



4-15-2009

DEPARTMENT OF SAFETY FORFEITURE
PROCEEDING, vs. One 1995 Oldsmobile, VIN:
1G3WH52M0SD381537, Seized From: Donna
Gibson, Seizure Date: 10/21/08, Claimant: Clay
Simpson, Seizing Agency: Kingsport P. 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 1995 Oldsmobile]	
VIN: 1G3WH52M0SD381537]	DOCKET # 19.05-102560J
Seized From: Donna Gibson]	(D.O.S. # H8119)
Seizure Date: 10/21/08]	
Claimant: Clay Simpson]	
Seizing Agency: Kingsport P. D.]	
Lienholder: None Filed]	

INITIAL ORDER

This contested administrative case was heard in Fall Branch, Tennessee, on April 15, 2009, before J. Randall LaFevor, Administrative Judge, assigned by the Secretary of State and 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 hearing was convened to consider the proposed forfeiture of the described vehicle for its alleged operation by an individual whose driving privileges had been revoked or suspended for driving a motor vehicle while under the influence of an intoxicant (“DUI”). TENN. CODE ANN. §§ 55-50-504 & 40-33-201, *et seq.* Upon full consideration of the entire record in this matter, it is determined that the subject vehicle should be FORFEITED as provided by law. This decision is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On October 21, 2008, at approximately 7:45 PM, an officer with the Kingsport Police Department stopped the Claimant’s vehicle for erratic driving, crossing the double center lines on the road.

2. When asked for her license, the driver, Donna Gibson, was unable to produce one because her operator's license had been revoked for a prior DUI offense.

3. Based on that information, the officer seized the vehicle, and later sought and obtained a Vehicle Forfeiture Warrant. The Claimant, Clay Simpson, registered owner of the vehicle, filed a claim for its return, resulting in the scheduling of the instant contested administrative case hearing.

4. Department of Safety records¹ established that Donna Gibson was previously convicted of DUI in Sullivan County, Tennessee, resulting in the revocation of her Tennessee motor vehicle operator's license by the Department of Safety. She will be eligible for reinstatement of her license on January 20, 2010. Her license had not been restored by the date of the vehicle seizure on October 21, 2008.

5. On the night of the vehicle seizure, the Donna Gibson and the Claimant both told the seizing officer that the Claimant is Gibson's uncle, that they live together, and that he had bought the car for her. The Claimant knew that Gibson's license was revoked for a prior DUI. Gibson had the keys to the vehicle, and all of the property found in the car belonged to her. In addition to the seized vehicle, the Claimant owns two other vehicles.

CONCLUSIONS OF LAW & ANALYSIS

1. The law provides that it is illegal for a person to operate a motor vehicle at a time when his/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).

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.*

¹ See Hearing Exhibit # 1: Department of Safety Driving Record.

3. In order to prevail in this case, the State must prove (1) that Gibson was driving the subject vehicle, and (2) that she was doing so at a time when her license to drive had been revoked for a DUI conviction. The State's evidence proved that Gibson's license was revoked due to a prior conviction for driving under the influence of an intoxicant. She did not comply with the requirements for reinstatement of her license. While her license was still revoked, she was found to be operating the subject vehicle when it was seized on October 21, 2008. Under these circumstances, the law provides that the vehicle is subject to forfeiture.

4. The law also provides that, when the owner of the vehicle is not present at the time of the seizure, his/her legal interest is not subject to forfeiture without proof that the owner knew that the vehicle "was being used in a manner making it subject to forfeiture and consented to its use." TCA § 40-33-210(c). In this case, the Claimant, Clay Simpson argued that he is the registered owner of the car, and is therefore entitled to have it returned to him. However, in this state, it is the intention of the parties, and not necessarily the certificate of title, that determines the ownership of an automobile [*Smith v. Smith*, 650 S.W.2d 54 (Tenn. Ct. App. 1983)]. In the instant proceeding, there was ample evidence, in the form of pre-hearing statements from the Claimant and his niece, that the Claimant had purchased the car for her, that she had the keys to the car, that all of the property in the car was hers, and that the Claimant owned two other cars and had no legitimate reason to purchase a third one for his own use. It could therefore be concluded that the actual owner of the vehicle was the Donna Gibson.

5. Additionally, even if he did not give the car to his niece, she was clearly driving it with his permission, having purchased it for her use. He allowed her to use it despite his admitted knowledge that her operator's license had been revoked for a prior DUI conviction. So, whether the Claimant had transferred ownership of the car to his niece, or had simply allowed her to drive it while her license was revoked, the Claimant cannot be found to be an "innocent owner" as contemplated by the law. Either way, he knew that the car would be "used in a manner making it subject to forfeiture and consented to its use," as contemplated by TCA § 40-33-210(c).

The State has successfully met its burden of proof. Accordingly, it is hereby ORDERED that the subject 1995 Oldsmobile is FORFEITED to the seizing agency, the Kingsport Police Department, for disposition as provided by law.

Entered and effective this 27th day of April, 2009.

J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 27th day of April, 2009.



Thomas G. Stovall, Director
Administrative Procedures Division