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October 2015

## John P. Jr. Hoover vs. Safety

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**State of Tennessee**  
**Department of State**  
Administrative Procedures Division  
312 Rosa L. Parks Avenue  
8<sup>th</sup> Floor, William R. Snodgrass Tower  
Nashville, Tennessee 37243-1102  
Phone: (615) 741-7008/Fax: (615) 741-4472

October 29, 2015

Commissioner Bill Gibbons  
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RE: In the Matter of: John P. Hoover, Jr. (Q8375)

Docket No. 19.01-131265J

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:**

**JOHN P. HOOVER, JR.**

**DOCKET NO. 19.01-131265J**

**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 **November 13, 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, 8<sup>th</sup> 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**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>Dept. of Safety and Homeland Security,</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. 19.01-131265J</b>
	)	<b>Safety No. Q8375</b>
<b>One 2008 Lexus GX7</b>	)	
<b>VIN: JTJBT20X280165937</b>	)	
<b>Seized from: Darlot A. Hoover</b>	)	
<b>Date of Seizure: April 8, 2015</b>	)	
<b>Claimant: John P. Jr. Hoover</b>	)	
<b>Lienholder: N/A</b>	)	

**INITIAL ORDER**

This matter was heard on September 22, 2015, in Chattanooga, 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 Nina Harris represented the Department of Safety (hereinafter "Department"). Claimant was present and represented by attorney Ben McGowan.

**ISSUE FOR CONSIDERATION**

Did the Department prove, by a preponderance of the evidence, that Claimant knew that the seized vehicle was being used in violation of Tennessee's drug trafficking law?

**SUMMARY OF DETERMINATION**

It is **DETERMINED** that the Department has failed to carry its burden of proof, and therefore, the seized vehicle must be returned to the Claimant. This conclusion is based on the following findings of fact and conclusions of law:

## FINDINGS OF FACT

1. Claimant and Darlot Hoover were married in 2002. The couple had a prenuptial agreement providing that all property titled in Claimant's name during the marriage would be his separate property.
2. The above referenced Lexus was titled and registered solely in Claimant's name. Darlot Hoover owned and drove an Audi vehicle at all times relevant to this case. The Audi was jointly titled to the couple.
3. Darlot began using drugs and became involved with Mr. Gilley who supplied drugs to her. She was arrested in North Carolina on drug related charges while in the company of Gilley. Claimant eventually posted her bond and she returned to Chattanooga.
4. Darlot committed to attend rehabilitation upon returning to Chattanooga and end her association with Gilley. When she refused to carry through on this commitment, Claimant took possession of Darlot's Audi leaving her without transportation.
5. Darlot requested the use of a vehicle to attend to her legal proceedings in North Carolina. Claimant allowed her to use the Lexus to travel to North Carolina and back.
6. Darlot did not return home as planned. Claimant unsuccessfully attempted to locate her through friends. Claimant eventually learned that she was in Atlanta with Gilley. Law enforcement was looking for Gilley and contacted Claimant for information. Claimant provided information about Darlot and Gilley being in Atlanta.
7. On April 8, 2015, Gilley and Darlot were arrested at a hotel in Chattanooga. Both were in possession of Methamphetamine and various indicia of its manufacture and sell. The above described vehicle was seized.

8. According to the seizure warrant, the vehicle was seized as both proceeds of drug trafficking and because it was used to transport illicit drugs. The seizure warrant further indicates that the seizing officer provided the judge information of Claimant involvement/knowledge of the vehicle's illegal use.
9. Claimant and Darlot divorced prior to this hearing. Claimant was awarded the seized vehicle in the divorce.
10. Claimant's testimony was credible.
11. The Department offered absolutely no proof that claimant had knowledge that Darlot Hoover intended to use his vehicle to transport illegal drugs, that Claimant was involved in the sale of illegal drugs, or that it was acquired through drug trafficking.
12. The Department has failed to show, by a preponderance of the evidence, that Claimant's vehicle is subject to seizure or forfeiture.

### **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.

In forfeiture proceedings, the governmental authority seeking forfeiture must present affirmative proof that it has complied with both the procedural and the substantive requirements in the forfeiture statutes enacted by our Legislature. Consistent with the civil nature of forfeiture proceedings, the State's burden of proof as to both the procedural and substantive statutory requirements is by a preponderance of the evidence. Tennessee v. Sprunger, 458 S.W.3d 482, 499 (2015).

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 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. T.C.A. § 53-11-451.

3. 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.

**IT IS THEREFORE ORDERED** that the above described vehicle be returned to Claimant.

This Initial Order entered and effective this 29<sup>th</sup> day of OCTOBER 2015.



Steve R. Darnell  
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,  
this 29<sup>th</sup> day of OCTOBER 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, 8<sup>th</sup> 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.