



3-18-2008

DEPARTMENT OF SAFETY FORFEITURE
PROCEEDING, vs. One 2001 Chevrolet
Avalanche, VIN: 3GNEK13T62G163561, Seized
From: Sylvia Pagan 1, Seizure Date: July 1, 2007,
Claimant: Sylvia Pagan, Seizing Agency: Knox Co.
S. D., Lienholder: None Filed

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

IN THE MATTER OF:]	
]	
DEPARTMENT OF SAFETY]	FORFEITURE PROCEEDING
]	
V.]	
]	
One 2001 Chevrolet Avalanche]	
VIN: 3GNEK13T62G163561]	DOCKET # 19.05-098408J
Seized From: Sylvia Pagan]	(D.O.S. # G-4771)
Seizure Date: July 1, 2007]	
Claimant: Sylvia Pagan]	
Seizing Agency: Knox Co. S. D.]	
Lienholder: None Filed]	

INITIAL ORDER

This contested administrative case was heard in Knoxville, Tennessee on March 18, 2008, before J. Randall LaFavor, Administrative Judge assigned by the Secretary of State, sitting for the Commissioner of the Tennessee Department of Safety. Ms. Lori Long, Staff Attorney for the Tennessee Department of Safety, represented the Seizing Agency. The Claimant appeared *pro se*.¹

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 laws 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:

¹ There was a notation in the record that the Claimant was represented by Attorney Jimmy Davis, who was served with a notice of the hearing date, even though he had not filed a *Notice of Appearance*, or otherwise appeared on the Claimant's behalf at previous proceedings. Mr. Davis was not present. The Claimant was asked if she wished to wait for her attorney, at which time she said that she did not anticipate that he would appear at the hearing, and that she wished to proceed without him.

FINDINGS OF FACT

1. The State seeks the forfeiture of the subject 2001 Chevrolet Avalanche, seized by the Knox County Sheriff's Department from the Claimant on July 1, 2007. On that date, Patrolman Lee Strzelecki, of the Knox County Sheriff's Department, was on routine patrol when he saw the subject vehicle being driven erratically, crossing the fog lines.

2. He stopped the car for the traffic violation. Upon approaching the driver (the "Claimant"), the officer detected the strong odor of alcohol. Upon exiting the car, the Claimant was unsteady on her feet. Her eyes were blood-shot and watery, and she failed two field sobriety tests administered at the scene. The Claimant was arrested and charged with Driving Under the Influence of an Intoxicant ("DUI").

3. A records check by the officer revealed that the Claimant had a conviction within the previous five years for Driving While Impaired by Alcohol in the State of New York. Based on that information 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 New York State Department of Motor Vehicles *Abstract of Driving Record* established that her prior conviction occurred on July 5, 2005 in the Town of Brookfield, Madison County, New York.²

4. During the hearing, the Claimant testified that, prior to her arrest, she had consumed an unspecified blood pressure medicine and migraine medication, and had drunk two (2) alcoholic beverages (margaritas). She also submitted a document labeled "Certificate of Disposition" from the Brookfield Town Court in Madison County, New York, describing her 2005 conviction for violating New York Consolidated Statutes § 1192.1³ That Code section provides that "No person shall operate a motor vehicle while the person's ability to operate such motor vehicle is impaired by the consumption of alcohol."

² See, Hearing Exhibit # 1.

³ See, Hearing Exhibit # 2.

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. TENN. CODE ANN. § 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. TENN. CODE ANN. § 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 been convicted of an alcohol-related driving offense within the previous five years [and after January 1, 1997]. TENN. CODE ANN. § 55-10-403(k)(1)&(2). The evidence clearly established that the Claimant was driving under the influence of an intoxicant at the time of her arrest on July 1, 2007. This conclusion is adequately supported by the Claimant's unsteady gait, blood-shot watery eyes, odor of alcohol on her person at the time of the stop, and her failure to perform adequately on two field sobriety tests. And, finally, her New York driving records (Hearing Exhibits # 1&2) support a finding that she was previously convicted of an alcohol-related driving offense on July 5, 2005, within the time frame established by the statute. The State has satisfactorily established that forfeiture is authorized by the law, and warranted by the facts of this case.

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 2001 Chevrolet Avalanche is FORFEITED to the seizing agency, the Knox County Sheriff's Department, for disposition as provided by law.

Entered and effective this 1st day of April, 2008.

J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 1st day of April, 2008.



Thomas G. Stovall, Director
Administrative Procedures Division