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OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

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

Respondent,

v.

**\$1,615 US CURRENCY; 2002 HONDA
ACCORD, LICENSE #CJM1677, VIN#
1HGCG567X2A166387,**

VENUS SMITH,

Petitioner/Claimant.

**FILE NO. HEX.TPD.2023-015
(TPD NO. 23-16502072)**

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

12 **THIS MATTER** came on for hearing on February 11, 2025,¹ before Jeff H. Capell,
13 Hearing Examiner, for the City of Tacoma, Washington.² Keith Echterling, Deputy City
14 Attorney, appeared at hearing for the City of Tacoma (the “City”) and its Tacoma Police
15 Department (“TPD”). Tacoma Police Sgt. Kenneth P. Smith and Officer Kevin Hanley were
16 present as City/TPD witnesses. Claimant Venus Smith (“Claimant” or “Smith”) appeared
17 *pro se*.³

18 At the hearing, testimony was taken and exhibits were admitted and reviewed. Based
19

20 _____
21 ¹ The hearing was conducted remotely using Zoom teleconferencing with both internet and telephonic access at no cost to either party. Claimant Smith was only able to be present by telephone audio but stated she wanted to proceed under those circumstances.

² The hearing was held after multiple continuances for multiple reasons, among which was the desire for related criminal charges to be resolved first.

³ 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. City witness Smith will be referred to as “Sgt. Smith” while Claimant Venus Smith will be referred to as “Claimant Smith” or by her full name.

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1 upon the evidence admitted, the Hearing Examiner makes the following:

2 **FINDINGS OF FACT**

3 1. Sgt. Kenneth P. Smith currently supervises TPD’s Special Investigations Unit
4 (“SIU” for short, also referred to during the hearing as the Special Investigations Division and
5 SID). SIU primarily focuses on narcotics enforcement in the city of Tacoma. Sgt. Smith has
6 worked in law enforcement since 1996 for several jurisdictions, but he has worked for the City
7 of Tacoma/TPD since 2003. He has training in controlled substances recognition and testing, as
8 well as significant actual experience in controlled substances enforcement. *Sgt. Smith*

9 *Testimony.*

10 2. On June 14, 2023, Sgt. Smith was working surveillance in the vicinity of
11 People’s Park in the city of Tacoma. People’s Park is located at a street address of 900 M.L.K.
12 Jr. Way, Tacoma, WA 98405, and it is known as an “open-air” drug trafficking area in the city
13 of Tacoma. The western edge of People’s Park runs along South L Street between South 9th
14 Street, to the north, and South 10th Street, to the south. *Id.*

15 3. Sgt. Smith was conducting his surveillance around 6:00 pm from an unmarked
16 vehicle parked along South L Street between South 9th Street and South 10th Street. During
17 that time, Sgt. Smith noticed a 2002 Honda Accord, Washington license number CJM1677 (the
18 “Honda”) parked in the 900 block of South L Street. Sgt. Smith observed the Claimant Venus
19 Smith sitting in the driver’s seat of the Honda as the sole occupant. *Id.*

20 4. Over the course of several minutes, Sgt. Smith observed four different people
21 approach the Honda at the driver’s side where the Claimant was seated, bend down, reach

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1 inside the Honda briefly, and then leave. One of these four people approached the Honda while
2 the immediately prior person was still interacting with the Claimant and so they waited for the
3 prior interaction to conclude and then approached and followed the same pattern of brief
4 interaction with the Claimant in her Honda. *Id.*

5 5. After Sgt. Smith observed the aforementioned interactions, which he recognized
6 from his training and experience as being typical of transactions in controlled substances, he
7 called in TPD officers Hanley and Davis to arrest the Claimant who was still the sole occupant
8 of the Honda. *Id.*

9 6. The Honda was impounded during the arrest. After it was impounded, Sgt. Smith
10 obtained a warrant to search the Honda incident to the Claimant Smith's arrest. In the Honda,
11 TPD found seven sandwich bags of the type used in controlled substances transactions. One of
12 the bags had a white residue in it. TPD found a .5 gram rock-like substance that appeared to be
13 crack cocaine which later tested positive for crack cocaine. *Id.*; *Hanley Testimony*; *Ex. R-8, Ex.*
14 *R-9.*

