



9-28-2006

DEPARTMENT OF SAFETY FORFEITURE  
PROCEEDING vs. One 1999 Mercury Cougar  
VIN: 1ZWFT61L7X5644095, Seized From: Judy  
L. Morales 8 & F-0869, Seizure Date: March 18,  
2006, Claimant: Judy L. Morales, 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>FORFEITURE PROCEEDING</b>
	]	
<b>V.</b>	]	
	]	
<b>One 1999 Mercury Cougar</b>	]	
<b>VIN: 1ZWFT61L7X5644095</b>	]	<b>DOCKET # 19.05-093533J</b>
<b>Seized From: Judy L. Morales</b>	]	<b>(D.O.S. # F-0868 &amp; F-0869)</b>
<b>Seizure Date: March 18, 2006</b>	]	
<b>Claimant: Judy L. Morales</b>	]	
<b>Lienholder: None</b>	]	

**INITIAL ORDER**

This matter was heard in Chattanooga, Tennessee on September 28, 2006, before J. Randall LaFavor, Administrative Judge assigned by the Secretary of State, sitting for the Commissioner of the Tennessee Department of Safety. Ms. Lori L. Long, Staff Attorney for the Tennessee Department of Safety, represented the State. The Claimant appeared *pro se*.

The subject of the hearing was the proposed forfeiture of the described vehicle (1) 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the influence of an intoxicant ("DUI"); and (2) for its alleged operation by an individual whose driving privileges had been revoked or suspended for driving a motor vehicle while under the influence of an intoxicant ("DUI").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 1999 Mercury Cougar, seized by the Collegedale Police Department from the Claimant/Registered Owner on April 18, 2006. At about 3:30 a.m. on that date, Sgt. Jeffrey Young, of the Collegedale Police

Department, was assisting another officer with a traffic stop, when another car nearly ran into the rear of his patrol car.

2. Sgt. Young approached that vehicle, and the driver identified herself as Judy Morales, the Claimant. She was dressed in a tank top, sweat pants and fuzzy bedroom slippers. He instructed her to pull her car to the shoulder of the road, which she did with great difficulty. While speaking to the Claimant, Sgt. Young observed that her eyes were glassy, and he detected a strong smell of alcohol. The Claimant admitted that she had consumed several drinks, and was trying to find her way home after visiting a friend. She was unable to properly perform several field sobriety tests, and registered .22 on a breath-alcohol test.

3. When asked to produce her operator's license, the Claimant acknowledged that her license was revoked/suspended due to a prior DUI conviction, and showed the officer a restricted license that permitted her to drive to and from work. After running a computer check to confirm the status of her license, the officer arrested the Claimant and charged her with several offenses, including Driving Under the Influence of an Intoxicant, and Driving on a Revoked License.

4. Based on the information obtained during the computer records check, and the circumstances of the current arrest, the Claimant's vehicle was seized, and a Vehicle Forfeiture Warrant for the subject vehicle was sought and obtained. The Claimant's certified Department of Safety Driving Record established that her most recent DUI conviction, prior to the March 18, 2006 arrest, occurred on April 13, 2005, and resulted in a conviction on May 23, 2005 and the revocation/suspension of her operator's license by the Department of Safety on July 5, 2005.<sup>1</sup> The Claimant's license was still revoked/suspended for that offense at the time of the March 18, 2006 arrest. Although the Claimant had been issued a restricted license, she confirmed that she was not operating her vehicle within the limits imposed by that license at the time of her arrest. In fact, during her hearing testimony, she confirmed that all details of the arresting officer's testimony were accurate. She offered no contradictory evidence, and simply

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<sup>1</sup> See Hearing Exhibit # 1.

requested that her car be returned to her despite the overwhelming proof supporting the State's request for forfeiture.

### **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 that **either** (1) that the Claimant 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 55-10-403(k)(1).

3. To sustain a forfeiture of the seized property under this statute, 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 within five (5) years after the previous offense]. TCA 55-10-403(k)(1)&(2). The State has carried its burden. The evidence clearly established that the Claimant was driving under the influence of an intoxicant at the time of her arrest

on March 18, 2006. This conclusion is adequately supported by the Claimant's admission to the arresting officer that she had been drinking prior to the stop, her erratic driving, the odor of alcohol on her person and other indicia of intoxication at the time of the stop, her failure to perform adequately on the field sobriety tests, and the .22 reading on her breath-alcohol test. Her driving record supports a finding that she was previously convicted of a DUI on May 23, 2005, 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 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 § 55-50-504(a)(1) and (h)(1).

5. In order to prevail under this theory, the State must prove (1) that the Claimant was driving 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 DUI conviction. The State's evidence proved that the Claimant's license was revoked/suspended due to her May 23, 2005 conviction for driving under the influence of an intoxicant. While her license was still revoked/suspended, she was driving the subject vehicle on March 18, 2006. Under these circumstances, the law provides that the Claimant's vehicle is subject to forfeiture.

### **Public Policy / Rationale for Forfeiture**

6. 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).

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Accordingly, it is hereby ORDERED that the subject 1999 Mercury Cougar is FORFEITED to the seizing agency, the Collegedale Police Department, for disposition as provided by law.

Entered and effective this 19th day of October, 2006.

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J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,  
this 19th day of October, 2006.



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Charles C. Sullivan, II, Director  
Administrative Procedures Division