



9-24-2007

DEPARTMENT OF SAFETY FORFEITURE
PROCEEDING vs. One 1999 Volkswagen NGI
VIN: 3VWCF21C3XM406035, Seized From:
Joshua Gossett 9, Seizure Date: December 24,
2005, Claimant: Joshua Gossett Seizing Agency:
Signal Mtn. P.D., Lienholder: TITLEMAX of TN

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

IN THE MATTER OF:]	
]	
DEPARTMENT OF SAFETY]	FORFEITURE PROCEEDING
]	
V.]	
]	
One 1999 Volkswagen NGI]	
VIN: 3VWCF21C3XM406035]	DOCKET # 19.05-092728J
Seized From: Joshua Gossett]	(D.O.S. # E-8259)
Seizure Date: December 24, 2005]	
Claimant: Joshua Gossett]	
Seizing Agency: Signal Mtn. P.D.]	
Lienholder: TITLEMAX of TN]	

INITIAL ORDER

This matter was heard in Chattanooga, Tennessee on September 24, 2007, before J. Randall LaFevor, Administrative Judge assigned by the Secretary of State, sitting for the Commissioner of the Tennessee Department of Safety. Ms. Lori Long, Staff Attorney for the Tennessee Department of Safety, represented the State. The Claimant was present and was represented by his legal counsel, Mr. C. Parke Masterson, Jr.

The subject of the hearing was the proposed forfeiture of the described vehicle for its use in the commission of the Claimant's second or subsequent violation of the state law prohibiting driving a motor vehicle under the influence of an intoxicant (DUI). Upon full consideration of the entire record in this matter, it is determined that the subject vehicle should be forfeited to the Seizing Agency, subject to the interest of the lienholder. This decision is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The State seeks the forfeiture of the subject 1999 Volkswagen NGI, seized by the Signal Mountain Police Department from the Claimant on December 24, 2005. On that date, Officer David Smith, of the Signal Mountain Police Department,¹ was operating a

¹ Officer Smith graduated from the Police Academy in 2004, and had been employed by the Signal Mountain Police Department since March 2005.

stationary radar unit on Highway 127 in Signal Mountain when he detected a vehicle driving at 49 miles per hour in a 40 MPH zone.

2. Officer Smith stopped the car for the traffic violation. Upon approaching the driver (the Claimant), the officer detected the strong odor of alcohol. Upon exiting the car, the Claimant was unsteady on his feet, and at one point he steadied himself by leaning against the officer's car. He admitted to the officer that he was on his way home from a bar where he had been drinking beer until 2:00 a.m.² The Claimant refused to submit to a test to determine the level of alcohol in his blood.

3. After the Claimant assured him that he did not suffer from any medical problems, and that he was physically capable of performing field sobriety tests, the officer administered the "walk-and-turn" and the "one-foot stand" tests.³ The Claimant performed poorly on both tests by: (1) missing steps and almost falling on the "walk-and-turn;" and (2) repeatedly putting his foot down, and then failing to complete the "one-foot stand" test, and refusing the officer's direction to start the test again. The Claimant was arrested and charged with Driving Under the Influence of an Intoxicant.

4. A records check by the officer revealed that the Claimant had a prior DUI conviction in the State of Tennessee within the previous five years. Based on that information and the circumstances of the current arrest, the Claimant's vehicle was seized, and a Vehicle Forfeiture Warrant for the subject vehicle was sought and obtained. The Claimant's certified Department of Safety Driving Record established that his prior DUI conviction occurred on November 22, 2004, and resulted in the revocation of his license by the Department of Safety on January 4, 2005.⁴

5. During the hearing, the Claimant advanced several challenges to the State's proof. And, while the record reflects that the arresting/seizing officer was not the most

² The Claimant told the officer that he had gone to the bar to see his friends' band, and that he consumed between 3 and 5 beers during a four-hour show, finishing his last beer at about 2:00 a.m.

³ The officer also administered the Horizontal Gaze Nystagmus (HGN) test. Testimony regarding that procedure was excluded, as the officer was not qualified as an expert witness for the purpose of explaining the underlying scientific basis of the test, as required in this jurisdiction. *State v. Murphy*, 953 S.W.2d 200 (Tenn. 1997).

