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February 2015

## Billy Howard Lindsey vs. Safety

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

<b>IN THE MATTER OF:</b>	)	
	)	
<b>Tennessee Department of Safety and Homeland Security</b>	)	
	)	<b>DOCKET NO. 19.05-128820J</b>
<b>v.</b>	)	<b>[D.O.S. Case No. P 4999]</b>
	)	
<b>One 1994 Chevrolet GC1</b>	)	
<b>VIN No:1GBEC19KXRE252561</b>	)	
<b>Seized From: Billy H. Lindsey</b>	)	
<b>Date of Seizure: January 12, 2014</b>	)	
<b>Claimant: Billy H. Lindsey</b>	)	
<b>Lienholder: N/A</b>	)	
	)	

**INITIAL ORDER**

This matter was heard on November 19, 2014, in Lawrenceburg, Tennessee by Mattielyn B. Williams, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting on behalf of the Tennessee Commissioner of Safety and Homeland Security. Attorney Karen Litwin represented the State. Claimant Billy H. Lindsey was represented by Attorney Daniel Marshall of the Nashville Bar.

The subject of this matter was the proposed forfeiture of the subject 1994 Chevrolet GC1 for its alleged operation by an individual who was engaging in his second or subsequent DUI, pursuant to Tennessee Code Annotated §55-10-401 and 55-10-403.

After consideration of the record, it is **DETERMINED** that the subject vehicle should be **FORFEITED** to the seizing agency.

This decision is based upon the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. Officer Mark Billions, of the Mt. Pleasant Police Department, testified that he observed the subject black Chevrolet truck with no lights illuminating its vehicle tag. As Officer Billions continued to observe, he (Billions) saw the vehicle cross the white line, on the right of the roadway, then swerve over the double yellow line, to the left of the roadway. Officer Billions turned on his emergency lights. Eventually the truck turned into a driveway; the driveway led to Claimant's sister's house. When the driver of the truck exited his vehicle, Officer Billions drew his service revolver, per policy.

2. As Officer Billions got closer to the driver, he (Billions) recognized the driver as Billy H. Lindsey, the Claimant in this matter. Claimant is sixty-six (66) years of age and works as a shade tree mechanic.

3. Officer Billions began to pat down Claimant Lindsey and noticed a strong odor of alcohol. Claimant Lindsey admitted that he (Lindsey) had been drinking alcohol. Officer Billions called for back-

up so that a police vehicle with a working videotape machine could record Claimant as he attempted to pass field sobriety tests.

4. Claimant was unable to touch heel to toe, had difficulty with walk and turns, and swayed while attempting to do one (1) leg stands. Claimant was placed under arrest for DUI. Since Mt. Pleasant is a relatively small town, Officer Billions was aware that Claimant had been arrested for DUI before. Claimant's vehicle was seized. Officer Billions was also aware of Claimant's involvement in a domestic dispute.

5. Claimant consented to the taking of a blood alcohol test. Exhibit 1, the TBI Official Report, shows that Claimant's blood alcohol level was 0.16%, whereas 0.08% is the legal limit.

6. Claimant Lindsey was arrested for DUI on July 23, 2011, Case Number 1101733. Claimant was not convicted of the July 23, 2011 DUI because the arresting officer left the Mt. Pleasant Police Department prior to that matter going to trial. Thus, the July 23, 2011 DUI arrest was dismissed.

7. Claimant was arrested for DUI on November 1, 2013, Case Number 13088000. Claimant had a vehicle seized in association with the November 1<sup>st</sup> DUI. Claimant was also arrested for a January 1, 2014 DUI. The November 1, 2013 and January 1, 2014 DUIs were pled together.

8. Claimant Billy H. Lindsey testified that he wasn't swerving on January 12, 2014. Claimant admitted that he did consume alcoholic beverages that day. Claimant noted that he was not speeding on January 12<sup>th</sup>.

9. Claimant continued that he has a restricted license and is currently driving a Ford with an interlocking ignition device that won't permit him to drive if he has been drinking. Claimant argued that Claimant's driving is no longer a danger to the public because of the ignition device; therefore, the subject vehicle should be returned, rather than forfeited.

### **CONCLUSIONS OF LAW**

1. The State was required to carry its burden of proof, by a preponderance of the evidence, that on January 12, 2014, Claimant was driving the subject vehicle when engaging in his second or subsequent DUI, pursuant to Tennessee Code Annotated §55-10-401 and 55-10-403.

2. Based on the record presented, from the Claimant's swerving while driving, to Claimant's difficulty with the field sobriety tests, to Claimant's blood alcohol reading of 0.16%, it is **CONCLUDED** that Claimant was legally intoxicated when behind the wheel of the subject vehicle on January 12, 2014. Thus the State has met its burden of proof as to Claimant's condition on January 12<sup>th</sup>.

3. Claimant does not deny his previous DUI arrests. As a matter of law, conviction on the underlying criminal charge is not necessary as a prerequisite to a vehicle being forfeited.

4. TCA Section 55-10-403(k)(1) states that the “vehicle used in the commission of a person’s second or subsequent violation of Section 55-10-401... is subject to seizure and forfeiture...” It is **CONCLUDED** that the Claimant ‘violated’ Section 55-10-401 (the DUI statute) on July 23, 2013, even though the criminal charge was dismissed. Thus, the January 12, 2014 offense is at least the Claimant’s second violation of Section 55-10-401. The State has met its burden of proof as to Claimant’s driving while intoxicated at least twice within five (5) years.

5. Given the DUI arrests of November 1, 2013 and January 1, 2014, the January 12, 2014 offense is probably the Claimant’s fourth DUI offense.

6. Claimant argues that he is no longer a danger to the public and that the subject vehicle should be returned because his primary vehicle now has an interlocking ignition device. Apparently Claimant is willing to add such a device to the subject vehicle, were it returned. However, Claimant cites no legal authority to support his argument against forfeiture.

7. Therefore, it is hereby **ORDERED** that the seized Chevrolet GC1 is hereby **FORFEITED** to the seizing agency, for disposition as provided by law.

This Initial Order entered and effective this \_\_\_\_\_ day of \_\_February\_\_,  
2015.

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Mattielyn B. Williams  
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of  
State this \_\_\_ day of \_\_\_February\_\_\_, 2015.

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J. Richard Collier, Director  
Administrative Procedures Division