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Bradford Golden vs. Safety

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**BEFORE THE COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF SAFETY & HOMELAND SECURITY**

IN THE MATTER OF:

**DEPARTMENT OF SAFETY &
HOMELAND SECURITY**

V.

**One 1999 Ford Explorer
V.I.N. #1FMYU22E6XUA24538
Seized from: Bradford Golden
Date of Seizure: August 12, 2013
Claimant: Bradford Golden**

**DOCKET NO: 19.05-124865J
D.O.S. Case # P1013**

INITIAL ORDER

This matter was heard on February 19, 2014 in Memphis, Tennessee, before Leonard Pogue, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety & Homeland Security. Mr. Andre Thomas, Staff Attorney for the Department of Safety & Homeland Security, represented the State. The Claimant, Bradford Golden, was present and represented himself.

The issue in this case is whether the State properly seize the Claimant's interest in the above referenced vehicle because he violated T.C.A. § 55-10-401, T.C.A. § 55-10-403, and T.C.A. § 40-33-101 *et seq.* After consideration of the record in this matter, it is determined that the vehicle should be forfeited to the seizing agency. This decision is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On August 12, 2013, 2013, Officer Paul Petty of the Memphis Police Department observed another Officer's vehicle, with blue lights and siren, behind Claimant's vehicle attempting to initiate a traffic stop but Claimant did not stop. Officer Petty used his PA system to tell the Claimant to stop which Claimant ultimately did.

2. Officer Petty testified that Claimant smelled of alcohol, had slurred speech and told the officers that "I have had too much to drink." Officer Petty observed a two-thirds empty bottle of Vodka in Claimant's vehicle. Claimant had difficulty standing and advised that he had a physical disability. Officer Petty determined that Claimant's license previously had been revoked for DUI. Claimant's driving record revealed that Claimant's license was revoked for DUI in Mississippi in December, 2008.

3. Officer Casey Kirby, a member of the Department's DUI Unit, was called to the scene. He observed Claimant to have blood shot eyes and a strong odor of alcohol. Officer Kirby did not perform walking/standing tests because of Claimant's disability. A horizontal gaze test was administered and Officer Kirby concluded that Claimant's blood alcohol level was in excess of .10. Claimant refused a breathalyzer test but agreed to blood draw. The results of the blood test showed Claimant had a blood alcohol level of .25.

4. Claimant testified that he had been drinking prior to the police stop and that he pled guilty to DUI first offense. He attributed his behavior and appearance at the scene to be caused, in part, to his diabetes and low blood sugar levels that caused him to go to the emergency room soon following the stop.

CONCLUSIONS OF LAW

1. The state has the burden of proving, by a preponderance of the evidence, that the seized property fits within the statute(s) 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*.

2. T.C.A. §55-10-403(k) provides that any vehicle used in the commission of a person's second or subsequent violation of T.C.A. §55-10-401 is subject to seizure and forfeiture, if the second offense occur within 5 years of the first or previous offense.

3. In order to prevail under this theory of the case, the State must prove (1) that the Claimant was driving or had control of the subject vehicle, (2) that he was doing so under the influence of an intoxicant, and (3) that he had been convicted of a DUI within the previous five (5) years. As to the first issue, there is no dispute that Claimant was driving at the time of the stop. Also, the State established that Claimant was operating the car under the influence of an intoxicant: Claimant's blood alcohol level was .24, three times the legal limit, and he pled guilty to DUI. Lastly, the proof established that Claimant had a prior DUI conviction within 5 years of this offense. The State has met its burden of proof on all issue.

It is therefore **Ordered** that the vehicle be **forfeited** to the seizing agency.

This Initial Order entered this _____ day of March, 2014.

Leonard Pogue
Administrative Judge

Filed in the Administrative Procedures Division, this _____ day of March, 2014.

Richard C. Collier, Director
Administrative Procedures Division