

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

**1994 MERCURY COUGAR,
VIN #1MELM62WORH628952 (Edna Jones)**

APPELLANT

V.

NO. 2006-CA-01773

TISHOMINGO COUNTY, MISSISSIPPI

APPELLEE

**APPEAL FROM THE CIRCUIT COURT OF
TISHOMINGO COUNTY, MISSISSIPPI**

BRIEF OF APPELLEE

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Edna Jones, Respondent/Appellant
2. John R. White, attorney for Respondent/Appellant
3. Tishomingo County, Mississippi Appellee
4. Richard Bowen, Attorney for Appellee
5. Thomas Jones, Respondent/Appellant's husband
6. Jason Williamson, witness for Tishomingo County, Mississippi
5. Honorable Sharion Aycock, Circuit Judge

RESPECTFULLY SUBMITTED,



**RICHARD D. BOWEN, MSB #4191
ATTORNEY FOR APPELLANT**

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STATEMENT OF THE ISSUES

- I. WHETHER TISHOMINGO COUNTY MET ITS BURDEN OF PROOF UNDER MISSISSIPPI CODE ANNOTATED §41-29-153.
- II. WHETHER THE TRIAL COURT CORRECTLY FORFEITED THE VEHICLE IN QUESTION.

STATEMENT OF THE CASE

This case arises out of the arrest and conviction of J. C. Jones on two counts of the sale of controlled substances. On approximately May 2, 2006, J. C. Jones was arrested for selling Morphine and Percocet pills to undercover officers employed by the Tishomingo County Sheriff's Department. At the time of his arrest, J. C. Jones was driving a 1994 green Mercury Cougar, VIN 1MELM62WORH628952 titled to his mother, Edna Jones. On approximately May 31, 2006, the vehicle was seized from the Jones residence where J. C. Jones was living with his parents.

On approximately September 10, 2006, a hearing was held on the Petition for Forfeiture filed by the Tishomingo County Sheriff's Department. Officer Jason Williamson testified that the vehicle was seized because it was used in violation of the Controlled Substances Law, Mississippi Code Annotated §41-29-153. Officer Williamson testified that at the time J. C. Jones sold the Morphine and Percocet pills to an undercover officer, he was driving the 1994 green Cougar and had the drugs in the vehicle at the time of the drug sale. Officer Williamson testified that J. C. Jones was obtaining the drugs in question from his father and was living with his parents, Thomas and Edna Jones. Mrs. Jones testified that she provided the Cougar for her son to travel back and forth to work. Sherman Jones testified that his son, J. C. Jones, had a prior DUI conviction and that his son had stolen drugs from him before. The owner of the vehicle, Edna Jones, testified that at the time of her son's arrest, she

and her husband believed J. C. Jones was stealing Morphine and Percocet and Valium from his father.

After considering the evidence and testimony of the parties the Circuit Court held that the forfeiture of the vehicle was proper. Edna Jones subsequently filed her appeal maintaining that the County did not meet its burden of proof to support forfeiture of the vehicle.

SUMMARY OF THE ARGUMENT

Under the innocent owner defense to forfeiture laws, knowledge of illegal drug activity alone is sufficient to allow forfeiture and consent is not required. Additionally, willful blindness will preclude a property owner from defeating a forfeiture based upon his or her lack of knowledge. *Parcel Real Property located at 335 West Ash Street, Jackson, Miss. v. City of Jackson*, 664 So.2d 194 (Miss. 1995).

Forfeiture may be based wholly on circumstantial evidence and inference. *One Hundred Seven Thousand (\$107,000.00) US Currency (Tagle) v. State, ex rel. Harrison County Sheriff's Dept. by and through Gulfcoast Multi-Jurisdictional Task Force*, 643 So.2d 917 (Miss. 1994). Here the Circuit Court heard evidence that J. C. Jones was living with his parents at the time of the drug sale. His mother had provided him and his brother with her automobile to drive. His parents knew of his DUI arrest. They also testified that they knew he was stealing Morphine and Percocet pills from them. J. C. Jones did, in fact, use the vehicle in question during the sale of the Morphine and Percocet pills. Therefore there was sufficient evidence for the Circuit Court to find that Edna Jones knew that her vehicle was being used for the sale of illicit drugs and forfeiture of the vehicle was proper.

ARGUMENT

A. THE TISHOMINGO COUNTY SHERIFF'S DEPARTMENT MET ITS BURDEN OF PROOF FOR FORFEITURE OF THE 1994 MERCURY COUGAR UNDER MISSISSIPPI CODE ANNOTATED §41-29-153.

