IN THE COURT OF APPEALS OF TENNESSEE, WESTERN SECTION AT NASHVILLE

JOE IVA MURPHY,	)	Davidson County Chancery Court Rule No. 94-725-III
Plaintiff/Appellant.	)	
VS.	)	C.A. No. 01A01-9507-CH-00322
STATE OF TENNESSEE DEPARTMENT OF SAFETY,	)	
Defendant/Appellee.	)	

FILED

February 21, 1996

Cecil W. Crowson
Appellate Court Clerk

From the Chancery Court of Davidson County at Nashville.
Honorable Robert S. Brandt, Chancellor

Lionel R. Barrett, Jr., Nashville, Tennessee
Attorney for Plaintiff/Appellant.

Charles W. Burson, Attorney General and Reporter
Rebecca Lyford, Counsel to the State
Attorney for Defendant/Appellee.

OPINION FILED:

AFFIRMED

FARMER, J.

HIGHERS, J.: (Concurs)
WILLIAMS, Sp. J. : (Concurs)

Appellant, Joe Iva Murphy, appeals from the judgment of the Chancery Court for Davidson County, affirming the decision of the Tennessee Department of Safety ("Department") that Appellant's 1989 Chevrolet Astro van and $1,589 be forfeited under the Tennessee Drug Control Act.

The undisputed facts in this case, as set forth in the findings of the Administrative Law Judge, are as follows:

> Around 10:30 a.m. on the morning of February 1, 1993, Sergeant James McWright of the 20th Judicial District Drug Task Force, Metropolitan Police Department, was contacted by a confidential informant, who provided information to the effect that two individuals had arrived in the Nashville area and were selling cocaine. The informant gave the following specific details as to the identity and description of these individuals: they were black males; one was named "Joe" and the other was named "Shonee" or "Shanea"; they were from California; they were residing in a couple of apartments at 1039 Third Avenue South in Nashville, Davidson County, at the time; they were driving a late model, two-tone gray or silver Chevy Astro van; the van bore California license plates; they were storing cocaine underneath the armrest in the back left side panel of the van; and the confidential informant knew of the specific location of the cocaine within the van, because the informant had seen the cocaine in that location within the van when the cocaine had been shown to him and offered to him for purchase by one of the individuals so described.
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> Sergeant McWright testified at the hearing on this matter that this particular confidential informant had proven reliable in the past by virtue of the fact that the informant had previously provided information to McWright that resulted in the arrest and conviction of two individuals from California. These individuals had hidden two kilos of cocaine under a sink at a Best Western Motel. Acting upon the information provided by this confidential informant, officers executed a search warrant and found and seized the two kilos of cocaine that were located as specifically described by the informant in that previous incident.
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> Based upon the knowledge obtained from the confidential informant on the morning of February 1, 1993, Officer David Grisham of the 20th Judicial District Drug Task Force was dispatched to South Third Street off Murfreesboro Road in order to locate the van that the informant had described. A van meeting the informant's description was not there, but one fitting the informant's description arrived at that location 10-15 minutes later, with a black male driving and a black female and child as passengers. The officer observed a two-tone Silver Chevy Astro van with California license plates arriving at the same address that the informant stated the individuals from California were staying. Officer Grisham radioed this information back to the office.
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> Upon receiving the information from Officer Grisham that the van described by the informant had been located, Sergeant McWright and Officer Ed Rigsby of the Davidson County Drug Task Force, left the office to join Officer Grisham in his surveillance. However,

within five minutes of the van's arrival at the 1039 Third Avenue South apartment location, the van again left, and Officer Grisham followed it. The van proceeded out Eighth Avenue, down Franklin Road to Harding Place and continued until reaching the K-Mart at Nolensville Road and Harding Place, where the van stopped. The occupants of the van went into the store for about twenty minutes. While the occupants of the vehicle were inside the store, Sergeant McWright, who had arrived at that location, radioed the airport detail and requested that a drug canine be sent to the Nolensville Road K-Mart parking lot. The black male, female and child returned to the van and began to leave the location. The officers who were following the van blocked it from leaving and requested that the black male exit the van. Sergeant McWright requested permission to search the van and was refused by the black male. Within 5 minutes, the drug canine had arrived. The drug canine was put into the front area of the van and gave no alert. When the dog was then placed in the side door of the van, it went straight across the back seat of the van to the left rear armrest area, where the dog alerted by scratching, biting and chewing, thereby indicating that the scent of drugs had been detected. This was the specific location that the confidential informant had indicated that morning that cocaine would be found. Officer McWright testified that this particular dog had been trained to specifically detect marijuana, cocaine and dilaudid. The dog was then removed from the van.

