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March 2015

## Carolyn Beane & John Johnson 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.**

**1997 Toyota Camry**

**VIN: 4T1BG22K6VU792150**

**Seized from: John Johnson**

**Date of Seizure: August 15, 2014**

**Claimant: Carolyn Beane**

**DOCKET NO: 19.05-129771J**

**DOS CASE NO: Q1947 & Q1948**

**INITIAL ORDER**

This matter was heard on January 27, 2015, in Nashville, Tennessee, before Kim Summers, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety. Ms. Karen Litwin, Staff Attorney for the Department of Safety, represented the State. The Claimant was present and represented herself, waiving her right to be represented by an attorney.

The issue in this case is whether the State properly seize the Claimant's interest in the above referenced vehicle due to a violation of T.C.A. §55-10-401, 55-10-403, § 55-10-414, 55-50-504, 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.

**SUMMARY OF THE EVIDENCE**

The State presented the testimony of Officer Lewis Powell of the Lavergne Police Department and admitted two exhibits into evidence: EXHIBIT 1, Official Alcohol Report; EXHIBIT 2, Driving Record for John Johnson.

The Claimant testified to the following – she was unaware of Mr. Johnson’s driving history; Mr. Johnson wanted the Claimant to have the vehicle so that it could be used by the Claimant’s daughter while away at school.

**FINDINGS OF FACT**

1. John Johnson purchased the 1997 Toyota Camry and included the Claimant’s name on the title.
2. The Claimant and Mr. Johnson are not married but have known each other for several years.
3. The Claimant has never driven the vehicle and has made no financial contribution towards the purchase or maintenance of the vehicle.
4. On August 15, 2014, Mr. Johnson was stopped at a sobriety check point by Officer Powell. Officer Powell noticed the smell of alcohol on Mr. Johnson who admitted that he had been drinking. Mr. Johnson was arrested after attempting to flee the scene and declined to perform any field sobriety field tests or submit to a blood alcohol test. A blood sample was obtained by court order after Officer Powell discovered that Mr. Johnson’s license had been revoked for two prior convictions of driving under the influence of an intoxicant.
5. Mr. Johnson’s blood alcohol level tested at .115.
6. Mr. Johnson’s vehicle was seized for driving on a revoked license and under the influence of an intoxicant.
7. Mr. Johnson was incarcerated at the time of the forfeiture hearing.

**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 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. The law provides that it is illegal for a person to operate a motor vehicle at a time when his license to drive has been revoked. It further provides that, if the revocation was ordered due to a DUI conviction, any vehicle driven by the offender during the period of revocation is subject to seizure and forfeiture. TCA § 55-50-504(a)(1) and (h)(1).

3. Pursuant to Tenn. Code Ann. § 55-10-401,

(a) 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.

4. Pursuant to Tenn. Code Ann. § 55-10-414(a)(1),

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.

5. The law further provides that the forfeiture of a vehicle should serve a remedial, rather than punitive, purpose – specifically to “prevent unscrupulous or incompetent persons from driving on Tennessee's highways while under the influence of alcohol or drugs.” T.C.A. § 55-10-414(a)(3).

6. The State's evidence proved that John Johnson was driving on August 15, 2014, on a license that had been revoked due to two prior convictions for driving under the influence of an intoxicant. The State's evidence also proved that John Johnson was driving under the influence of an intoxicant when he was stopped at the sobriety checkpoint on August 15, 2014.

7. The seized vehicle is appropriately forfeited, not only because Mr. Johnson was driving on a revoked license, but also because he was, again, driving under the influence of an intoxicant, thus, demonstrating no intention of following the requirements of the law.

8. Although the Claimant is named as an owner on the vehicle's title, she has provided no other indicia of ownership – she did not provide funds for the purchase or maintenance of the vehicle, she had never driven the vehicle, and had not previously relied on the use of the vehicle. Absent his incarceration and the seizure of the vehicle, there is no evidence to suggest that Mr. Johnson would have ever offered the use of the vehicle to the Claimant or her daughter.

9. The Claimant forfeited his right to the vehicle by continuing to drive on a revoked license and under the influence of an intoxicant; therefore, he has lost his right to transfer ownership / possession of the vehicle to another party.

10. The State has met its burden of proof for forfeiting the vehicle. Accordingly, the vehicle shall be **FORFEITED** to the seizing agency.

The policy reasons for this decision are to uphold the laws of the State of Tennessee while providing appropriate protections for the property rights of individuals.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the \_\_\_\_\_ day of \_\_\_\_\_ 2015.

*JKSummers*

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KIM SUMMERS  
ADMINISTRATIVE JUDGE  
ADMINISTRATIVE PROCEDURES DIVISION  
OFFICE OF THE SECRETARY OF STATE

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

*J. Richard Collier*

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J. RICHARD COLLIER, DIRECTOR  
ADMINISTRATIVE PROCEDURES DIVISION  
OFFICE OF THE SECRETARY OF STATE