15 7. A razor blade with white residue on it was found wedged into the center console
16 of the Honda. Sgt. Smith recognized the blade as a type used in cutting pencil-eraser sized
17 portions of crack cocaine for sale. He testified that a rock of this size sells for \$20 dollars on
18 the street in Tacoma. *Id.*

19 8. There was a cell phone also on the center console which had white residue on its
20 glass screen. Sgt. Smith testified that glass cell phone screens are often used as a makeshift
21 cutting surface for transactions in controlled substances. TPD also found a digital scale of the

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1 type used in weighing out controlled substances for sale in the Honda's center console. *Id.*

2 9. TPD also found a purse/bag in the Honda with cash in it consisting mostly of
3 unorganized twenty-dollar (\$20) bills. Another Gucci purse was found on the Honda's
4 passenger seat again with unorganized bills in it. Sgt. Smith testified that the disorganized
5 nature of the money in the two bags/purses indicated quick transactions having taken place. On
6 cross examination from the Claimant, Sgt. Smith answered that none of the money found in the
7 Honda consisted of "marked bills." He also testified, again on cross examination, that none of
8 the transactions he surveilled with the Claimant were part of a controlled buy. *Sgt. Smith*
9 *Testimony; Ex. R-10, Ex. R-11.*

10 10. On June 14, 2023, TPD Officer Hanley was assigned to assist surveillance
11 operations in the area of People's Park in a marked TPD patrol car. Hanley was in uniform as a
12 TPD officer. Hanley arrested Smith, based on Sgt. Smith's prior observations at around
13 6:30 pm. She was in the Honda at the time of the arrest. *Hanley Testimony.*

14 11. Hanley directly observed the small, white, rock-like object found on the driver's
15 seat of the Honda below Smith's leg. Hanley then took Claimant Smith to jail, after securing
16 the Honda. At the jail, Hanley performed a cursory search of Claimant Smith, but she was later
17 searched "more in depth" by appropriate jail personnel. During that more in-depth search, 24.3
18 grams of what appeared to be methamphetamine and 18.7 grams of what appeared to be crack
19 cocaine were found concealed on Claimant Smith's person (hereafter collectively the
20 "Substances"). *Id.*

21 12. Hanley took possession of the Substances from jail personnel after they were

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1 found on Claimant Smith’s person. Hanley has been trained to field test narcotics and has
2 experience doing so. He tested the Substances, as found on Claimant Smith’s person, and they
3 tested positive for methamphetamine and crack cocaine. *Id.*

4 13. Claimant Smith testified that the controlled Substances found on her person and in
5 her car were for her own personal use. This testimony is directly contradicted by Claimant
6 Smith having been convicted of “Unlawful Possession of a Controlled Substance with Intent to
7 Distribute” arising from the events of June 14, 2023. Claimant Smith presented evidence of her
8 having legitimate income, and she testified that she purchased the Honda with that money.
9 *Claimant Smith Testimony; Ex. R-5, Ex. C-1~C-4.*

10 14. Any Conclusion of Law more properly deemed to be a Finding of Fact is hereby
11 adopted as such.

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

13 **CONCLUSIONS OF LAW**

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

19 2. The Hearing Examiner has jurisdiction over this matter pursuant to RCW
20 69.50.505, and RCW Chapter 34.05, and his appointment as hearing officer from the Tacoma
21 Chief of Police dated April 11, 2024.

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1 3. The seizing law enforcement agency has the burden of proof in forfeiture
2 proceedings under the UCSA (RCW 69.50) to establish, by a preponderance of the evidence,
3 that the property seized is subject to forfeiture under the provisions of the statute. *RCW*
4 *69.50.505(5)*. Preponderance of the evidence means that the trier of fact is convinced that it is
5 more probable than not that the fact at issue is true.⁴ The seizing agency “[m]ay meet its
6 burden through direct or circumstantial evidence.”⁵ The preponderance of the evidence
7 standard is at the low end of the spectrum for burden-of-proof evidentiary standards in the U.S.
8 legal system.⁶

9 4. The law requires that decisions from adjudicative tribunals rest upon evidence.⁷
10 Evidence is used to establish facts. “Proof of the fact[s] to be established may be by direct or
11 circumstantial evidence.”⁸ The hearing examiner weighs the evidence and makes credibility
12 determinations where evidence conflicts.⁹

13 5. In this matter, TPD stated that it is relying on RCW 69.50.505(1)(d) and RCW
14 69.50.505(1)(g) as statutory authority for seeking forfeiture of the Honda Accord. RCW
15 69.50.505(1)(d) and RCW 69.50.505(1)(g) provide, in relevant part the following:

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

18 (d) All conveyances, including aircraft, vehicles, or vessels, which
19 are used, or intended for use, in any manner to facilitate the sale,

20 ⁴ *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).

