



University of Tennessee, Knoxville  
**Trace: Tennessee Research and Creative  
Exchange**

---

Tennessee Department of State, Opinions from the  
Administrative Procedures Division

Law

---

5-6-2013

## Department of Safety vs. William Gamble

Follow this and additional works at: [http://trace.tennessee.edu/utk\\_lawopinions](http://trace.tennessee.edu/utk_lawopinions)

---

This Initial Order by the Administrative Judges of the Administrative Procedures Division, Tennessee Department of State, is a public document made available by the College of Law Library, and the Tennessee Department of State, Administrative Procedures Division. For more information about this public document, please contact [administrative.procedures@tn.gov](mailto:administrative.procedures@tn.gov)

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

<b>IN THE MATTER OF:</b>	)	
	)	
<b>TENNESSEE DEPARTMENT OF SAFETY,</b>	)	<b>Docket No. 19.05-120047J</b>
	)	
<b>v.</b>	)	<b>Department of Safety</b>
	)	<b>Case No. M9646</b>
<b>one 1995 LINCOLN TOWN CAR</b>	)	
<b>VIN# 1LNLM82W1SY618526</b>	)	
<b>SEIZED FROM: WILLIAM GAMBLE</b>	)	
<b>SEIZURE DATE: AUGUST 15, 2012</b>	)	
<b>CLAIMANT: WILLIAM GAMBLE</b>	)	
<b>LIENHOLDER: N/A</b>	)	
	)	

**INITIAL ORDER**

This matter came on to be heard on February 6, 2013, in Memphis, Tennessee before Joyce Grimes Safley, Administrative Judge, assigned by the Secretary of State, and sitting for the Commissioner of the Tennessee Department of Safety. Mr. Andre Thomas, Attorney for the Department of Safety, represented the State. The Claimant was present, and represented himself, after waiving representation by counsel.

The subject of this hearing was the proposed forfeiture of the above referenced Lincoln Town Car automobile, VIN # 1LNLM82W1SY618526 for Claimant's alleged use of this vehicle in violation of T.C.A §55-50-504 (driving a vehicle on a revoked license- DUI).

After consideration of the evidence offered, the arguments of counsel and Claimant, and the entire record in this matter, it is **ORDERED** that the seized vehicle be **FORFEITED** to the seizing agency, the Memphis Police Department.

This decision is based upon the following Findings of Fact and Conclusions of Law.

#### **FINDINGS OF FACT**

1. On August 9, 2012, Claimant was driving a 1995 Lincoln Town Car near East Shelby Drive, Memphis, TN.

2. Officer Ennett Williams, with the Memphis Police Department, was on routine patrol, when he observed that Claimant was driving a vehicle without a vehicle license plate.

3. Officer Williams made a traffic stop due to the absence of a license plate on Claimant's vehicle.

4. Claimant did not have a valid Tennessee Driver's License. A data search revealed that Claimant's driver's license had been revoked on April 1, 1991 for DUI's.

5. At the time of the August 9, 2012 traffic stop, Officer Williams observed that Claimant smelled of "strong intoxicants", had bloodshot eyes, and had slurred speech.

6. The entire technical record was entered into evidence as an exhibit in this matter. Additionally, a certified copy of Claimant's Driving Record was entered as an exhibit in this matter.

3. The following individuals testified at the contested case hearing: Officer Ennett Williams, Officer Richardson, and Claimant.

4. Claimant owns the vehicle which is the subject of this forfeiture proceeding.

### CONCLUSIONS OF LAW

1. T.C.A. § 55-50-504 applies to this matter. It states, in pertinent part:

**Driving while license cancelled, suspended or revoked.---[...]**  
**Forfeiture---Notice.---**(a)(1) A person who drives a motor vehicle within the entire width between the boundary lines of every way publicly maintained that is open to the use of the public for purposes of vehicular travel, or the premises of any shopping center, manufactured housing complex or apartment house complex or any other premises frequented by the public at large at a time when the person's privilege to do so is cancelled, suspended, or revoked commits a Class B misdemeanor.

\*\*\*

(h)(1) The vehicle used in the commission of a person's violation of §55-50-504, when the original suspension or revocation was made for a violation of §55-10-401<sup>1</sup>, or a statute in another 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

---

<sup>1</sup> T.C.A. §55-10-401 **Driving under the influence of an intoxicant, drug or drug producing stimulant effect prohibited—Alcohol concentration in blood or breath.** (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 of such person's blood or breath is ten-hundredths of one percent (.10%) 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 amphetamines, derivatives of phenoethylamine or any of the salts thereof, except preparations intended for use in the nose and unfit for internal use.

designated as the applicable agency, as defined by §40-33-020, for all forfeitures authorized by this subsection.

(2) For purposes clarifying the provisions of this subsection and consistent with the overall remedial purpose of the asset forfeiture procedure, ***a vehicle is subject to seizure and forfeiture upon the arrest or citation of a person for driving while such person's driving privileges are cancelled, suspended or revoked.*** A conviction for the criminal offense of driving while such person's driving privileges are cancelled, suspended or revoked is not required.

(Emphasis added.)

2. T.C.A. §40-33-201 provides that property, including conveyances, shall be subject to forfeiture under the provisions of T.C.A. §55-10-403(k) and T.C.A. §55-50-504(h).

3. Pursuant to T.C.A. §40-33-210, in order to forfeit any property or a person's interest in property, the State has the burden to prove by a preponderance of evidence that:

*(1) The seized property was of a nature making its possession illegal or was being used in a manner making it subject to forfeiture[...]; 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, [...];*

#### **Burden of Proof**

4. The State has the initial burden of proving, by a preponderance of the evidence, that the seized vehicle was subject to forfeiture because it was being used to violate T.C.A. §55-10-403. See T.C.A. §40-33-210. Failure to carry the burden of proof operates as a bar to any forfeiture and the property shall be immediately returned to the Claimant, T.C.A. §40-33-210(b)(1).

5. “Preponderance of the evidence” means:

the greater weight of the evidence or that, according to the evidence, the conclusion sought by the party with the burden of proof is the more probable conclusion.

Rule 1340-2-2-.15(2) of the *Rules of Procedure for Asset Forfeiture Proceedings*.

6. The State has met its burden of proof in this case. It has proved, by a preponderance of the evidence, that Claimant drove his vehicle on a public roadway at a time when his driver’s license had been revoked for a DUI conviction.

For all the above reasons, it is **ORDERED** that the above referenced vehicle shall be immediately **FORFEITED** to the seizing agency.

It is so ordered.

This Order entered and effective this \_\_\_\_ day of May, 2013.

---

Joyce Grimes Safley  
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,  
this \_\_\_\_\_ day of \_\_\_\_\_ 2013.

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'.

Thomas G. Stovall, Director  
Administrative Procedures Division