

**IN THE SUPREME COURT 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**

**APPELLANT**

**VS.**

**CAUSE NO. 2011-IA-280**

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

**APPELLEE**

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**BRIEF OF APPELLANT**

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**ORAL ARGUMENT REQUESTED**

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to Mississippi Rule of Appellate Procedure 28(a)(1), the undersigned counsel of record certifies that the following listed persons and/or entities have an interest in the outcome of this case. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

1. Paul Ricks, Appellant;
2. Chuck McRae, Esq., Attorney for Appellant;
3. Honorable Judge Kent McDaniel, County Court Judge of Rankin County;
4. Joey W. Mayes, Esq., Special Assistant District Attorney of Rankin County; and
5. James L. Kelly, Esq., Attorney for Appellee

Respectfully Submitted,



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Chuck McRae  
Miss. Bar No. [REDACTED]  
Attorney for Appellant

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## **REQUEST FOR ORAL ARGUMENT**

Pursuant to Mississippi Rule of Appellate Procedure 34(b), oral argument would assist this Honorable Court in its decision-making process. Oral argument would clarify that there was absolutely no nexus between any alleged illegal activity and the monies sought to be forfeited. There has been only one other case before this Honorable Court regarding the seizure of U.S. currency when there was no evidence of illegal drugs, controlled substances, or drug paraphernalia, and oral argument would further highlight the importance of this issue.

## **STATEMENT OF THE ISSUE**

Did the trial court err by denying Ricks's Motion for Partial Summary Judgment, which was based on a lack of illegal activity and absence of probable cause?

## **STATEMENT OF THE CASE**

This is a case where a person following highway-directive signs was pulled over, had his vehicle, trailer and person searched, had his property seized, and was arrested for following the law.

Paul Ricks was driving his tractor-trailer truck on Interstate 20 in Rankin County, Mississippi, on September 6, 2006. Ricks followed the signs posted along the interstate directing him to travel in the left-hand-lane of travel through a portion of the interstate near the Downtown Brandon Exit. Ricks was pulled over by deputies with the Rankin County Sheriff's Department for driving in the left lane of the interstate. Those officers searched Ricks's tractor trailer and unlawfully seized a significant sum of United States currency. Ricks was never indicted for criminal charges in connection with the traffic stop.

Notwithstanding the lack of criminal charges, the State filed a petition for forfeiture in an

effort to retain the monies seized during the search of the trailer. Ricks filed a motion for partial summary judgment wherein he argued that the State failed to prove that Ricks intended to use the currency in his possession for some illegal activity. The trial court denied Ricks's motion for partial summary judgment, and Ricks petitioned this Court for interlocutory appeal, which was granted.

### **STATEMENT OF THE FACTS AND PROCEDURAL HISTORY**

On or about September 6, 2006, Paul Ricks was driving a tractor-trailer truck Westbound on Interstate 20 near the Downtown Brandon Exit in Rankin County, Mississippi. (R. 1:21.) While traveling on the interstate, Ricks pulled his truck into the left-hand lane of travel, as commanded by the interstate-directive signs, to allow vehicles entering the interstate to merge from the on-ramp into the right-hand lane of travel, as required by Mississippi law.<sup>1</sup> Thereafter, officers of the Rankin County Sheriff's Department initiated their blue lights, signaling Ricks to pull his vehicle onto the shoulder of the interstate.

Once stopped, the sheriff's deputies searched the tractor trailer and seized a total of \$69,975.00 in United States currency. Importantly, the officers did not find any illegal drugs, other controlled substances, or paraphernalia inside the tractor trailer, the cab of the truck, or on Ricks's person. (R. 2:196.) Although the State, through the Rankin County District Attorney, advised Ricks that no charges would be presented, Paul Ricks was arrested and, eventually,

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<sup>1</sup>Mississippi Code Section 63-3-603, entitled "Use of Lanes," provides, in subpart (c), that:

Official signs may be erected directing slow-moving traffic to use a designated lane or *allocating specified lanes* to traffic moving in the same direction, and drivers of vehicles shall obey the directions of every such sign.