21 ⁵ *Sam v. Okanogan County Sheriff's Office*, 136 Wn. App. 220, 229, 148 P.3d 1086 (2006).

⁶ *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).

⁷ *Lamphiear v. Skagit Corp.*, 6 Wn. App. 350, 356-357, 493 P.2d 1018, 1022-1023 (1972).

⁸ *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).

⁹ *City of Sunnyside v. Gonzalez*, 188 Wn.2d 600, 614~615, 398 P.3d 1078 (2017).

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1 delivery, or receipt of property described in (a) or (b)¹⁰ of this
2 subsection, except that:

3 (i) No conveyance used by any person as a common carrier in the
4 transaction of business as a common carrier is subject to
5 forfeiture under this section unless it appears that the owner or
6 other person in charge of the conveyance is a consenting party or
7 privy to a violation of this chapter or chapter **69.41** or **69.52**
8 RCW;

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

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

16 (iv) A forfeiture of a conveyance encumbered by a bona fide
17 security interest is subject to the interest of the secured party if
18 the secured party neither had knowledge of nor consented to the
19 act or omission; and

20 (v) When the owner of a conveyance has been arrested under this
21 chapter or chapter **69.41** or **69.52** RCW the conveyance in which
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;

* * *

(g) All moneys, negotiable instruments, securities, or other
tangible or intangible property of value furnished or intended to
be furnished by any person in exchange for a controlled
substance in violation of this chapter or chapter **69.41** or **69.52**
RCW, all tangible or intangible personal property, proceeds, or
assets acquired in whole or in part with proceeds traceable to an
exchange or series of exchanges in violation of this chapter or
chapter **69.41** or **69.52** RCW, and all moneys, negotiable
instruments, and securities used or intended to be used to
facilitate any violation of this chapter or chapter **69.41** or **69.52**
RCW. A forfeiture of money, negotiable instruments, securities,
or other tangible or intangible property encumbered by a bona
fide security interest is subject to the interest of the secured party
if, at the time the security interest was created, the secured party
neither had knowledge of nor consented to the act or omission.

¹⁰ 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 No personal property may be forfeited under this subsection
2 (1)(g), to the extent of the interest of an owner, by reason of any
3 act or omission which that owner establishes was committed or
omitted without the owner's knowledge or consent;

4 6. The City's evidence did show by a preponderance that Claimant Smith used the
5 Honda to deliver and sell methamphetamine and crack cocaine on June 14, 2023. The Honda
6 was used to facilitate the delivery and sale of controlled substances (as tested positive)¹¹ under
7 RCW 69.50.505(1)(d). The money used to purchase the Honda and the Honda's purchase itself
8 is not at issue in this appeal. Nothing in applicable laws requires forfeitures of money or
9 automobiles to be based on controlled buys or involve the use of marked bills.

10 7. The City's evidence showed further that the Honda Accord was used in violation
11 of RCW 69.50.505(1)(d) in that the controlled Substances had been received into the Honda
12 and were stored there or present there on Claimant Smith's person while unlawful transactions
13 were conducted. The presence of the scale, baggies and razor in the Honda, together with the
14 controlled Substances on the seat and on Claimant Smith's person, further prove that it is more
15 likely than not that the Honda was used to facilitate the delivery and sale of the Substances.

16 8. The City's evidence also shows by a preponderance that the money seized was
17 used both to facilitate transactions in controlled substances and also was furnished in exchange
18 for controlled substances.¹²

19 9. The Examiner cannot conclude that the Substances were only for Claimant
20 Smith's personal use given the evidence actual transactions here.¹³

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¹¹ Findings of Fact 1~5 and 12.

¹² Findings of Fact 1~5, 7, 9.

¹³ Findings of Fact 1~5, 13.

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1 referenced, for uses and purposes consistent with RCW Chapter
2 69.50, Uniform Controlled Substances Act.

3 **SO ORDERED** this 20th day of February, 2025.

4 
5 _____
6 **JEFF H. CAPELL, Hearing Examiner**

7 **NOTICE**

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

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