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Justin Anderson vs. Safety

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Administrative Procedures Division
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Nashville, Tennessee 37243-1102
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April 6, 2016

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RE: In the Matter of: Justin Anderson (Q8353)

Docket No. 19.05-134147J

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:

JUSTIN ANDERSON

DOCKET NO. 19.05-134147J

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 **April 21, 2016**.

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 AND HOMELAND SECURITY**

**IN THE MATTER OF:
TENNESSEE DEPARTMENT OF
SAFETY AND HOMELAND SECURITY**

v.

**One 2010 Mercury Montero
VIN: 4M2CN8H75AKJ05731
Seized From: Justin P. Anderson
Date of Seizure: April 19, 2015
Claimant: Justin P. Anderson
Seizing Agency: T.H.P.**

**DOCKET NO: 19.05-134147J
D.O.S. Case No. Q8353**

INITIAL ORDER

This contested administrative case was heard in Chattanooga, Tennessee on March 31, 2016, before J. Randall LaFevor, Administrative Judge assigned by the Secretary of State, sitting for the Commissioner of the Tennessee Department of Safety. Mr. Dustin Brandon, Staff Attorney for the Tennessee Department of Safety, represented the Seizing Agency. The Claimant was not present, but was represented by his legal counsel, Mr. Daniel J. Ripper.

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 April 19, 2015, a Trooper with the Tennessee Highway Patrol heard a BOLO issued for a vehicle being operated in an erratic manner on I-24 near Chattanooga. Shortly thereafter, the Trooper saw a vehicle matching the BOLO's description driving toward him, and observed that the driver did not appear to be wearing his seatbelt. The

Trooper followed the vehicle for nearly a mile, while the vehicle was in the far left lane (of three lanes), and its left turn signal was on.

2. The Trooper stopped the vehicle to investigate the observed seatbelt infraction and the driver's condition. Upon approaching the vehicle, he smelled the odor of marijuana coming from the front-seat passenger, who admitted recently smoking marijuana. While interviewing the driver, Justin Anderson ("the Claimant"), the Trooper observed clues indicating possible impairment, and administered multiple field sobriety tests. The results of those tests also indicated that the driver was impaired.

3. Upon arresting the Claimant for the DUI offense, and noting that the Claimant's vehicle was equipped with a breath-alcohol interlock device, the Trooper checked his driving history. After learning that he had a prior DUI conviction in Missouri on December 2, 2013, the Trooper seized the vehicle. The Trooper later sought and obtained a Forfeiture Warrant for the vehicle. The Claimant filed a claim for its return, and this hearing was scheduled to consider his claim.

4. At the hearing, the State submitted the Trooper's account of the activity that occurred during the stop, and documentary evidence proving: (1) that the Claimant was convicted of the April 19, 2015 DUI offense in the Marion County General Sessions Court on August 12, 2015 [See Hearing Exhibit #2]; and, (2) that the Claimant was previously convicted of a July 30, 2013 DUI offense in Missouri on December 2, 2013 [See Hearing Exhibit #1]. The Claimant offered no proof.

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 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 he was doing so under the influence of an intoxicant; and (3) that he had previously been convicted of a DUI within the previous five years. TENN. CODE ANN. § 55-10-414. The State met its burden. The Trooper’s testimony and the Claimant’s August 12, 2015 DUI conviction prove that the Claimant was operating his vehicle under the influence of an intoxicant on April 19, 2015. His Missouri driving record supports a finding that he was previously convicted of a DUI offense on December 12, 2013, within the time frame established by the statute.

4. Because the seized vehicle was used in the commission of the Claimant’s second or subsequent violation of the DUI law, it is subject to forfeiture by the State. TENN. CODE ANN. § 55-10-414.

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 2010 Mercury Montero is FORFEITED to the seizing agency, the Tennessee Highway Patrol, for disposition as provided by law.

Entered and effective this 6TH day of April, 2016.



J. Randall LaFevor, Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 6TH day of APRIL 2016.



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

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.