is a significant amount of cocaine. Officer Straub testified that “half (1/2) a gram” of cocaine is an amount consistent with personal use, based on his training and experience.
29. Officers found baggies that were consistent with the packaging of small-quantity cocaine sales, located near the digital scales in the kitchen.
30. The officers testified that digital scales are indicative of the sale of narcotics. Digital scales are used to determine the weight of narcotics and are also used to separate narcotics into smaller quantities for resale.
31. Officers found multiple sets of digital scales in multiple areas of the house, which indicated to them that Mr. Holley and Ms. Blackwell were engaged in the sale of narcotics.
32. Officers also found a second bag that had 8 grams of marijuana inside of the bag.
33. Officers also found a misdemeanor amount of pills in the house.
34. Officers found \$629.00 in U.S. currency in the residence, consisting of one one hundred dollar bill and other bills of small denominations. The currency was found near the marijuana and cocaine. Small denominations of bills are often indicative of drug sales, per the Officers’ training and experience.
35. Officers read Ms. Blackwell her *Miranda* rights after the first set of digital scales and drugs were discovered.
36. Under *Miranda*, Ms. Blackwell claimed ownership of the handgun. Ms. Blackwell further asserted that she used the handgun for protection, and that she carried it at home and in a holster.

37. Ms. Blackwell further stated that she knew about the weapon, the drugs, and the money that the officers had discovered in the residence, and she knew that “nothing good would come of that.”
38. Officers obtained a search warrant after the initial discovery of the drugs. After they obtained the search warrant, the officers came back and conducted a more extensive search of the house.
39. Officers seized the 2004 BMW, an “AccountNow”² green card, with an approximate balance of \$2400.00, and other miscellaneous property, including laptops, radios, TVs, electronic gaming devices, and other electronics. Officers believed that the property was bought with proceeds from drug sales, since it appeared that neither Mr. Holley nor Ms. Blackwell were employed. Further, the officers believed that the laptop was used to communicate and facilitate the sale of drugs.

AFTER THE SEIZURE

40. Auto Market Inc. timely filed to protect its lienhold interest in the seized 2004 BMW.
41. In order to avoid paying the costs for the instant asset forfeiture hearing, both Mr. Holley and Ms. Blackwell sought indigent status.
42. On March 25, 2014, Ms. Blackwell signed a notarized “Uniform Civil Affidavit of Indigency” and submitted this document to the Department of Safety and Homeland Security. On April 7, 2014, Mr. Holley signed a notarized “Uniform Civil Affidavit of Indigency” and submitted this document to the Department of Safety and Homeland Security.

² It is unclear whether the “Account Now” green card is the same as the green dot card.

43. Ms. Blackwell listed her income for the past 12 months [from the period of March 25, 2013 to March 25, 2014] as “Zero.” Mr. Holley listed his income for the past 12 months [from the period of April 7, 2013 to April 7, 2014] as “Zero.”
44. Ms. Blackwell and Mr. Holley both signed, acknowledged, and swore that the information provided on their Uniform Civil Affidavit of Indigency was correct, under penalty of perjury:
- I hereby declare under penalty of perjury that the foregoing answers are true, correct, and complete and that I am financially unable to pay the costs of this action. **I also understand that fraudulent misrepresentation or lying will result in my claim being dismissed.**
45. Ms. Blackwell and Mr. Holley acknowledged “that fraudulent misrepresentation or lying will result in my claim being dismissed,” when they each signed the Uniform Civil Affidavit of Indigency.
46. At the contested case hearing on December 30, 2014, Ms. Blackwell testified that she worked for a temporary service, “Prologistix,” in October of 2013. Ms. Blackwell testified that she made “nine something an hour.” Ms. Blackwell further testified that she worked as a “Centennial Hospital working valet” in the spring and summer of 2013.
47. Mr. Holley gave vague testimony about working at several jobs, but could not testify as to exactly how much money he made and exactly when he worked those jobs.
48. Neither Mr. Holley nor Ms. Blackwell provided to the Court any records of employment or proof of legitimate income, such as pay stubs or W-2s. When officers searched the house on January 9, 2014, they did not find any pay stubs, W-2 forms, tax forms, uniforms, or any other evidence that would indicate that Mr. Holley and Ms. Blackwell had jobs.

49. It is **DETERMINED** that there is an inconsistency between the Affidavits completed and the Claimants' testimony at the hearing. Either the Affidavits or the testimony at the hearing is a falsehood. Based on the demeanor of the Claimants at the hearing, it is **DETERMINED** that the Affidavits of Indigency are a falsehood and the testimony of Claimants at the hearing, about working, was truthful.
50. There is an argument that both Ms. Blackwell's and Mr. Holley's claims should be dismissed due to fraudulent misrepresentation of their income on their respective Uniform Civil Affidavit of Indigency forms, in light of their contrary sworn testimony about working.
51. Although it would be legally possible to dismiss both Claimants' claims, based on their falsehoods about their income, it is **DETERMINED** that it would be preferable to decide this matter on its factual merits.
52. Based on the falsehoods about indigency, possible falsehoods about working, and Mr. Holley's false statement about being involved in a car accident and hospitalized to Auto Market, when he was actually in jail, it is **DETERMINED** that Mr. Holley and Ms. Blackwell are **NOT CREDIBLE** witnesses.

