

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

**SIXTY-NINE THOUSAND NINE HUNDRED
SEVENTY-FIVE DOLLARS (\$69,975.00) IN UNITED STATES
CURRENCY AND SIX THOUSAND THREE HUNDRED
FIFTEEN DOLLARS (\$6,315.00) IN UNITED STATES
CURRENCY (Paul Ricks, claimant)**

APPELLANT

VS.

CAUSE NO. 2011-IA-280

**STATE OF MISSISSIPPI, EX REL.
RANKIN COUNTY SHERIFF'S DEPARTMENT**

APPELLEE

**INTERLOCUTORY APPEAL FROM THE COUNTY COURT
OF RANKIN COUNTY MISSISSIPPI**

BRIEF OF APPELLEE

Submitted by:

**James L. Kelly (M.S.B. [REDACTED])
Kelly Law Office, P.C.
202 East Government Street
Brandon, Mississippi 39042
Telephone: (601)825-6455
Facsimile : (601)825-6552
Attorney of Record for Appellee**

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case.

1. Honorable Kent McDaniel
Rankin County Court Judge
Post Office Box 1599
Brandon, Mississippi 39043
2. Rankin County Mississippi Sheriff's Department
Timber Street
Brandon, Mississippi 39042
3. James L. Kelly, Esq., counsel for Rankin County
202 East Government Street
Brandon, Mississippi 39042
4. Chuck McRae, counsel for claimant Paul Ricks
Post Office Box 565
Ridgeland, Mississippi 39158


James L. Kelly, Esq.

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STATEMENT OF THE ISSUES

1. This appeal should be dismissed as moot, given that the County Court has entered an order striking the claimant's pleadings, rendering final judgment in favor of the government, which was not appealed to the Circuit Court, and is not the subject of this appeal.
2. This appeal should be dismissed as the claimant lacks standing to assert a claim.
3. The trial court neither erred nor abused its discretion by denying Paul Ricks' motion for summary judgment.

STATEMENT OF THE CASE

On the 6th day of September, 2006, based upon probable cause that a traffic violation of improper lane usage had occurred, claimant Paul Ricks (Ricks), driving a Peterbuilt tractor trailer, was pulled over on the Interstate 20 West bound lanes in Rankin County Mississippi by Deputy Shannon Penn of the Rankin County Mississippi Sheriff's Office. **R162.** Ricks consented to a search of the vehicle whereupon the subject currency, \$69,975.00, was located in a box in the sleeper compartment of the truck. **Id.** The currency in the box was vacuum packed, sealed in plastic and shrink wrapped into one large bundle. **R51.** When speaking to the officer who located the currency, Ricks denied knowledge of the presence of the \$69,975.00 found in the sleeper compartment of the truck he was driving. **R162.** Ricks also denied any interest in the \$69,975.00. **Id.** The majority of the vacuum sealed currency, \$49,040.00, was in twenty dollar bills. **R050.** Ricks was on that day, September 06, 2006, charged with money laundering, in violation of M.C.A. 97-23-101 (1972) as amended. **R185.**

Seven days later, on the 13th day of September, 2006, Rankin County filed its Petition for Forfeiture. **R020.** On the 24th day of October, 2006, Ricks filed his answer herein, claiming an interest in the currency and demanding its return. There was no mention in Ricks' answer concerning his Fifth Amendment right against self incrimination.

Additional relevant case history is documented by the Trial Court's Final Judgment entered on the 18th day of April, 2011¹, as follows:

On the 24th day of September, 2007 the State of Mississippi propounded a First set of Interrogatories and Request for Production of Documents and Request for Admissions to Paul Ricks (claimant), by service of such documents to his legal counsel. On the 22nd day of October, 2007, the same discovery requests were again sent to Paul Rick's legal counsel. On the 9th day of January, 2008, this Court granted the Claimant's MOTION TO

¹
Which was not appealed to the Rankin County Circuit Court, is not the subject of this interlocutory appeal, and renders this interlocutory appeal moot.

SUSPEND DISCOVERY; discovery was stayed for a period of six (6) months. On the 10th day of August, 2008, the State of Mississippi requested of the Claimant, by way of correspondence, that he respond to all outstanding discovery requests within thirty (30) days of August 10, 2008. Thirty days later, no response had been made. On the 29th day of October, 2008, instead of complying with Mississippi discovery obligations, Claimant filed a motion for the return of the seized assets, plus damages.