Miss. Code Ann. § 63-3-603(c) (emphasis added).

accused of money laundering. Additionally, the State offered to allow Ricks to retain \$9,975.00, and the State Retain the remaining \$60,000.00. However, the allegations against Ricks were never presented to the grand jury, and the charges against Ricks were ultimately dropped. (R. 2:195.)

In its responses to Ricks's requests for admissions, the State<sup>2</sup> conceded that the officers were unable to find any illegal drugs, controlled substances, or paraphernalia inside the tractor trailer, the cab of the truck, or on Ricks's person. (R. 2:196.) However, in spite of that, the State continued its efforts to unlawfully retain monies belonging to Ricks when it filed its Petition for Forfeiture in the County Court of Rankin County on September 13, 2006. (R.E. 13; R. 1:20.) In that petition, the State pled subject-matter jurisdiction pursuant to "Sections 41-29-101, *et seq.* of the Mississippi Code of 1972, as amended, [which is] known as the Uniform Controlled Substances Law." (R.E. 13; R. 1:20.) Specifically, the State argued that the money was subject to forfeiture under Mississippi Code Sections 41-29-153(a)(5) and 41-29-153(a)(7), and, further, that the money "should be forfeited and distributed pursuant to Miss. Code Ann. §§ 41-29-179(4) and 41-29-181(2), as amended." (R.E. 13; R. 1:20.) The State also argued that Ricks's money should be forfeited pursuant to certain provisions of Mississippi Code Section 41-29-177 because the money had been "lawfully seized pursuant to Miss. Code Ann. 41-29-153(b)." (R.E. 13-14; R. 1:20-21.)

Ricks filed his answer to the State's petition on October 24, 2006. (R.E. 15; R. 1:25.) Thereafter, the State attempted to begin the discovery phase of the proceedings. On December

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<sup>2</sup>The Rankin County Sheriff's Department originally had filed a Petition for Forfeiture; however, the party handling the prosecution of this case was the State of Mississippi. Therefore, "the State" will be referenced in this Brief.



17, 2007, Ricks filed a motion to stay discovery and postpone the forfeiture hearing until after the date on which the then-pending-criminal charges had been resolved; said motion was granted by the trial court on January 9, 2008. (R. 1:43, 47.)

Even though the trial court had ordered a stay on discovery, the State filed its notice of service of discovery for its second request for admissions to Ricks on December 17, 2008. (R. 1:53.) Though not required to answer the State's requests for admissions because there had been no order lifting the stay on discovery, Ricks filed his responses to the State's second request for admissions on December 23, 2008. (R. 1:64.) Thereafter, Ricks propounded discovery requests on the State. Ricks answered many of the State's discovery requests by asserting his Fifth Amendment right against self-incrimination. Seemingly unhappy with Ricks's responses to its second requests for admissions, the State filed a combined motion to compel Ricks to answer its first request for admissions and asked the court for an enlargement of time to answer Ricks's requests for admissions and provide deposition testimony. (R. 1:76.)

On January 26, 2009, following an *ex parte* hearing with the District Attorney for Rankin County and the Rankin County Sheriff's Department, the trial court entered its order compelling Ricks to answer the State's discovery requests, and, in a hand-written amendment, lifted the stay on discovery. (R. 1:93.) On April 28, 2009, following a hearing on Ricks's Motion to Recuse and Motion to Reconsider the trial court's January 2009 order, the trial court entered its corrected order denying the motion to recuse and granting the motion to reconsider. (R. 1:102.) In that corrected order, the trial judge lifted the stay on discovery and ordered each of the litigants to answer the opposing side's discovery requests within a designated period of time. (R. 1:102.) Ricks complied with that order, and on May 27, 2009, he filed his answers to the State's request

for admissions. (R. 1:106.)

