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November 2014

## Doris Roberson vs. Safety

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

**IN THE MATTER OF:**

**Dept. of Safety and Homeland Security,**

**Vs.**

**One 1995 Oldsmobile Cutlass Supreme**

**VIN: 1G3WH52M6SD305613**

**Seized From: Barbara Ashe**

**Date of Seizure: February 14, 2014**

**Claimant: Doris Roberson**

**DOCKET NO: 19.05-127148J**

**SAFETY NO: P6128**

**INITIAL ORDER**

This matter was heard on July 29, 2014, in Dyersburg, Tennessee before Michael Begley, Administrative Law Judge, assigned by the Secretary of State, Administrative Procedures Division and designated to sit for the Commissioner of the Tennessee Department of Safety and Homeland Security (Department). Attorney Joe Bartlett represented the Department, and Claimant was present and chose to waive her right to counsel and represent herself.

The issue presented for consideration is whether the Department can forfeit Claimant's interest in the vehicle pursuant to T.C.A. §55-10-414. It is **DETERMINED** that the Department has proven, by a preponderance of the evidence that Barbara Ashe, co-owner and driver of the vehicle on the date of the incident in question, has violated T.C.A. §55-10-401 on two occasions within a five year period. It is also **DETERMINED** that 25% of Claimant's interest in the vehicle should be returned to the Claimant. This conclusion is based on the following findings of fact and conclusions of law:

## **FINDINGS OF FACT**

1. On February 14, 2014, Barbara Ashe, driver and co-owner of the vehicle in question, was arrested for her second DUI offense within the last five years. Ms. Ashe's first DUI arrest was on March 15, 2009. Ms. Ashe failed the field sobriety test, and she failed the evidential breath test with a .196 g/210L. Claimant did not dispute any testimony related to Ms. Ashe's DUI arrest.
2. Ms. Ashe was arrested and charged with DUI on March 26, 2009, to which she later plead guilty.
3. As such, The Department has shown, by a preponderance of the evidence, that Ms. Ashe was operating the vehicle while impaired by alcohol in violation of T.C.A. §55-10-401(1).
4. Claimant and Ms. Ashe's sister, Doris Roberson, was not involved in any of the events relating to Ms. Ashe's DUI arrest. Claimant is also a co-owner of the vehicle with Ms. Ashe and appears as such on the title.
5. Claimant has a vehicle of her own, and she purchased the vehicle in question for Ms. Ashe. It has been the understanding of Ms. Ashe and Claimant that Ms. Ashe would periodically reimburse Claimant for the portion Claimant paid to purchase the vehicle. The amount owed now stands at \$800, with \$400 attributable to each co-owner.
6. Claimant has paid the insurance on the vehicle for Ms. Ashe.
7. Claimant has since purchased Ms. Ashe another vehicle.
8. While claimant maintains a small level of monetary interest in the vehicle, Ms. Ashe is the true owner in almost all aspects related to this matter. There is little indication that Claimant has any intent to use the vehicle, and there are numerous indications that Claimant intended for Ms. Ashe to be the owner of the vehicle in practice.

9. As a co-owner, Claimant's interest is 50% of the whole interest in the vehicle. Assuming \$800 is outstanding, Claimant's interest would be \$400.

10. The Department has shown, by a preponderance of the evidence, that Barbara Ashe violated T.C.A. §55-10-401 on two occasions during a five year period thus forfeiting the vehicle subject to a 25% interest of Claimant's portion, which would be \$100.

### **CONCLUSIONS OF LAW**

1. The Department as the moving party in this case has the burden to introduce evidence that would by a preponderance of the evidence prove the issues should be resolved in its favor.

Rule 1360-4-1-.02.

2. Tennessee Code Annotate §55-10-414 provides as follows:

(a) 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 in accordance with the procedure established in title 40, chapter 33, part 2. The department of safety is designated as the applicable agency, as defined by § 40-33-202, for all forfeitures authorized by this section. (emphasis added).

(b) In order for subsection (a) to be applicable to a vehicle, the violation making the vehicle subject to seizure and forfeiture must occur in Tennessee and at least one (1) of the previous violations must have occurred within five (5) years of the current violation.

(c) It is the specific intent that a forfeiture action under this section shall serve a remedial and not a punitive purpose. The purpose of the forfeiture of a vehicle after a person's second or subsequent DUI violation is to prevent unscrupulous or incompetent persons from driving on Tennessee's highways while under the influence of alcohol or drugs. Driving a motor vehicle while under the influence of alcohol or drugs endangers the lives of innocent people who are exercising the same privilege of riding on the state's highways. There is a reasonable connection between the remedial purpose of this section, ensuring safe roads, and the forfeiture of a motor vehicle. While this section may serve as a deterrent to the conduct of driving a motor vehicle while under the influence of alcohol or drugs, it is nonetheless intended as a remedial measure. Moreover, the statute serves to remove a dangerous instrument from the hands of individuals who have demonstrated a pattern of driving a motor vehicle while under the influence of alcohol or drugs.