On the 21st day of January, 2009, the Plaintiff government moved to compel discovery.

After hearing on the government's motion to compel, the Plaintiff presented an order to the court which was entered by the Court on the 21st day of April, 2009. Counsel for Claimant however, objected to the wording of the order because it contained clear and direct language that Paul Ricks shall "fully answer all discovery propounded ...within forty five (45) days of this Order or all pleadings of Paul Ricks may be struck from this matter." Hearing Claimant's objection, a corrected order was entered by the Court (drafted by counsel for Ricks) on the 28th day of April, 2009, granting the Plaintiff's motion to compel, requiring Paul Ricks to answer all discovery requests then outstanding within forty-five (45) days of April 28, 2009. Instead of complying with said order (Ricks had drafted), Paul Ricks, on the 5th day of June, 2009, filed a motion to strike much of the Plaintiff's discovery requests.

On the 23rd day of July, 2009, the Plaintiff filed another motion to compel answers to discovery.

Other motions were thereafter filed by the Ricks, including his motion for partial summary judgment; and later, his motion to dismiss, which were both denied by this Court (and later, the Mississippi Supreme Court).

On the 04th day of March, 2010 this Court ordered that all outstanding discovery propounded by the Plaintiff must be answered by Ricks within five (5) days of the Mississippi Supreme Court denying his interlocutory appeal. The Mississippi Supreme Court denied the Claimants interlocutory appeals on the 2nd day of June, 2010 and his motion to reconsider denial of interlocutory appeal, on the 21st day of July, 2010. On the 21st day of July, 2010, Ricks served notice that his discovery responses previously submitted under seal, were being released.

The much belated responses of the claimant are not a good faith attempt to comply with the Mississippi Rules of Civil Procedure. They amount to nothing but a deliberate refusal to answer relevant, probative, material questions without an arguable basis for such refusal. Ricks demands return of the assets seized because years after the initial traffic stop, he has not been indicted for any criminal offense, but yet he refuses to answer discovery, in part, because of his Fifth Amendment right against self incrimination.

Due to Rick's recalcitrant refusal to comply with discovery requirements, on the day of hearing (February 22, 2011) the Court granted the Government's motion to strike pleadings and render judgment in it's favor, but with clear direction to Ricks that if he, within five days thereof, complied with such discovery requirements, that the order striking pleadings and rendering judgment against him would be rescinded. On the same day,

February 22, 2011, the Court is now advised, that the Government committed in writing to Ricks that he would not be indicted or prosecuted for any criminal offense related to the traffic stop underlying this cause.

After having been ordered to do so by the Court, by a date certain, Ricks has not made a good faith effort to comply with the discovery requirements of the Mississippi Rules of Civil Procedure. No certificate of discovery compliance has been filed with the Clerk of the Court since February 22, 2011.

If a party...fails to obey an order to provide or permit discovery...the court...may make such orders in regard to the failure as are just, and among others the following: ...rendering a judgment by default against the disobedient party.

M.R.C.P. 37(b)(2).

The Court is left with no alternative but to strike all pleadings of Ricks filed herein and render judgment against him.

That the claimant has filed an interlocutory appeal of another order of this Court is of no moment.

The petition for appeal shall not stay proceedings in the trial court unless the trial judge or the Supreme Court shall so order.

M.R.A.P. 4(f)

This proposed order was mailed to counsel for Claimant on 4/18/11, and no response has been made thereto.

IT IS, THEREFORE, THE ORDER OF THE COURT that all pleadings of the Claimant Paul Ricks are stricken from the record and judgment is hereby entered that all funds seized related to this action, \$69,975.00 and \$6,315.00 in United States Currency, are hereby forfeited to the Rankin County Sheriff's Department to be used according to law. This order will become final ten (10) days from its entry unless properly appealed or stayed by the Supreme Court.

This the 18th Day of April, 2011, nunc pro tunc, February 22, 2011.

R308.

The above quoted order was not appealed to Circuit Court. This interlocutory appeal should be dismissed as moot.