However, after preliminarily entertaining the State's discovery requests, Ricks filed his Motion to Strike Interrogatories and Requests for Production Propounded by Rankin County Sheriff's Department, a Non-party on June 5, 2009. (R. 1:113.) In that motion, Ricks argued that, because this was an *Ex. Rel.* proceeding, he was not a party, and, therefore, the State's filing of interrogatories and requests for production did not conform to the Mississippi Rules of Civil Procedure. See Mississippi Rule of Civil Procedure 33 ("Any party may serve as a matter of right upon *any other party* written interrogatories . . . .") (emphasis added); Mississippi Rule of Civil Procedure 34 ("Any party may serve on *any other party* a request . . . to produce . . . .") (emphasis added). Ricks further argued that certain of the State's interrogatories were in violation of the Constitutions of both the State of Mississippi and the United States of America.

In an effort to continue in the discovery process, Ricks sought to depose Vicky Williams, Assistant District Attorney for Rankin County, and Rankin County Sheriff Ronnie Pennington; however, those efforts were answered by motions to quash the subpoena *duces tecum* and for protective orders for each of the desired deponents. (R. 1:121, 136.)

On August 10, 2008, the State stated that no charges against Ricks would be presented to the Grand Jury, and that the State would allow Ricks to claim \$9,975.00, and, in effect, the Sheriff's Department would keep the remaining \$60,000.00. (R.E. 17; R. 1:52.) Dissatisfied by the State's proposal, Ricks, on October 29, 2008, filed his Motion for the Return of the Currency and to Assess Damages of Interest and Attorney Fees and Pursuant to 42 U.S.C.A. §§ 1983, 1985, and 1986 for Damages Under Color of Law. (R.E. 18; R. 48.)

On July 21, 2009, Ricks filed his Motion for Partial Summary Judgment, arguing that he

was entitled to a judgment as a matter of law for the following reasons: (1) neither the Rankin County Sheriff's Department nor Rankin County were the proper parties to claim the \$69,975.00; (2) because this was not a drug-related matter, under Mississippi Code Section 97-23-101, there is no procedure that requires the forfeiture of the \$69,975.00 to either the Rankin County Sheriff's Department or the County of Rankin; (3) Ricks had lawful possession of the \$69,975.00 at the time it was seized; (4) the State of Mississippi and the Rankin County Sheriff's Department dismissed all criminal charges against Ricks in connection to the traffic stop in question; and (5) the arresting officer lacked probable cause for the traffic stop in question. (R.E. 139-40; R. 1:140.) On March 4, 2010, the trial court entered its order denying Ricks's motion for partial summary judgment, and ordered Ricks to comply with all outstanding discovery requests within five days after the time in which Ricks could petition the Mississippi Supreme Court for an interlocutory appeal. (R. 2:174.)

On March 17, 2010, Ricks filed his Motion to Dismiss, wherein he argued that the State, by and through the Rankin County Sheriff's Department, field a "civil action for the forfeiture of property under the authority of Sections 41-29-101, *et seq.* Of the Mississippi Code of 1972, as amended, known as the Uniform Controlled Substances Law[:]" however, this was not a controlled substances case, as no controlled substances were found in the search of Ricks's tractor trailer, truck, or on his person. (R.E. 23; R. 2:176.) Therefore, the \$69,975.00 could not be subjected to the forfeiture proceedings of the Mississippi Uniform Controlled Substances. (R.E. 26; R. 2:179.) Additionally, there were no charges of money laundering in this case, therefore, the currency was not subject to forfeiture under Mississippi Code Section 97-23-101. (R. 2:179.) As such, the currency that was in Ricks's tractor trailer was in his lawful possession,

and the Rankin County Sheriff's Department unlawfully seized said currency. (R.E. 27; R. 2:180.) The trial court entered its Order Denying Motion to Dismiss and Stay of All Proceedings on April 14, 2010. (R. 2:211.)

