



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

Tennessee Department of State, Opinions from the
Administrative Procedures Division

Law

August 2015

Jeremiah Boynton vs. Safety

Follow this and additional works at: 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



State of Tennessee
Department of State
Administrative Procedures Division
312 Rosa L. Parks Avenue
8th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243-1102
Phone: (615) 741-7008/Fax: (615) 741-4472

August 6, 2015

Commissioner Bill Gibbons
Tennessee Department of Safety
23rd Floor, William R. Snodgrass Tower
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243-1102

Nina F. Harris, Esq.
Staff Attorney III
Tennessee Department of Safety &
Homeland Security
7175 Strawberry Plains Pike, Suite #102
Knoxville, TN 37914-7002

Sunrise Acceptance
P.O. Box 2577
Cleveland, TN 37320-2577

Jeremiah Boynton
4403 South Choctow Drive
Chattanooga, TN 37411

RE: In the Matter of: Jeremiah Boynton (Q4572)

Docket No. 19.05-132355J

Enclosed is an Initial Order rendered in connection with the above-styled case.

Administrative Procedures Division
Tennessee Department of State

/aem
Enclosure

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

IN THE MATTER OF:

JEREMIAH BOYNTON

DOCKET NO. 19.05-132355J

NOTICE

ATTACHED IS AN INITIAL ORDER RENDERED BY AN ADMINISTRATIVE JUDGE WITH THE ADMINISTRATIVE PROCEDURES DIVISION.

THE INITIAL ORDER IS NOT A FINAL ORDER BUT SHALL BECOME A FINAL ORDER UNLESS:

1. THE ENROLLEE FILES A WRITTEN APPEAL, OR EITHER PARTY FILES A PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION NO LATER THAN **August 21, 2015**.

YOU MUST FILE THE APPEAL, PETITION FOR RECONSIDERATION WITH THE ADMINISTRATIVE PROCEDURES DIVISION. THE ADDRESS OF THE ADMINISTRATIVE PROCEDURES DIVISION IS:

SECRETARY OF STATE
ADMINISTRATIVE PROCEDURES DIVISION
WILLIAM R. SNODGRASS TOWER
312 ROSA PARKS AVENUE, 8th FLOOR
NASHVILLE, TENNESSEE 37243-1102

IF YOU HAVE ANY FURTHER QUESTIONS, PLEASE CALL THE ADMINISTRATIVE PROCEDURES DIVISION, **615/741-7008 OR 741-5042, FAX 615/741-4472**. PLEASE CONSULT APPENDIX A AFFIXED TO THE INITIAL ORDER FOR NOTICE OF APPEAL PROCEDURES.

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

IN THE MATTER OF:]	
DEPARTMENT OF SAFETY]	FORFEITURE PROCEEDING
v.]	
One 2008 Chrysler PT Cruiser]	
VIN: 3A8FY58B68T224919]	DOCKET # 19.05-132355J
Seized From: Prunella [England] Boynton]]	(D.O.S. # Q4572)
Seizure Date: 12/4/14]	
Claimant: Jeremiah Boynton]	
Seizing Agency: Dayton P.D.]	
Lienholder: Sunrise Acceptance]	

INITIAL ORDER

This contested administrative case was heard in Chattanooga, Tennessee on July 29, 2015, before J. Randall LaFevor, Administrative Judge assigned by the Secretary of State, sitting for the Commissioner of the Tennessee Department of Safety. Ms. Nina Harris, Staff Attorney for the Tennessee Department of Safety, represented the Seizing Agency. The Claimant appeared *pro se*.

The subject of the hearing was the proposed forfeiture of the seized vehicle for its use in the commission of the driver'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 FORFEITED to the Seizing Agency. This decision is based on the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On December 4, 2014, an officer with the Dayton Police Department was dispatched to a disturbance involving Prunella Boynton.¹ Enroute to the location of the disturbance, the officer saw Prunella Boynton driving toward her home. He activated his emergency equipment, and followed her to her driveway, where she locked herself in the car.

¹ Prunella Boynton was known to the officer, and sometimes had used the last name "England."

2. After some effort, the officer who initially responded, and others who arrived later, removed the driver from the vehicle. She resisted with force, at one point even trying to bite the officer. Based on his perceived odor of alcohol in the vehicle, the driver's unsteadiness on her feet, and her admission that she had been drinking beer before being stopped, the officer attempted to administer a breath-alcohol test. She spit into the breathalyzer, invalidating the results.

