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Jones, Ronald T. & Kevin A. vs. Safety

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

IN THE MATTER OF:]	
DEPARTMENT OF SAFETY]	FORFEITURE PROCEEDING
vs.]	
One 2013 Nissan Altima]	
VIN: 1N4AL3AP5DC177968]	DOCKET # 19.05-124792J
Seized From: Kevin A. Jones]	(D.O.S. # N9793)
Seizure Date: 6/21/13]	
Claimant: Ronald T. Jones]	
]	& Kevin A. Jones
Seizing Agency: Red Bank P.D.]	
Lienholder: N.M.A.C.]	

INITIAL ORDER

This contested administrative case was heard in Chattanooga, Tennessee, on February 26, 2014, before J. Randall LaFevor, Administrative Judge, assigned by the Secretary of State and sitting for the Commissioner of the Tennessee Department of Safety. Ms. Nina Harris, Staff Attorney for the Tennessee Department of Safety, represented the State. The Claimants were represented by their legal counsel, Mr. Benjamin McGowan.¹

The subject of the hearing was the proposed forfeiture of the seized vehicle for its use in the commission of a second or subsequent violation of the state law prohibiting driving a motor vehicle under the influence of an intoxicant (“DUI”) TENN. CODE ANN. §§ 55-50-504 & 40-33-201, *et seq.* Upon consideration of the pleadings, the sworn testimony and other evidence introduced during the hearing, and the entire record, it was determined that Kevin Jones’ interest in the vehicle should be forfeited to the Seizing Agency, as supported by the following Findings of Fact and Conclusions of Law. The interest of Ronald Jones will not be forfeited.

¹ Claimant Ronald Jones appeared for the hearing. Claimant Kevin Jones was not present.

FINDINGS OF FACT

1. The State seeks the forfeiture of Kevin Jones' interest in the subject 2013 Nissan Altima, seized from Kevin Jones by the Red Bank Police Department on June 21, 2013.
2. On that date, a Red Bank Police Officer noticed the subject vehicle being driven erratically on a public street: speeding, weaving across the center line and driving over a curb while turning. He stopped the car and confronted the driver, Kevin Jones ("Jones"). When questioned by the officer, Jones claimed ownership of the car, without mentioning that his father owned any interest in the vehicle. When asked for his license and proof of insurance, Jones had difficulty locating the documents.
3. The officer noted that Jones smelled of alcohol, and decided to administer standard field sobriety tests, including the "walk-and-turn" and the "one-legged stand." Jones performed poorly on both tests, leading the officer to conclude that he was too intoxicated to drive. A breath-alcohol test revealed that his alcohol content was .08.² Jones admitted to the officer that he had consumed three pints of beer before he was stopped. The officer arrested Jones, charging him with Driving Under the Influence of an Intoxicant, Speeding, Failure to Exercise Due Care, and Driving on the Left of the Center Lane.
4. Upon checking Jones' legal history, he found that he was convicted in 2011 for a DUI offense that occurred in August 2010³; and, that, at the time of the stop, he was on bail for a charge of Public Intoxication and Indecent Exposure. Based on all the information obtained during and after the stop, the officer seized the vehicle, and later sought and obtained a Vehicle Forfeiture Warrant. Jones filed a claim for the return of the vehicle.
5. The second Claimant, Ronald Jones, is the registered co-owner of the seized car, and is the father of Kevin Jones. The Forfeiture Warrant issued in this case did not authorize forfeiture of Ronald Jones' interest in the car. Upon learning of the seizure of

² See Hearing Exhibit #1.

³ See Hearing Exhibit #2, State of Tennessee Official Driver Record.

the car, he also filed a claim for its return, asserting that he is the sole owner of the vehicle. This hearing was scheduled to hear the claims of both Kevin and Ronald Jones.

6. Ronald Jones testified that he had purchased the car in January 2013 for his son's use, primarily to drive to and from school. Both Ronald and Kevin Jones' names appear on the Certificate of Title.⁴ At the time of the purchase, Jones was living in his father's home. Shortly thereafter, he moved to his own residence, and took the car with him. After moving away, Jones seems to have treated the car as his own, driving with his own key, and without the necessity to seek his father's permission to drive it as he pleased. When the car was stopped by the officer, it contained a variety of property that belonged solely to Jones, including, *inter alia*, school books, a sleeping bag, and a phone charger. The proof showed that Ronald Jones paid the entire down-payment and made all payments on the car thereafter, pursuant to a Retail Installment Sale Contract executed by Ronald T. Jones, as Buyer, and Kevin A. Jones, as Co-Buyer.⁵ According to Ronald Jones, he bought the car for his son's use, "to help him out." The car was kept at Kevin Jones' home. Ronald Jones had two other cars at his home, which were not made available for his son's use.

CONCLUSIONS OF LAW & ANALYSIS

1. 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*). The burden of proof is the duty imposed upon a party to establish, by a preponderance of the evidence, that an allegation is true, or that an issue should be resolved in favor of that party. A "preponderance of the evidence" means the "greater weight of the evidence," or "the more probable conclusion, based on the evidence presented." Rule 1360-4-1-.02(7), TENN. COMP. R. & REGS.

