



4-22-2008

DEPARTMENT OF SAFETY FORFEITURE
PROCEEDING, vs. One 2004 Hyundai Accent,
VIN: 1G3AJ84N2N6414746, Seized From: Lisa
Leonard 8 & G-7739, Seizure Date: October 6,
2007, Claimant: Lisa Leonard, Lienholder: None
Filed, Seizing Agency: Bristol P.D

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

IN THE MATTER OF:]	
]	
DEPARTMENT OF SAFETY]	FORFEITURE PROCEEDING
]	
V.]	
]	
One 2004 Hyundai Accent]	
VIN: 1G3AJ84N2N6414746]	DOCKET # 19.05-098354J
Seized From: Lisa Leonard]	(D.O.S. # G-7738 & G-7739)
Seizure Date: October 6, 2007]	
Claimant: Lisa Leonard]	
Lienholder: None Filed]	
Seizing Agency: Bristol P.D.]	

INITIAL ORDER

This matter was heard in Fall Branch, Tennessee on April 22, 2008, 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 State. 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 the Claimant's 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of an intoxicant ("DUI"); and/or for (2) its alleged operation by an individual whose driving privileges had previously been revoked or suspended for driving a motor vehicle while under the influence of an intoxicant ("DUI").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 vehicle should be forfeited to the seizing agency, as supported by the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The State seeks the forfeiture of the subject 2004 Hyundai Accent, seized by the Bristol Police Department from the Claimant/Owner after being stopped by an officer on October 6, 2007.
2. On October 6, 2007, Officer Terry Johnson observed the Claimant's vehicle driving erratically, weaving on the road and crossing the fog line. He stopped the vehicle, and determined that the driver of the car was Robert Stowers. Lisa Leonard, the Claimant (and owner of the vehicle) was sitting in the passenger seat.
3. In response to the officer's instructions, the driver stepped from the car. Based on his erratic driving and the smell of alcohol and his admission that he had been drinking, he was administered two field sobriety tests. He failed both.
4. When the driver was asked to produce his operator's license, he was unable to do so. After running a computer check to determine the status of his license, the officer discovered that the Claimant's license had been revoked in Virginia for multiple prior DUI convictions. He was arrested and charged with Driving Under the Influence and Driving on a Revoked License.
5. Before being stopped by the officer, the Claimant had been drinking and had become sick. She said that was why she had allowed Stowers to drive her car, despite her knowledge that he also had been drinking. She acknowledged that she was aware that his license had been revoked in Virginia for Driving Under the Influence.
6. 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. Stowers' Certified Driving Record from the State of Virginia established that his operator's license was revoked in 2003 for a third DUI conviction, and that it was still revoked for that offense at the time of the October 6, 2007 arrest.

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, [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 has carried its burden. The evidence clearly established that the driver was operating the vehicle under the influence of an intoxicant at the time of his arrest on October 6, 2007. This conclusion is adequately supported by his failing the two field sobriety tests, the odor of alcohol on his person, and his admission that he had been drinking before he was arrested.

Additionally, his driving record supports a finding that he was previously convicted of a DUI in Virginia in 2003, 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 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. The State's evidence proved that Stowers' license was revoked in Virginia due to his 2003 conviction for driving under the influence of an intoxicant. While his license was still revoked, he was driving the subject vehicle on October 6, 2007. He was driving the seized vehicle in the presence of, and with the permission of, the Claimant, who was the owner of the vehicle. 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).

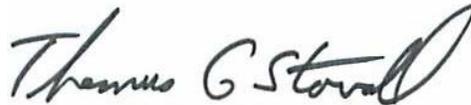
In the instant case, this rationale is equally applicable to the seizure and forfeiture of a vehicle whose owner allowed it to be driven by a person who was intoxicated, and whose license was known by the owner to have been revoked due to prior DUI convictions.

Accordingly, it is hereby ORDERED that the subject 2004 Hyundai Accent is FORFEITED to the seizing agency, the Bristol Police Department, for disposition as provided by law.

Entered and effective this 8th day of May, 2008.

J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 8th day of May, 2008.



Thomas G. Stovall, Director
Administrative Procedures Division