CLAIMANTS' THEORY

53. It is Mr. Holley's and Ms. Blackwell's theory that Officers Straub and Tuberville have a vendetta against them and caused physical harm to Mr. Holley on a separate occasion. On June 10, 2015, Mr. Holley and Ms. Blackwell submitted the May 26, 2015 results of an inquiry by the Metropolitan Police Department of Nashville and Davidson County. That letter to Mr. Holley sustained violations of Dept. Manual

4.20.050 (Department and Personal Appearance – Official Obligation) Paragraph (S) Failure to Cooperate/Withholding Information as to Officer Conrad Straub. That same letter sustained violations of Dept. Manual 4.20.050 (Department and Personal Appearance – Personal Behavior) Paragraph (N) Abusive Treatment and Dept. Manual 4.20.050 (Department and Personal Appearance – Official Obligation) Paragraph (V) False or Inaccurate Reports as to Officer John Tuberville.

54. It is **DETERMINED** that although Officers Straub and Tuberville are not without blemish, the factual basis for seizure and forfeiture in this matter is clear.

CONCLUSIONS OF LAW


1. In order to prevail, the State must carry its burden of proof, by a preponderance of the evidence, that the subject vehicle, US currency, and other property were used to facilitate, used as a container, used to transport, constitute proceeds, or were obtained in an exchange, in a manner that violated the Tennessee Drug Control Act. Such violation subjects property to forfeiture pursuant to the provisions of T.C.A. §53-11-451.
2. It is **CONCLUDED** that Mr. Holley's testimony as to the source of the seized property and currency is **NOT CREDIBLE**. On the whole, it is **CONCLUDED** that Ms. Blackwell's testimony is **NOT CREDIBLE**.
3. The Claimants' prior activities in the sale of illegal drugs are relevant and admissible evidence in a forfeiture hearing. Lettner v. Plummer, 559 S.W.2d 785 (Tenn. 1977); Young v. State of Tennessee Department of Safety, 911 S.W.2d 729 (Tenn. App. 1995).

4. The forfeiture statute does not require the State to trace the seized property to a specific transaction. Lettner v. Plummer, 559 S.W.2d 785 (Tenn. 1977).
5. Proof that property subject to forfeiture is related to illicit drug activities may be wholly circumstantial. U.S. v. Dusenbery, 80 F.Supp.2d 744 (N.D. Ohio 1998).
6. Given the Claimants' minimal employment history, lack of credibility, and extensive drug-related activity, it is **CONCLUDED** that Mr. Holley and Ms. Blackwell acquired the currency and property seized through drug-related activities. Even if some of the funds that constitute the seized currency are from the cashing of the insurance check, to the extent that those funds have been co-mingled with illegal drug money, such funds are forfeitable.
7. 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 a controlled substance in violation of the Tennessee Drug Control Act.
8. It is **CONCLUDED** that the State has proven by a preponderance of the evidence that the \$629.00 in U.S. Currency, prepaid Green Dot card and/or "Account Now" card, and miscellaneous property, should be forfeited to the seizing agency under this statute because it is more likely than not that the money and the goods are the proceeds of drug sales or the miscellaneous seized property was purchased with the proceeds of drug sales.
9. T.C.A. §53-11-451(a)(4) authorizes the forfeiture of all conveyances, including vehicles, that are used to transport a controlled substance.
10. It is **CONCLUDED** that the State has proven by a preponderance of the evidence that Ms. Blackwell used the 2004 BMW to transport controlled substances and conduct


the sale of narcotics. Therefore, the vehicle should be forfeited to the seizing agency, subject to the lien of Auto Market Inc.

11. Based on how the \$629.00 in U.S. Currency, prepaid Green Dot card and/or "Account Now" card, and miscellaneous property were acquired or used, i.e. in violation of the Tennessee Drug Control Act, it is hereby **ORDERED** that the seized currency, Green Dot card and/or "Account Now" card and miscellaneous property are **FORFEITED** to the seizing agency, for disposition as provided by law.
12. Based on how the Claimants' vehicle was used as transportation and as a container, i.e. in violation of the Tennessee Drug Control Act, it is hereby **ORDERED** that the seized 2004 BMW vehicle is **FORFEITED** to the seizing agency for disposition as provided by law, subject to the lien of Auto Market Inc.

This Initial Order entered and effective this 17th day of July, 2015.


Mattielyn B. Williams
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 17th day of July 2015.


J. Richard Collier, Director
Administrative Procedures Division

**APPENDIX A TO INITIAL ORDER
NOTICE OF APPEAL PROCEDURES**

Review of Initial Order

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8th Floor, William R. Snodgrass Tower, 312 Rosa L. Parks Avenue, Nashville, Tennessee, 37243. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

Review of Final Order

Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.