



6-21-2006

TENNESSEE DEPARTMENT OF SAFETY vs.
One 1990 BUICK CENTURY consolidated cases
VIN # 3G4AL548LS603107, SEIZED FROM:
BRUCE BASIL, SEIZURE DATE: AUGUST 11,
2005 CLAIMANT: BRUCE BASIL
LIENHOLDER: N/A

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

IN THE MATTER OF:)
)
TENNESSEE DEPARTMENT OF SAFETY,) Docket No. 19.05-092572J
)
v.) Department of Safety
) Case No. E7865 and E7866
One 1990 BUICK CENTURY,) consolidated cases
VIN# 3G4AL548LS603107)
SEIZED FROM: BRUCE BASIL)
SEIZURE DATE: AUGUST 11, 2005)
CLAIMANT: BRUCE BASIL)
LIENHOLDER: N/A)

INITIAL ORDER

This matter came on to be heard on June 21, 2006, in Chattanooga, Tennessee before Joyce Grimes Safley, Administrative Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Mr. William Lundy, Attorney for the Department of Safety, represented the State. The Claimant, Bruce Basil, was present, and represented himself.

The subject of this hearing was the proposed forfeiture One 1990 Buick Century, VIN# 3G4AL548LS603107 pursuant to T.C.A. §55-10-401 and §55-10-403 (Driving Under the Influence – Second or Subsequent Violation) and T.C.A §55-50-504 (driving a vehicle on a revoked license).

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 **RETURNED** to the Claimant. This decision is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The State called no witnesses other than the Claimant at the hearing of this matter.

2. The State entered the technical record as an exhibit in this matter.

3. Claimant testified at the hearing that he was convicted for Driving Under the Influence in 2004. His driver's license was revoked after that conviction.

4. Claimant denied that he had been driving his vehicle on the date that it was seized. He testified that he was at his home when the police knocked at the door and inquired about an automobile accident.

5. Claimant states that he was drinking alcoholic beverages "at home", but denies that he had been driving.

6. The police did not stop Claimant's vehicle pursuant to a traffic stop.

7. No testimony or evidence was offered to rebut Claimant's assertion that he had not drive his vehicle on August 11, 2005. There was no factual account of the circumstances surrounding the seizure other than the Claimant's account.

CONCLUSIONS OF LAW

1. T.C.A. §55-10-401 provides as follows:

Driving under the influence of an intoxicant, drug or drug producing stimulant effect prohibited---Alcohol concentration in blood or breath.

(a) It is unlawful for any person to drive or to be in physical control of any automobile or other motor driven vehicle on any of the public roads and highways of the state, or on any streets or alleys, or while on the premises of any shopping center, trailer park or any apartment house complex, or any other premises which is generally frequented by the public at large, while

(1) under the influence of any intoxicant, marijuana, narcotic drug, or drug producing stimulating effects on the central nervous system; or

(2) The alcohol concentration of such person's blood or breath is ten-hundredths of one percent (.10%) or more.

(b) For the purpose of this section, "drug producing stimulating effects on the central nervous system" includes the salts of barbituric acid, also known as malonyl urea, or any compound, derivatives, or mixtures thereof that may be used for producing hypnotic or somnifacient effects, and includes amphetamine, desoxyephedrine or compounds or mixtures thereof, including all derivatives of phenylethylamine or any of the salts thereof, except preparations intended for use in the nose and unfit for internal use.

2. T.C.A. §55-10-403(k) states in pertinent part:

(1) The vehicle used in the commission of a person's second or subsequent violation of §55-10-401, or the second or subsequent violation of any combination of §55-10-401, and a statute of any other 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. The department of safety is designated as the

applicable agency, as defined by §40-33-202, for all forfeitures authorized by this subsection (k).

(2) In order for the provisions of subdivision (k)(1) to be applicable to a vehicle, the violation making the vehicle subject to seizure and forfeiture must occur on or after January 1, 1997, and the second offense after January 1, 1997, occurs within five (5) years of the first offense occurring after January 1, 1997.

(3) It is the specific intent that a forfeiture action under this section shall serve a remedial and not a punitive purpose. The purpose of the forfeiture of a vehicle after a person's second or subsequent DUI violation is to prevent unscrupulous or incompetent persons from driving on Tennessee's highways while under the influence of alcohol or drugs. Driving a motor vehicle while under the influence of alcohol or drugs endangers the lives of innocent people who are exercising the same privilege of riding on the state's highways. There is a reasonable connection between the remedial purpose of this section, insuring safe roads, and the forfeiture of a motor vehicle. While this section may serve as a deterrent to the conduct of driving a motor vehicle while under the influence of alcohol or drugs, it is nonetheless intended as a remedial measure. Moreover, the statute serves to remove a dangerous instrument from the hands of individuals who have demonstrated a pattern of driving a motor vehicle while under the influence of alcohol or drugs.

3. T.C.A. §40-33-201 provides that property, including conveyances, shall be subject to forfeiture under the provisions of T.C.A. §55-10-403(k) and T.C.A. §55-50-504(h).

4. Pursuant to T.C.A. §40-33-210, in order to forfeit any property or a person's interest in property, the State has the burden to prove by a preponderance of evidence that:

(1) The seized property was of a nature making its possession illegal or was being used in a manner making it subject to forfeiture[...]; 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, [...];

(3) If such person having been placed under arrest and thereafter having been requested by a law enforcement officer to submit to such test and advised of the consequences for refusing to do so, refuses to submit, the test shall not be given, and such person shall be charged with violating this subsection(a).

5. The State has the initial burden of proving, by a preponderance of the evidence, that the seized vehicle was subject to forfeiture because it was being used to violate T.C.A. §55-10-403. See T.C.A. §40-33-210. 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).

6. “Preponderance of the evidence” means:

the greater weight of the evidence or that, according to the evidence, the conclusion sought by the party with the burden of proof is the more probable conclusion.

Rule 1340-2-2-.15(2) of the *Rules of Procedure for Asset Forfeiture Proceedings*.

7. The State has not met its burden of proof in this case. It has not proved, by a preponderance of the evidence, that Claimant was

driving under the influence of alcohol, or that Claimant was driving his vehicle on a revoked license.

8. The seized vehicle, a 1990 Buick Century automobile, VIN# 3G4AL548LS603107 , is not subject to forfeiture.

Accordingly, it is **ORDERED** that the 1990 Buick Century automobile, VIN# 3G4AL548LS603107 be immediately **RETURNED** to Claimant.

It is so ordered.

This Order entered and effective this 10th day of July, 2006.

Joyce Grimes Safley
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 10th day of July 2006.



Charles C. Sullivan, II, Director
Administrative Procedures Division