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11-26-2012

Department of Safety vs. One 2006 Dodge
Charger, VIN: 2B3KA43G76H472532, Seized
From: Kian Hamzapour, Date of Seizure: August 9,
2012, Claimant: Kian Hamzapour, 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: 19.05-119193J
SAFETY NO: M9827**

**One 2006 Dodge Charger
VIN: 2B3KA43G76H472532
Seized From: Kian Hamzapour
Date of Seizure: August 9, 2012
Claimant: Kian Hamzapour
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 Hillary Edwards represented the Department of Safety. Claimant was represented by attorney Bob Travis of the Lebanon bar.

ISSUE FOR CONSIDERATION

Did the Department properly seized Claimant's vehicle because he operated it in violation of T.C.A. §55-10-401.

SUMMARY OF DETERMINATION

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. Trooper Leverette with the Tennessee Highway Patrol has a device on his cruiser that photographs the license plates of vehicles within a range, deciphers the plate number, and then searches the plate number in approximately 10 computerized databases for warrants, expired licenses, stolen vehicles, etc. If a match is found, the Trooper is provided an alert including a description of the vehicle and the Department's driver's license photo of the vehicles owner.

2. On August 9, 2012, Trooper Leverette received an alert concerning Claimant's vehicle. The alert indicated that Claimant's driver's license was revoked. The Trooper turned his cruiser around and activated his blue lights to stop traffic so he could quickly and safely join traffic going in the opposite direction. Once he was in traffic traveling the same direction as Claimant, the Trooper deactivated his blue lights.

3. While the Trooper believes he has probable cause to make a stop based on the alert alone, it is his policy to not do so until he has confirmed the driver matches the photograph in the alert.

4. The Trooper intended to drive alongside the vehicle to compare the license photograph to the driver. However, he observed the vehicle cross several lanes of traffic and make an abrupt turn onto an adjoining road. The Trooper's observation of the vehicle's operation led the Trooper to believe that the vehicle was evading him.

5. The Trooper followed Claimant's vehicle, but was unable to catch up and eventually lost sight of the vehicle. After driving a few miles he stopped his cruiser and waited for the vehicle, but it did not reappear. The Trooper decided to resume his patrol and traveled back in the same direction he had come.

6. Shortly after the Trooper started to backtrack to his patrol route, he received a second alert on the same vehicle. He observed the vehicle again travelling in the opposite lane of traffic.

7. The Trooper turned his vehicle and initiated a stop of Claimant's vehicle. Based upon the two alerts and the evasive actions of the driver, the Trooper had probable cause to initiate the traffic stop.

8. Claimant was the owner of and was driving the vehicle. The vehicle does not have a lien on it. Claimant was convicted of DUI in the State of Florida on March 21, 2012. The Department received notice of Claimant's DUI conviction and sent him notice that his driver's license was revoked on May 10, 2012.

9. Claimant knew his license to operate a motor vehicle in the State of Tennessee was revoked due to his DUI conviction in Florida on August 9, 2012.

10. Claimant operated the above described vehicle at a time when his license to operate a motor vehicle was revoked due to a DUI conviction. The vehicle was properly seized and should be forfeited to the seizing agency.

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 25 day of January, 2013

Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 25 day of January, 2013



Thomas G. Stovall, Director
Administrative Procedures Division

