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April 2016

## Lucretia Neal 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

April 15, 2016

Commissioner Bill Gibbons  
Tennessee Department of Safety  
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Nashville, TN 37249-1000

RE: In the Matter of: Lucretia Neal (Q5539)

Docket No. 19.01-133216J

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:**

**LUCRESIA NEAL**

**DOCKET NO. 19.01-133216J**

**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 **May 2, 2016**.

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**

**IN THE MATTER OF:**

**TENNESSEE DEPARTMENT OF SAFETY**

**v.**

**1978 Pontiac Bonneville  
VIN: 2N69Y8P125003  
Seized From: Marcus Grinstead  
Seizure Date: January 15, 2015  
Claimant: Lucretia Neal**

**DOCKET NO: 19.01-133216J  
DOS CASE NO. Q5539**

**INITIAL ORDER**

This matter was heard in Nashville, Tennessee, on January 26, 2016, 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, Lucretia Neal, was present and represented by Jacob Fendley, Esq..

The hearing pertained to 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 the law, subjecting it to forfeiture pursuant to Tenn. Code Ann. § 53-11-451(a). After consideration of the entire record and the arguments of the parties, it is determined that the property was not properly seized and should be returned to the Claimant. This determination is based upon the following Findings of Fact and Conclusions of Law.

## SUMMARY OF THE EVIDENCE

Three exhibits were admitted into evidence: EXHIBIT 1, insurance record (late-filed); EXHIBIT 2, bank record (late-filed); EXHIBIT 3, color photos.

The State presented testimony from Agents Lockerman and Chaney with the Clarksville Police Department. Agent Lockerman testified that the Claimant's father admitted at the time of seizure that the vehicle belonged to the Claimant's brother. The Claimant provided testimony on her own behalf.

## FINDINGS OF FACT

1. On January 15, 2105, Marcus Grinstead, the brother of the Claimant, was arrested in Clarksville, at the home of a known associate, Mr. Hoosier, for trafficking in illegal drugs. A search warrant was obtained for this location, and items were seized.
2. On the same day, law enforcement seized the Claimant's 1978 Pontiac Bonneville, which, at the time, was parked down the road at the home of the Claimant's father.
3. The vehicle had been purchased by the Claimant for her own personal use. After driving it for a few months around Nashville, the Claimant decided to leave the vehicle at her father's house in Clarksville so that it could be used by her family as needed.
4. The Claimant's father passed away in March of 2015.
5. The Claimant is employed at Skyline Medical Center as a phlebotomist.
6. The Claimant continued to provide insurance coverage but those driving the vehicle paid for gas and necessary maintenance.
7. The Claimant was aware of her brother's illegal drug activity but neither condoned nor had knowledge of her vehicle being used to facilitate this activity.

8. The vehicle had been observed by law enforcement being driven around town, including to a meeting with Mr. Hoosier. The vehicle was never seen parked at Mr. Hoosier's home.

9. The Notice of Property Seizure and Forfeiture was sent by certified mail on January 21, 2015.

### 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.
- (c) (1) The interest of a co-owner or co-owners who were not in possession of the property at the time it was seized may be forfeited if the co-owners:
  - (A) Were co-conspirators to the activity making the property subject to forfeiture;
  - (B) Knew that the property was of a nature making its possession illegal; or
  - (C) Knew that it was being used in a manner making it subject to forfeiture and consented to the use.

3. Department of Safety Rule 1340-2-2-.05 provides the following factors to be considered to ascertain property ownership –

- (a) How the parties involved regarded ownership of the property in question;
- (b) The intentions of the parties relative to ownership of the property;
- (c) Who was responsible for originally purchasing the property;
- (d) Who pays any insurance, license or fees required to possess or operate the property;
- (e) Who maintains and repairs the property;
- (f) Who uses or operates the property;

- (g) Who has access to use the property;
- (h) Who acts as if they have a proprietary interest in the property.

4. 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.”

5. 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).

6. In the absence of strict compliance with the law, the forfeiture must be vacated. *Id.*

#### **ANALYSIS and CONCLUSIONS OF LAW**

1. The Department bears the burden of proof in this matter to show by a preponderance of the evidence that: (1) the subject property was used in a manner making it subject to forfeiture; and (2) the owner was aware of this use.

2. The preponderance of the evidence in this matter has shown that the Claimant is the rightful owner of the vehicle at issue since the vehicle was purchased and insured by the Claimant.

3. The Claimant denied any knowledge of the vehicle being used for an illegal purpose. There is no evidence in the record to contradict this assertion.

4. There is no evidence in the record that the vehicle at issue was purchased, maintained, or used consistently by Mr. Grinstead.

5. There is no evidence in the record that the vehicle at issue was ever used by Mr. Grinstead during an illegal drug transaction.

6. The evidence in the record shows that the Notice of Property Seizure and Forfeiture was not sent until 6 days after the seizure, thus, it was not provided “upon the seizure.”



7. The State has failed to show strict compliance with the procedural requirements of the forfeiture law.

8. The Department has not carried its burden of proof in regard to the vehicle at issue in this case. The preponderance of the evidence has not shown strict compliance with the procedural requirements of the forfeiture law or that the vehicle was being used in violation of the Tennessee Drug Control Act, that the Claimant is not the owner of the vehicle, or that the Claimant was aware of any illegal use of the vehicle.

Accordingly, it is hereby **ORDERED** that the vehicle shall be returned to the Claimant.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the 15<sup>TH</sup> day of APRIL 2016.



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 15<sup>TH</sup> day of APRIL 2016.



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, 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.