



1-29-2009

DEPARTMENT OF SAFETY FORFEITURE
PROCEEDING, vs. and H5537, One 2008 Toyota
Tacoma, Van: 5TENX22N08Z537694, Seized
from: Charles Prior, Date of Seizure: July 23, 2008,
Seized by: Memphis Police Department/OCU,
Claimants: Charles & Linda Prior, Lienholder:
Toyota Motor Credit Corp.

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BEFORE THE COMMISSIONER OF THE
TENNESSEE DEPARTMENT OF SAFETY

IN THE MATTER OF:)	
)	
DEPARTMENT OF SAFETY)	FORFEITURE PROCEEDING
)	
v.)	DOCKET NO. 19.05-102495J
)	DOS Case No. H5536 and H5537
One: 2008 Toyota Tacoma)	
Van: 5TENX22N08Z537694)	
Seized from: Charles Prior)	
Date of Seizure: July 23, 2008)	
Seized by: Memphis Police Department/OCU)	
Claimants: Charles & Linda Prior)	
Lienholder: Toyota Motor Credit Corp.)	

INITIAL ORDER

This administrative proceeding was heard on January 29, 2009, in Memphis, Tennessee, before John Hicks, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety. Andre Thomas, Staff Attorney for the Department of Safety, represented the State. Claimants Charles and Linda Prior appeared *pro se*.

The subject of this hearing was the proposed forfeiture of the subject 2008 Toyota Tacoma for its alleged operation by Claimant Charles Prior in the commission of Claimant's second or subsequent violation of state law prohibiting driving a motor vehicle while under the influence of an intoxicant ("DUI"). After consideration of the record, it is DETERMINED that the subject 2008 Toyota Tacoma should be FORFEITED to the Memphis Police Department/OCU subject to the lien of Toyota Motor Credit Corporation. This decision is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On July 16, 2008, Officer William Till of the Memphis Police Department/OCU stopped Claimant Charles Prior for driving across the center line. When stopped, Claimant was driving the subject 2008 Toyota Tacoma.
2. Officer Till determined that Claimant Charles Prior had slurred speech, glassy/bloodshot eyes and had an open container of Budweiser beer between the seats.
3. When Claimant got out of the subject 2008 Toyota Tacoma he was unable to stand without support.
4. Claimant was unable to perform a field sobriety test and Claimant refused a BAC test.
5. Claimant was arrested for driving under the influence.
6. Claimant's driver's license was revoked pursuant to a June 16, 2008 conviction in Mississippi.
7. The subject 2008 Toyota Tacoma was seized based on Claimant's second DUI arrest.
8. The 2008 Toyota Tacoma is titled to Claimants Charles and Linda Prior.
9. Claimant Linda Prior was aware that her husband Claimant Charles Prior had a prior DUI conviction and that his driver's license was revoked pursuant to a June 16, 2008 conviction in Mississippi.

CONCLUSIONS OF LAW

1. The State carried its burden of proof, by a preponderance of the evidence, that on July 16, 2008 Claimant Charles Prior was driving the subject 2008 Toyota Tacoma while intoxicated.

2. The State carried its burden of proof, by a preponderance of the evidence, that on July 16, 2008, Claimant Charles Prior was driving the subject 2008 Toyota Tacoma after his driving privileges had been revoked pursuant to a previous Mississippi DUI conviction.

3. T.C.A. 55-10-403 (k) (1) The vehicle used in the commission of a person's second or subsequent violation of §. 55-10-401,...is subject to seizure and forfeiture in accordance with the procedure established in title 40, chapter 33, part 2.

4. It is CONCLUDED that the State met its burden of proof to show that the seized 2008 Toyota Tacoma was used in the commission of Claimant Charles Prior's second or subsequent violation DUI and is subject to forfeiture.

5. It is CONCLUDED that Claimant was intoxicated on July 16, 2008. Claimant Charles Prior was unable to take a field sobriety test and refused a BAC test.

6. It is CONCLUDED that the seized 2008 Toyota Tacoma should be forfeited to the seizing agency pursuant to the provisions of T.C.A. § 55-50-504(h) and T.C.A. § 55-10-403 (k) (1).

7. T.C.A. 40-33-210 provides

(a) ...the state shall have the burden to prove by a preponderance of the evidence that ; ... (2) The owner or co-owner of the property knew that such property was of a nature making its possession illegal or was being used in a manner making it subject to forfeiture, ...

8. It is CONCLUDED that that the State met the burden the show that Claimant Linda Prior had knowledge that Claimant Charles Prior's driver's license was revoked pursuant to a second DUI conviction. Claimant Linda Prior admitted that she had knowledge that Claimant Charles Prior had a DUI conviction.

9. It is CONCLUDED that Claimant Linda Prior failed show that at any time she had no knowledge or reason to believe that the seized 2008 Toyota Tacoma was being or would be used by Claimant Charles Prior whose driving privileges had been revoked or suspended for driving a motor vehicle while under the influence of an intoxicant ("DUI").

10. It is CONCLUDED that the seized 2008 Toyota Tacoma should be forfeited.

11. It is ORDERED that the seized 2008 Toyota Tacoma is **FORFEITED** to the seizing agency, Memphis Police Department /OCU, subject to the lien of Toyota Motor Credit Corporation for disposition as provided by law.

This Initial Order entered and effective this 18th day of August, 2009.

John Hicks
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State this 18th day of August, 2009.

Thomas G. Stovall, Director
Administrative Procedures Division