



4-26-2006

DEPARTMENT OF SAFETY FORFEITURE
PROCEEDING vs. One 1998 Mazda 626 VIN:
1YVGF22C2W5727629, Seized From: Rachel E.
Nichols 3, Seizure Date: January 20, 2005,
Claimant: Rachel E. Nichols, Lienholder: None

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

 Part of the [Administrative Law Commons](#)

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
]	
V.]	
]	
One 1998 Mazda 626]	
VIN: 1YVGF22C2W5727629]	DOCKET # 19.05-091476J
Seized From: Rachel E. Nichols]	(D.O.S. # D-8273)
Seizure Date: January 20, 2005]	
Claimant: Rachel E. Nichols]	
Lienholder: None]	

INITIAL ORDER

This matter was heard in Memphis, Tennessee on April 26, 2006, before J. Randall LaFevor, Administrative Judge assigned by the Secretary of State, sitting for the Commissioner of the Tennessee Department of Safety. Mr. Joe Bartlett, Staff Attorney for the Tennessee Department of Safety, represented the State. The Claimant was present and was represented by his legal counsel, Mr. Gray Bartlett.

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. 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 1998 Mazda 626, seized by the Memphis Police Department from the Claimant/Registered Owner. On January 18, 2005, officers of the Memphis Police Department stopped the vehicle, which was being driven by the Claimant.

2. Following a brief investigation, the Claimant was charged with Driving Under the Influence. She was subsequently convicted of that offense.

3. The Claimant's certified Department of Safety Driving Record established that, prior to the instant offense, she was convicted of DUI in Mississippi on February 27, 2001.¹

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. 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).

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 she was doing so under the influence of an intoxicant, and **(3)** that she had previously been convicted of a DUI, after January 1, 1997 [and that the current offense occurred within five (5) years after the most recent offense]. TCA 55-10-403(k)(1)&(2). The State has carried its burden. Her subsequent conviction of the offense of DUI clearly established that the Claimant was driving under the influence of an intoxicant at the time of her arrest on January 18, 2005. Her driving record supports a

¹ See Hearing Exhibit #1.

finding that she was previously convicted of a DUI offense in Mississippi on February 27, 2001, within the time frame established by the statute.

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 1998 Mazda 626 is FORFEITED to the seizing agency, the Memphis Police Department, for disposition as provided by law.

Entered and effective this 12th day of May, 2006.

J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State this 12th day of May, 2006.

Charles C. Sullivan II, Director
Administrative Procedures Division