



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

Tennessee Department of State, Opinions from the
Administrative Procedures Division

Law

7-9-2014

Billy J. King 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

the emergency vehicles that had previously arrived on the scene. Officer Cole stated the Claimant was too intoxicated to perform a field sobriety test and he placed the Claimant under arrest for DUI. Officer Cole observed no one else at the scene of the accident with the Claimant. A blood alcohol test was later administered to the Claimant which showed his blood alcohol level to be .149, almost twice the legal limit of .08

3. The Claimant was previously convicted of DUI on October 31, 2011 in Kentucky.

4. Although the Claimant does not remember much about the incident in question, he did admit to drinking excessively earlier in the day and being intoxicated at the time of the accident. However he does not believe he was driving the vehicle when the accident occurred.

5. Carl King is the Claimant's son. He had also been drinking with the Claimant and others at a farm earlier that day. Mr. King testified that Dennis Wilmth, his nephew and the Claimant's grandson, arrived at the farm after Mr. Wilmth got off work. Mr. Wilmth wanted Mr. King to perform some repair work on his car. Mr. King stated that he agreed to do so if Mr. Wilmth, who was sober, agreed to drive the Claimant home in the Claimant's truck. Mr. King testified that he saw Mr. Wilmth drive away from the farm in the subject vehicle with the Claimant riding as a passenger.

6. Neither the Claimant nor Mr. King could explain Mr. Wilmth's absence from the scene of the accident upon Officer Cole's arrival. Mr. Wilmth did not testify at the hearing as he was out of town for work.

CONCLUSIONS OF LAW

1. The Department has carried its burden of proof by a preponderance of the evidence that on October 24, 2013, was arrested for a second DUI offense within a five year period, thus making the vehicle subject to forfeiture pursuant to the provisions of T.C.A. Sections 55-10-403(k). The story that Mr. Wilmth was driving the subject vehicle at the time of the accident yet was nowhere to be found upon Officer's Cole arrival at the scene lacks credibility. The preponderance of the evidence suggests that the Claimant was driving his

vehicle at the time of the accident. In addition to being arrested for DUI at that time, he had previously been convicted of DUI in Kentucky in 2011.

2. Based upon the foregoing, it is hereby **ORDERED** that the subject 2008 Chevrolet Truck be **FORFEITED** to the seizing agency.

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

Thomas G. Stovall
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