As outlined above, little has been accomplished in this litigation other than a documented history of Ricks' refusal to comply with orders of the trial Court and discovery requirements of the Mississippi Rules of Civil Procedure. Though probable cause exists to believe that the funds seized are subject to forfeiture under the forfeiture provisions of the Mississippi Uniform Controlled Substances Law, the

government has not been allowed access to meaningful discovery which would result in additional evidence in favor of forfeiture.

SUMMARY OF THE ARGUMENT

Good reason exists to believe that the funds seized were connected to illegal narcotics or contraband and thus, subject to forfeiture under Mississippi law. Ricks, the driver of the vehicle stopped, denied knowledge of the \$69,975.00 being present in the sleeper section of the vehicle. **R162.** Thus, Ricks lacks standing to assert a claim and file this appeal. He now claims knowledge of and an interest in the funds however; thus, Ricks lied to the officer who made the traffic stop. The majority of the funds were in twenty dollar bills. **R050** All of the funds were shrink wrapped and vacuum sealed; being transported Westbound, towards Mexico, El Paso Texas and other common sources of large quantities of narcotics, on an interstate highway. **R051.** The proof has not developed further however, because Ricks has not litigated in good faith, forcing the trial court to strike all of his pleadings. **R306-308.** Ricks did not appeal that order to the Circuit Court², thus, the case is over and this appeal is moot.

Not only does Ricks seek to profit by his refusal to comply with discovery obligations and his inconsistent positions on his knowledge of and interest in the currency, but he likewise seeks to “have it both ways” regarding whether or not he is subject to prosecution, and whether he invokes his Fifth Amendment right against self-incrimination. An example of Ricks gaming the system is reflected in his response to State’s interrogatory No. 08, as follows:³

INTERROGATORY NO. 08: Identify each and every person and/or any source of income or assets from whom you acquired or obtained any interest in the defendant currency.

ANSWER: Objection as this is an invasion of privacy and not relevant to the issues herein. Fifth Amendment is inserted. I had legal possession at the time and was and was

²He by-passed Circuit Court and appealed straight to this Court, which lacks jurisdiction to hear that appeal.

³Submitted only after years of legal wrangling over simple issues of discovery.

wrongfully charged by the Rankin County Sheriff and the State of Mississippi with possession of the \$69,975.00 which the Rankin County Sheriff, Rankin County District Attorney's Office and State of Mississippi obviously agreed that I had legal possession as they dropped all charges.

Thus, on one hand, Ricks failed to claim the Fifth Amendment in his answer to the forfeiture petition, and on the other hand, years later, claims the privilege on part, but not all of his interrogatory answer, though in the same interrogatory answer he claims that all criminal charges against him were dropped. If all charges were dropped, then why does he claim the Fifth Amendment, and if he really claims the privilege against self-incrimination, then why does he, in the same interrogatory response, claim knowledge of the presence of the proceeds, an essential element of a money laundering charge? The answer is simple, Ricks attempts to use the Fifth Amendment as a sword rather than a shield, and by doing so, hopes that this court will allow him to deny the State an opportunity to prove its case. The County Court saw through his ruse.

A litigant should not be allowed to profit by evasive tactics, refusing to comply with orders of the court and refusing to comply with the Mississippi Rules of Civil Procedure. If there is any deficiency in the government's proof at this juncture, it is because Ricks has refused to comply with orders of the trial court with regard to matters of discovery. Instead of complying with the trial court's March 04, 2010 order compelling discovery for example, Ricks continued to raise his relevancy objections and continued to claim his Fifth Amendment right against self incrimination, despite the fact that no indictment had been returned against him since the 2006 traffic stop and despite the fact that Ricks had been assured in writing by the District Attorney that he would not be prosecuted for any criminal offense.

R308

Tagle, a forfeiture case, was in an entirely different posture than the present case. *Tagle* proceeded to trial. Due to Ricks' delay tactics and refusal to comply with discovery orders of the trial

court, a trial date has never been set in this matter. In *Tagle*, Tagle acknowledged that he was the owner of the currency. In the present case, Ricks denied knowledge of and ownership of the currency. **R162.**

The government in *Tagle* failed at trial to produce any proof of a connection between the funds seized and illegal narcotics related activity. The government in the present case has not been given an opportunity to develop or present proof beyond what is obvious from the stop itself. Unlike *Tagle*, the present case is in a posture pre-mature for summary judgment, as discovery is far from complete. Unlike *Tagle*, the claimant's pleadings in the present case have been stricken from the record.

