7-7-2008

DEPARTMENT OF SAFETY vs. ONE 1968 CHEVROLET, VIN NO.: 155698F185787, SEIZED FROM: JOHNATHAN SULLIVAN, DATE OF SEIZURE: 4/17/08, CLAIMANT: SANDRA ALLEN

BEFORE THE COMMISSIONER OF THE
TENNESSEE DEPARTMENT OF SAFETY

IN THE MATTER OF:	)	
	)	
DEPARTMENT OF SAFETY	)	
	)	
v.	)	**DOCKET NO. 19.05-099601J**
	)	**DOS Case No. H2730**
ONE: 1968 CHEVROLET	)	
VIN NO.: 155698F185787	)	
SEIZED FROM: JOHNATHAN SULLIVAN	)	
DATE OF SEIZURE: 4/17/08	)	
CLAIMANT: SANDRA ALLEN	)	

INITIAL ORDER

This administrative proceeding was heard on July 7, 2008, in Cookeville, Tennessee, before Anthony Adgent, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety. The Honorable Orvil Orr, Staff Attorney for the Department of Safety, represented the State. Claimant represented herself.

The subject of this hearing was the proposed forfeiture of the subject 1968 Chevrolet. The vehicle was allegedly being operated by the son of the Claimant, Johnathan Sullivan whose driving privileges had been revoked or suspended for driving a motor vehicle while under the influence of an intoxicant ("DUI"). After consideration of the record and the evidence presented at the hearing it is DETERMINED that the subject vehicle should NOT BE FORFIETED to the seizing agency. This decision is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Officer Calvin Anderson of the Cookeville Police Department stopped the subject vehicle which was being driven by Johnathan Sullivan.

2 The vehicle was stopped because it had no license tags.

3. Officer Anderson placed Sullivan under arrest and seized the car under T.C.A. 55-50-504 and 4-33-201.

4. Records showed that Sullivan's license was revoked at the time of the seizure.

5. The Claimant knew that Sullivan's license had been revoked for DUI.

6. Sullivan had applied for a Restricted Drivers License the morning of the seizure but was unable to get the proper documents signed by the appropriate Judge because was not in his office at the time the application was submitted.

7. Sullivan was subsequently granted a Restricted Drivers License on 4/21/08, some 4 days after this seizure.

8. The Restricted License was produced at the hearing and showed driving restrictions for time of day only.

CONCLUSIONS OF LAW AND ANALYSIS

1. The State failed to carry its burden of proof, by a preponderance of the evidence, that Claimant was operating the subject automobile without a proper driver's license after his driving privileges had been revoked pursuant to a previous DUI conviction in violation of T.C.A. 55-50-504.

2. Although Officer Anderson had every reason to believe that Sullivan was driving on a revoked license he had no way of knowing that Sullivan had made application for a Restricted License the same morning of the arrest and that BUT FOR the absence of the

authorizing Judge at the time the application was made Sullivan would have had a restricted license at the time of his arrest and the seizure of the auto.

3.   Although, in the strictest interpretation of the statutes, the seizure of this auto could be justified, I do not believe that the seizure was justified under these mitigating circumstances.

4.   Therefore it is hereby **ORDERED** that the seized 1968 Chevrolet be **RETURNED** to the Claimant.

This Initial Order entered and effective this 22nd day of July, 2008.

_____
Anthony Adgent
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 22nd day of July, 2008.

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Thomas Stovall, Director
Administrative Procedures Division