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Joshua M. Tate vs. Safety

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BEFORE THE COMMISSIONER OF THE
TENNESSEE DEPARTMENT OF SAFETY

IN THE MATTER OF:

One 2003 Ford Sport Trac
VIN: 1FMZU77E63UB90644
Seized from: Joshua Tate
Date of Seizure: May 10, 2013
Claimant: Joshua Tate
Lienholder: Professional Financial Services

DOCKET NO: 19.05-123312J

INITIAL ORDER

This contested administrative case was heard in Knoxville, Tennessee, on October 16, 2013, before Lynn M. England, Administrative Judge, assigned by the Secretary of State and sitting for the Commissioner of the Tennessee Department of Safety. Ms. Allyson Kennedy, Staff Attorney for the Tennessee Department of Safety, represented the State. The Claimant was present and was not represented by counsel.

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proposed forfeiture of the described vehicle for its alleged operation by an individual whose driving privileges had been revoked or suspended for driving a motor vehicle while under the influence of an intoxicant ("DUI"). 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 RETURNED as provided by law. This decision is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On May 10, 2013, the Claimant, Joshua Tate, was stopped for speeding by Trooper John Carr with the Tennessee Highway Patrol.
2. Upon the officer's request, the Claimant was unable to produce a valid license. The officer ran a records check, and determined that the Claimant's driver's license had been revoked for a DUI conviction on November 14, 2012.

3. The officer seized the Claimant's 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. The hearing testimony and records from the Tennessee Department of Safety established that the Claimant was eligible to receive a restricted license at the time of the seizure, but had been provided with misinformation regarding his eligibility by a staff member of a Tennessee court.
5. On August 21, 2013, the Claimant received his restricted driver's license.
6. On October 10, 2013, the charge of driving on revoked was dismissed.

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 operated 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 operating 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 at the time of the forfeiture that the Claimant's license was revoked due to his prior conviction for Driving Under the Influence of an Intoxicant. However, the charge of Driving on Revoked was later Dismissed against him.

Since the Claimant has a valid restricted license and the Criminal Court of Knox County has dismissed the charge of driving on a revoked license, the forfeiture is hereby set aside *nunc pro tunc*.

Accordingly, it is hereby ORDERED that the subject 2003 Ford Sport Trac shall be RETURNED to the CLAIMANT.

Entered and effective this _____ day of _____, 2013.

Lynn M. England
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this
_____ day of _____ 2014.

J. Richard Collier, Director
Administrative Procedures Division