Ricks first petitioned the Mississippi Supreme Court for interlocutory appeal on March 25, 2010. (R. 2:186.) He filed his second petition for interlocutory appeal, combined with a motion to consolidate, with the Mississippi Supreme Court on May 5, 2010. (R. 2:212.) A panel of three Justices denied that petition and motion to consolidate on June 4, 2010. (R. 2:220.) Ricks filed his Consolidated Motion to Reconsider Denial of Petition for Interlocutory Appeal on June 18, 2010, and the same was denied by the Court. (R. 2:232.)

Thereafter, the State filed a Motion to Strike Pleadings of Claimant and Render Judgment in Favor of the Plaintiff, arguing that, under Mississippi Rule of Civil Procedure 37(b)(2), a judgment in favor of the State should be rendered because Ricks had failed to comply with the trial court's orders to provide discovery to the State. (R. 2:221.) On December 13, 2010, the State filed a second Motion to Strike Pleadings of Respondent and Render Judgment in Favor of the Plaintiff, making essentially the same arguments as in its first Motion to Strike Pleadings of Claimant and Render Judgment in Favor of the Plaintiff. (R. 242.)

On February 11, 2011, Ricks filed his final Motion for Partial Summary Judgment. (R.E. 33; R. 2:266.) In that motion, Ricks argued that (1) the money was legally in his possession at the time it was seized; (2) the money had not been used for illegal activity and was improperly seized by the Rankin County Sheriff's Department; (3) no illegal drugs, controlled substances, or paraphernalia were found during the search; and (4) that the Mississippi Supreme Court has decided a similar case, wherein the Court held that the State must prove that the claimant in

possession of the currency sought to be seized had intended to use the currency in connection with some illegal activity. *\$107,000 U.S. Currency (Adrian Tagle) v. State of Mississippi, ex rel*, 643 So. 2d 917, 922 (Miss. 1994).

On February 22, 2011, nearly four-and-one-half years after the traffic stop, the State finally notified Ricks “that the State of Mississippi will not further pursue any criminal action against Paul Ricks as pertaining to the traffic stop that occurred on or about September 6, 2006 in Rankin County, Mississippi.” (R.E. 36; R. 2:274.)

Also on February 22, 2011, the trial court entered its Order Denying Motion for Partial Summary Judgment. (R.E. 37; R. 2:280.) Aggrieved, Ricks filed his final Petition for Interlocutory Appeal on February 23, 2011, and the same was granted on April 7, 2011. (R.E. 38; R. 2:288.)

### **SUMMARY OF THE ARGUMENT**

Because the State failed to demonstrate that Paul Ricks intended to use the United States currency that was seized from his tractor-trailer truck on September 6, 2006 in connection with some illegal activity, and the Rankin County Sheriff’s deputies lacked probable cause to stop Ricks, neither the State of Mississippi, the County of Rankin, nor the Rankin County Sheriff’s Department are entitled to the forfeiture of the \$69,975.00 in question.

### **STANDARD OF REVIEW**

The standard of review for the grant or denial of summary judgment is *de novo*. *Hubbard v. Wansley*, 954 So. 2d 951, 956 (Miss. 2007). “Partial summary judgment is also permissible under our rules, utilizing the same criteria for a grant or denial of summary judgment and the same standard of review on appeal.” *One South, Inc. v. Hollowell*, 963 So. 2d 1156, 1160 (Miss.

2007); Miss. R. Civ. P. 56(d). Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Miss. R. Civ. P. 56(c). Summary judgment is granted properly only when there is no genuine issue of material fact. *The Jackson Clinic for Women, P.A. v. Henley*, 965 So. 2d 643, 649 (Miss. 2007). The burden of demonstrating that no genuine issue of material fact exists rests on the party moving for summary judgment. *Id.* The evidence is to be evaluated in the light most favorable to the party opposing the motion, and if no genuine issue of material fact exists, the moving party is entitled to a judgment as a matter of law. *Webb v. Braswell*, 930 So. 2d 387, 395 (Miss. 2006).

