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**OFFICE OF THE HEARING EXAMINER**

**CITY OF TACOMA**

**THE CITY OF TACOMA through its  
POLICE DEPARTMENT,**

**Respondent,**

v.

**One 2008 Toyota Prius, WA LICENSE  
#CFJ5626, VIN #JTDKB20U483331014  
and one 2003 Mercedes SL, WA LICENSE  
#CND4156, VIN #WDBSK75F63F044416,<sup>1</sup>**

**ADRIAN BROUSSARD,**

**Petitioner/Claimant.**

**FILE NO. HEX.TPD.2024-051  
(TPD NO. 24-20400828)**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER OF FORFEITURE**

**THIS MATTER** came on for hearing on November 5, 2024,<sup>2</sup> before Jeff H. Capell, Hearing Examiner, for the City of Tacoma, Washington. Keith Echterling, Deputy City Attorney, appeared at hearing for the City of Tacoma (the “City”) and its Tacoma Police Department (“TPD”). Tacoma Police Officers Nicholas Fallis, Wyatt Gustason, and Angel Castaneda, were present as City/TPD witnesses. Claimant Adrian Broussard (“Claimant” or “Broussard”) appeared *pro se*.<sup>3</sup>

At the hearing, testimony was taken and exhibits were admitted and reviewed. Based upon the evidence admitted, the Hearing Examiner makes the following:

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<sup>1</sup> On October 31, 2024, the Hearing Examiner issued an Order of Dismissal in regard to that certain Chevrolet Trailblazer, WA License #CEF4152, VIN #1GNDDT13S052353336, leaving only the 2008 Toyota Prius and 2003 Mercedes SL as the subject matter of the hearing in this matter.

<sup>2</sup> The hearing was conducted virtually using Zoom teleconferencing with both internet and telephonic access at no cost to either party.

<sup>3</sup> Participants from the hearing may be referred to on occasion hereafter by last name only for brevity and ease of reference. No disrespect is intended.

**FINDINGS OF FACT,  
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1 **FINDINGS OF FACT**

2 1. The events giving rise to the forfeiture at issue here got under way sometime in  
3 July of 2024,<sup>4</sup> when a confidential informant (CI) working with TPD gave TPD information  
4 that the Claimant, Adrian Broussard was selling controlled substances in Tacoma. Fallis met  
5 with the CI who told Fallis about Broussard’s “dealings” and “what he was able to provide.”  
6 Fallis showed a Department of Licensing photograph of Broussard to the CI for identification  
7 purposes. *Fallis Testimony.*

8 2. Fallis was given a phone number through which Broussard could be contacted.  
9 Fallis then setup a “controlled buy” with Broussard that took place in July of 2024. A  
10 controlled buy is an arranged meeting with a person believed to be selling narcotics. Controlled  
11 buys are conducted under heavy surveillance. Fallis characterized the controlled buy as a  
12 police-authorized purchase of controlled (illegal) narcotics. *Id.*

13 3. Fallis currently works for TPD in its Special Investigations Unit (SIU) which  
14 focuses on enforcement of Washington’s controlled substances laws. He has had training in  
15 dealing with narcotics enforcement at both the state and federal level. This training has  
16 included field enforcement techniques and narcotics recognition and testing training. *Id.*

17 4. Setting up controlled buys is a regular practice in narcotics law enforcement.  
18 Controlled buys are primarily used to gather information such as confirming the identity of  
19 suspected drug dealers and confirming that they are, in fact, selling controlled substances. In  
20 conformance with standard controlled buy procedures, the CI here was searched prior to the  
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<sup>4</sup> At one point in the hearing, the Examiner asked for more precise dates, times, locations, and etc. on some of the City’s testimony. The City responded that because of the involvement of a confidential informant (CI), there was a need to keep testimony more general to prevent exposing the CI to the risk of identification.