Sergeant McWright entered the side door of the van and proceed to the left rear armrest. He opened up the folding top of the armrest and looked inside, spotting two bolts which bolted it into place. Another officer who was searching the front of the van located in the right front door panel pocket a 3/8" ratchet with a 1/2" or 9/16" deep well socket, the only such tools found within the van. These tools fit the bolts inside the armrest and Sergeant McWright used these tools to remove the armrest bolts. When the armrest was removed, Sergeant McWright looked down into the side panel of the van and spotted plastic bags containing approximately 2.5 ounces of crack cocaine and a semi-automatic chrome-plated pistol. Upon finding the cocaine and the pistol, the black male, who had been identified at this point as Joe Iva Murphy, the Claimant, was placed under arrest and advised of his rights. Officers then patted down Mr. Murphy for weapons and removed a large bulge from one sock. The bulge was a bundle of bills totalling $1,000.00. Additionally, the Claimant was carrying $589.00 in cash in his wallet. There was no testimony at the hearing as to where Mr. Murphy obtained these monies. The subject $1,589.00 in cash and the van were seized, and the Claimant subsequently field a timely claim for return of the money and the van.

After Sergeant McWright had located the cocaine and weapon, the cocaine was removed from the side panel area and photographed by Officer Ed Rigsby, who was wearing rubber gloves. Officer Grisham, who testified that he at no point had handled the cocaine, removed from the Claimant the money that he was carrying and placed it in the front glove box of the van. The drug canine was then placed in the front part of the van, where the dog alerted on the glove box, indicating that it detected the scent of drugs on the money within the glove box.

When Mr. Murphy was placed under arrest, he indicated to Officer Grisham that he was unemployed, that his permanent address was Compton, California (near L.A.) and that his nearest living relative was in Compton, California.

> The cocaine seized from the van was submitted to the T.B.I. lab for analysis, and tested positively as cocaine base.
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> Officers then went back to the apartments at 1039 Third Avenue South were the confidential informant had indicated the two black males from California were staying. Officer Grisham testified that this area is known by police officers to be an area frequented by drug dealers and known for drug activity. Both apartments were registered in the names of two females blacks. One of the apartments was registered in the name of a Ms. Austin, who was determined to be the black female who had been a passenger in the van that morning. The other apartment was registered in the name of another black female. The first apartment was searched with consent without result. Officers went to the second apartment and requested consent to search from the female registered occupant, which was obtained. A black male, who came to the door of the second apartment, originally identified himself with a false name, but upon more searching inquiry, finally identified himself as "Shanea" and stated that he had come from California with the Claimant, Joe Iva Murphy. A search of the apartment yielded an additional 12.6 grams of what was verified by T.B.I. lab analysis to be crack cocaine.

Appellant filed a petition with the Department to have the seized van and cash returned. Based upon the foregoing facts, the Department rejected Appellant's argument that the warrantless search of his vehicle and person violated his rights under both the Fourth Amendment to the United States Constitution and Article I, Section 7 of the Constitution of the State of Tennessee. The Department noted that Appellant had advanced this argument in the related criminal proceeding pursuant to a motion to suppress, which was ultimately denied. The Department's order also indicates that, at the beginning of the hearing on the petition, Appellant moved to suppress the evidence seized, propounding the same theory. The Department concluded that the officers had probable cause both to arrest Appellant and to search the van for cocaine. It reasoned that the information provided by the confidential informant led to the arresting officer's locating of the van, which was as described by the informant. Too, the driver of the van was identified as "Joe," which the informant had indicated as being the name of one of the two individuals who had come from California to sell cocaine. The Department found the seizure of the approximately $1,600 incident to a lawful arrest and the warrantless search of the van justified under the vehicle exception to the warrant requirement under the Fourth Amendment. The Department concluded that the items in question were, therefore, subject to forfeiture.

Appellant petitioned for review in accordance with T.C.A. § 4-5-322 of the Uniform Administrative Procedures Act. Upon review, the chancery court found substantial and material evidence to support the Department's decision and dismissed the petition.

On appeal, Appellant's sole issue concerns whether the warrantless search of the vehicle violated his federal and state constitutional rights. As with any review of this type, we are limited to determining whether the rights of Appellant have been prejudiced because the administrative findings and conclusions are:

> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the agency;
> (3) Made upon unlawful procedure;
> (4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
> (5) Unsupported by evidence which is both substantial and material in the light of the entire record.

See T.C.A. § 4-5-322(h).

State v. Murphy, No. 01C01-9406-CR-00210 (Tenn. Cr. App. May 11, 1995), appeal denied, is the separate criminal action arising from this matter. After denial of his motion to suppress in the criminal proceeding, Appellant pled guilty to the charges for which he was indicted, while reserving the right to appeal a certified question of law in accordance with Rule 37(b)(2)(i) T.R.Cr.P.[1] ***Murphy***, slip op. at 2. In a footnote, ***Murphy*** notes:

> [T]he trial court filed a lengthy memorandum supporting his denial of appellant's motion to suppress. . . . The trial judge filed an amended judgment order with this court stating that the district attorney and the trial court agreed with appellant that the question was dispositive in this case and that the issue had been reserved in conjunction with appellant's guilty pleas. The amended order does not specifically define the issue as reserved by the appellant. However, the lengthy memorandum prepared by the trial court sufficiently defines the issue to allow a review of the merits.

