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# TENNESSEE DEPARTMENT OF SAFETY v. One 1990 Lexus LS 400, V.I.N. No.: JTBUF11E1L0009311, Seized from: Stanley Sims, Date of Seizure: January 10, 2012, Claimant: Jarvis Sims, Lienholder: N/A

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

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| IN THE MATTER OF: | ) | |
| | ) | |
| TENNESSEE DEPARTMENT | ) | |
| OF SAFETY | ) | |
| | ) | |
| v. | ) | DOCKET NO. 19.05-117357J |
| | ) | [D.O.S. Case No. M 2574] |
| | ) | |
| One 1990 Lexus LS 400 | ) | |
| V.I.N. No.: JTBUF11E1L0009311 | ) | |
| Seized from: Stanley Sims | ) | |
| Date of Seizure: January 10, 2012 | ) | |
| Claimant: Jarvis Sims | ) | |
| Lienholder: N/A | ) | |
| | ) | |

**INITIAL ORDER**

The contested case hearing in this matter came forward on June 20, 2012, in Memphis, Tennessee, before Mattielyn B. Williams, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, sitting for the Commissioner of the Tennessee Department of Safety. Mr. Joe Bartlett, Staff Attorney, Tennessee Department of Safety, represented the State/seizing agency. Claimant Jarvis Sims represented himself.

The subject of this matter was the proposed forfeiture of the subject 1990 Lexus LS 400, seized for its alleged operation by an individual who was driving on a revoked license, pursuant to Tennessee Code Annotated §55-50-504.

After consideration of the record, it is **DETERMINED** that the subject vehicle should be **FORFEITED** to the seizing agency for disposition as provided by law.

This decision is based upon the following Findings of Fact and Conclusions of Law:

## FINDINGS OF FACT

1. Officer Phillip Allen, of the Memphis Police Department, testified that on January 3, 2012 (or January 10, 2012), he observed the subject 1990 Lexus LS 400 being driven by Driver Stanley Sims. The vehicle's tags expired in November 2011 and the tags belonged to a GMC Envoy. Officer Allen and Officer Chris Murphy pulled over the subject vehicle.

2. Driver Stanley Sims is the Father of Owner/Claimant Jarvis Sims.

3. When Driver Sims was asked for his driver's license, he presented an ID Only identification. Driver Sims was charged with Driving on a Revoked License due to an earlier DUI, with lack of insurance/financial responsibility, and with expired tags/vehicle registration. Exhibit 2, a certified copy of Driver Sims driving license history, confirms Driver Sims' revoked status.

4. The subject vehicle was seized.

5. Claimant Jarvis Sims testified that he was out-of-town when this incident occurred, that his Father did not have permission to drive his (Claimant's) vehicle, and that he (Claimant) had removed the current tags from the vehicle

when he went out of town to Mississippi, due to fear that the current tags would be stolen.

6. Claimant admitted that he was aware that his father did not have a driver's license. Claimant testified that he only found out the reason (i.e. prior DUI) that his father did not drive when the subject Lexus was seized.

7. On March 10, 2011, Driver Sims was issued a misdemeanor citation for driving a 1999 Dodge Intrepid, which also belongs to Claimant Jarvis Sims. It is unclear whether and to what extent Claimant Jarvis Sims was aware of that "Misdemeanor Citation in Lieu of Continued Custody of Arrested Person."

8. Claimant did not file a theft report when he learned that his father had taken the subject vehicle. Claimant left the keys to the subject vehicle at home when he traveled to Mississippi. Claimant does not know the origin of the expired tags that were on the subject vehicle.

9. Driver Stanley Sims explained that he was taking his girlfriend to see her hospitalized mother, when the vehicle was stopped. Driver Sims told the Officers that the car was his son's, asking that it not be seized.

10. Driver Sims admitted that he had to search for the keys to the vehicle and found them underneath clothes in the chest of drawers. Driver Sims indicated that he had access to several car tags, as a result of the selling of other vehicles.

11. Claimant and Driver were firm that the son/Claimant did not know the reason why the father/Driver did not drive.

12. Claimant and Driver have lived together all of Claimant's life. Claimant appeared to be approximately twenty (20) years old.

13. Claimant explained that he did not take the car keys with him to Mississippi because he did not want to lose them.

14. Driver Stanley Sims driver's license record reveals multiple incidences of driving on a revoked license, including the March 10, 2011 incident.

## CONCLUSIONS OF LAW

1. The State was required to carry its burden of proof, by a preponderance of the evidence, that Driver Stanley Sims was driving the subject vehicle at a time when his driver's license was revoked for a DUI conviction, thus making the vehicle subject to forfeiture, pursuant to T.C.A. §55-50-504.

2. It is **CONCLUDED** that the State **MET** its burden.

3. Claimant cited no statute, Rule, or case law to support the argument that driving friends to the hospital is an exception to the prohibition against driving when one's driver's license is revoked.

4. Claimant contends that he is an innocent owner, unaware of the revocation of his father's driver's license for DUI.

5. The State contends that, by a preponderance of the evidence, Claimant surely knew that his father's driver's license was revoked for DUI. Therefore, Claimant is not an innocent owner, entitled to return of the vehicle, per the State.

6. On the one hand, Claimant hid the keys and removed the tags from the vehicle. Thus, there is an argument that Claimant took steps to make certain that his unlicensed father did not drive the subject vehicle. On the other hand, Claimant left the keys behind, where his father could potentially find them.

7. If this had been a case where Claimant Sims had taken the car keys with him to Mississippi and his father had hot-wired the subject vehicle to drive it, this case would be decided in Claimant Jarvis Sims' favor.

8. However, this is not a hot-wiring case. It is **CONCLUDED**, by a preponderance of the evidence, that by leaving the keys in their joint residence, Claimant Sims left control of the vehicle to anyone who could find the keys. Claimant's father, by being housemates with Claimant, was uniquely positioned to search for and find Claimant's car keys.

9. Claimant testified that he did not know that his father's driver's license was revoked for DUI. Were this a criminal matter, where the standard of proof is beyond a reasonable doubt, there is reasonable doubt that his father never told the son/Claimant the reason why he doesn't drive. However, it is proper to decide civil cases, such as the instant matter, by a preponderance/more likely than not.

10. Based on the circumstances as a whole, it is **CONCLUDED** to be more likely than not that, at some point prior to seizure of the Lexus, during their residence together of some twenty (20) years, Driver Stanley Sims was candid with his son regarding why he (the father) does not drive. Thus, it is

**CONCLUDED** that Claimant Sims, more likely than not, was not unaware that his father's driver's license was revoked for DUI. Thus, it is **CONCLUDED** that Claimant Sims is not an innocent owner. Therefore, Claimant Sims should have taken the keys with him, rather than assume the risk that his father might drive the Lexus, making it subject to seizure and forfeiture.

11. Based on the subject vehicle being driven by a person whose driving privileges were and remain revoked for DUI, and with Claimant Jarvis Sims not being an innocent owner, it is hereby **ORDERED** that the subject 1990 Lexus LS 400 **IS FORFEITED** to the seizing agency, for disposition as provided by law.

This Initial Order entered and effective this 24 day of July, 2012

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MATTIELYN B. WILLIAMS
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 24 day of July, 2012

Thomas G. Stovall, Director
Administrative Procedures Division