In addition, even given the limited progress of discovery herein, genuine issues of material fact have surfaced. The movant is not entitled to judgment as a matter of law.

ARGUMENT

1. Mootness

Cause No. 2011-TS-0083 in this Court involves an attempted appeal by Ricks of a County Court order which resolves the present controversy, in its entirety, against Ricks. See **R306**. Due to the fact that Ricks did not appeal to the Rankin County Circuit Court regarding said order, this Court has no jurisdiction to rule upon the matter. The government has filed a motion in this Court to dismiss that illegal appeal, supported by memorandum of law, which should be granted. This Court has stated:

[c]ases in which an actual controversy existed at trial but the controversy has expired at the time of review, become moot. We have held that the review procedure should not be allowed for the purpose of settling abstract or academic questions, and that we have no power to issue advisory opinions.

J.E.W. v. T.G.S., 935 So.2d 954 (Miss. 2006). Thus, upon this Courts dismissal of Ricks improper appeal in Cause No. 2011-TS-0083, no further issues, including those raised herein, need be, or can be determined.

2. Standing

Before an individual can be a legitimate claimant in a forfeiture proceeding, he “must demonstrate an interest in the property.” Kessler, *Civil and Criminal Forfeiture*, Section 3:51, West Pub.Co. (2008). Without a threshold demonstration of this interest a court “is without a case or controversy over which it may exercise jurisdiction.” *Id.* Ricks, the driver of the vehicle stopped, denied knowledge of the \$69,975.00 being present in the sleeper section of the vehicle. **R162.** Thus, Ricks lacks standing to assert a claim and file this appeal. A claimant will not have standing without asserting an interest in the property and describing whether the interest is a possessory interest, an ownership interest, or something else. Though it need not be in detail, his claim must be something more than some undefined “interest”. *United States v. \$191,910.00 in United States Currency*, 16 F.3d 1051 (9th Cir. 1994). Ricks has refused to answer discovery inquiries regarding his interest in the property. This appeal should thus be dismissed, as the claimant lacks standing to bring it.

3. The trial court committed no error nor abuse of discretion in denying summary judgment.

Disputed Facts

Ricks argues as if it is undisputed that he was stopped without probable cause to believe that he had committed a traffic offense. That is simply not true. Ricks attaches no affidavits, no depositions, no other sworn testimony or any type of evidence in support of his statement that he was stopped without probable cause. Likewise, there are no affidavits, depositions or other evidence at all attached to his motion for summary judgment. Instead, Ricks argues the law of *Tagle v. State* and in his motion, generally “...incorporates all pleadings and evidence filed herein...” **R267.** Without any “evidence filed herein” supporting his claim that he was stopped without probable cause, his allegation is thus nothing but that, a bare bones allegation/argument without any factual support.

In support of his motion for summary judgment, instead of attaching or specifically referring to any particular documents or evidence in the record, Ricks generally “incorporate[d] all pleadings and evidence filed herein and makes each a part hereof by reference.” **R267**. To the contrary of Ricks claim that he was stopped without probable cause, part of the “all pleadings and evidence filed herein” incorporated by Ricks⁴ in his motion for summary judgment indicate that he was indeed stopped for probable cause. Ricks was stopped on I-20 West because he had committed the offense of improper lane usage. **R051** (Rankin County Sheriff Office Case Report); **R162** (affidavit of arresting officer). Additionally, evidence exists, incorporated herein by both parties, that there is probable cause to believe that the funds were connected to unlawful activity, including the narcotics trade. **R185** (money laundering affidavit); **R015** (case report); **R162** (affidavit of arresting officer). How then, can Ricks now claim that no genuine issue of material fact exists as to whether he was stopped for probable cause, and how can he now claim that no genuine issue of material fact exists as to whether the funds were connected to unlawful activity, particularly narcotics? Ricks cannot in good faith argue that no genuine issues of material fact exists, unless he concedes that the evidence in the record referred to above, incorporated herein by both parties, establishes the opposite of his claims. All evidence referred to above points to the conclusion that Ricks was lawfully stopped for improper lane usage; that Ricks has no legitimate interest in the subject currency and that the subject funds were connected to some unlawful activity, including the narcotics trade. Ricks would not participate in discovery as ordered by the court however, so the proof was not further developed. To grant summary judgment at this point in favor of Ricks would be to do so without any evidence submitted by him to support his positions and in the face of material facts developed in the record which support forfeiture.

