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David R. Brown vs. Safety

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

IN THE MATTER OF:

TENNESSEE DEPARTMENT OF SAFETY

VS.

**One 2005 Chevrolet Corvette
VIN: 1G1YY24U555113918
SEIZED FROM: David R. Brown
SEIZURE DATE: 10/29/13
CLAIMANT: David R. Brown
SEIZING AGENCY: Knox Co. S.D.**

**Docket # 19.05-126483J
DOS # P3802**

INITIAL ORDER

This contested administrative case was heard in Knoxville, Tennessee on October 23, 2014, before Rob Wilson, Administrative Judge assigned by the Secretary of State, sitting for the Commissioner of the Tennessee Department of Safety. Patrick Rice, Staff Attorney for the Tennessee Department of Safety, represented the Seizing Agency. The Claimant was represented by Stephen G. McGrath, Esq.

The subject of the hearing was the proposed forfeiture of the seized vehicle for its use in the commission of the Claimant's second or subsequent violation of the state law prohibiting driving a motor vehicle under the influence of an intoxicant ("DUI"). Upon full consideration of the entire record in this matter, it is determined that the subject vehicle should be RETURNED to Claimant. This decision is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On October 29, 2013, at approximately 7:45 a.m., Officer Lee Strzelecki arrived on the scene of a vehicle crash at Cedar Bluff and Middlebrook Pike in Knoxville, Tennessee. Officer Strzelecki did not actually see the vehicle accident. Officer Strzelecki stated that Claimant David Brown appeared to be impaired. Claimant stated that another vehicle ran him off the road.

Claimant had a slight contusion on his forehead and was transported to Parkwest Medical Center.

3. Based on the Claimant's appearance and actions the investigating officer arrested the Claimant and charged him with driving under the influence of an intoxicant.

4. When he was arrested for the DUI offense, the officer checked the Claimant's driving history, and upon learning that he had previous DUI convictions, the officer seized the Claimant's vehicle. He later sought and obtained a Forfeiture Warrant for the vehicle. The Claimant filed a claim for the return of the vehicle, and this hearing was scheduled to consider that claim.

5. The Claimant's certified Department of Safety Driving Record ¹ established that he had previously been convicted of DUI offenses in 2005 and 2012.

6. Claimant's official alcohol report stated that his blood alcohol content was only 0.01, which is well within the legal limit. Claimant's official toxicology report tested positive for Trazodone, m-Chlorophenylpiperazine, and Alprazolam.²

7. Claimant submitted certified medical records from Horizon Emergency Care at Parkwest Medical Center in Knoxville, Tennessee.³ Claimant's medical records state that he is "not disoriented," "not confused," and that he is "oriented to person, place, and time." These observations were made by a registered nurse at Parkway Medical Center at 8:25, a.m., slightly less than an hour after Claimant's arrest. The medical notes further stated that patient was fully verbal with clear speech, and fully cooperative.

CONCLUSIONS OF LAW & ANALYSIS

1. The law provides that it is illegal for a person to operate a motor vehicle 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).

2. 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.

¹ See Certified Driving Record, Hearing Exhibit #1.

² See Hearing Exhibit #2.

³ See Hearing Exhibit #3.

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.

3. In order to prevail in this case, the State must prove: **(1)** that the Claimant was driving the subject vehicle; **(2)** that he was doing so under the influence of an intoxicant; and **(3)** that he had previously been convicted of a DUI, after January 1, 1997 [and that the current offense occurred within five (5) years after the most recent prior offense]. TCA 55-10-403(k)(1)&(2). The State has not carried its burden. Although the evidence clearly established that the Claimant has had a prior DUI, there is no conclusive evidence to prove that he was driving under the influence of an intoxicant at the time of his arrest. The medical records submitted establish that Claimant’s blood alcohol content was 0.01, which is not enough to prove DUI for alcohol. Additionally, the other drugs found in Claimant’s toxicology report were legally prescribed to him, and there was no proof submitted to establish that Claimant’s motor skills were affected, with the exception of a car accident that no one witnessed. And finally, the medical records submitted into evidence conclusively establish that Claimant was alert, oriented to person, place, and time, and fully verbal, lucid, and coherent less than an hour after this incident took place. The combined evidence clearly preponderates in the Claimant’s favor.

4. The conclusion that the Claimant was driving under the influence is not adequately supported by the evidence. Accordingly, it is hereby ORDERED that the subject 2005 Chevrolet Corvette be returned to the Claimant.

Entered and effective this _____ day of _____, 2014.

Rob Wilson
Administrative Judge

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, looped initial "J".

J. Richard Collier, Director
Administrative Procedures Division