2. The law provides that it is illegal for a person to operate a motor vehicle under the influence of an intoxicant. TCA 55-10-401, *et. seq.* It further provides that any vehicle

⁴ See Exhibit B to Claimant's Memorandum of Law in Support of Motion to Dismiss.

⁵ See Exhibit B to Claim of Nissan Motor Acceptance Corp as Lienholder.

used in the commission of a person's second or subsequent violation of the DUI law is subject to seizure and forfeiture by the State. TCA 55-10-414.

3. To sustain a forfeiture of the seized property under this statute, the State must prove: [1] that Jones was operating the subject vehicle; [2] that he was doing so under the influence of an intoxicant; and [3] that he had violated the law prohibiting driving under the influence of an intoxicant within the previous five (5) years. TCA 55-10-414.

4. The evidence clearly established that Jones was operating the vehicle under the influence of an intoxicant at the time of his arrest on June 21, 2013. This conclusion is adequately supported by the officer's observations, including his erratic driving on the highway, the odor of alcohol on his breath, his poor performance on the field sobriety tests, his admission that he had been drinking before operating the car, and his .08 breath-alcohol content. Jones' Official Driving Record showed that he had been convicted of a previous DUI in 2011 for a violation that occurred in August 2010, within the five-year statutory period.

5. The State has carried its burden. Therefore, the law permits the forfeiture of any interest that Kevin Jones owned in the car he was driving when he committed the second DUI offense. However, the necessary inquiry does not stop there.

6. Although he did not challenge the facts surrounding his son's arrest, Ronald Jones did contest the proposed forfeiture of the car, arguing that, despite other evidence to the contrary, he is the sole owner of the car, and, he is therefore entitled to have it returned to him. The law provides that, if the State seeks forfeiture of the interest of an owner who was not present at the time of the seizure, his/her legal interest is not subject to forfeiture without proof that the owner knew that the vehicle "was being used in a manner making it subject to forfeiture and consented to its use." TCA § 40-33-210(c) [Emphasis added]. The State has the burden of proving that the owner (the Claimant) gave his consent. TCA § 40-33-210(a).

7. In order to assess the validity of Ronald Jones' claim of sole ownership of the vehicle, reference is made to TENN. CODE ANN. § 40-33-204(d), which provides that,

when the issue of vehicle ownership is called into question, various listed indicia of ownership may be considered. When applied to the facts of this case, those indicia reveals the following results:

(1) In evidence available to the public, the parties appeared to treat the car as though it was owned by both Ronald and Kevin Jones. Both names appear on the purchase contract and Certificate of Title as co-owners;

(2) The parties' actual intentions could not be determined during the hearing, because an indispensable party, Kevin Jones, failed to attend the hearing, and therefore did not testify about his intentions. His father said that he bought the car for Kevin's use, to help him out, possibly suggesting a gift;

(3) Ronald Jones made the down-payment, and all subsequent payments;

(4) There was no testimony or other evidence to establish who pays the insurance, license or fees required to possess or operate the vehicle;

(5) There was no testimony or other evidence to establish who maintains and repairs the vehicle;

(6) The vehicle is used and operated exclusively by Kevin Jones. His father said that he has two other cars, and has never been the primary driver of the car;

(7) Kevin Jones has unfettered access to the vehicle. He has his own key, and does not need his father's permission to drive it;

(8) Kevin Jones acts as if he has primary proprietary interest in the car. He keeps it at his home, drives it daily, and keeps his personal items (school books, sleeping bag, phone charger, etc.) in the car.

8. Without more evidence, it is not clear that the car was a gift to Kevin from his father. If it were, his father would no longer have any legal interest in the car. However, from the listed factors above, it is impossible to conclude that Ronald Jones is the sole owner of the car, as he claims. A fair analysis of the factors indicates that both Ronald and Kevin Jones are co-owners of the vehicle, in fairly equal shares: Ronald has made the major financial investment, but the parties have allowed Kevin to assert dominion and control over the vehicle.

9. Without additional proof, it must be concluded from these factors that the Claimant, Ronald T. Jones, owns no more than a one-half interest in the seized vehicle.

Accordingly, it is hereby concluded that the State has met its burden of proof with respect to the interest of Kevin Jones. His one-half interest in the vehicle is forfeited to the Seizing Agency, the Red Bank Police Department, subject to the legal interests of the lien holder, Nissan Motors Acceptance Corporation.

As discussed during the argument on the Claimant's Motion to Dismiss, since the Forfeiture Warrant did not seek the forfeiture of the legal interest of Ronald T. Jones in the vehicle, his interest cannot be forfeited as part of this proceeding. It is therefore not necessary to consider the other factors that would have to be proved before his interest could be forfeited. Since no Forfeiture Warrant was issued against the interest of Ronald T. Jones, his interest in the seized vehicle shall be returned to him.

The Seizing Agency shall not charge the Claimant, Ronald T. Jones, any storage or other fees associated with its seizure, as long as he contacts the agency to retrieve his interest in the vehicle within five (5) days following receipt of this Order.

IT IS SO ORDERED.

Entered and effective this _____ day of _____, 2014.

J. Randall LaFevor, Administrative Judge

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

A handwritten signature in black ink that reads "J. Richard Collier". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

J. Richard Collier, Director
Administrative Procedures Division