⁴ And also incorporated by reference into the Government’s response to Ricks motion for summary judgment. **R272**.

Law

A motion for summary judgment may be granted only where the exhibits and other evidence shows that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law.

The evidence must be viewed in the light most favorable to the party against whom the motion has been made.

The burden is on the moving party to "demonstrat[e] that [no] genuine issue of material fact exists, and the non-moving party must be given the benefit of the doubt concerning the existence of a material fact.

One South v. Hollowell, 963 So.2d 1156 @ 1160 (Miss. 2007).

Ricks has attached no evidence to his motion. He has not "demonstrated" anything.

Where there are undisputed facts which are susceptible to more than one interpretation, summary judgment is inappropriate.

Johnson v. City of Cleveland, 846 So.2d 1031 (Miss. 2003)

A motion for summary judgment lies only when there is no genuine issue of material fact; summary judgment is not a substitute for a trial of disputed fact issues. Accordingly, the court cannot try issues of fact on a Rule 56 motion; it may only determine whether there are issues to be tried.

Official Comment, M.R.C.P. 56.

There are certainly fact issues to be resolved herein and the undisputed facts point towards forfeiture: (1) Does Ricks have an interest in the funds, or does he not? (2) What was the source of the funds? (3) To where were the funds being transported? (4) Why were the funds shrink wrapped and vacuum sealed? (5) What were the funds to be used for? (6) If Ricks has an interest in the funds, then why did he lie to the arresting officer concerning his knowledge of and interest in the funds? (7) Does the fact pattern developed and to be further developed fit into a drug courier profile? (8) Why was such

a large quantity of cash being carried in such a fashion? Ricks refusal to comply with discovery requirements and orders of the trial court has resulted in several of those questions remaining unanswered. At summary judgment, the State must be given the benefit of doubt regarding those questions. At this juncture, the evidence must be viewed in the light most favorable to the State.

A conclusion of proper forfeiture can be drawn solely from circumstantial evidence.

...common experience considerations should be applied in deciding whether the money is probably derived from drug transactions. It is the cumulative impact of a number of facts and the permissible inferences from those facts which allow the conclusion to be drawn from mere circumstances that the property is subject to forfeiture. Each fact used separately may be qualitatively less significant, but the effect of such facts, when combined, permits a conclusion to be drawn which meets the same standard as that met by facts bearing directly on the necessary conclusion.

Kessler, *Civil and Criminal Forfeiture*, Section 3:42, West Pub.Co. (2008)

Even at this stage in the proceedings and without the Defendant participating in discovery in good faith, circumstantial evidence exists in the record supporting forfeiture.

There are instances where circumstantial evidence indicating the possessor of substantial quantities of cash is involved in drug trafficking has been found to supply the necessary connection between the money and the illicit activity without the accompanying discovery of either drugs or drug paraphernalia.

Id. @ 3:47. Several factors here exist which courts commonly refer to under such circumstances, as supporting forfeiture, to wit:

-Large quantity of cash

“...for most Americans \$55,518 is not casual pocket change which one leaves on the bureau at night.” *United States v. \$55,518.05*, 728 F.2d 192 @ 196 (3rd Cir. 1984). The Fifth Circuit has permitted an inference of forfeiture to be drawn from the “sheer quantity of currency seized.” *United States v. \$364,960.00*, 661 F.2d 319 (5th Cir. 1981). Other circuits and this court are in accord. “The extremely large amount of money found in the household itself is strong evidence that the money was

furnished or intended to be furnished in return for drugs.” *United States v. \$93,685.61*, 730 F.2d 571 (9th cir. 1984). Forfeiture can be based wholly upon circumstantial evidence, including the “sheer quantity” of money involved, among other factors. *Jones v. State*, 607 So. 2d 23 (Miss. 1991)(\$149,700; “This Court explained in Reed that a connection with narcotics trafficking can stem from the sheer quantity of currency.”) See also:

