



5-27-2010

DEPARTMENT OF SAFETY FORFEITURE
PROCEEDING vs. One 1992 Mercury SGS VIN:
1MECM5043NA644349, Seized From: Felipe
Rivera, Seizure Date: 4/23/09, Claimant: Felipe
Rivera Seizing Agency: Rhea Co. S. 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 1992 Mercury SGS]	
VIN: 1MEECM5043NA644349]	DOCKET # 19.05-107712J
Seized From: Felipe Rivera]	(D.O.S. # J4085)
Seizure Date: 4/23/09]	
Claimant: Felipe Rivera]	
Seizing Agency: Rhea Co. S. D.]	
Lienholder: None Filed]	

INITIAL ORDER

This contested administrative case was heard in Chattanooga, Tennessee, on May 27, 2010, before J. Randall LaFevor, Administrative Judge, assigned by the Secretary of State and sitting for the Commissioner of the Tennessee Department of Safety. Mr. Joe Bartlett, Staff Attorney for the Tennessee Department of Safety, represented the State. The Claimant appeared *pro se*, accompanied by Mr. Victor Sanchez, acting as his interpreter.

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proposed forfeiture of the described vehicle for its alleged operation by an individual whose driving privileges had been revoked or suspended for driving a motor vehicle while under the influence of an intoxicant (“DUP”). 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 April 23, 2009, a deputy with the Rhea County Sheriff’s Department stopped the Claimant’s vehicle for driving in excess of the posted speed limit.

2. The deputy approached the vehicle, and asked the driver for his license. The driver identified himself as Felipe Rivera (the “Claimant”), and then informed the officer that he had no operator’s license because it had been revoked for a DUI offense.

3. After confirming that the Claimant’s license had been revoked for a prior DUI conviction, the officer seized the vehicle, and later sought and obtained a Vehicle Forfeiture Warrant. The Claimant filed a claim for its return, resulting in the scheduling of the instant contested administrative case hearing.

4. Tennessee Department of Safety records¹ established that the Claimant was previously convicted of DUI on May 6, 2008 in Rhea County, resulting in the revocation of his Tennessee motor vehicle operator’s license by the Department of Safety. His license had not been restored before the vehicle seizure on April 23, 2009.

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*.

3. In order to prevail in this case, the State must prove (1) that the Claimant was driving the subject vehicle, and (2) that he was doing so at a time when his license to drive had been revoked for a DUI conviction. The State’s evidence proved that the Claimant’s license was revoked due to a May 2008 conviction for driving under the

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

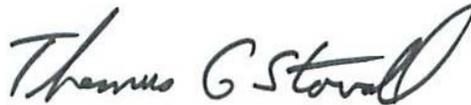
influence of an intoxicant. He did not comply with the requirements for reinstatement of his license. While his license was still revoked, he was found to be operating the subject vehicle when it was seized on April 23, 2009. Under these circumstances, the law provides that the vehicle is subject to forfeiture.

The State has successfully met its burden of proof. Accordingly, it is hereby ORDERED that the subject 1992 Mercury SGS is FORFEITED to the seizing agency, the Rhea County Sheriff's Department, for disposition as provided by law.

Entered and effective this 28th day of May, 2010.

J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 28th day of May, 2010.



Thomas G. Stovall, Director
Administrative Procedures Division