

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

In the matter of:)	
)	
TENNESSEE DEPARTMENT OF SAFETY,)	Docket No. 19.01-093783J
)	
)	Department of Safety
)	Case No. F4940
)	
v.)	
)	
1994 MERCURY TOPAZ)	
VIN #1MEPM36Y4RK656341)	
SEIZED FROM: BRENDA SUE SELF)	
SEIZURE DATE: JULY 23, 2006)	
CLAIMANT: BRENDA SUE SELF)	
LIENHOLDER: n/a)	

INITIAL ORDER

This matter came on to be heard on October 26 2006 in Knoxville, Tennessee before Joyce Grimes Safley, Administrative Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Ms. Lori Long, attorney for the Department of Safety, represented the State. Claimant was present at the hearing and represented herself.

The subject of this hearing was the proposed forfeiture of a 1994 Mercury Topaz automobile, VIN #1MEPM36Y4RK656341, for its alleged use in violation of the Tennessee Drug Control Act, T.C.A. §39-17-401, *et seq.*, and T.C.A. §53-11-451(a)(4). After consideration of the evidence offered, the arguments of counsel, and the entire record in this matter, it is **ORDERED**

that the seized vehicle be immediately **FORFEITED** to the seizing agency. This decision is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On July 23, 2006, Claimant used her vehicle, the above referenced 1994 Mercury Topaz automobile, to transport approximately 2 grams of crack cocaine to a hotel in Unicoi County, Tennessee, for the purpose of selling it.

2. Officer David Walker, with the Unicoi County Sheriff's Department, testified that Claimant met an undercover agent at the hotel and sold him the crack cocaine. Officer Walker was monitoring the transaction via audio transmission.

3. Thereafter, Claimant was arrested.

4. Claimant testified that she was a confidential informant for the Johnson City Drug Task Force.

5. Claimant further testified that the undercover agent called her "three or four times" during the night asking her to sell him cocaine.

6. Claimant invoked her Fifth Amendment rights in response to certain questions by the State's attorney.¹

7. Claimant stated that she had been a drug addict in the past, however, she is currently "clean". She also testified that she does not "deal" drugs.

¹ Claimant was advised during the hearing that she could invoke her 5th Amendment right against self incrimination.

8. It is not contradicted that Claimant had two grams of cocaine in her possession. It is also not contradicted that she transported the cocaine in her vehicle, and then sold the cocaine to an undercover agent during the night. Claimant's testimony is not deemed credible.

CONCLUSIONS OF LAW

1. The State has the burden of proving, by a preponderance of the evidence, that the seized vehicle was subject to forfeiture because it was being used or were intended to be used to violate the Tennessee Drug Control Act, T.C.A. §39-17-401, *et seq.* See T.C.A. §40-33-210 and T.C.A. §53-11-201(d)(2). Failure to carry the burden of proof operates as a bar to any forfeiture and the property shall be immediately returned to the Claimant. T.C.A. §40-33-210(b)(1).

2. T.C.A. §53-11-451 states:

Goods subject to forfeiture---Seizure---Disposition.---

(a) The following are subject to forfeiture:

(1) All controlled substances that have been manufactured, distributed, dispensed, or acquired in violation of parts 3 and 4 of this chapter or title 39, chapter 17, part 4;

(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 (2).

4. It is noted that no conveyance is subject to forfeiture under T.C.A. §53-11-451 for "simple possession" of a controlled substance as set forth in T.C.A. §39-17-418. See T.C.A. §53-11-451 (4)(C) and T.C.A. §39-17-418.

5. Claimant argues that because she pled guilty to “possession” in her criminal case, her vehicle is not subject to forfeiture.

6. This argument is without merit. The respective burdens of proof in a criminal case and in a civil forfeiture case are different. Claimant’s plea bargain in a criminal case does not reflect the actual facts or conduct of Claimant. Plea agreements are frequently entered for expediency and resolution of the criminal matter to result in a lesser charge, less probation, less prison or jail time, and/or less restitution.

7. Clearly, T.C.A. §53-11-451 (a)(1) and (a)(4) contemplates forfeiture of vehicles 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).***

8. T.C.A. §53-11-451(a)(2) provides that “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 the Tennessee Drug Control Act are subject to forfeiture.

9. T.C.A. §39-17-419 permits an inference “from the amount of controlled substance or substances possessed by an offender, along with other relevant facts surrounding the arrest, that the controlled substance or substances were possessed with the purpose of selling or otherwise dispensing.”

10. Possession of cocaine is a Class B felony if the amount involved is .5 grams or more of any substance containing cocaine. T.C.A. § 39-17-417

(c) (1). Here, the amount of exceeded .5 grams.

11. T.C.A. §39-17-417 states as follows:

Criminal offenses and penalties. ---

(a) It is an offense for a defendant to knowingly:

- (1) Manufacture a controlled substance;
- (2) Deliver a controlled substance
- (3) Sell a controlled substance; or
- (4) Possess a controlled substance [such as cocaine]] with intent to manufacture, deliver or sell such controlled substance.

12. T.C.A. §39-17-417(g)(1) provides that subsection (a)(2)-(4) is violated [to knowingly deliver a controlled substance, sell a controlled substance, or possess a controlled substance with intent to manufacture, deliver, or sell) with respect to a Schedule II controlled substance classified as cocaine if the offense involves .5 grams or more of cocaine. As noted above, such is a Class B felony.

13. It is determined that Claimant used her automobile to transport property described in T.C.A. §53-11-451 (a)(1) or (2), thus subjecting Claimant's vehicle to forfeiture. Further, Claimant actually sold the cocaine she transported in the vehicle to an undercover agent.

14. Claimant's testimony is not deemed credible.

15. The State has met its burden of proof in this case. Given all the evidence and circumstances surrounding Claimant's arrest, it is more probable than not that the vehicle was being used in violation of the portions of the Tennessee Drug Control Act set forth above.

Accordingly, it is **ORDERED** that the subject vehicle be immediately **FORFEITED** to the seizing agency.

It is so ordered.

This Order entered and effective this 6th day of November, 2006.

Handwritten signature of Charles C. Sullivan, II in cursive script.

Charles C. Sullivan, II, Director
Administrative Procedures Division