1     meetup to ensure no controlled substances, weapons or cash were in the CI’s possession prior  
2     to meeting with TPD personnel before executing on the purchase. *Id.*

3             5.     In this particular controlled buy, TPD, through its CI, had arranged to purchase  
4     cocaine from Broussard. In order to do that, TPD gave the CI a certain amount of money to  
5     make the purchase. TPD had surveillance set up for the arranged meeting place. The  
6     transaction took place under constant TPD surveillance. *Id.*

7             6.     During the controlled buy, Broussard pulled up to the location driving the 2003  
8     Mercedes SL registered in his name (the “Mercedes”), and which is the partial subject matter  
9     of this forfeiture proceeding. The CI joined Broussard inside the Mercedes. After a short time  
10    in the Mercedes, the CI exited the car and reported directly to Fallis, whereupon he turned over  
11    what was purchased to TPD—a user amount of cocaine. The CI was under constant TPD  
12    surveillance as the controlled buy was conducted. Upon reporting to Fallis, the CI positively  
13    identified the occupant of the Mercedes, who had sold him the substance presumed to be  
14    cocaine as Adrian Broussard. Two TPD surveillance officers also identified Broussard as the  
15    sole occupant of the Mercedes during the controlled buy. *Fallis Testimony; Ex. C-3.*

16            7.     Fallis kept the purchased substance solely in his possession until it could be  
17    tested. The substance the CI purchased from Broussard was then tested and produced a positive  
18    result for cocaine. *Fallis Testimony.*

19            8.     After the controlled buy, TPD officers, including Officer Fallis, engaged in  
20    surveillance of Broussard for some time leading up to September 11, 2024. During this  
21    continued surveillance, Fallis observed what he characterized as driving habits consistent with

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1 someone trying to avoid law enforcement. Fallis also observed and ascertained where he  
2 thought Broussard was living—3908 South J Street, in the city of Tacoma. Fallis also observed  
3 “several other vehicles associated with” Broussard, one of which is the 2008 Toyota Prius (the  
4 “Prius”) that is also at issue in this forfeiture proceeding. *Id.*

5 9. After this additional surveillance, TPD obtained a warrant authorizing a search of  
6 the residence at 3908 South J Street (the “Residence) and the Mercedes.<sup>5</sup> The warrant was  
7 executed on September 11, 2024. Inside the residence, TPD found several firearms, just over  
8 \$5,100 in cash, some ecstasy and “some ballistic clothing,” none of which was definitively  
9 determined to belong solely to Broussard as opposed to other occupants of the Residence.  
10 Nothing of note was found in the search of the Mercedes. TPD seized the Mercedes because it  
11 had been used to facilitate the controlled buy in July of 2024. *Id.*

12 10. After conducting the search of the Residence and the Mercedes, Fallis contacted  
13 and then interviewed Broussard after taking him to the “Tacoma Police Department.”<sup>6</sup> During  
14 that interview, Broussard indicated that there were controlled substances in the Prius. As a  
15 result of this admission, TPD obtained an amendment to the existing warrant to search the  
16 Prius. Fallis did not participate in the search of the Prius. *Fallis Testimony.*

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20 <sup>5</sup> The City did not present copies of any warrants as evidence at the hearing. Broussard argued that the forfeiture  
21 proceeding should be dismissed, and his vehicles returned because the warrants were invalid and because he never  
saw a warrant for the Prius. The Hearing Examiner explained that he did not have authority to rule on the  
constitutional validity of the criminal search warrant(s) that gave rise in part to this forfeiture proceeding.  
*Exendine v. City of Sammamish*, 127 Wn. App. 574, 576, 113 P.3d 494, 495 (2005).

<sup>6</sup> Fallis testified that Broussard was read his *Miranda* rights and chose to waive them. It appears from testimony  
that he was under custodial arrest at that time. Fallis testified that Broussard was first contacted during the  
execution of the original warrant behind the wheel of the Prius after he had exited the Residence once TPD  
arrived.