⁴ See Hearing Exhibit #1.

experienced, or knowledgeable, law enforcement officer that the State could have hoped for, his testimony nonetheless established the necessary facts with the requisite degree of certainty. Although the Claimant demonstrated that the area where he was required to perform the field sobriety tests was not perfectly level, he failed to prove that the slope of the pavement was the cause of his poor performance on the tests. Likewise, although the Claimant testified that he had a congenital foot deformity, his additional testimony that he had participated in high school athletics, including soccer, football and basketball, indicated that his physical abilities were not significantly impaired by that condition. Additionally, he offered no medical evidence to establish that he suffered any current disabilities from any of the head and body injuries that he said he incurred while engaged in high school athletics. Absent such medical proof, it would be impossible to determine whether a head or leg injury received in 1996 or 1997 adversely affected his ability to perform the field sobriety tests when he was arrested in December 2005. Similarly, he offered no medical proof to support his claim that he was unable to understand or process the instructions given by the officer, due to asserted mental problems. While all of these assertions present issues that may have impacted his ability to successfully perform the field sobriety tests, the Claimant simply failed to support his arguments with adequate proof. Any arguments not specifically addressed here were also unsupported by sufficient proof. Finally, if the Claimant actually suffered from any medical or physical conditions that interfered with his ability to perform the field sobriety tests, the record contains no reasonable explanation for his failure to so advise the officer when he asked about such problems prior to administering the tests.

CONCLUSIONS OF LAW & ANALYSIS

1. The law provides that it is illegal for a person to operate a motor vehicle under the influence of an intoxicant. TENN. CODE ANN. § 55-10-401, *et. seq.* It further provides that any vehicle used in the commission of a person's second or subsequent violation of the DUI law is subject to seizure and forfeiture by the State. TENN. CODE ANN. § 55-10-403(k)(1).

2. The state has the burden of proving, by a preponderance of the evidence, that the seized property fits within the statute defining its illegal use, thereby rendering it subject to forfeiture. Rule 1340-2-2-.15(4), TENN. COMP. R. & REGS. (*Rules of the Tennessee Department of Safety*). The burden of proof is the duty imposed upon a party to establish, by a preponderance of the evidence, that an allegation is true, or that an issue should be resolved in favor of that party. A “preponderance of the evidence” means the “greater weight of the evidence,” or “the more probable conclusion, based on the evidence presented.” Rule 1360-4-1-.02(7), TENN. COMP. R. & REGS. Clearly, this is a significantly lower standard of proof than the “beyond a reasonable doubt” standard required for a criminal DUI conviction.

3. In order to prevail in this case, the State must prove **(1)** that the Claimant was driving the subject vehicle, **(2)** that he was doing so under the influence of an intoxicant, and **(3)** that he had been convicted of a DUI within the previous five years [and after January 1, 1997]. TENN. CODE ANN. § 55-10-403(k)(1)&(2). The evidence clearly established that the Claimant was driving under the influence of an intoxicant at the time of his arrest on December 24, 2005. This conclusion is adequately supported by the Claimant’s unsteadiness on his feet when exiting his car, the odor of alcohol on his person at the time of the stop, his admission that he had consumed three-to-five beers in the hours before the officer stopped him, and the Claimant’s failure to perform adequately on the field sobriety tests. Additionally, the Claimant’s refusal to submit to a blood-alcohol content (BAC) test in this case prevented crucial evidence from being available during the hearing to establish the level of alcohol in his blood at the time of the traffic stop. In administrative proceedings such as this, unlike in Criminal proceedings, an adverse inference may be drawn from a driver’s refusal to submit to a BAC test upon request of a law enforcement officer. And, finally, the Claimant’s driving record supports a finding that he was previously convicted of a DUI offense on November 22, 2004, within the time frame established by the statute. The State has satisfactorily established that forfeiture is authorized by the law, and warranted by the facts of this case.

4. Although the application of the vehicle forfeiture law may, at times, seem somewhat oppressive, the purpose of the legislature in enacting the law is clear:

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, ensuring 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.**

TENN. CODE ANN. § 55-10-403(k)(3) [Bold emphasis supplied.]

Accordingly, it is hereby ORDERED that the subject 1999 Volkswagen NGI is forfeited to the seizing agency, the Signal Mountain Police Department, for disposition as provided by law, subject to the secured interest of TitleMax of Tennessee.

Entered and effective this 28th day of November, 2007.

J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 28th day of November, 2007.

A handwritten signature in black ink that reads "Thomas G. Stovall". The signature is written in a cursive style with a large, looped initial 'T' and 'S'.

Thomas G. Stovall, Director
Administrative Procedures Division