(d) Only P.O.S.T.-certified or state-commissioned law enforcement officers will be authorized to seize these vehicles under this section.

3. Tennessee Code Annotated §55-10-401 provides:

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; or

(3) With a blood alcohol concentration of four-hundredths of one percent (0.04%) and the vehicle is a commercial motor vehicle as defined at §55-50-102.

4. Tennessee Code Annotated § 40-33-210 provides as follows:

(a) In order to forfeit any property or any person's interest in the property pursuant to §§ 39-14-307, 47-25-1105, 53-11-451, 55-10-414, 55-50-504(h), 57-3-411, 57-5-409, 57-9-201, 67-4-1020 or 70-6-202, the state shall have the burden to prove by a preponderance of evidence that:

(1) The seized property was of a nature making its possession illegal or was used in a manner making it subject to forfeiture under the sections set out in this subsection (a); and

(2) The owner or co-owner of the property knew that the property was of a nature making its possession illegal or was being used in a manner making it subject to forfeiture, or, in the case of a secured party, that the standards set out in subsection (f) are met.

(b)(1) Failure to carry the burden of proof shall operate as a bar to any forfeiture and the property shall be immediately returned to the claimant.

(2) Notwithstanding that the hearing officer found that the state carried its burden of proof and recommended forfeiture of the property, the administrative head of the applicable agency may, in the interests of justice, order that the seized property be returned to the claimant.

(c)(1) The interest of a co-owner or co-owners who were not in possession of the property at the time it was seized may be forfeited if the co-owners:

(A) Were co-conspirators to the activity making the property subject to forfeiture;

(B) Knew that the property was of a nature making its possession illegal; or

(C) Knew that it was being used in a manner making it subject to forfeiture and consented to the use.

(2) If the state meets its burden of proof as to one (1) co-owner of the seized property but fails to do so as to one (1) or more other co-owners, the property shall be forfeited subject to the interest of the innocent co-owners.

(d) If it is determined that the state has carried the burden of proof with regard to all parties claiming an interest in the property, and the ruling of the administrative head of the applicable agency is adverse to the claimant or claimants, the property shall be sold or disposed of as provided in § 40-33-211.

(e) If the interest of the owner or co-owner of seized property is forfeited pursuant to this section but the interest of the secured party is not, the administrative head of the applicable agency may, at the request of the secured party, return the seized property for disposition in accordance with the security agreement or other contract. If the property is not returned to the secured party, the forfeiture shall be subject to the secured party's interest.

(f) A secured party's interest may be forfeited if, from evidence presented at the hearing, the administrative head of the applicable agency finds that:

(1) The secured party is a co-conspirator to the activity making the property subject to forfeiture; or

(2) The secured party, at the time the interest attached, had actual knowledge of the intended illegal use of the property. A secured party who acquired an interest in the ordinary course of business shall be presumed to have no actual knowledge of an intended illegal use and shall have no duty to inquire as to the record or reputation of a borrower.

(g) The expenses of storage, transportation and other similar costs shall be adjudged as part of the cost of the proceeding in such manner as the administrative head of the applicable agency shall determine.

5. Rule 1340-2-2-.05 of the Rules of the Tennessee Department of Safety state the following regarding determinations of ownership of property:

(4) If the person in possession of the property is not the registered owner as determined from public records of titles, registrations, or other recorded documents, the officer may submit certain indicia of ownership to the judge which proves that the possessor is nonetheless an owner of the property. Such indicia of ownership shall include, but is not limited to the following:

(a) How the parties involved regarded ownership of the property in question;

(b) The intentions of the parties relative to ownership of the property;

(c) Who was responsible for originally purchasing the property;

- (d) Who pays any insurance, license or fees required to possess or operate the property;
- (e) Who maintains and repairs the property;
- (f) Who uses or operates the property;
- (g) Who has access to use the property;
- (h) Who acts as if they have a proprietary interest in the property.

It is **CONCLUDED** that considering the totality of the evidence, i.e. Claimant's purchasing of the vehicle for Ms. Ashe, the understanding and practice of Ms. Ashe paying Claimant back, and Ms. Ashe's undisputed DUI second offense, the Department has shown, by a preponderance of the evidence, that Claimant is entitled to 25% of Claimant's interest in the vehicle.

**IT IS THEREFORE ORDERED** that the above described vehicle is forfeited to the seizing agency subject to the 25% interest of Claimant's interest.

This Initial Order entered and effective this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

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Michael Begley  
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this \_\_\_\_\_ day of \_\_\_\_\_ 2014.



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J. Richard Collier, Director  
Administrative Procedures Division