Mississippi Code Annotated §41-29-153 states in pertinent part:

(a) The following are subject to forfeiture:

...(4) All conveyances, including aircraft, vehicles or vessels, which are used are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment of property described in paragraph (1) or (2) or this section, however:

...B. No conveyance is subject to forfeiture under this section by reason of any act or omission proved by the owner thereof to have been committed or omitted without his knowledge or consent;

Appellant argues that under the Circuit Court incorrectly placed the burden on Edna Jones to prove that she did not have knowledge or consent to the vehicle's use for the sale of the illicit drugs. A review of the transcript reveals that the Circuit Court, after hearing the testimony of witnesses, found that Mrs. Jones did know that her son was using her vehicle for the sale of drugs. The Court stated:

In Cause No. CV06-0181, the Court finds and determines that there is proof, preponderance of the evidence, that this 1994 Mercury Cougar vehicle was used Pursuant to the definition of Section 41-29-153 to facilitate the sale of a controlled substance. (Transcript, p. 25, Lines 19-24.)¹

¹Pursuant to M.R.A.P. 28(e), references herein are keyed to the record excerpt and to the record.

(T. p#) denotes references to page(s) in the Transcript. All references to the Transcript are reproduced in the Appellee's Record Excerpt.

The Court finds from the testimony of Mr. and Mrs. Jones that it is evident to the court that the parties, at least through Mrs. Jones' testimony, the Court heard proof that she became very suspicious that the missing medications were being taken by her son, John Colt Jones, and that this was about the time of the arrest in the John Colt Jones case, which was on or about May 2006, and that it was during that period of time that the vehicle was being used by her sons to travel back and forth to Corinth for their work,.... (Transcript p. 26, Lines 7-18.)

That being the case, the Court is convinced that Mrs. Jones knew or should have known that the vehicle was being used in the transportation or facilitation of the sale of controlled substance, and it will be forfeited to the County of Tishomingo. (Transcript p. 25, Line 27 - p. 26, Line 3.) (emphasis added)

The Circuit Court did not require Mrs. Jones to prove her lack of knowledge and consent, rather the Court found that her testimony indicated she did know or should have known the vehicle was being used for illegal activity.

B. THE CIRCUIT COURT DID NOT ERR IN FORFEITING THE VEHICLE IN QUESTION.

After considering the evidence, testimony and credibility of the witnesses, the Circuit Court found that there was proof by a preponderance of the evidence that Edna Jones knew her son was using her vehicle for drug related activity.

Mr. Sherman Jones testified:

- Q. Mr. Jones, it is a fact, isn't it, that your son J. C. or John Colt Jones was obtaining the drugs he was selling from you?
- A. No, he was not. Now, he has stole from me before, and which any officer around here will tell you I have been to the police station before.

(Transcript p. 14, Lines 12-17.)

Q. He has prior convictions besides the one yesterday, does he not?

A. I don't really - - yeah. Yeah. Yeah.

Q. What has he been convicted of?

A. DW - - DUI.

(Transcript p. 15, Lines 3-7.)

Mrs. Jones testified that although the vehicle in question was titled in her name, she allowed her sons to use it so they would have a way back and forth to work in Corinth. (Transcript p. 17, Lines 27-28.) Mrs. Jones also testified that she knew her son was stealing medication at the time he was arrested.

Q. When did your medications come up missing?

A. Well, he was - well, off and on, you know, J. C., we figure it was him, you know. It would come up some missing. And then he had a bottle of Valiums. He gets Valiums, too. He takes Valiums. Ane he had a whole bottle of them that was taken out of our mailbox.

Q. You figured it was J. C. that was taking them didn't you?

A. Yes, sir, I do.

Q. And how long have you suspected or known that J. C. was taking your husband's medications?

A. Well, when the bottle of pills come missing out of the mailbox, that was when it really, you known, opened our eyes about it, and that's when he had called the post office, and the post office is holding our mail and stuff and we started carrying it around in a bag.

Q. Now, when was that, Mrs. Jones? Was that this year?

A. I don't know. About three months ago maybe.

Q. About May of this year when J. C. was arrested for selling Percocet and - -

A. It's possible.

(Transcript p. 20, Lines 3-24.)

Here, Tishomingo County established (1) that the vehicle in question was used to facilitate the sale of Morphine and Percocet, (2) that the vehicle was owned by Edna Jones, (3) that Edna Jones provided the vehicle for her son's use, (4) that her son was living with her at the time of his drug arrest, (5) that J. C. Jones had a previous DUI conviction, (6) that J. C. Jones had previously stolen her husband's medication, and (7) that J. C. Jones was stealing medication, specifically Morphine, Percocet and Valium, during the time period he was using the vehicle and was arrested. The Mississippi Supreme Court has held that willful blindness negates the innocent owner defense. *Parcel Real Property located at 335 West Ash Street, Jackson, Miss. v. City of Jackson*, 664 So.2d 194 (Miss. 1995). Here, Mrs. Jones knew that her son was using her vehicle and knew he was stealing medications prescribed for her husband at the time of his arrest. The Court find after considering her testimony that she knew her vehicle was being used by her son for the sale of illicit drugs. Therefore, forfeiture in this case was appropriate

CONCLUSION

Based upon the totality of evidence and testimony of Officer Williamson, Mr. Sherman Jones and Mrs. Edna Jones, there was a preponderance of evidence indicating that Mrs. Jones knew her son was likely utilizing her automobile to facilitate the sale of illegal drugs. Therefore the Circuit Court Order forfeiting the vehicle in question was proper.

