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1-13-2009

Deborah H2992 Monnard, 2004 Ford Pick Up,
V.I.N. #1FTPX14524NC63413, Seized from:
Deborah Monnard, Seizure date: April 28, 2008,
Claimant: Deborah Monnard

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

IN THE MATTER OF:

**Deborah (H2992) Monnard
2004 Ford Pick Up
V.I.N. #1FTPX14524NC63413
Seized from: Deborah Monnard
Seizure date: April 28, 2008
Claimant: Deborah Monnard**

DOCKET NO: 19.05-100217J

AMENDED INITIAL ORDER

This matter was heard in Humboldt, Tennessee, on January 13, 2009, before Joyce Carter-Ball, Administrative Law Judge, assigned by the Secretary of State and sitting for the Commissioner of the Tennessee Department of Safety. Joe Bartlett, Staff Attorney for the Department of Safety, represented the State.

Deborah Monnard, Claimant, was represented by her legal counsel, Terry L. Wood. An Initial Order forfeiting the subject 2004 Ford Pick Up to the seizing agency was filed on February 23, 2009.

On March 10, 2009, counsel for Claimant filed a Petition for Reconsideration of the Initial Order. It was determined that the Petition had merit, and the Petition for Reconsideration was granted.

CONCLUSIONS OF LAW

1. The State of Tennessee as the moving party in this case has the burden to introduce evidence that would by a preponderance of the evidence prove the issues should be resolved in its favor. **Rule 1360-4-1-.02.**

2. **Tennessee Code Annotated §55-10-401 provides:**

(a) It is **unlawful for any person to drive or to be in physical control of any automobile or other motor driven vehicle on any of the public roads and highways** of the state, or on any streets or alleys, or while on the premises of any shopping center, trailer park or any apartment house complex, or any other premises which is generally frequented by the public at large, while:

(1) **Under the influence of any intoxicant, marijuana, narcotic drug, or drug** producing stimulating effects on the central nervous system; or

(2) The alcohol concentration in such person's blood or breath is eight-hundredths of one percent (.08%) or more.

(b) For the purpose of this section, "drug producing stimulating effects on the central nervous system" includes the salts of barbituric acid, also known as malonyl urea, or any compound, derivatives, or mixtures thereof that may be used for producing hypnotic or somnifacient effects, and includes amphetamine, desoxyephedrine or compounds or mixtures thereof, including all derivatives of phenoethylamine or any of the salts thereof, except preparations intended for use in the nose and unfit for internal use.

3. After further review of this matter, it is determined that the State failed to prove that Claimant was driving or in physical control of the subject vehicle while under the influence of any intoxicant, marijuana, narcotic drug or drug producing stimulating effects on the central nervous system.

4. Although Claimant did not comply with any of the field sobriety tests, and was not able to maneuver the subject vehicle, Officer Smith did not think Claimant was impaired when he initially spoke with her, and later asked her to follow him and drive on a public road. Officer Smith testified that Claimant did submit to a BAC, and that the **BAC came back negative on alcohol.**

5. The marijuana finding in the blood test result was negated completely by undisputed testimony of Dr. Baron A. Chase. The state offered no testimony to contradict this expert testimony.

6. It is determined that Claimant has problems with her balance, which has resulted in a number of falls and injuries. However, at the time Claimant was approached by Officer Smith on April 28, 2008, the evidence does not show that Claimant was impaired because of any intoxicant, marijuana or narcotic drug, pursuant to T.C.A. §55-10-401, which warrants forfeiture of her vehicle.

7. Based upon further review of the record, it is ORDERED that the subject 2004 Ford Pick Up be **RETURNED** to the Claimant. This order **amends** the initial order entered on February 23, 2009.

IT IS SO ORDERED.

This Initial Order entered and effective this 20th day of May, 2009.

Joyce Carter-Ball
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 20th day of May, 2009.



Thomas G. Stovall, Director
Administrative Procedures Division

