



2-17-2010

DEPARTMENT OF SAFETY FORFEITURE
PROCEEDING vs. One 2008 Chevrolet Silverado
Truck VIN: 2GCEK13M481231987, Seized
From: Kristopher Fariss, Seizure Date: 9/19/09,
Claimant: Kristopher Fariss Seizing Agency: Knox
Co. S. D., Lienholder: Home Federal Bank

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

IN THE MATTER OF:]	
]	
DEPARTMENT OF SAFETY]	FORFEITURE PROCEEDING
]	
V.]	
]	
One 2008 Chevrolet Silverado Truck]	
VIN: 2GCEK13M481231987]	DOCKET # 19.05-106564J
Seized From: Kristopher Fariss]	(D.O.S. # J8519)
Seizure Date: 9/19/09]	
Claimant: Kristopher Fariss]	
Seizing Agency: Knox Co. S. D.]	
Lienholder: Home Federal Bank]	

INITIAL ORDER

This matter was heard in Knoxville, Tennessee on February 17, 2010, before J. Randall LaFevor, Administrative Judge assigned by the Secretary of State, sitting for the Commissioner of the Tennessee Department of Safety. Ms. Nina Harris, Staff Attorney for the Tennessee Department of Safety, represented the Seizing Agency. The Claimant was represented by his legal counsel, Ms. Laura Metcalf.

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 state law 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 requested forfeiture should be denied, and that the subject vehicle should be returned to the Claimant. This decision is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. An officer with the Knox County Sheriff's Office seized the Claimant's truck on September 19, 2009. The Claimant filed a petition for the return of the vehicle, and a contested case hearing was scheduled to consider that claim. On the date of the hearing, the seizing officer did not appear at the hearing. After a suitable time had passed, and in

the absence of an explanation from the Seizing Agency for the officer's absence, counsel for the agency elected to proceed without the seizing officer.

2. Department of Safety records¹ established that the Claimant's Tennessee motor vehicle operator's license was revoked on March 15, 2007, due to a DUI conviction in Union County on February 23, 2007. All other evidence introduced during the hearing was elicited through the testimony of the Claimant.

3. In response to questions from the Seizing Agency's counsel, the Claimant admitted that he was involved in an automobile accident on September 19, 2009. He was then asked a series of questions which he refused to answer, on advice of counsel, and grounded on his Fifth Amendment right against self-incrimination.

4. Among the relevant questions asked were: (1) Whether the Claimant was driving his car when the accident occurred; (2) Whether the Claimant told the officer that he had been drinking prior to the accident; and (3) Whether the Claimant was administered field sobriety tests, and/or breath or blood test for alcohol.

5. Since the Claimant refused to answer those questions, it may be inferred that his responses would have been adverse to his case.² The adverse responses which may be inferred are: (1) That the Claimant was driving his car at the time of the accident; (2) That the Claimant told the officer that he had been drinking prior to the accident [But there was no proof of how much he had consumed, or of what impact it may have had on his ability to drive]; and (3) That the Claimant was administered tests to determine his blood-alcohol content and/or sobriety, [But, the State offered no proof of the results of any such tests.]

¹ See Hearing Exhibit #1.

² See Rule 1340-2-2-.18(1)(a)2, *Rules of Procedure for Asset Forfeiture Hearings*: "If a claimant invokes the Fifth Amendment, then the inference is that the response called for is adverse to the claimant's case. This inference may be taken by an administrative judge and may be used to support the agency's burden of proof in accordance with applicable law."

6. In light of the absence of the Seizing Agency's witness, the arresting officer, the State was unable to offer any other evidence in support of its proposed forfeiture of the Claimant's vehicle.

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. TCA 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. TCA 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 he was doing so while impaired by an intoxicant, and (3) that he had previously been convicted of a DUI, after January 1, 1997 [and that the current offense occurred within five (5) years after the most recent offense]. TCA 55-10-403(k)(1)&(2). The State failed to carry its burden. The Claimant's driving record supports a finding that he was previously convicted of a DUI offense on February 23, 2007, within the time frame established by the statute. It may be inferred by his refusal to answer the question, that he was driving his vehicle when it was involved in an accident. However, the State failed to prove that the Claimant was driving his truck at the time of the accident *while impaired due to the consumption of an intoxicant.*

4. Even with the benefit of adverse inferences drawn as a result of the Claimant's refusal to answer questions about the events surrounding his truck's seizure, the State was unable to meet its burden of proof. At best, through his testimony, the State proved that the Claimant was driving at the time of the accident, that he had been drinking prior to the accident, and that he was administered tests after the accident to determine his state of sobriety and/or blood-alcohol content. While it may be sufficient to raise a suspicion that the Claimant may have been "driving under the influence," that proof alone does not establish that the Claimant was *driving his vehicle while impaired* due to the consumption of alcohol or another intoxicant. It is not simply the act of having ingested alcohol before driving, but the act of driving while under the influence of that substance, that is illegal. Many people are quite capable of driving unimpaired after consuming a modest quantity of alcohol. It is possible that the additional evidence needed to support the State's case might have been provided by the seizing officer. However, in his absence, there was no proof related to the Claimant's physical condition, the results of field sobriety or blood-alcohol tests, or other indicia of intoxication.

Accordingly, it is hereby ORDERED that the requested forfeiture is denied, and that the subject 2008 Chevrolet Silverado Truck shall be returned to the Claimant. No storage fees or other costs associated with this case shall be assessed against the Claimant, provided he claims his truck from the Seizing Agency within five (5) days of receipt of this Order.

Entered and effective this 9th day of March, 2010.

J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 9th day of March, 2010.

A handwritten signature in black ink that reads "Thomas G. Stovall". The signature is written in a cursive style with a large, looping initial 'T' and 'S'.

Thomas G. Stovall, Director
Administrative Procedures Division