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1           11. Officer Gustason<sup>7</sup> was present at the Residence when the initial warrant was  
2 executed and then for the execution of the amended scope of the warrant which included the  
3 search of the Prius. *Gustason Testimony.*

4           12. Gustason assisted in executing the search of the Prius. He identified the Prius as  
5 shown in Exhibit R-5 as the vehicle he searched. He, and the other officers he assisted found a  
6 green Crown Royal bag in the center console of the Prius which contained a digital scale of the  
7 type commonly used in weighing quantities of drugs for sale, along with bags of what appeared  
8 to be powder cocaine, crack cocaine, fentanyl pills and ecstasy in amounts exceeding the  
9 typical user amounts. The scale had what appeared to be powdered drug residue on it.

10 *Gustason Testimony; Exs. R-6~R-9.*

11           13. Officer Castaneda was present at the execution of the warrant at the Residence  
12 and then had duties afterward as the evidence officer for the search. An evidence officer  
13 documents any evidence found, takes custody of it, and then eventually weighs, tests and  
14 packages the evidence found. As the evidence officer here, Castaneda had transferred to his  
15 possession all the items described in Finding of Fact 12. He then separated out the different  
16 substances and transported them to TPD lab facilities for testing and then packaging and  
17 storage. *Castaneda Testimony; Exs. R-6~R-9.*

18           14. Castaneda had two other officers assist him in testing and weighing the substances  
19 found in the Prius (the “Substances”), but he was the primary officer conducting the testing and  
20 weighing. Castaneda typically weighs suspected narcotics first, and then tests and finally seals  
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<sup>7</sup> All TPD officers who testified at the hearing have similar, significant training in narcotics enforcement, recognition and testing.

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1 them. He followed that procedure with the Substances. He did the testing of all the Substances  
2 and the two assisting officers helped with weighing and sealing. *Castaneda Testimony.*

3 15. Each presumed substance has its own specific procedure and test, which  
4 Castaneda followed and used respectively. The Substances included positive-tested cocaine,  
5 positive-tested crack cocaine, positive-tested fentanyl, and positive-tested ecstasy. Castaneda  
6 testified that the amounts of each of the Substances were more consistent with dealer amounts  
7 than with personal use amounts. *Id.*

8 16. Broussard testified on his own behalf. His “testimony” consisted more of legal  
9 challenges than any presentation of facts. As mentioned above, he challenged the validity of  
10 the search warrant, in particular the amendment that authorized the search of the Prius. He  
11 mentioned the Plain View Doctrine, but there was no application of the Plain View Doctrine on  
12 any facts presented. TPD did not rely on the Plain View Doctrine for any warrantless search  
13 here. Broussard mentioned the 8th Amendment and stated that the seizure and forfeiture here  
14 amounts to an excessive penalty but did not offer any evidence to support his contention.<sup>8</sup>

15 *Broussard Testimony.*

16 17. Broussard also argued that he could limit the scope of consent to a search and he  
17 never consented to a search of the Prius. The searches conducted here were not based on  
18 consent, but rather on issued warrants. *Id.*

19 18. Broussard argued that the Substances were only for his personal use. *Id.*

20 19. Any Conclusion of Law more properly deemed to be a Finding of Fact is hereby  
21 adopted as such.

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<sup>8</sup> Broussard mentioned the 14th Amendment as the avenue for application of the 8th Amendment to this proceeding.

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1 Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

2 **CONCLUSIONS OF LAW**

3 1. This matter was brought pursuant to the provisions of the Revised Code of  
4 Washington (“RCW”) Chapter 69.50, the Uniform Controlled Substances Act (“UCSA”), and  
5 RCW 34.05, the Administrative Procedures Act (the “APA”), before the duly appointed  
6 Hearing Examiner of the City of Tacoma, serving as the designee of the Chief Law  
7 Enforcement Officer of the City.

8 2. The Hearing Examiner has jurisdiction over this matter pursuant to RCW  
9 69.50.505, RCW Chapter 34.05, and his current appointment as hearing officer from the  
10 Tacoma Chief of Police dated April 11, 2024.

