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Law

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5-12-2011

Department of Safety vs. One 1992 Chevrolet Pick  
Up Truck VIN: 1GCDC14Z9NZ208226, Seized  
from: Quincy Gills, Date of Seizure: December 7,  
2010, Claimant: Joyce Gills, Lienholder: None

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

<b>IN THE MATTER OF:</b>	)	
	)	
<b>DEPARTMENT OF SAFETY</b>	)	
	)	
<b>v.</b>	)	<b>DOCKET NO. 19.05-112535J</b>
	)	<b>DOS Case No. L0928</b>
<b>One 1992 Chevrolet Pick Up Truck</b>	)	
<b>VIN: 1GCDC14Z9NZ208226</b>	)	
<b>Seized from: Quincy Gills</b>	)	
<b>Date of Seizure: December 7, 2010</b>	)	
<b>Claimant: Joyce Gills</b>	)	
<b>Lienholder: None</b>	)	

**INITIAL ORDER**

This matter was heard on May 12, 2011, in Memphis, Tennessee before Steve R. Darnell, Administrative Law Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Attorney Joe Bartlett represented the Department of Safety. Claimant was present and not represented by counsel.

**ISSUES FOR DETERMINATION**

1. Who is the owner of the above described vehicle?
2. If Claimant has a legitimate ownership interest in the above described vehicle, did she allow Quincy Gills to operate the vehicle in violation of the law?

**SUMMARY OF DETERMINATION**

It is **DETERMINED** this vehicle was the property of Quincy Gills who was operating it in violation of the law. Further, if it were determined that Claimant did have a legitimate ownership interest in the vehicle; her interest would be subject to forfeiture because she knowingly allowed Quincy Gills to operate it in violation of the law. This conclusion is based on the following findings of fact and conclusions of law:

## **FINDINGS OF FACT**

1. Quincy Gills' driving privileges were revoked as a result of a DUI conviction in Shelby County on March 8, 2010. He was eligible for reinstatement on March 8, 2011. His driving record is extensive and he is indefinitely suspended for reasons not relevant to this case.
2. On December 2, 2010, Quincy Gills' vehicle was stopped by Memphis Police Department officers because the license plate was registered to a Cadillac. Mr. Gills was arrested for driving on a revoked license.
3. Mr. Gills told the officers that the truck belonged to him but was in his mother's name. Mr. Gills mother is the Claimant herein Joyce Gills. Both list the same residential address.
4. The truck had Mr. Gills' work tools and equipment loaded on it. Officers allowed these items to be removed at the scene by a third party. Mr. Gills' personal items were located inside the cab of the truck.
5. Claimant, Joyce Gills, is the titled owner of the vehicle. She does not drive the vehicle. It is not registered. She did not know where the Cadillac license plate came from that was on the vehicle.
6. Joyce Gills claims Quincy Gills took the truck without her permission, but no theft report was filed.
7. Joyce Gills testimony was not credible.
8. The above described vehicle is owned by Quincy Gills.

## **CONCLUSIONS OF LAW**

1. The Department of Safety, as the moving party in this case, has the burden to introduce evidence that would by a preponderance of the evidence prove the issues should be resolved in its favor. Rule 1360-4-1-.02.

2. Tennessee Code Annotated §55-50-504 provides as follows:

(a)(1) A person who drives a motor vehicle within the entire width between the boundary lines of every way publicly maintained which is open to the use of the public for purposes of vehicular travel, or the premises of any shopping center, manufactured housing complex or apartment house complex or any other premises frequented by the public at large at a time when the person's privilege to do so is cancelled, suspended, or revoked commits a Class B misdemeanor. A person who drives a motor vehicle within the entire width between the boundary lines of every way publicly maintained which is open to the use of the public for purposes of vehicular travel, or the premises of any shopping center, manufactured housing complex or apartment house complex or any other premises frequented by the public at large at a time when the person's privilege to do so is cancelled, suspended or revoked because of a conviction for vehicular assault under [§ 39-13-106](#), vehicular homicide under [§ 39-13-213](#), or driving while intoxicated under [§ 55-10-401](#) shall be punished by confinement for not less than two (2) days nor more than six (6) months, and there may be imposed, in addition, a fine of not more than one thousand dollars (\$1,000).

(2) A second or subsequent violation of subdivision (a)(1) is a Class A misdemeanor. A person who drives a motor vehicle within the entire width between the boundary lines of every way publicly maintained which is open to the use of the public for purposes of vehicular travel, or the premises of any shopping center, manufactured housing complex or apartment house complex or any other premises frequented by the public at large at a time when the person's privilege to do so is cancelled, suspended or revoked because of a second or subsequent conviction for vehicular assault under [§ 39-13-106](#), vehicular homicide under [§ 39-13-213](#), or driving while intoxicated under [§ 55-10-401](#) shall be punished by confinement for not less than forty-five (45) days nor more than one (1) year, and, in addition, may be subject to a fine of not more than three thousand dollars (\$3,000).

(b) The department, upon receiving a record of the conviction of any person under this section upon a charge of driving a vehicle while the license of such person was suspended, shall extend the period of such suspension for an additional like period and, if conviction was upon a charge of driving while a license was revoked for a violation of [§ 39-13-213](#), [§ 55-10-101](#), [§ 55-10-102](#) or [§ 55-10-401](#), the department shall extend the revocation for an additional period of one (1) year.

