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7-18-2014

## Deborah Brasfield vs. Safety

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

<b>IN THE MATTER OF:</b>	]	
<b>DEPARTMENT OF SAFETY</b>	]	<b>FORFEITURE PROCEEDING</b>
	]	
<b>vs.</b>	]	
	]	
<b>One 2002 Kawasaki Prairie ATV</b>	]	
<b>VIN: JKA VFKD142B506421</b>	]	<b>DOCKET # 19.05-125915J</b>
<b>Seized From: David Turner</b>	]	<b>(D.O.S. # P3074)</b>
<b>Seizure Date: 9/30/13</b>	]	
<b>Claimant: Deborah Brasfield</b>	]	
<b>Seizing Agency: T.H.P.</b>	]	
<b>Lienholder: None Filed</b>	]	

**INITIAL ORDER**

This contested administrative case was heard in Jackson, Tennessee, on July 15, 2014, before J. Randall LaFevor, Administrative Judge, assigned by the Secretary of State and sitting for the Commissioner of the Tennessee Department of Safety. Mr. Joe Bartlett, Staff Attorney for the Tennessee Department of Safety, represented the State. The Claimant was represented by his legal counsel, Mr. Matthew M. Maddox.

As a preliminary matter, the Claimant asked that the case be dismissed because the trooper who obtained the warrant was not present, and no other witnesses were present to provide testimony in support of the requested property forfeiture. The State responded that it was prepared to present its case without the seizing agency's witnesses. The Claimant's motion was therefore denied, and the hearing proceeded as scheduled.

The hearing was convened to consider the proposed forfeiture of the seized vehicle for (1) 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of an intoxicant (“DUI”); and/or for (2) its alleged operation by an individual whose driving privileges had previously been revoked or suspended for driving a motor vehicle while under the influence of an intoxicant (“DUI”).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 consideration of the pleadings, the sworn testimony and other evidence introduced

during the hearing, and the entire record, it was determined that the vehicle should be returned to the Claimant, as supported by the following Findings of Fact and Conclusions of Law.

### **FINDINGS OF FACT**

1. On September 30, 2013, a Tennessee Highway Patrol trooper was dispatched to a crash scene along Highway 70 in Carroll County. When he arrived, he found a wrecked All-Terrain Vehicle ("ATV"), and the apparent driver, David Turner ("Turner") nearby. Turner had sustained serious injuries, and was transported to the hospital for treatment.

2. Based on the trooper's perception that Turner was impaired by an intoxicant, and upon learning that his vehicle operator's license was revoked for a prior DUI, the trooper seized the ATV, and later sought and obtained a Forfeiture Warrant for the vehicle. Deborah Brasfield ("Claimant"), Turner's mother, filed a claim for the return of her ATV, and the instant hearing was scheduled to consider that claim.

3. The Claimant, Deborah Brasfield, is the registered owner of the seized ATV. She said that she had delivered it, along with food and other provisions<sup>1</sup> to a campsite on her 54-acre tract of land, for use by her son and his friend during five days of camping. Her property had a 200-foot frontage on Highway 70; she had made it clear that the ATV was only to be used on her property, and not on any nearby roads. That testimony was deemed credible, and was not contradicted by any evidence offered by the State.

4. Although the Department of Safety did not submit Turner's *Official Driver Record* to establish a prior DUI or license revocation, the Claimant testified that she was aware that his license had been revoked for a prior DUI, and that he would be eligible for reinstatement in November 2013.

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<sup>1</sup> The provisions left by the Claimant included no alcoholic beverages. She later learned that alcohol had been delivered by another friend of her son.

## 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 statutes 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. In order to prevail in the instant matter, the State must prove **either** (1) that the driver of the vehicle committed his second or subsequent DUI offense, **or** (2) that he was driving at a time when his operator’s license had been revoked due to a DUI conviction.

### Re: Second Offense DUI

2. The law provides that it is illegal for a person to operate a motor vehicle on a public road under the influence of an intoxicant. TCA 55-10-401, *et. seq.* It further provides that any vehicle 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 55-10-403(k)(1).

3. To sustain a forfeiture of the seized property under this statute, the State must prove [1] that the driver was operating the subject vehicle on a road that is open to the public, [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. TCA 55-10-403(k)(1)&(2). The State has failed to carry its burden. Although the evidence tends to establish that Turner was operating the vehicle prior to the accident, and that alcohol may have been involved, the evidence failed to prove that he was "under the influence of an intoxicant" while operating the vehicle. The State did not offer the observations of an investigating officer, or the results of a test to establish the level of alcohol in his blood. Nor did the evidence prove that he was operating the vehicle on a *public road* prior to the accident.

(Turner and the ATV were located near Highway 70.) These elements are essential to a finding that he was driving in violation of the law.

**Re: Driving on a Revoked License**

4. The law also provides that it is illegal for a person to operate a motor vehicle at a time when his license to drive has been revoked. It further provides that, if the revocation was ordered due to a DUI conviction, any vehicle driven by the offender during the period of revocation is subject to seizure and forfeiture. TCA § 55-50-504(a)(1) and (h)(1).

5. In order to prevail under this theory, the State must prove (1) that the driver was operating the subject vehicle on a public road, etc., and (2) that he was doing so at a time when his license to drive had been revoked or suspended for a DUI conviction. Through the Claimant's testimony, the State proved that Turner's license was revoked due to a recent conviction for driving under the influence of an intoxicant. But it failed to prove that he was operating a vehicle on a *public road* prior to the accident on the ATV. The State therefore failed to prove the elements required to sustain forfeiture.

6. The law also provides that, when the owner of the vehicle is 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). In this case, the Claimant, Deborah Brasfield, argued that she is the registered owner of the car, and is therefore entitled to have it returned to her. She is right. Although the Claimant knew that her son had recently lost his license due to a DUI conviction, she took all reasonable steps to ensure that he would not drive her ATV in violation of the law. She testified that she trailered the ATV to the campsite on her property, and left it there for use by her son and his friend "on her property." She also left food and other provisions to sustain them during their 5-day camping trip. Those provisions did not include any alcoholic beverages. (She testified that she was later told that some alcohol had been brought to the campsite by other friends without her knowledge.) Her testimony and credibility were not challenged

by the State's proof. In the absence of some evidence in the record that David Turner was driving the Claimant's ATV on a public road *with her knowledge and consent*, or proof of facts from which such a reasonable inference can be drawn, it is concluded that the State failed to prove that the Claimant knew that the vehicle "was being used in a manner making it subject to forfeiture and consented to its use," as required by TCA § 40-33-210(c).

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Accordingly, it is hereby concluded that the State has failed to meet its burden of proof. Forfeiture of the vehicle is barred, as a matter of law. It is therefore ORDERED that the Vehicle Forfeiture Warrant is DISMISSED, and the subject 2002 Kawasaki ATV shall be returned to the Claimant, Deborah Brasfield.<sup>2</sup>

Entered and effective this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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J. Randall LaFevor, 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

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<sup>2</sup> As previously noted, the trooper who seized the ATV in this case failed to appear for the hearing. No explanation was offered for his absence. While there is no way to know whether the outcome of this hearing would have been different if he had been present, it is clear that the State's presentation of its case was seriously impaired by the trooper's absence.