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December 2015

James Ritchie vs. Safety

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

December 10, 2015

Commissioner Bill Gibbons
Tennessee Department of Safety
23rd Floor, William R. Snodgrass Tower
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243-1102

James Ritchie #14584
c/o Sumner County Jail
117 West Main Street
Gallatin, TN 37066

James Ritchie
121 Luna Lane
Hendersonville, TN 37075

Karen Litwin, Esq.
Staff Attorney III
Tennessee Department of Safety
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Division of Legal Services
1150 Foster Avenue
McCord Building, Room #107
Nashville, TN 37249-1000

RE: In the Matter of: James Ritchie

Docket No. 19.01-134826J

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:

JAMES RITCHIE

DOCKET NO. 19.01-134826J

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 **December 28, 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

v.

**2007 Dodge Charger
VIN: 2B3LA53H97H647559
Two Thousand Forty-Nine Dollars (\$2049) in
United States Currency
Seized From: James Ritchie
Seizure Date: February 25, 2015
Claimant: James Ritchie**

**DOCKET NO: 19.01-1348260J
DOS CASE NO. Q6916**

INITIAL ORDER

This matter was heard in Nashville, Tennessee, on September 14, 2015, before Kim Summers, Administrative Judge, assigned by the Secretary of State to sit for the Commissioner of the Tennessee Department of Safety (the Department). The State of Tennessee was represented by Karen Litwin, attorney for the Department of Safety. The Claimant represented himself and appeared by phone.

The subject of this hearing was the proposed forfeiture of the subject property for its alleged use in violation of Tenn. Code Ann. §§ 53-11-201 *et seq.* and §§ 40-33-201 *et seq.* The issue is whether the property seized was used, or intended to be used, to transport, or in any manner facilitate the transportation, sale, or receipt of drugs in violation of Tenn. Code Ann. § 53-11-451(a). After consideration of the entire record and the arguments of the parties, it is determined that the subject property should be returned to the Claimant. This determination is based upon the following Findings of Fact and Conclusions of Law.

SUMMARY OF THE EVIDENCE

The State presented testimony from the following witnesses from the 18th Judicial District Drug Task Force: Ed Williams, Assistant Director; Charlie Belote, Investigator. The Claimant testified on his own behalf.

One late-filed exhibit was admitted into evidence: COLLECTIVE EXHIBIT 1 includes 5 pages from the TBI and 9 photographs.

FINDINGS OF FACT

1. On February 25, 2015, law enforcement seized 7 grams of methamphetamine from the Claimant's 2007 Dodge Charger following a traffic stop.

2. The Dodge Charger was seized.

3. The Claimant was arrested and transported to his home where law enforcement conducted a search and seized \$ 2049 from a safe in the Claimant's bedroom.

4. On March 2, 2015, 14 grams of methamphetamine were found in the backseat of the police vehicle in which the Claimant had been transported. Because no other individual had subsequently been transported in that vehicle, it was believed that this additional 14 grams of methamphetamine were left in the vehicle by the Claimant.

5. The certification on the Notice of Seizure indicates that a copy of the Notice was provided to the Claimant by certified mail on February 25, 2015.

6. The Notice of Seizure specifies that a total of 21 grams of methamphetamine was seized from the Claimant.

RELEVANT LAW

1. TENN. CODE ANN. § 53-11-451(a) subjects to forfeiture all of the following:

- (1) All controlled substances that have been manufactured, distributed, dispensed or acquired in violation of part 3 of this chapter and this part, or title 39, chapter 17, part 4;
- (2) All raw materials, products and equipment of any kind that are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of part 3 of this chapter and this part, or title 39, chapter 17, part 4;
- (3) All property that is used, or intended for use, as a container for property described in subdivision (a)(1) or (a)(2);
- (4) All conveyances, including aircraft, vehicles or vessels that 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 (a)(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 part 3 of this chapter and this part, 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 of the conveyance to have been committed or omitted without the 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; and
 - (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 that are used, or intended for use, in violation of part 3 of this chapter and this part, 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, compiled in part 3 of this chapter, this part and title 39, chapter 17, part 4, all proceeds traceable to the exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of the Tennessee Drug Control Act;
 - (B) No property shall be forfeited under subdivision (a)(6)(A), to the extent of the interest of an owner, by reason of any act or omission established by the owner to have been committed or omitted without the owner's knowledge or consent; and

- (7) All drug paraphernalia as defined by § 39-17-402.
2. TENN. CODE ANN. § 40-33-210 provides:
- (a) In order to forfeit any property or any person's interest in the 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 or 70-6-202, the state shall have the burden to prove by a preponderance of evidence that: (emphasis added)
- (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 . . .
- (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.
3. Pursuant to Tenn. Code Ann. § 40-33-203(c), “[u]pon the seizure of any personal property subject to forfeiture pursuant to § 40-33-201, the seizing officer shall provide the person found in possession of the property, if known, a receipt titled a “Notice of Seizure.”
4. In order to proceed with a forfeiture action, the State must present affirmative proof of strict compliance with all procedural and substantive requirements. *State v. Sprunger*, 458 S.W.3d 482, 500 (Tenn. 2015).
5. In the absence of strict compliance with the law, the forfeiture must be vacated. *Id.*

ANALYSIS and CONCLUSIONS OF LAW

1. The vehicle and the currency were seized by law enforcement on February 25, 2015. At this time, law enforcement had only seized 7 grams of methamphetamine.
2. The Notice of Seizure in the record, dated February 25, 2015, specified that 21 grams of methamphetamine had been seized even though the additional 14 grams of methamphetamine had not been discovered until 5 days later.

3. It is not possible that this Notice of Seizure was provided to the Claimant on February 25, 2015, as specified in the document. There is no evidence in the record that any other Notice of Seizure was provided to the Claimant on that day.

4. There is no evidence in the record that a Notice of Seizure was provided to the Claimant “upon the seizure” of the property found in his possession, as required by Tenn. Code Ann. § 40-33-203(c).

5. Because the State has failed to show strict compliance with the procedural requirements of the forfeiture law, the vehicle and currency cannot be properly forfeited.

Accordingly, it is hereby **ORDERED** that the 2007 Dodge Charger and the \$2049 be **RETURNED** to the Claimant.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the 10TH day of DEC 2015.



KIM SUMMERS
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the 10TH day of DECEMBER 2015.



J. RICHARD COLLIER, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

**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.