



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

---

Tennessee Department of State, Opinions from the  
Administrative Procedures Division

Law

---

February 2015

## Felicia Renee Carroll vs. Safety

Follow this and additional works at: [http://trace.tennessee.edu/utk\\_lawopinions](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](mailto:administrative.procedures@tn.gov)

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

**IN THE MATTER OF:**

**Department of Safety,**

**Vs.**

**One 2002 Nissan Altima  
VIN: 1N4AL11D72C150665  
Seized From: Corey L. Williams  
Date of Seizure: September 13, 2014  
Claimant: Felicia Renee Carroll  
Lienholder: None Filed**

**DOCKET NO: 19.05-129819J  
SAFETY NO: Q2312**

**INITIAL ORDER**

This matter was heard on January 27, 2015, in Dyersburg, Tennessee before Steve R. Darnell, 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. Attorney Andre Thomas represented the Department, and Claimant was present for the hearing, but not represented by counsel.

**ISSUE FOR DETERMINATION**

What interest in this vehicle is subject to forfeiture due to Corey L. Williams operating it while his license was revoked due to a DUI conviction?

**SUMMARY OF DETERMINATION**

The proof shows that Claimant's interest in this vehicle is not subject to forfeiture. However, no lienholder or co-owner filed claims and any interest they held is properly forfeited

to the seizing agency. This determination is based on the following findings of fact and conclusions of law:

### **FINDINGS OF FACT**

1. Claimant, Felicia Carroll, and her husband Caleb Carroll jointly own the above referenced vehicle. This vehicle is jointly registered in their names and no lienholder is noted on the title.
2. On September 13, 2014, a deputy with the Weakley County Sheriff's Department made a lawful stop of this vehicle. The vehicle was being operated by Corey L. Williams. Williams' license was revoked due to a DUI conviction in Haywood County on December 3, 2013.
3. Caleb Carroll was the front seat passenger in the vehicle. He permitted Williams to drive the vehicle. Carroll knew William's license was revoked due to his DUI conviction.
4. The Weakley County deputy seized the vehicle in accordance with law. Notice of the seizure was given to Caleb Carroll and Claimant. Claimant filed a claim in her name only. Caleb Carroll did not file a claim. Caleb Carroll's interest in this vehicle is forfeited to the seizing agency by operation of law.
5. Claimant, Felicia Carroll, did not have knowledge that Williams was operating the vehicle. Her interest in this vehicle is not subject to forfeiture.
6. Claimant alleges there is a lienholder on the vehicle. As noted, no lienholder is noted on the title. The alleged lienholder is Claimant's sister-in-law. The alleged lienholder had actual knowledge of the seizure and did not file a claim. No one appeared on the alleged lienholder's behalf.
7. The record does not support a finding, by a preponderance of the evidence, that there was a lien on this vehicle.

8. Claimant owned a 50% interest in this vehicle. Caleb Carroll owned a 50% interest in this vehicle.

9. The Department has shown, by a preponderance of the evidence, that Caleb Carroll's interest in this vehicle is subject to forfeiture and there is no lien on the vehicle. The record further shows, by a preponderance of the evidence that her interest in this vehicle is not subject to forfeiture.

### **CONCLUSIONS OF LAW**

1. The Department of Safety, 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 Annotated §55-50-504 provides as follows:

(a)(1) A person who drives a motor vehicle within the entire width between the boundary lines of every way publicly maintained which is open to the use of the public for purposes of vehicular travel, or the premises of any shopping center, manufactured housing complex or apartment house complex or any other premises frequented by the public at large at a time when the person's privilege to do so is cancelled, suspended, or revoked commits a Class B misdemeanor. A person who drives a motor vehicle within the entire width between the boundary lines of every way publicly maintained which is open to the use of the public for purposes of vehicular travel, or the premises of any shopping center, manufactured housing complex or apartment house complex or any other premises frequented by the public at large at a time when the person's privilege to do so is cancelled, suspended or revoked because of a conviction for vehicular assault under [§ 39-13-106](#), vehicular homicide under § 39- 13-213, or driving while intoxicated under [§ 55-10-401](#) shall be punished by confinement for not less than two (2) days nor more than six (6) months, and there may be imposed, in addition, a fine of not more than one thousand dollars (\$1,000).

(2) A second or subsequent violation of subdivision (a)(1) is a Class A misdemeanor. A person who drives a motor vehicle within the entire width between the boundary lines of every way publicly maintained which is open to the use of the public for purposes of vehicular travel, or the premises of any shopping center, manufactured housing complex or apartment house complex or any other premises frequented by the public at large at a time when the person's privilege to do so is cancelled, suspended or revoked because of a second or subsequent conviction for vehicular assault under [§ 39-13-106](#), vehicular homicide under [§ 39-13-213](#), or driving while intoxicated under [§ 55-10- 401](#) shall be punished by confinement for not less than forty-five (45) days nor more than one (1)

year, and, in addition, may be subject to a fine of not more than three thousand dollars (\$3,000).