CERTIFICATE OF SERVICE

I, Richard D. Bowen, attorney for the Tishomingo County Sheriff's Department, Tishomingo County, Mississippi, do hereby certify that I have this day mailed by United States Mail, postage prepaid, a true and exact copy of the above and foregoing Brief of the Appellee, along with an electronic disk of same, to John R. White, attorney for Edna Jones, Appellee, at his usual mailing address of 123 South Fulton Street, Iuka, MS 38732, and to The Honorable Sharion Aycock, at her usual mailing address of Post Office Box 1100, Tupelo, MS 38802-1100.

THIS 16th day of April, 2007.



RICHARD D. BOWEN

ADDENDUM

§ 41-29-153. Property subject to forfeiture

(a) The following are subject to forfeiture:

(1) All controlled substances which have been manufactured, distributed, dispensed or acquired in violation of this article or in violation of Article 5 of this chapter;

(2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this article or in violation of Article 5 of this chapter;

(3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2) of this section;

(4) All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment of property described in paragraph (1) or (2) of this section, however:

A. No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this article;

B. No conveyance is subject to forfeiture under this section by reason of any act or omission proved by the owner thereof to have been committed or omitted without his knowledge or consent; if the confiscating authority has reason to believe that the conveyance is a leased or rented conveyance, then the confiscating authority shall notify the owner of the conveyance within five (5) days of the confiscation;

C. A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission;

D. A conveyance is not subject to forfeiture for a violation of Section 41- 29-139(c)(2)(A), (B) or (C);

(5) All money, deadly weapons, books, records, and research products and materials, including formulas, microfilm, tapes and data which are used, or intended for use, in violation of this article;

(6) All drug paraphernalia as defined in Section 41-29-105(v); and

(7) Everything of value, including real estate, furnished, or intended to be furnished, in exchange for a controlled substance in violation of this article, all proceeds traceable to such an exchange, and all monies, negotiable instruments, businesses or business investments, securities, and other things of value used, or intended to be used, to facilitate any violation of this article. All monies, coin and currency found in close proximity to forfeitable controlled substances, to forfeitable drug manufacturing or distributing

paraphernalia, or to forfeitable records of the importation, manufacture or distribution of controlled substances are presumed to be forfeitable under this paragraph; the burden of proof is upon claimants of the property to rebut this presumption.

A. No property shall be forfeited under the provisions of paragraph (a)(7) of this section, to the extent of the interest of an owner, by reason of any act or omission established by him to have been committed or omitted without his knowledge or consent.

B. Neither personal property encumbered by a bona fide security interest nor real estate encumbered by a bona fide mortgage, deed of trust, lien or encumbrance shall be forfeited under the provisions of paragraph (a)(7) of this section, to the extent of the interest of the secured party or the interest of the mortgagee, holder of a deed of trust, lien or encumbrance by reason of any act or omission established by him to have been committed or omitted without his knowledge or consent.

(b) Property subject to forfeiture may be seized by the bureau, local law enforcement officers, enforcement officers of the Mississippi Department of Transportation, highway patrolmen, the board, or the State Board of Pharmacy upon process issued by any appropriate court having jurisdiction over the property. Seizure without process may be made if:

- (1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;
- (2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this article;
- (3) The bureau, the board, local law enforcement officers, enforcement officers of the Mississippi Department of Transportation, or highway patrolmen, or the State Board of Pharmacy have probable cause to believe that the property is directly or indirectly dangerous to health or safety; or
- (4) The bureau, local law enforcement officers, enforcement officers of the Mississippi Department of Transportation, highway patrolmen, the board, or the State Board of Pharmacy have probable cause to believe that the property was used or is intended to be used in violation of this article.

(c) Controlled substances listed in Schedule I of Section 41-29-113 that are possessed, transferred, sold, or offered for sale in violation of this article are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in the said Schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

(d) Species of plants from which controlled substances in Schedules I and II of Sections 41-29-113 and 41-29-115 may be derived which have been planted or cultivated in violation of this article, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

(e) The failure, upon demand by the bureau and/or local law enforcement officers, or their authorized agents, or highway patrolmen designated by the bureau, the board, or the State Board of Pharmacy, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.