United States v. One Lot of United States Currency (\$36,634), 103 F.3d 1048 (1st Cir. 1997)(\$36,634 “an extremely large sum of cash to be carrying”; not fatal to government’s case that no drugs or paraphernalia were found) *United States v. \$37,780*, 920 F.2d 159, 163 (2d Cir.1990) (“Hernandez was carrying an extremely large sum of cash [\$37,780] in small denominations, demonstrating that he was either inordinately carefree with his money or was involved in illegal activity.”); *United States v. \$215,300*, 882 F.2d 417, 419 (9th Cir.1989) (“Carrying a large sum of cash is ‘strong evidence’ of [a connection to illegal drug activity] even without the presence of drugs or drug paraphernalia.”

-Particular location of the money

Courts have found that the secretive location of cash can be a factor in determining whether it is connected to illegal activity. Kessler, *Civil and Criminal Forfeiture*, Section 3:47, West Pub.Co. (2008). In this case, the cash had been hidden inside an air mattress box in the sleeper section of the truck. R162, R051

-Denomination of bills

In *United States v. \$159, 880.00 in U.S. Currency*, 387 F.Supp.2d 1000 (S.D.Iowa 2005), the court recognized the fact that drug dealers have difficulty obtaining bills of larger denomination and therefore, often carry large sums of cash in smaller denominations.

Rather than obtain cashier's checks or converting smaller denomination bills into larger ones, Claimants rubber-banded the cash into 21 bundles and put it into a plastic bag placed inside a duffel bag. The Court finds this method of transporting funds provides further evidence that the cash was connected with drug activity. See \$242,484.00, 389 F.3d at 1161 (noting that those who deal in drug-tainted money cannot convert large numbers of bills of various denominations into higher denomination bills, or into a cashier's check,

without generating a currency transaction report...

Id. @ 1013. The majority of the funds in the truck Ricks was driving was in twenty dollar bills. There was also \$4,620.00 in ten dollar bills and \$800.00 in five dollar bills. **R050**

-Evasive or incomplete answers given concerning the ownership of the money

In *Tran v. State*, 963 So.2d 1 (Miss.App. 2006) the defendant was convicted of money laundering regarding cash hidden in a vehicle traveling on interstate 20 through Rankin County Mississippi. The conviction was affirmed where the defendant at first lied about ownership of funds, but later claimed the funds. Tran's deceptive statements distinguished him from the other similarly situated, but non-lying defendant whose conviction was reversed on appeal. Similarly, Ricks at first denied knowledge of the cash in the vehicle, but now claims it. This is not a criminal proceeding as *Tran*, but the inference that deceptive statements prejudices the claimant remains the same, though a lesser burden of proof applies.

-A general disclaimer of ownership by those who would appear to be in possession

See *Tran*, discussed above. Also, in *United States v. United States Currency* \$83,310.78, 851 F.2d 1231 (9th Cir. 1988), the court found that probable cause existed that the large amount of currency found was connected to the narcotics trade, despite the fact that no narcotics were located in the house, where the occupants of the house denied knowledge of the presence of the currency, and other factors were also present.

-Vacuum sealed

In *Cowan v. Mississippi Bureau of Narcotics*, 2 So.3d 759 (Miss.App. 2009) a highway traveler was in possession of \$12,974.00. The court found the factors that the money was a "large amount of cash" @ 765, and that it was vacuum sealed (to prevent dogs from sniffing drug residue) @ 765, supportive of forfeiture. See also, *United States v. \$159, 880.00 in U.S. Currency*, 387 F.Supp.2d 1000 (S.D.Iowa 2005) (transporting money in vacuum-sealed bags, "a common ploy to mask odors such as

might be detected by dog searches" internal citations omitted.)

Though no one factor listed above would be, standing alone, sufficient reason to forfeit the cash, taken together, a reasonable inference, if not complete justification for forfeiture exists. At a minimum, summary judgment should be denied. The most complete and accurate result however, would be for this Court to deny summary judgment herein and also dismiss Ricks appeal in Cause No. 2011-TS-0083 as being improperly filed (Ricks by-passed Circuit Court, leaving this Court without jurisdiction); or in the alternative, dismiss Ricks appeal in Cause No. 2011-TS-0083 as being improperly filed and then dismiss this appeal as moot.

Tagle v. State

Ricks relies heavily upon *Tagle vs. State* to support his position. His reliance is misplaced however, primarily because *Tagle* did not involve a motion for summary judgment. *Tagle* involved a lack of evidence at the close of trial. A completely different situation is presently before the court. To follow Ricks logic would mean that if a party can improperly frustrate the progress of discovery long enough for his motion for summary judgment to come before the trial court, then he might prevail if he can cite to a case regarding similar issues where there was a lack of proof at the close of trial. Absurd.

In *Tagle*, a law enforcement traffic stop on I-10 resulted in seizure of \$107,000.00 cash. No drugs were found in the car and Tagle admitted that the cash was his. "After Tagle was read his rights, he told Smith that the money was his and that it was a gift from a friend who owed it to him." *Tagle v. State ex rel. Harrison County*, 643 So.2d 917 @ 919 (Miss. 1994). Opposite of *Tagle*, in the present case, Ricks denied knowledge of and an interest in the currency, **R162**, thus, a serious credibility and standing issue exists in this case that was not present in *Tagle*. Tagle refused to testify, asserting his Fifth Amendment right against self-incrimination. The Tagle case proceeded to trial and closed without sufficient proof of a connection between the cash and drug trafficking being established. In *Tagle*, there

was no discussion of whether Tagle refused to obey orders of the trial court; no discussion of whether the funds were shrink wrapped and vacuum sealed, hidden in a mattress box and no discussion as to whether or not a denial of a defendant's motion for summary judgment would have been affirmed on appeal. The State in *Tagle* was given every opportunity to develop its case at trial, but simply failed to do so. Presently, Ricks argues that not only should he have the right to disregard discovery requirements and court orders (despite being guaranteed no criminal prosecution), but also, that the State should not be allowed to proceed to trial if no evidence of narcotics is produced at summary judgment. Ricks essentially argues that forfeiture cases should be tried at summary judgment. That is not the law of our jurisdiction.

Accordingly, the court cannot try issues of fact on a Rule 56 motion; it may only determine whether there are issues to be tried.

Official Comment, M.R.C.P. 56.

Tagle was the first case this court had considered where no narcotics had been found with the cash. ("This Court has never specifically dealt with a forfeiture case where not a trace of drugs or paraphernalia were found." *Tagle* @ 921). Ricks may be the first case to be considered where, at summary judgment, it is shown that while no drugs were found, the claimant denied knowledge of the presence of over \$69,000.00 in cash in the truck he was driving, which was mostly in 20 dollar bills that were shrink wrapped and vacuum sealed, and where prior to summary judgment the claimant failed to assert his Fifth Amendment right against self incrimination in his answer, but later selectively asserted that right in order to avoid discovery obligations, despite being guaranteed that he would not be prosecuted. This case is easily distinguished from *Tagle*.

Ricks also relies upon *Neely v. State ex rel. Tate County*, 628 So.2d 1376 (Miss. 1993), another forfeiture case that proceed through discovery and then on to trial where both parties were allowed to

fully litigate the matter. In *Neely*, the issue was application of the rebuttable presumption of the “close proximity” rule in narcotics related forfeiture cases. The evidence at trial showed that Neely was gainfully employed, earning \$300.00 per week, and Neely gave specific documented reasons regarding why he had the cash, \$1,270.00, in his possession. The Court held that even if a presumption of forfeiture had been raised by the State, Neely had nonetheless rebutted it. To the contrary, Ricks has offered no reason why he lied about his knowledge of the presence of the \$69,975.00 in U.S. currency; has offered no reason why it was shrink wrapped; has offered no reason as to why it was vacuum sealed and has refused to answer any questions regarding the origins or intended destination of the currency. *Neely* went to trial, this matter has not. There was no mention in *Neely* that Neely failed to litigate in good faith or whether his pleadings were stricken from the record, as in the present case, due to his misconduct. *Neely* is not applicable.