(b) The department, upon receiving a record of the conviction of any person under this section upon a charge of driving a vehicle while the license of such person was suspended, shall extend the period of such suspension for an additional like period and, if conviction was upon a charge of driving while a license was revoked for a violation of [§ 39-13-213](#), [§ 55-10-101](#), [§ 55-10-102](#) or [§ 55-10-401](#), the department shall extend the revocation for an additional period of one (1) year.

(c) No person shall cause or knowingly permit such person's child or ward under eighteen (18) years of age to drive a motor vehicle upon any highway when such minor is not authorized hereunder or in violation of any of the provisions of this chapter.

(d) No person shall authorize or knowingly permit a motor vehicle owned by such person or under such person's control to be driven upon any highway by any person who is not authorized hereunder or in violation of any of the provisions of this chapter.

(e) No person shall employ as a chauffeur of a motor vehicle any person not then licensed as provided in this chapter.

(f) No person charged with violating the provisions of this section for a violation of [§ 39-13-213](#), [§ 55-10-101](#), [§ 55-10-102](#) or [§ 55-10-401](#) shall be eligible for suspension of prosecution and dismissal of charges pursuant to the provisions of [§§ 40-15-102--40-15-105](#) and [40-32-101\(a\)\(3\)-\(c\)\(3\)](#) or for any other pretrial diversion program, nor shall any person convicted under this section for a violation of [§ 39-13-213](#), [§ 55-10-101](#), [§ 55-10-102](#) or [§ 55-10-401](#) be eligible for probation, or any other provision of law authorizing probation, until such time as such person has fully served day for day at least the minimum sentence provided by law.

(g) If the court suspends the prosecution and dismisses the charges pursuant to the provisions of [§§ 40-15-102--40-15-105](#), and [40-32-101\(a\)\(3\)-\(c\)\(3\)](#) or for any other pretrial diversion program, the court shall forward to the department a record of such dismissal or diversion action. Such person will then be required to meet the financial responsibility requirements pursuant to chapter 12 of this title prior to the reinstatement of any driving privileges.

**(h)(1) The vehicle used in the commission of a person's violation of [§55-50-504](#), when the original suspension or revocation was made for a violation of [§ 55-10-401](#), or a statute in another 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 is designated as the applicable agency, as defined by [§ 40-33-202](#), for all forfeitures authorized by this subsection (h).**

(2) For purposes of clarifying the provisions of this subsection (h) and consistent with the overall remedial purpose of the asset forfeiture procedure, a vehicle is subject to seizure and forfeiture upon the arrest or citation of a person for driving while such person's driving privileges are cancelled, suspended or revoked. A conviction for the criminal offense of driving while such person's driving privileges are cancelled, suspended or revoked is not required.

(i) Notwithstanding any other provision of law to the contrary, revocation or suspension of a license shall not take effect until ten (10) days after notice has been sent to the last known address of the driver. The notice requirement in this subsection (i) shall not apply to a driver whose license has been revoked or suspended by a court of competent

jurisdiction or who has surrendered the license to such a court.

(j)(1) Notwithstanding any other rule of evidence or law to the contrary, in the prosecution of second or subsequent offenders under this section the official driver record maintained by the department of safety and produced upon a certified computer printout shall constitute prima facie evidence of the prior conviction.

(2) Following indictment by a grand jury, the defendant shall be given a copy of the department of safety printout at the time of arraignment. If the charge is by warrant, the defendant is entitled to a copy of the department of safety printout at the defendant's first appearance in court or at least fourteen (14) days prior to a trial on the merits.

(3) Upon motion properly made in writing alleging that one (1) or more prior convictions is in error and setting forth the error, the court may require that a certified copy of the judgment of conviction for such offense be provided for inspection by the court as to its validity prior to the department of safety printout being introduced into evidence.

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

(a) In order to forfeit any property or any person's interest in such property pursuant to [§§ 39-14-307](#), [47-25-1105](#), [53-11-451](#), [55-10-403\(k\)](#), [55-50-504\(h\)](#), [57-3-411](#), [57-5-409](#), [57-9-201](#), [67-4-1020](#) and [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 such 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.

It is **CONCLUDED** that the Department has carried its burden of proof, and established by a preponderance of the evidence, that Corey L. Williams operated the above described vehicle when his driver's license was suspended for a DUI conviction. Caleb Carroll permitted Williams to operate the vehicle knowing his license was revoked due to his DUI conviction. Caleb Carroll

did not file a claim and his interest is forfeited by operation of law. There is no lien on this vehicle. The Department presented no proof that Claimant knew Williams was operating the vehicle. Claimant's interest is not subject to forfeiture.

**IT IS THEREFORE ORDERED** that Caleb Carroll's 50% interest in the above described vehicle be forfeited to the seizing agency. There is no lien on this vehicle. Claimant's 50% interest is not subject to forfeiture.

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

---

Steve R. Darnell  
Administrative Law Judge

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



---

J. Richard Collier, Director  
Administrative Procedures Division