



12-15-2009

TENNESSEE DEPARTMENT OF SAFETY vs.
One 1992 Mercury Cougar VIN #
1MEPM6040NH609489, Seized from: JANET
HORTON, Date of Seizure: January 3, 2009,
Claimant: JANET HORTON

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

IN THE MATTER OF:

**TENNESSEE DEPARTMENT OF
SAFETY**

**DOCKET NO: 19.05-104727J
H9939**

v.

**One 1992 Mercury Cougar
VIN# 1MEPM6040NH609489
Seized from: JANET HORTON
Date of Seizure: January 3, 2009
Claimant: JANET HORTON**

INITIAL ORDER

This matter was heard in Fall Branch, Tennessee, on December 15, 2009, before Rob Wilson, Administrative Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Nina Harris, staff attorney for the Department of Safety, represented the State. Claimant Janet Horton proceeded on her own behalf.

The subject of this hearing was the proposed forfeiture of the subject 1992 Mercury Cougar for its alleged operation by Janet Horton whose driving privileges had been restricted for driving a motor vehicle while under the influence of an intoxicant ("DUI"). After consideration of the record, it is DETERMINED that the subject 1992

Mercury Cougar should be forfeited to the seizing agency. This decision is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On January 3, 2009 Officer Thomas Wayt observed Ms. Horton driving the vehicle in question.
2. Officer Wayt determined that Ms. Horton's driver's license was currently revoked pursuant to a previous DUI conviction.
3. Ms. Horton stated that she was a passenger in the car, and not the driver.
4. Officer Wayt stated that he saw Ms. Horton step out of the driver's side door of the vehicle. Additionally, Officer Wayt stated that Ms. Horton's speech was loud and slurred, and that she smelled like alcohol.

CONCLUSIONS OF LAW

1. Pursuant to T.C.A. Section 55-50-504(h)(1) [T]he vehicle used in the commission of a person's violation of §55-50-504, when the original suspension or revocation was made for a violation of §55-10-401, or a statute in another state prohibiting driving under the influence of an intoxicant, is subject to seizure and forfeiture in accordance with the procedure established in title 40, chapter 33, part 2.
2. Pursuant to T.C.A. Section 40-33-210(a), In order to forfeit any property or any person's interest in such 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 and 70-6-202, the state shall have the burden to prove by a preponderance of the evidence that:

(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; 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, or, in the case of a secured party, that the standards set out in subsection (f) are met.

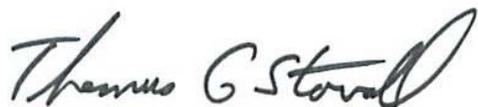
3. Ms. Horton surely was aware that her Tennessee driver's license had been revoked, but she still drove her vehicle on the evening of January 3, 2009.

4. It is CONCLUDED that the State has proved by a preponderance of the evidence that claimant Janet Horton drove her car in at a time when her driving privileges had been revoked. Accordingly, the subject 1992 Mercury Cougar shall be forfeited to the seizing agency.

This Initial Order entered and effective this 8th day of January, 2010.

Rob Wilson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 8th day of January, 2010.



Thomas G. Stovall, Director
Administrative Procedures Division