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Thomas M. Robinson vs. Safety

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

IN THE MATTER OF:

DEPARTMENT OF SAFETY

v.

1999 Ford F-150

VIN: 2FTRX08L9XCA65417

Seized from: Thomas Robinson

Date of Seizure: October 22, 2013

Claimant: Thomas Robinson

DOCKET NO: 19.05-125721J

D.O.S. Case No. P3296

INITIAL ORDER

This matter was heard on September 16, 2014, in Knoxville, Tennessee, before Kim Summers, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Commissioner of the Tennessee Department of Safety. Mr. Patrick Rice, Staff Attorney for the Department of Safety, represented the State. The Claimant was present and represented by Brian Nichols, Esq..

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, 55-10-403 and 40-33-201 *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.

SUMMARY OF THE EVIDENCE

The State presented the testimony of Trooper Eric Miller of the Tennessee Highway Patrol. The Claimant testified on his own behalf that he does not experience any side effects from the Oxycontin, even when taken in conjunction with Xanax.

Four exhibits were entered into evidence – EXHIBIT NO. 1, the Petitioner’s DUI Record; EXHIBIT NO. 2, the Tennessee Implied Consent Advisement; EXHIBIT NO. 3, the Claimant’s Official Toxicology and Alcohol Reports; and EXHIBIT NO. 4, medical records for the Claimant.

FINDINGS OF FACT

1. On October 22, 2013, the Claimant was pulled over by Lieutenant Lucious Howard for not wearing his seatbelt. Lieutenant Howard requested the assistance of Trooper Eric Miller.

2. Trooper Miller has been employed by the Tennessee Department of Safety and Homeland Security for eight years. He has received standard field sobriety training through the Department. He has also been certified in Advanced Roadside Impaired Driving Enforcement and is considered to be a Drug Recognition Expert.

3. The Claimant was still in his vehicle when Trooper Miller arrived at the scene. Trooper Miller observed that the Claimant had droopy eyelids and constricted pupils, which are clinical indicators of the possible use of a narcotics analgesic.

4. Because Trooper Miller believed that the Claimant was impaired, he asked the Claimant to exit his vehicle in order to perform field sobriety tests. The Claimant consented.

5. The Standardized Field Sobriety Testing (SFST) developed by the National Highway Traffic Safety Administration (NHTSA) includes the Horizontal Gaze Nystagmus (HGN), the Walk-and-Turn (WAT), and the One-Leg Stand (OLS).¹

6. Upon inquiry, the Claimant indicated a physical impairment that could impact the results of the field sobriety tests. In order to provide some allowance for the impairment, Trooper Miller administered 4 non-standard tests in addition to the 3 standard tests – Romberg Balance, Lack of Convergence, Finger to Nose, and Alphabet Recitation

¹ Judicial Notice has been taken of the Standardized Field Sobriety Testing included on the NHTSA website.

7. Based upon the totality of results from all the field sobriety tests, Trooper Miller concluded that the Claimant was impaired due to being under the influence of a narcotic analgesic.²

8. The Claimant failed 5 out of the 8 points allotted on the WAT; he failed 3 out of 4 points on the OLS³; on the Finger to Nose, he failed to use the tip of his finger 3 out of 6 times and missed his nose altogether 3 out of 6 times; and he failed to correctly recite the alphabet.

9. The Claimant was not confused, incoherent, or disrespectful to Trooper Miller.

10. After completion of the field sobriety tests, Trooper Miller then ran the Claimant's driving history which indicated a prior DUI conviction from June 16, 2010.

11. The Claimant provided his consent to a blood test on the Tennessee Implied Consent Advisement.

12. The Claimant tested negative for alcohol and positive for phentermine⁴, oxycodone, and the possibility of benzodiazepines⁵.

13. The Claimant has taken Oxycontin for fifteen years to alleviate pain associated with multiple broken bones resulting from two falls over thirty feet. The Claimant has also been prescribed Xanax for anxiety. The Claimant's most recent accident was in 1992.

14. There is no *per se* standard of intoxication for narcotics.

15. Impairment can occur even when taking medications as prescribed.

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 defining its illegal use, thereby rendering it subject to forfeiture.

Department of Safety Rule 1340-2-2-.15(4).

² Trooper Miller testified that the evidence of narcotic use was sufficient even excluding results from the Lack of Convergence and HGN tests, to which Claimant's Counsel objected during the hearing as requiring testimony from a medical expert.

³ The Claimant was permitted to choose on which leg he would stand. He chose to stand on his right leg notwithstanding the pins and screws in his right hip.

⁴ A Schedule 4 appetite suppressant.

⁵ AKA Xanax.

2. Pursuant to Tenn. Code Ann. § 55-10-401,

(a) It is unlawful for any person to drive or to be in physical control of any automobile or other motor driven vehicle on any of the public roads and highways of the state, any shopping center, trailer park, apartment house complex or any other location which is generally frequented by the public at large, while:

(1) Under the influence of any intoxicant, marijuana, controlled substance, controlled substance analogue, drug, substance affecting the central nervous system or combination thereof that impairs the driver's ability to safely operate a motor vehicle by depriving the driver of the clearness of mind and control of himself which he would otherwise possess;

(2) The alcohol concentration in the person's blood or breath is eight-hundredths of one percent (0.08%) or more.

3. Pursuant to Tenn. Code Ann. § 55-10-414(a)(1),

The vehicle used in the commission of a person's second or subsequent violation of § 55-10-401, or the second or subsequent violation of any combination of § 55-10-401, and a statute in any other state prohibiting driving under the influence of an intoxicant, is subject to seizure and forfeiture.

4. The law further provides that the forfeiture of a vehicle should serve a remedial, rather than punitive, purpose – specifically to “prevent unscrupulous or incompetent persons from driving on Tennessee's highways while under the influence of alcohol or drugs.” T.C.A. § 55-10-414(a)(3).

5. The field sobriety tests were appropriately administered by Trooper Miller to determine whether the Claimant had been driving a vehicle under the influence of drugs or alcohol. The totality of the results from these tests indicated to Trooper Miller that the Claimant had been under the influence of narcotics while driving which was later established by the results of the toxicology report.

6. Even in the absence of the HGN and Lack of Convergence tests, the preponderance of the evidence in this matter has shown that the Claimant was operating a motor vehicle while under the influence of a narcotic.

7. The field sobriety tests and the toxicology report preponderate against the testimony of the Claimant that he has never before suffered any intoxicating effects from taking his prescribed medications.

8. The Claimant having been previously found guilty of driving under the influence within the prior 5 years, the State has proven that the Claimant's vehicle has been used in a manner that would subject the vehicle to forfeiture, therefore, it is **ORDERED** that the vehicle be **FORFEITED** to the seizing agency.

The policy reasons for this decision are to uphold the laws of the State of Tennessee and to protect the property rights of individuals.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the _____ day of _____ 2014.

DKSummers

KIM SUMMERS
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the _____ day of _____ 2015.

J. Richard Collier

J. RICHARD COLLIER, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE