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Law

11-26-2012

Department of Safety vs. One 2002 Dodge Ram
Truck, VIN: 3D7HA18Z92G196694, Seized
From: Matthew B. Lewis, Date of Seizure: April 18,
2012, Claimant: Matthew B. Lewis, Lienholder:
None

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

IN THE MATTER OF:

Department of Safety,

Vs.

**DOCKET NO: 19.05-119190J
SAFETY NO: M5877**

**One 2002 Dodge Ram Truck
VIN: 3D7HA18Z92G196694
Seized From: Matthew B. Lewis
Date of Seizure: April 18, 2012
Claimant: Matthew B. Lewis
Lienholder: None**

INITIAL ORDER

This matter was heard on November 26, 2012, Nashville, Tennessee before Steve R. Darnell, Administrative Law Judge, assigned by the Secretary of State, Administrative Procedures Division and designated to sit for the Commissioner of the Tennessee Department of Safety. Attorney Nina Harris represented the Department of Safety. Claimant was not present, but his attorney Daniel Marshall appeared on his behalf. Claimant's mother was also present.

The issue presented for consideration is whether the Department properly seized Claimant's vehicle because he operated it in violation of T.C.A. §55-10-401. It is **DETERMINED** this vehicle was properly seized and Claimant's interest should be forfeited to the seizing agency.

This conclusion is based on the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On April 18, 2012, a Tennessee Highway Patrol Trooper observed Claimant drive the above described vehicle through a red light in Davidson County, Tennessee. The Trooper initiated a traffic stop of Claimant. Upon approaching the vehicle, the Trooper noticed the smell of alcohol on Claimant's person. The Trooper observed other indications that Claimant was intoxicated.

2. Based on the Trooper's observations, Claimant was asked to perform a series of field sobriety tests. Claimant failed these tests. Claimant was arrested and transported to Baptist Hospital where a blood draw was made to determine his BAC. Claimant's BAC was .12. Claimant was charged with DUI.

3. Claimant was previously convicted of DUI on March 19, 2003 in Williamson County, on July 29, 2008 in Davidson County, and was convicted of the instant offense on July 23, 2012 in Davidson County.

4. There were less than five years between the instant incident and Claimant's conviction in 2008. Claimant's vehicle is therefore subject to seizure by the Department. Claimant's vehicle was seized by the Trooper.

5. The vehicle was purchased by Claimant while he was a student at the University of Tennessee. Claimant's grandfather co-signed the note so Claimant could make the purchase. Claimant made the payment, albeit with moneys gifted to him by his parents. The vehicle was licensed and titled in Claimant's name only. Claimant owned a 100% interest in the vehicle.

6. Claimant's interest in the truck is subject to forfeiture.

CONCLUSIONS OF LAW

1. The Department of Safety 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 phenylethylamine or any of the salts thereof, except preparations intended for use in the nose and unfit for internal use.

3. Tennessee Code Annotate §40-10-403 provides in part as follows:

(a)(1) Any person or persons violating the provisions of §§ 55-10-401--55-10-404 shall, upon conviction thereof, for the first offense be fined not less than three hundred fifty dollars (\$350) nor more than one thousand five hundred dollars (\$1,500), and such person or persons shall be confined in the county jail or workhouse for not less than forty-eight (48) hours nor more than eleven (11) months and twenty-nine (29) days; and the court shall prohibit such convicted person from driving a vehicle in the state of Tennessee for a period of time of one (1) year. In addition to the other penalties set out for a first offense violation, if at the time of such offense the alcohol concentration in such person's blood or breath is twenty hundredths of one percent (.20%) or more, the minimum period of confinement for such person shall be seven (7) consecutive calendar days rather than forty-eight (48) hours....