3. The officer arrested the driver, and charged her with, *inter alia*, driving under the influence of an intoxicant. The officer checked her driving history, and after learning that she had a recent DUI conviction, the officer seized the vehicle, and later sought and obtained a Forfeiture Warrant for the vehicle. Notice of the seizure was sent to both the driver and her husband, Jeremiah Boynton, who was listed on the title as co-owner of the vehicle.

4. Jeremiah Boynton filed a claim for return of the vehicle, and this hearing was scheduled to consider his claim. Hearing testimony and the driver's Official Tennessee Driving Record² established that Prunella Boynton appeared in the Rhea County General Sessions Court on June 23, 2015, pled guilty, and was convicted of the December 4, 2014 offense of DUI. Her Driving Record also established that she had previously been convicted of a DUI offense on November 5, 2010 in Hamilton County.

5. The Claimant's husband testified that, although the car was titled to him and his wife together, she was the primary driver, and he generally drove another vehicle. The Claimant knew of his wife's prior DUI history, and placed no restrictions on her ability to drive the seized vehicle, or to restrict her assertion of primary ownership and use of that car.

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. TENN. CODE ANN. § 55-10-401, *et. seq.* It further provides that any vehicle used in the commission of a person's second or subsequent violation of

² See Hearing Exhibit #1.

the DUI law is subject to seizure and forfeiture by the State. TENN. CODE ANN. § 55-10-414.

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. 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 driver was driving the subject vehicle; **(2)** that she was doing so under the influence of an intoxicant; and **(3)** that she had previously been convicted of a DUI within the previous five years. TENN. CODE ANN. § 55-10-414. The State met its burden. The Claimant’s condition and behavior at the time of the stop, and her June 23, 2015 DUI conviction, proved that she was operating her vehicle under the influence of an intoxicant on December 4, 2014. Her driving record supports a finding that she was previously convicted of a DUI offense on November 5, 2010, within the time frame established by the statute.

4. Because the seized vehicle was used in the commission of the co-owner/driver’s second or subsequent violation of the DUI law, it is subject to forfeiture by the State. TENN. CODE ANN. § 55-10-414. Even though the Claimant was not in the car with his wife at the time of the seizure, he knew of her DUI history, and failed to take any steps to prevent her from driving while intoxicated. By allowing her drive the vehicle as her own, without restriction, he cannot claim to be an “innocent owner.” His interest in the vehicle is therefore subject to forfeiture.

5. Although the application of the vehicle forfeiture law may, at times, seem somewhat harsh, the purpose of the legislature in enacting the law is clear:

It is the specific intent that a forfeiture action under this section shall serve a remedial and not a punitive purpose. The purpose of the forfeiture of a

vehicle after a person's second or subsequent DUI violation is to prevent unscrupulous or incompetent persons from driving on Tennessee's highways while under the influence of alcohol or drugs. Driving a motor vehicle while under the influence of alcohol or drugs endangers the lives of innocent people who are exercising the same privilege of riding on the state's highways. There is a reasonable connection between the remedial purpose of this section, ensuring safe roads, and the forfeiture of a motor vehicle. While this section may serve as a deterrent to the conduct of driving a motor vehicle while under the influence of alcohol or drugs, it is nonetheless intended as a remedial measure. **Moreover, the statute serves to remove a dangerous instrument from the hands of individuals who have demonstrated a pattern of driving a motor vehicle while under the influence of alcohol or drugs.**


TENN. CODE ANN. 55-10-414(c) [Bold emphasis supplied].

Accordingly, it is hereby ORDERED that the subject 2008 Chrysler PT Cruiser is FORFEITED to the seizing agency, the Dayton Police Department, subject to the legal interest of the lien holder, Sunrise Acceptance.

Entered and effective this 6TH day of August, 2015.


J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 6TH day of AUGUST 2015.


J. Richard Collier, Director
Administrative Procedures Division

APPENDIX A TO INITIAL ORDER
NOTICE OF APPEAL PROCEDURES

Review of Initial Order

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8th Floor, William R. Snodgrass Tower, 312 Rosa L. Parks Avenue, Nashville, Tennessee, 37243. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

Review of Final Order

Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.