



University of Tennessee, Knoxville
**Trace: Tennessee Research and Creative
Exchange**

Tennessee Department of State, Opinions from the
Administrative Procedures Division

Law

7-8-2014

Leslie J. Redondo vs. Safety

Follow this and additional works at: http://trace.tennessee.edu/utk_lawopinions

This Initial Order by the Administrative Judges of the Administrative Procedures Division, Tennessee Department of State, is a public document made available by the College of Law Library, and the Tennessee Department of State, Administrative Procedures Division. For more information about this public document, please contact administrative.procedures@tn.gov

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

IN THE MATTER OF:]	
]	
DEPARTMENT OF SAFETY]	FORFEITURE PROCEEDING
]	
vs.]	
]	
One 2006 Ford F-250 Truck]	
VIN: 1FTSW21P86EA10320]	DOCKET # 19.05-126668J
Seized From: Leslie J. Redondo]	(D.O.S. # P6258 & P6259)
Seizure Date: 2/23/14]	
Claimant: Leslie J. Redondo]	
Seizing Agency: Jackson Co. S.D.]	
Lienholder: None Filed]	

INITIAL ORDER

This matter was heard in Cookeville, Tennessee on July 1, 2014, before J. Randall LaFevor, Administrative Judge assigned by the Secretary of State, sitting for the Commissioner of the Tennessee Department of Safety. Mr. Robert Broome, Staff Attorney for the Tennessee Department of Safety, represented the Seizing Agency. The Claimant was represented by her legal counsel, Mr. Jonathan Young.

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of an intoxicant (“DUP”); and/or (2) its alleged operation by an individual whose driving privileges had previously been revoked or suspended for driving a motor vehicle while under the influence of an intoxicant (“DUP”). Upon consideration of the pleadings, the sworn testimony and other evidence introduced during the hearing, arguments of counsel, and the entire record, it is determined that the vehicle should be forfeited to the seizing agency, as supported by the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On February 23, 2014, the Jackson County Sheriff's Department received a report of a reckless driver on a road in Jackson County. The Sheriff and his Chief Deputy were in the vicinity where the activity was reported, and responded to the call. When they arrived, they immediately saw a vehicle matching the description of the reported vehicle, initially weaving across the road into the oncoming lane, then leaving the road and striking a tree.

2. After determining that the driver, Leslie Redondo ("the Claimant") was not injured in the crash, the deputy noted that she was unsteady on her feet and slurred her speech. The deputy aborted any attempted Field Sobriety Tests because the Claimant was unable to balance long enough to perform those tasks. She admitted to the deputy that she had been drinking alcohol before she crashed her car.

3. The Claimant was unable to produce a valid driver's license, because it had been revoked for a prior DUI conviction. She was arrested, and charged with DUI and Driving on a Revoked License. Based on his assessment of the Claimant's condition and the fact that she was driving while her license was revoked for a DUI offense, the deputy seized the Claimant's vehicle, and later sought and obtained a Vehicle Forfeiture Warrant.

4. The Claimant filed a claim for its return, resulting in the scheduling of the instant contested administrative case hearing. During the hearing, the Claimant asserted her Fifth Amendment privilege, and refused to answer when asked whether she had consumed alcohol before driving on the date of the seizure, and whether she was driving while her license was revoked. Pursuant to Departmental Regulations, an adverse inference is drawn from her refusals to respond. [Rule 1340-2-2-.18(1)(a)2, TENN. COMP. R. & REGS.] Tennessee Department of Safety records¹ established that the Claimant was previously convicted of DUI on March 8, 2013 in Putnam County, Tennessee, resulting in the revocation of her Tennessee motor vehicle operator's license

¹ See Hearing Exhibit #1, Department of Safety Driving Record.

by the Department of Safety. Her license had not been restored before the current vehicle seizure.

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 her second or subsequent DUI offense, **or** (2) that she was driving at a time when her 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 § 55-10-414.

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; **[2]** that she was doing so under the influence of an intoxicant; and **[3]** that she had been convicted of a DUI within the previous five (5) years. TCA 55-10-414. The State has carried its burden. The Claimant was driving the truck on February 23, 2014. Her admission to the deputy that she had consumed alcohol before driving, her slurred speech, lack of balance, and her inability to perform any Field Sobriety Tests support the deputy's assessment that she was

under the influence of an intoxicant. Additionally, her driving record proves that she was previously convicted of a DUI in Putnam County, Tennessee on March 8, 2013, which is within the time frame established by the statute.

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/her 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 § 55-50-414.

5. In order to prevail under this theory, the State must prove: [1] that the driver was operating the subject vehicle; and [2] that she was doing so at a time when her license to drive had been revoked or suspended for a previous DUI conviction. The State's evidence proved that the Claimant's license was revoked due to her March 8, 2013 conviction for driving under the influence of an intoxicant. While her license was still revoked, she was driving the subject vehicle on February 23, 2014. Under these circumstances, the law provides that the Claimant's vehicle is subject to forfeiture. TCA § 40-33-210.

Public Policy / Rationale for Forfeiture

6. Although the application of the vehicle forfeiture law may, at times, seem somewhat harsh, 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).

Accordingly, it is hereby ORDERED that the subject 2006 Ford F-250 Truck is **FORFEITED** to the Seizing Agency, the Jackson County Sheriff's Department, for disposition as provided by law.

Entered and effective this _____ day of _____, 2014.

J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this _____ day of _____ 2014.



J. Richard Collier, Director
Administrative Procedures Division