(b) – (c)

(d)(1)(A) Except as provided in subdivision (d)(2), if a person's motor vehicle operator's license has been revoked pursuant to subsection (a), such person may apply to the trial judge for a restricted driver license. The trial judge may order the issuance of a restricted motor vehicle operator's license in accordance with § 55-50-502, if based upon the records of the department of safety:

- (i) The violation resulting in the person's present conviction for driving under the influence of an intoxicant occurred on or after July 1, 2000;
- (ii) The person does not have a prior conviction for a violation of § 39-13-106, § 39-13-213(a)(2), or § 39-13-218, in this state or a similar offense in another state; and
- (iii) The person does not have a prior conviction for a violation of § 55-10-401 or § 55-10-418 within ten (10) years of the present violation in this state or a similar offense in another state.
- (iv) The trial judge may issue such order allowing the person so convicted to operate a motor vehicle for the limited purposes of going to and from:
 - (a) Such person's regular place of employment and any work-related driving;
 - (b) A court-ordered alcohol safety program;
 - (c) A college or university in the case of a student enrolled full time in such college or university;
 - (d) A scheduled interlock monitoring appointment; and
 - (e) A court-ordered outpatient alcohol or drug treatment program.

.....

(e) – (j)

(k)(1) The vehicle used in the commission of a person's second or subsequent violation of § 55-10-401, or the second or subsequent violation of any combination of § 55-10-401, and a statute in any other state prohibiting driving under the influence of an intoxicant, is subject to seizure and forfeiture in accordance with the procedure established in title 40, chapter 33, part 2. The department of safety is designated as the applicable agency, as defined by § 40-33-202, for all forfeitures authorized by this subsection (k).

(2) In order for the provisions of subdivision (k)(1) to be applicable to a vehicle, the violation making the vehicle subject to seizure and forfeiture must occur in Tennessee and at least one (1) of the previous violations must occur on or after January 1, 1997, and the second offense after January 1, 1997, occurs within five (5) years of the first offense occurring after January 1, 1997.

(3) It is the specific intent that a forfeiture action under this section shall serve a remedial and not a punitive purpose. The purpose of the forfeiture of a vehicle after a person's second or subsequent DUI violation is to prevent unscrupulous or incompetent persons from driving on Tennessee's highways while under the influence of alcohol or drugs. Driving a motor vehicle while under the influence of alcohol or drugs endangers the lives of innocent people who are exercising the same privilege of riding on the state's highways. There is a reasonable connection between the remedial purpose of this section, ensuring safe roads, and the forfeiture of a motor vehicle. While this section may serve as a deterrent to the conduct of driving a motor vehicle while under the influence of alcohol or drugs, it is nonetheless intended as a remedial measure. Moreover, the statute serves to remove a dangerous instrument from the hands of individuals who have demonstrated a pattern of driving a motor vehicle while under the influence of alcohol or drugs.

4. Tennessee Code Annotated § 40-33-210 provides as follows:

(a) In order to forfeit any property or any person's interest in such property pursuant to §§ 39-14-307, 47-25-1105, 53-11-451, **55-10-403(k)**, 55-50-504(h), 57-3-411, 57-5-409, 57-9-201, 67-4-1020 and 70- 6-202, the state shall have the burden to prove by a preponderance of evidence that:

(1) The seized property was of a nature making its possession illegal or was used in a manner making it subject to forfeiture under the sections set out in this subsection (a); and

(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, or, in the case of a secured party, that the standards set out in subsection (f) are met.

(b)(1) Failure to carry the burden of proof shall operate as a bar to any forfeiture and the property shall be immediately returned to the claimant.

(2) Notwithstanding that the hearing officer found that the state carried its burden of proof and recommended forfeiture of the property, the administrative head of the applicable agency may, in the interests of justice, order that the seized property be returned to the claimant.

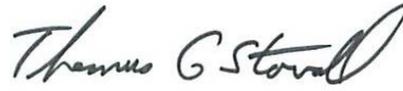
It is **CONCLUDED** that the Department of Safety has carried its burden of proof and established by a preponderance of the evidence that Claimant operated the above described vehicle in violation of T.C.A. §40-10-403 and the same is subject to forfeiture to the seizing agency.

IT IS THEREFORE ORDERED that the above described vehicle be forfeited to the seizing agency.

This Initial Order entered and effective this 23 day of January, 2013

Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 23
day of January, 2013

A handwritten signature in black ink that reads "Thomas G. Stovall". The signature is written in a cursive style with a horizontal line underneath it.

Thomas G. Stovall, Director
Administrative Procedures Division