11 3. The seizing law enforcement agency has the burden of proof in forfeiture  
12 proceedings under the UCSA (RCW 69.50) to establish, by a preponderance of the evidence,  
13 that the property seized is subject to forfeiture under the provisions of the statute. *RCW*  
14 *69.50.505(5)*. Preponderance of the evidence means that the trier of fact is convinced that it is  
15 more probable than not that the fact at issue is true.<sup>9</sup> The seizing agency “[m]ay meet its  
16 burden through direct or circumstantial evidence.”<sup>10</sup> The preponderance of the evidence  
17 standard is at the low end of the spectrum for burden-of-proof evidentiary standards in the U.S.  
18 legal system.<sup>11</sup>

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<sup>9</sup> *Spivey v. City of Bellevue*, 187 Wn.2d 716, 733, 389 P.3d 504, 512 (2017); *State v. Paul*, 64 Wn. App. 801, 807, 828 P.2d 594 (1992).

<sup>10</sup> *Sam v. Okanogan County Sheriff's Office*, 136 Wn. App. 220, 229, 148 P.3d 1086 (2006).

<sup>11</sup> *In re Custody of C.C.M.*, 149 Wn. App. 184, 202-203, 202 P.3d 971, 980 (2009); *Mansour v. King County*, 131 Wn. App. 255, 266, 128 P.3d 1241, 1246-1247 (2006).

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1           4. The law requires that decisions from adjudicative tribunals rest upon evidence.<sup>12</sup>  
2 Evidence is used to establish facts. “Proof of the fact[s] to be established may be by direct or  
3 circumstantial evidence.”<sup>13</sup> The hearing examiner weighs the evidence and makes credibility  
4 determinations where evidence conflicts.<sup>14</sup>

5           5. In this matter, TPD stated that it is relying on RCW 69.50.505(1)(d) as the  
6 statutory authority for seeking forfeiture of the Mercedes and the Prius. RCW 69.50.505(1)(d)  
7 provides, in relevant part the following:

8           (1) The following are subject to seizure and forfeiture and no property right exists  
9 in them:...

10           (d) All conveyances, including aircraft, vehicles, or vessels, which  
11 are used, or intended for use, in any manner to facilitate the sale,  
12 delivery, or receipt of property described in (a) or (b)<sup>15</sup> of this  
13 subsection, except that:

14           (i) No conveyance used by any person as a common carrier in the  
15 transaction of business as a common carrier is subject to  
16 forfeiture under this section unless it appears that the owner or  
17 other person in charge of the conveyance is a consenting party or  
18 privy to a violation of this chapter or chapter **69.41** or **69.52**  
19 RCW;

20           (ii) No conveyance is subject to forfeiture under this section by  
21 reason of any act or omission established by the owner thereof to  
22 have been committed or omitted without the owner's knowledge  
23 or consent;

          (iii) No conveyance is subject to forfeiture under this section if  
used in the receipt of only an amount of cannabis for which  
possession constitutes a misdemeanor under RCW **69.50.4014**;

          (iv) 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; and

<sup>12</sup> *Lamphiear v. Skagit Corp.*, 6 Wn. App. 350, 356-357, 493 P.2d 1018, 1022-1023 (1972).

<sup>13</sup> *Lamphiear*, 6 Wn. App. at 356, citing *Arnold v. Sanstol*, 43 Wn.2d 94, 260 P.2d 327 (1953); see also *GLEPCO, LLC v. Reinstra*, 175 Wn. App. 545, 563, 307 P.3d 744, 752-753 (2013).

<sup>14</sup> *City of Sunnyside v. Gonzalez*, 188 Wn.2d 600, 614-615, 398 P.3d 1078 (2017).

<sup>15</sup> Subsections (a) and (b) include “All controlled substances” and “All raw material” and etc. used in the controlled substances trade.

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1 (v) When the owner of a conveyance has been arrested under this  
2 chapter or chapter 69.41 or 69.52 RCW the conveyance in which  
3 the person is arrested may not be subject to forfeiture unless it is  
seized or process is issued for its seizure within ten days of the  
owner's arrest;

4 The City's legal counsel argued specifically that the City had shown by a preponderance that  
5 the two vehicles were used, or intended for use, in any manner to facilitate the sale, delivery, or  
6 receipt of controlled substances. There was no evidence presented at the hearing that any of the  
7 exceptions/defenses at RCW 69.50.505(1)(d)(i)~(v) applied here.