(c) No person shall cause or knowingly permit such person's child or ward under eighteen (18) years of age to drive a motor vehicle upon any highway when such minor is not authorized hereunder or in violation of any of the provisions of this chapter.

(d) No person shall authorize or knowingly permit a motor vehicle owned by such person or under such person's control to be driven upon any highway by any person who is not authorized hereunder or in violation of any of the provisions of this chapter.

(e) No person shall employ as a chauffeur of a motor vehicle any person not then licensed as provided in this chapter.

(f) No person charged with violating the provisions of this section for a violation of [§ 39-13-213](#), [§ 55-10-101](#), [§ 55-10-102](#) or [§ 55-10-401](#) shall be eligible for suspension of prosecution and dismissal of charges pursuant to the provisions of [§§ 40-15-102--40-15-](#)

[105](#) and [40-32- 101\(a\)\(3\)-\(c\)\(3\)](#) or for any other pretrial diversion program, nor shall any person convicted under this section for a violation of [§ 39-13-213](#), [§ 55- 10-101](#), [§ 55-10-102](#) or [§ 55-10-401](#) be eligible for probation, or any other provision of law authorizing probation, until such time as such person has fully served day for day at least the minimum sentence provided by law.

(g) If the court suspends the prosecution and dismisses the charges pursuant to the provisions of [§§ 40-15-102--40-15-105](#), and [40-32-101\(a\)\(3\)- \(c\)\(3\)](#) or for any other pretrial diversion program, the court shall forward to the department a record of such dismissal or diversion action. Such person will then be required to meet the financial responsibility requirements pursuant to chapter 12 of this title prior to the reinstatement of any driving privileges.

**(h)(1) The vehicle used in the commission of a person's violation of §55- 50-504, when the original suspension or revocation was made for a violation of [§ 55-10-401](#), or a statute in another 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 is designated as the applicable agency, as defined by [§ 40-33-202](#), for all forfeitures authorized by this subsection (h).**

(2) For purposes of clarifying the provisions of this subsection (h) and consistent with the overall remedial purpose of the asset forfeiture procedure, a vehicle is subject to seizure and forfeiture upon the arrest or citation of a person for driving while such person's driving privileges are cancelled, suspended or revoked. A conviction for the criminal offense of driving while such person's driving privileges are cancelled, suspended or revoked is not required.

(i) Notwithstanding any other provision of law to the contrary, revocation or suspension of a license shall not take effect until ten (10) days after notice has been sent to the last known address of the driver. The notice requirement in this subsection (i) shall not apply to a driver whose license has been revoked or suspended by a court of competent jurisdiction or who has surrendered the license to such a court.

(j)(1) Notwithstanding any other rule of evidence or law to the contrary, in the prosecution of second or subsequent offenders under this section the official driver record maintained by the department of safety and produced upon a certified computer printout shall constitute prima facie evidence of the prior conviction.

(2) Following indictment by a grand jury, the defendant shall be given a copy of the department of safety printout at the time of arraignment. If the charge is by warrant, the defendant is entitled to a copy of the department of safety printout at the defendant's first appearance in court or at least fourteen (14) days prior to a trial on the merits.

(3) Upon motion properly made in writing alleging that one (1) or more prior convictions is in error and setting forth the error, the court may require that a certified copy of the judgment of conviction for such offense be provided for inspection by the court as to its validity prior to the department of safety printout being introduced into evidence.

3. Tennessee Code Annotated § 40-33-210 provides as follows:

(a) In order to forfeit any property or any person's interest in such property pursuant to [§§ 39-14-307](#), [47-25-1105](#), [53-11-451](#), [55-10-403\(k\)](#), [55-50-504\(h\)](#), [57-3-411](#), [57-5-409](#), [57-9-201](#), [67-4-1020](#) and [70- 6-202](#), the state shall have the burden to prove by a

preponderance of evidence that:

(1) The seized property was of a nature making its possession illegal or was used in a manner making it subject to forfeiture under the sections set out in this subsection (a); 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, or, in the case of a secured party, that the standards set out in subsection (f) are met.

(b)(1) Failure to carry the burden of proof shall operate as a bar to any forfeiture and the property shall be immediately returned to the claimant.

(2) Notwithstanding that the hearing officer found that the state carried its burden of proof and recommended forfeiture of the property, the administrative head of the applicable agency may, in the interests of justice, order that the seized property be returned to the claimant.

It is **CONCLUDED** that the Department of Safety has carried its burden of proof, and established by a preponderance of the evidence, that Quincy Gills operated the above described vehicle while his license was revoked due to a DUI conviction. Further, the preponderance of the evidence supports a finding that this truck was in fact the property of Quincy Gills and not that of Claimant Joyce Gills. If Claimant did own any legitimate ownership interest in this vehicle, the record supports a finding that she allowed Quincy Gills to use the vehicle even though she knew his license to be suspended. Under either scenario, the truck is subject to forfeiture to the seizing agency.

**IT IS THEREFORE ORDERED** that the above described vehicle be forfeited to the seizing agency.

This Initial Order entered and effective this 11th day of July, 2011.

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Steve R. Darnell  
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 11th day of July, 2011.



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Thomas G. Stovall, Director  
Administrative Procedures Division