CONCLUSION

Paul Ricks, traveling through Rankin County Mississippi West bound on an interstate highway, carrying a large sum of shrink wrapped, vacuum sealed cash hidden in a mattress box, denied having any knowledge of that cash when the deputy sheriff asked him about it. Ricks, driving a commercial vehicle, had been pulled over for improper lane usage. When Ricks later filed his answer to the forfeiture petition, he failed to assert his privilege against self incrimination; he likewise failed to claim a specified interest in the funds. He lacks standing to bring any claim.

Nonetheless, litigation ensued, but Ricks would not participate in discovery, claiming a Fifth Amendment right against self incrimination which he did not claim in his answer. The County Court of Rankin County ordered Ricks to comply with discovery obligations, but he still would not do so. After years of legal maneuvering, including two attempted interlocutory appeals by Ricks to this Court which were both denied (**R220 and 224**), on the 22nd day of February, 2011, the County Court gave

Ricks one more last chance to comply with his discovery obligations, noting that the State had guaranteed Ricks that he would not be prosecuted for any criminal offense. **R308.** Ricks continued in his refusal to participate in discovery, resulting in the trial court striking his pleadings and rendering judgment in favor of the State. **R308.** Ricks failed to properly perfect an appeal of that order to this⁵ or any other court, thus, the case is over. This appeal should be dismissed as moot.

This matter is distinguished from *Tagle v. State ex rel. Harrison County*, 643 So.2d 917 (Miss. 1994) in that *Tagle* went to trial where the government was given full opportunity to develop its case and present evidence. This case is at summary judgment where a different standard applies, with all inferences to be decided in favor of the non-moving party. The issues are not to be tried at summary judgment, but rather, a determination is to be made whether issues of fact exist.

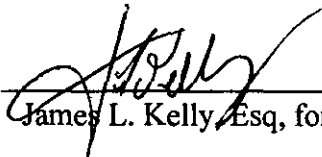
Numerous state and federal appellate decisions exist where cash was determined to be properly forfeited though no narcotics or paraphernalia were found. It is the cumulative impact of a number of factors and the permissible inferences from those facts which allow the conclusion to be drawn from circumstantial evidence that the property is subject to forfeiture. In this situation, several factors exist in the record supporting forfeiture, including: large quantity of cash; concealment of the cash in a mattress box; packaging of the cash (vacuum sealed and shrink wrapped); mostly in small denominations (20s and 10s); being carried on an interstate highway; the driver of the vehicle carrying the cash denied knowledge of the existence of the cash. At motion for summary judgment filed by the claimant, all inferences from such evidence which may reasonably be drawn, must be decided in favor of forfeiture.

⁵Ricks did file a notice of appeal to this Court though there is no direct appeal from County Court to the Supreme Court in matters such as this. The State of Mississippi has filed a motion to dismiss that appeal with supporting memorandum of law.

A miscarriage of justice would occur if the claimant were allowed to selectively use his Fifth Amendment right against self-incrimination as a sword, preventing the development of facts, though he has been guaranteed no prosecution, leading to summary judgment in his favor. The trial Court committed no error in denying the claimant's motion for summary judgment.

For the forgoing reasons, the Rankin County Sheriff's Office, Rankin County Mississippi, requests that the order of the lower court denying claimant's motion for summary judgment be affirmed; or in the alternative, that this appeal be dismissed as moot due to the conclusion of this matter in Rankin County County Court No. 2006-921 which was not properly appealed to this or any other Court of competent jurisdiction.

Respectfully Submitted, this the 28th Day of November, 2011.


James L. Kelly Esq, for the Appellee

Kelly Law Office, P.C.
202 East Government Street
Brandon, Mississippi 39042


CERTIFICATE OF SERVICE

I, James L. Kelly, counsel for the appellee, do hereby certify that I have this day hand delivered, or served by United States mail, a true and correct copy of the above, foregoing Brief to:

Honorable Kent McDaniel, Rankin County Court Judge
Rankin County Courthouse
Brandon, Mississippi 39042

Chuck R. McRae, Esq.,
legal counsel for the Claimant.
416 East Amite Street
Jackson, MS 39201

This the 28th day of November, 2011.



James L. Kelly, Esq., MSB # [REDACTED]
202 East Government Street
Brandon, MS 39042
Attorney for Rankin County Sheriff
Telephone: 601-825-6455
Facsimile: 601-825-6552