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March 2015

## Glenn F. Barnett 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.**

**One 2008 Chevrolet Silverado  
V.I.N. # 1GCEC14X48Z318415  
Seized from: Glenn F. Barnett  
Date of Seizure: November 14, 2013  
Claimant: Glenn F. Barnett**

**DOCKET NO: 19.05-128539J  
DOS # 4841**

**INITIAL ORDER**

This matter was heard on February 25, 2015 in Chattanooga Tennessee, before Leonard Pogue, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety and Homeland Security. Ms. Nina Harris, Staff Attorney for the Department of Safety and Homeland Security, represented the State. The Claimant, Glenn F. Barnett, was represented by attorney Matthew Rogers.

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, T.C.A. § 55-10-403, *et seq* and T.C.A. § 40-33-101 *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.

**FINDINGS OF FACT**

1. On November 14, 2013, Deputy Paul Johnson of the McMinn County Sheriff's Department was travelling on Highway 305 when he noticed cars in front of him veering to the side of the road. He then observed a white truck coming into his lane of travel. Deputy Johnson veered out of the way of the truck and then turned around to follow the truck with his emergency lights activated. Deputy Johnson stopped the subject vehicle, which was being operated by Claimant.

2. At the time of the stop, Deputy Johnson smelled alcohol coming from inside the truck. Claimant denied that he had been drinking; however, Claimant's passenger stated that both of them had drunk a beer. Deputy Johnson administered field sobriety tests and Claimant performed poorly. Deputy Johnson determined that Claimant's license had been revoked for DUI on three occasions, with the most recent occurring in 2009. It was the opinion of Deputy Johnson that Claimant was too impaired to drive.

3. A blood alcohol test<sup>1</sup> and toxicology drug testing<sup>2</sup> were performed. Claimant's blood alcohol test results showed a blood alcohol level of 0.03. The drug test was positive for Benzodiazepines.

4. Department of Safety records<sup>3</sup> established that, prior to the subject event, that Claimant's license was revoked for DUI in 1997, 2001 and 2009. The Department records<sup>4</sup> further established that Claimant's license was revoked for DUI in October, 2014 as a result of this incident.

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<sup>1</sup> Exhibit 1

<sup>2</sup> Exhibit 2

<sup>3</sup> Exhibit 3

<sup>4</sup> Exhibit 3

**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(s) defining its illegal use, thereby rendering it subject to forfeiture. Rule 1340-2-2-.15(4), TENN. COMP. R. & REGS., *Rules of the Tennessee Department of Safety*.

2. T.C.A. §55-10-403(k) provides that any vehicle used in the commission of a person's second or subsequent violation of T.C.A. §55-10-401 is subject to seizure and forfeiture, if the second offense occur within 5 years of the first or previous offense.

3. The proof showed that Claimant performed poorly on the field sobriety tests. More significant, Claimant's license was revoked for DUI as a result of this incident which occurred within five years of Claimant's previous DUI conviction.

The State met its burden of proof that on the date of the seizure Claimant's vehicle was used in the commission of a second DUI. Therefore, it is **Ordered** that the vehicle be **forfeited** to the seizing agency.

This Initial Order entered this \_\_\_\_\_ day of March, 2015.

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Leonard Pogue  
Administrative Judge

Filed in the Administrative Procedures Division, this \_\_\_\_\_ day of March, 2015.

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Richard C. Collier, Director  
Administrative Procedures Division