8 6. The City's evidence did show by a preponderance that Broussard used the  
9 Mercedes to deliver and sell cocaine to the CI during the controlled buy that took place in July  
10 of 2024. The Mercedes was used to facilitate the delivery and sale of a controlled substance  
11 tested positive as cocaine as set forth in RCW 69.50.505(1)(d).

12 7. The City's evidence also showed that the Prius was used in violation of RCW  
13 69.50.505(1)(d) in that the Substances had been received into the Prius and stored there. The  
14 presence of the scale in the Prius indicates that it is more likely than not that the Prius was also  
15 used to facilitate the delivery and sale of the Substances, just as was the Mercedes in July of  
16 2024.

17 8. The Examiner does not find Broussard's contention that the Substances were only  
18 for his personal use to be credible. Broussard's legal argument citing to the Plain View  
19 Doctrine and consent are unavailing because neither plain view nor consent were the basis for  
20 the searches conducted here. Broussard's reference to the 8th Amendment with an unsupported  
21 claim that the forfeitures here are excessive penalties needed some factual support to be

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1 grounds for return of the vehicles. There was none.

2 9. As already referenced above, the Examiner cannot invalidate the warrants that  
3 were the basis for the searches here.<sup>16</sup> Given that, a challenge to the warrants cannot invalidate  
4 the forfeitures here.

5 10. Any Finding of Fact more properly deemed or considered a Conclusion of Law is  
6 hereby adopted as such.

7 Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing  
8 Examiner enters the following:

9 **ORDER OF FORFEITURE**

10 It is hereby ORDERED as follows:

- 11 1. Any claim of right, title, or ownership, or right to possession of the  
12 subject 2003 Mercedes SL, WA LICENSE #CND4156, VIN  
13 #WDBSK75F63F044416 registered to Claimant Broussard, seized  
14 by officers of the Tacoma Police Department on or about  
15 September 11, 2024, claimed or asserted by Claimant Broussard is  
16 hereby forfeited pursuant to the provisions of RCW Chapter 69.50,  
17 Uniform Controlled Substances Act, and, specifically, RCW  
18 Chapter 69.50.505(1)(d) thereof; and
- 19 2. The City of Tacoma, Washington, is hereby entitled to ownership  
20 and the exclusive right to possession of the subject 2003 Mercedes  
21 SL just referenced, for uses and purposes consistent with RCW  
Chapter 69.50, Uniform Controlled Substances Act.
3. Any claim of right, title, or ownership, or right to possession of the  
subject 2008 Toyota Prius, WA LICENSE #CFJ5626, VIN  
#JTDKB20U483331014 registered to Claimant Broussard, seized  
by officers of the Tacoma Police Department on or about  
September 11, 2024, claimed or asserted by Claimant Broussard is  
hereby forfeited pursuant to the provisions of RCW Chapter 69.50,  
Uniform Controlled Substances Act, and, specifically, RCW  
Chapter 69.50.505(1)(d) thereof; and

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<sup>16</sup> *Exendine v. City of Sammamish*, 127 Wn. App. 574, 576, 113 P.3d 494, 495 (2005).

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1  
2 4. The City of Tacoma, Washington, is hereby entitled to ownership  
3 and the exclusive right to possession of the subject 2008 Toyota  
4 Prius just referenced, for uses and purposes consistent with RCW  
5 Chapter 69.50, Uniform Controlled Substances Act.

6 **SO ORDERED** this 3rd day of December, 2024.

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9 **JEFF H. CAPELL, Hearing Examiner**

10 **NOTICE**

11 A petition for reconsideration of this Order may be filed, pursuant to Section 34.05.470 RCW.  
12 Further, this Order may be appealed in accordance with Part V of Chapter 34.05 RCW,  
13 Administrative Procedures Act.  
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