



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

Tennessee Department of State, Opinions from the
Administrative Procedures Division

Law

5-29-2014

Candice McAllister vs. Safety

Follow this and additional works at: 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

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

IN THE MATTER OF:

**One 2012 Nissan Sentra
VIN: 3N1AB6APXCL640207
Seized from: Larry Booth
Seizure date: 1/1/13
Claimant: Candice McAllister
Lien Holder: Citizens National Bank**

DOCKET NO: 19.05-121698J

DOS NO: N4450

INITIAL ORDER

This matter was heard on June 18, 2014, in Nashville, Tennessee, before Marion P. Wall, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety. Ms. Allyson Kennedy, Staff Attorney for the Department of Safety, represented the Department. The Claimant, Ms. Candice McAllister, was represented by Mr. Travis McCarter of the Sevierville Bar.

The subject of this hearing was the proposed forfeiture of the subject vehicle for allegedly being driven while the operator's license was revoked for DUI, in violation of the Tennessee Code Annotated §55-50-504. After consideration of the record, it is ORDERED that the vehicle be RETURNED to the Claimant. This decision is based upon the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On January 1, 2013, Officer Lucas Atchley of the Pigeon Forge Police Department received a call about an intoxicated male getting into a red Nissan Sentra (which the seized vehicle is). He saw the vehicle and stopped it. The driver was doing nothing suspicious while driving, such as weaving. He removed the driver, Larry Booth, and searched the vehicle. Mr. Booth has been convicted of DUI within the last year, and his driver's license had been revoked for this conviction. The search yielded nothing of interest. Officer Atchley administered field sobriety tests to Mr. Booth. He apparently did well. Officer Atchley stated that Mr. Booth drinks a lot, and is good at field sobriety tests. Significantly, Officer Atchley did not order a Breathalyzer test. Officer Atchley testified that he did not think he could get a conviction against Mr. Booth, and so did not charge him with DUI, instead only charging him with driving on a revoked license (DOR).

2. Mr. Booth told Officer Atchley that he had a restricted license, but did not have it with him. He produced the license at the hearing, which shows that he was allowed to be driving at the time and place he was driving, but also shows that the license is only for the purpose of going to or from work, church, the probation office, a scheduled litter pickup, or alcohol treatment or safety program. Thus, he had a license to drive in certain restricted situations, and the situation that night was not one of the permitted ones.

3. Mr. Booth testified that he drove that night because Ms. McAllister had been drinking and should not have been driving. He denied drinking. He stated he passed the field sobriety tests. Mr. Booth and Officer Atchley know each other.

4. Ms. McAllister testified that this was the first time that Mr. Booth had ever driven her vehicle. She stated that she did not know of any DUI, but, oddly, also stated that she was aware he had a restricted license that allowed him to drive until 3 a.m. Ms. McAllister testified that she thought he (Mr. Booth) was within the time and geographic restrictions of his license, as he was, and that therefore he could drive her car legally. Officer Atchley testified that Ms. McAllister seemed surprised at the seizure.

5. Ms. McAllister's testimony that she believed Mr. Booth was legally able to drive is credited, based on her testimony, her demeanor, and her surprise at the seizure that night.

6. The Claimant filed a timely petition for the return of the seized vehicle.

CONCLUSIONS OF LAW

1. The State bears the burden of proof by a preponderance of the evidence in this matter.

2. TCA §55-50-504(h) renders a vehicle subject to forfeiture if driven by a driver whose license has been revoked, when the original suspension or revocation was for violation of TCA §55-10-401 (DUI). It further provides that, for purposes of

clarification, "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." TCA §55-50-504(h)(2).

3. TCA§ 40-33-210 provides that where the driver of the conveyance was not the owner, the State shall have the burden of showing that the owner was aware that the property was being used in a manner making it subject to forfeiture.

4. The State has failed to show by a preponderance of the evidence that Ms. McAllister was aware that Mr. Booth was driving outside his restrictions, and therefore was aware that the property was being used in a manner making it subject to forfeiture.

4. It is, therefore, ORDERED that the subject vehicle be RETURNED to the Claimant.

This Initial Order entered and effective this _____ day of _____, 2014.

Marion P. Wall
Administrative Judge

Mailed On:5-29-2014

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".

J. Richard Collier, Director
Administrative Procedures Division