

IN THE COURT OF APPEALS OF MISSISSIPPI

NO. 2006-CA-01773

**1994 Mercury Cougar, VIN #1MELM62WORH628952 (Edna Jones)
APPELLANT**

VS.

**Tishomingo County, Mississippi
APPELLEE**

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

BRIEF OF APPELLANT

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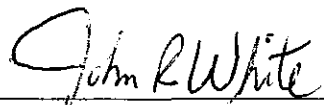
ON APPEAL FROM THE CIRCUIT COURT OF
TISHOMINGO COUNTY, MISSISSIPPI

CERTIFICATE OF INTERESTED PERSONS

The undersigned attorney of record for the Appellant certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Court may evaluate possible disqualifications or recusal.

1. Edna Jones, Appellant
2. Tishomingo County, Appellee
3. Thomas Jones, Appellant's Husband
4. Jason Williamson, Witness for Tishomingo County
5. John R. White, Attorney for Appellant
6. Richard D. Bowen, Attorney for Appellee
7. Sharion Aycock, Circuit Court Judge

This the 14 day of February, 2007.



JOHN R. WHITE, MSB #7143
i. ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

	Page
Certificate of Interested Parties	i
Table of Contents	ii
Table of Authorities	iii
Issues	1
Statement of Case	1
Summary of Argument	1
Argument	1
Conclusion	3
Certificate of Service	4

TABLE OF AUTHORITIES

Page

CASES

<i>Saik v. State</i> , 473 So. 2d 188 (Miss. 1985)	2, 3
<i>Galloway v. City of New Albany</i> , 735 So. 2d 407 (Miss. 1999)	3
<i>Ervin v. State</i> , 434 So. 2d 1324 (Miss. 1983)	3
<i>Curtis v. State</i> , 642 So. 2d 381 (Miss. 1994).	2, 3

STATUTES AND OTHER AUTHORITIES

Mississippi Code Ann. of 1972 §41-29-153	1
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STATEMENT OF ISSUES

1. Who has the burden in a forfeiture case (Miss. Code Ann. §41-29-153)?
2. The trial court erred in forfeiting the vehicle in question.

STATEMENT OF CASE

This appeal arises out of a forfeiture case where Tishomingo County seized a vehicle on no evidence whatsoever of knowledge, consent or culpability of the owner of the vehicle to the commission of the drug crime.

SUMMARY OF ARGUMENT

Three witnesses testified at the trial in Circuit Court. The officer for Tishomingo County, Jason Williamson, the Defendant's husband, Thomas Jones, and the Defendant, Edna Jones, owner of the vehicle. No evidence was introduced to show knowledge of Defendant that a crime was being committed in her vehicle. In fact, just the opposite was testified to by Defendant and her husband. Tishomingo County did not meet its burden and this case should be reversed.

ARGUMENT

1. Who has the burden in a forfeiture case? Miss. Code Ann. §41-29-153, states in part:

(a) The following are subject to forfeiture:

(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:

(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; . . .

Forfeiture statutes are penal in nature and must be strictly construed. *Saik v. State of Mississippi, ex rel. Mississippi Bureau of Narcotics, et al.*, 472 So. 2d 188 (Miss. 1985).

In any proceeding for a forfeiture of a vehicle used in connection with the sale of drugs, the state must prove that the owner had knowledge of or gave consent to it's use to transport drugs. *Curtis v. State*, 624 So. 2d 381 (Miss. 1994). I hope that's the law, otherwise, innocent people watch out, the government's a'coming. The Circuit Court here incorrectly states that Edna Jones "has not met her burden to prove to the Court that she did not have knowledge or did not give consent of it's use." Pg. 26 of Transcript. The Court was inherently wrong in applying this standard. Ms. Jones represented herself, and did not know better.

2. The trial court erred in forfeiting the vehicle in question.

I do not know but I suspect the proceedings of this type happen all over this State. Vehicles not worth fighting for are seized and confiscated. Owners give up because of lack of funds or intimidation by authorities. Hiring lawyers, appeal costs, etc. are "throwing good money after bad." What a shame! These same people who should be protecting your property rights take what is rightfully yours. Such is the case at bar.

This case was demurrable or subject to directed verdict after the Plaintiff rested. Pg. 11 of Transcript. Jason Williamson, the state's only witness, never said a word about Edna Jones or

her knowledge of the drug case. Why? Because there was nothing to say. Defendant, being pro se, did not know to ask for a directed verdict.

After the State rested both Edna Jones and her husband, Thomas Jones, testified by making statements to the Court under oath. In spite of very speculative cross-examination, both Mr. and Mrs. Jones testified that:


- 1) They were out of town when the drug sales occurred. Pg. 12 and 17 of Transcript.
- 2) J. C. Jones, their son (the perpetrator), did not have a driver's license. Pg. 22 of Transcript.
- 3) The oldest son was supposed to have access to the car not the perpetrator. Pg. 22 of Transcript.
- 4) They did not know the perpetrator was even using the car much less using it to sell drugs. Pg. 12, 17, 21, 22, 23 of Transcript.

These facts do not support a case for forfeiture. *Saik v. State*, 473 So. 2d 188 (Miss. 1985). *Galloway v. City of New Albany*, 735 So. 2d 407 (Miss. 1999). *Ervin v. State*, 434 So. 2d 1324 (Miss. 1983). *Curtis v. State*, 642 So. 2d 381 (Miss. 1994).

CONCLUSION

This Court has been careful about protecting people's rights in forfeiture cases for a reason; cases just like this. This happens a lot in Tishomingo County and it's wrong. This Court should send out a message loud and clear to stop this wrongful taking of innocent people's property without any evidence whatsoever.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, the undersigned, John R. White, attorney of record for the Appellant do hereby certify
that I have this day mailed a true and correct copy of the **Brief of Appellant** to the following:

Hon. Richard D. Bowen
P.O. Box 690
Iuka, MS 38852

Hon. Sharion Aycock
Circuit Court Judge
P. O. Drawer 1100
Tupelo, MS 38802

This the 14 day of February, 2007.



JOHN R. WHITE