7-11-2012

DEPARTMENT OF SAFETY vs. One 1995 Jeep Wrangler, VIN: 1J4FY19P1SP225654, Seized From: Scott D. Lacey, Seizure Date: 1/24/12, Claimant: Scott D. Lacy, Seizing Agency: Knoxville P.D., Lienholder: Citi Financial

BEFORE THE COMMISSIONER OF THE TENNESSEE DEPARTMENT OF SAFETY

IN THE MATTER OF:		**]**	
		]	
DEPARTMENT OF SAFETY		**]**	**FORFEITURE PROCEEDING**
		]	
vs.		**]**	
		]	
One 1995 Jeep Wrangler		**]**	
VIN:	**1J4FY19P1SP225654**	**]**	**DOCKET # 19.05-117532J**
Seized From:	**Scott D. Lacy**	**]**	**(D.O.S. # M4195 & M4201)**
Seizure Date:	**1/24/12**	**]**	
Claimant:	**Scott D. Lacy**	**]**	
Seizing Agency:	**Knoxville P.D.**	**]**	
Lienholder:	**Citi Financial**	**]**	

INITIAL ORDER

This contested administrative case was heard in Knoxville, Tennessee on July 11, 2012, before J. Randall LaFevor, Administrative Judge assigned by the Secretary of State, sitting for the Commissioner of the Tennessee Department of Safety. Ms. Nina Harris, Staff Attorney for the Tennessee Department of Safety, represented the Seizing Agency. The Claimant appeared *pro se*.

The subject of the hearing was the proposed forfeiture of the seized vehicle for (1) its use in the commission of a second or subsequent violation of the state law prohibiting driving a motor vehicle under the influence of an intoxicant ("DUI"); and/or for (2) its alleged operation by an individual whose driving privileges had previously been revoked or suspended for driving a motor vehicle while under the influence of an intoxicant ("DUI"). Upon consideration of the pleadings, the sworn testimony and other evidence introduced during the hearing, arguments of the parties, and the entire record, it was determined that the Seizing Agency failed to prove that the vehicle was subject to forfeiture, as supported by the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On January 24, 2012, a Knoxville Police Department officer was dispatched to a restaurant, where he was told that an intoxicated patron had left the parking lot in his Jeep after refusing to allow a restaurant employee to call him a taxi cab. After getting a description of the patron and his car, the officer left the restaurant to look for him.

2. He found the described car about a block away, parked partly in the street, and found the described patron in a nearby hotel lobby. After identifying the man as Scott D. Lacy ("Claimant"), the officer noted a strong smell of alcohol about his person and observed that he was effectively incoherent. He had no driver's license because it had been revoked for prior DUI convictions, and he refused to take any field sobriety tests or a breath-alcohol test.

3. Based on his perception that the Claimant was intoxicated, and his belief that he had driven the Jeep while his license was revoked for a DUI offense, the officer seized the vehicle, and later sought and obtained a Vehicle Forfeiture Warrant. The Claimant filed a claim for its return, resulting in the scheduling of the instant contested administrative case hearing.

4. During the hearing, the Claimant admitted that he had been at the restaurant, and that he had had too much to drink. However, he denied that he had driven from the restaurant parking lot. He said that a friend who was inside the restaurant had driven him from the lot, but that she had stopped a short distance away after experiencing problems driving his Jeep. She then got into her companion's car and left the Claimant on the side of the road. He walked to the hotel to seek assistance.

5. Tennessee Department of Safety records[1] established that the Claimant was previously convicted of two (2) DUI charges on June 24, 2009 in Knox County, Tennessee, resulting in the revocation of his Tennessee motor vehicle operator's license by the Department of Safety. His license had not been restored before the current vehicle seizure.

[1] See Hearing Exhibit #1, Department of Safety driving Record.

CONCLUSIONS OF LAW & ANALYSIS

1. 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. In order to prevail in the instant matter, the State must prove **either** (1) that the driver of the vehicle committed his second or subsequent DUI offense, **or** (2) that he was driving at a time when his operator's license had been revoked due to a DUI conviction.

Re: Second Offense DUI

2. The law provides that it is illegal for a person to operate a motor vehicle under the influence of an intoxicant. TCA 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. TCA 55-10-403(k)(1).

3. To sustain a forfeiture of the seized property under this statute, the State must prove: **[1]** that the driver was operating the subject vehicle; and **[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 (5) years. TCA 55-10-403(k)(1)&(2). The State failed to carry its burden. Although the Claimant was intoxicated when he left the restaurant and when he was located by the officer, and his driving record proved that he was previously convicted of DUI offenses, there was no sworn testimony by a witness who observed him

actually *operating the vehicle*.[2] The Claimant testified, under oath, that another person drove him from the restaurant, and the State failed to rebut that evidence. In light of the State's failure to prove that the Claimant actually *drove the vehicle* while he was intoxicated, his vehicle cannot be forfeited for Driving Under the Influence.

Re: Driving on a Revoked License

4. The law also provides that it is illegal for a person to operate a motor vehicle at a time when his license to drive has been revoked. It further provides that, if the revocation was ordered due to a DUI conviction, any vehicle driven by the offender during the period of revocation is subject to seizure and forfeiture. TCA § 55-50-504(a)(1) and (h)(1).

5. In order to prevail under this theory, the State must prove: **[1]** that the driver was operating the subject vehicle; **and [2]** that he was doing so at a time when his license to drive had been revoked or suspended for a DUI conviction. Just as previously found in paragraph 3, *supra*, the first requirement for forfeiture, *that the driver was operating the subject vehicle*, was not proven during the hearing. Absent such a finding, forfeiture is not authorized by the law.

Accordingly, it is hereby concluded that the State has failed to meet its burden of proof. Forfeiture of the vehicle is barred, as a matter of law. It is therefore ORDERED that the *Vehicle Forfeiture Warrant* is DISMISSED, and the subject 1995 Jeep Wrangler shall be returned to the Claimant, Scott D. Lacy.

[2] The only person who claimed to have seen the Claimant driving was an unidentified restaurant employee. That out-of-court declarant's observation, relayed through the arresting officer during the hearing, was not presented as sworn testimony by the declarant, subject to cross-examination. Such evidence is clearly hearsay, and cannot overcome the Claimant's sworn testimony that was received during the hearing. While some hearsay evidence is admissible during administrative hearings [TCA 3-4-313(1)], its admissibility is contingent upon a finding that the evidence is "not reasonably susceptible to proof under the rules of court." The State could have brought the restaurant employee to the hearing to testify. His evidence therefore could have been presented "under the rules of court," and does not fall within the cited exception.

And, IT IS FURTHER ORDERED that the Seizing Agency shall not charge the Claimant any storage fees or other fees associated with its seizure, as long as he contacts the agency to pick up his vehicle within five (5) days following receipt of this Order.

Entered and effective this 18 day of July, 2012

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J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 18 day of July, 2012

Thomas G. Stovall, Director
Administrative Procedures Division