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[1] **(b) When an Appeal Lies**. An appeal lies from any order or judgment in a criminal proceeding where the law provides for such appeal, and from any judgment of conviction:

. . . .

(2) upon a plea of guilty or nolo contendere if:

(i) defendant entered into a plea agreement under Rule 11(e) but explicitly reserved with the consent of the State and of the court the right to appeal a certified question of law that is dispositive of the case;

Murphy, slip op. at 2 n.1. According to ***Murphy,*** the issue before it was "whether the warrantless search of appellant's vehicle was unreasonable and in violation of the Fourth Amendment to the United States Constitution and Article I, Section 7 of the Constitution of the State of Tennessee." ***Id.*** at 2-3.

Upon consideration of the issue, ***Murphy*** concluded that "the record supports a conclusion that both probable cause and an actual exigency existed." ***Id.*** at 7. ***Murphy*** reasoned:

> Probable cause is not a technical calculation, but a factual and practical consideration of everyday life upon which "reasonable and prudent [people], not legal technicians, act." ***State v. Melson***, 638 S.W.2d 342, 351 (Tenn.1982) (citations omitted). On these facts, the police had probable cause to believe that the two-tone gray Astro van with California plates, which they followed from the address given them by the confidential informant, contained contraband.
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> The police were faced with a situation which required immediate action. The vehicle was parked in a public lot. Although appellant was under arrest, he was accompanied by a woman who could drive the car away. Moreover, the police had reason to believe that two men were involved in the sale of drugs. If the vehicle were left unattended in the lot, any evidence of illegal activity could be removed by either the woman passenger or by the unapprehended accomplice.
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> If the police have probable cause to believe that an automobile contains contraband, they may either seize the car and then obtain a search warrant or they may search it immediately. The Fourth Amendment authorizes either action. ***Chambers v. Maroney***, 399 U.S. 42, 52 (1970). . . .
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> The otherwise reasonable search is not invalidated by the fact that the police could have obtained a warrant earlier. . . .
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> Since the police had probable cause to believe the van contained illegal drugs and since there were exigent circumstances which required immediate action, the police could either impound the car and search it after a warrant issued or they could search it at once. ***Chambers***, 399 U.S. at 52. Their decision to search it immediately was reasonable under the circumstances and violated neither the Fourth Amendment to the United States Constitution or Article I, Section 7 of the Tennessee Constitution. The trial court did not err in denying appellant's motion to suppress the results of that search.

Id. at 8-10.

In this case, we are confronted with the issue of whether or not the Department's decision upholding the forfeiture of Appellant's property is within the confines of T.C.A. § 4-5-

322(h). The only argument made on appeal is that which has previously been addressed by the court in ***State v. Murphy***. Ordinarily, a plea of guilty is not considered conclusive on the issues in a subsequent civil action. ***Grange Mut. Casu. Co. v. Walker***, 652 S.W.2d 908 (Tenn. App. 1983). A criminal court conviction, however, may operate as an estoppel in subsequent civil litigation "where the issues have been determined in the previous criminal prosecution." ***Grange Mutual***, 652 S.W.2d at 910. In this particular case, we have a plea of guilty, but with subsequent actual litigation and adjudication of the dispositive issue of this case. Therefore, we conclude that Appellant has had opportunity once already to litigate the issue and that Appellant is estopped from re-litigating the issue here.

The court in ***Morris v. Esmark Apparel, Inc.,*** 832 S.W.2d 563 (Tenn. App. 1991), defines the doctrine of collateral estoppel as "the judicially-promulgated policy of repose preventing relitigation of a particular dispositive issue which was necessarily or actually decided with finality in a previous suit involving at least one of the parties on a different cause of action." ***Morris***, 832 S.W.2d at 565. Factors to consider in determining whether one is to be collaterally estopped from re-litigating an issue include whether the issue decided in the prior adjudication was identical with the present issue presented; whether the party against whom collateral estoppel is asserted was a party or in privy to the party to the prior adjudication; whether the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior suit; and whether the prior suit resulted in a judgment on the merits. ***Id***. at 566.

We conclude that the procedural history of this case clearly warrants application of the doctrine. The judgment of the chancery court affirming the Department's decision forfeiting Appellant's property is, therefore, affirmed. We assess costs against Joe Iva Murphy, for which execution may issue if necessary.

FARMER, J.

HIGHERS, J. (Concurs)

WILLIAMS, Sp. J. (Concurs)