### **ARGUMENT**

The only issue presented in this appeal is whether the trial court erred by denying Ricks’s Motion for Partial Summary Judgment, which was based on a lack of illegal activity and absence of probable cause.

The State, in its Petition for Forfeiture, argued that the \$69,975.00 in U.S. currency belonging to Paul Ricks was subject to forfeiture under Section 41-29-153(a)(5) and (7) of the Mississippi Code of 1972, as amended, and that the currency was lawfully seized pursuant to Mississippi Code Section 41-29-153(b). Those statutory provisions are a part of the statutory scheme known as the Mississippi Controlled Substances Law. *See* Sections 41-29-101, *et seq.*, of the Mississippi Code of 1972, as amended. Because no illegal drugs, controlled substances, or paraphernalia were found during the search and seizure on September 6, 2006, the State’s argument is misplaced, and the full \$69,975.00 must be returned to Paul Ricks. Moreover, the

statutory provisions providing when a forfeiture of U.S. currency may take place and the procedures thereof relate only to situations where illegal drugs, controlled substances or paraphernalia were present. Such is not the situation in the case *sub judice*.

Mississippi Code Section 41-29-153 provides, in pertinent part, that:

(a) The following are subject to forfeiture:

...

(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 . . . .

...

(7) Everything of value, including . . . 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.

...

(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 seizer is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

...

(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.

Miss. Code Ann. § 41-29-153 (2007).

In *\$107,000 U.S. Currency (Adrian Tagle) v. State of Mississippi, ex rel*, 643 So. 2d 917 (Miss. 1994), the Mississippi Supreme Court evaluated a similar case to the one *sub judice*, wherein the State sought the forfeiture of U.S. currency under Section 41-29-153(a)(5) and (7) of the Mississippi Code of 1972, as amended, and the State argued that the currency had been lawfully seized under Mississippi Code Section 41-29-153(b). In that case, the Court held that,

in order to be entitled to forfeiture, “the State must prove that it is more likely than not that the currency was possessed by the claimant with the intent to be used in connection with an illegal narcotics trafficking scheme.” *Id.* at 922 (citing *Reed v. State*, 460 So. 2d 115, 118 (Miss. 1984)).

In *Tagle*, the claimant was driving through Mississippi as he traveled from Ft. Bragg, North Carolina to Edinburg, Texas. *Tagle*, 643 So. 2d at 918. He was stopped on Interstate 10 in Harrison County Mississippi, for “driving in an erratic manner.” *Id.* Tagle gave both oral and written consent for an officer of the Harrison County Sheriff’s Department to search his vehicle. The officer found \$107,000.00 in a gift-wrapped box in the trunk of the vehicle that Tagle was driving. The State seized the currency under the provisions of Mississippi Code Section 41-29-153(b)(4). *Id.* Thereafter, the State filed its Petition for Forfeiture under Mississippi Code Section 41-29-177(2). At a hearing on the petition, Tagle was called by the State to testify. He stated his name, said that he lived in Edinburg, Texas, and then answered the rest of the questions asked by the State by asserting his Fifth Amendment right against self-incrimination. *Id.* Next, the officer who had stopped Tagle testified. *Id.* The officer said that he followed Tagle for approximately one mile on Interstate 10, and that Tagle was driving “erratically” at a rate of 65 miles per hour. *Id.* The officer testified that Tagle immediately pulled onto the shoulder of the interstate once his blue lights had been initiated. *Id.* The officer further testified that he had stopped Tagle because he feared Tagle was driving under the influence of alcohol or some other substance; however, no field sobriety tests were administered. The officer said that Tagle told him he had been visiting friends in North Carolina, that he had been driving for a long time, and that he was extremely tired. *Id.* Finally, the officer said that he had “determined that [Tagle] was



not intoxicated, but was, in fact, 'extremely nervous,'" and "he did not decide to request consent to search until after he observed Tagle's nervous demeanor." *Id.* at 919.

With respect to the money inside the gift-wrapped box, the officer said that Tagle first told him that it was fine china, and then told him that "it was a gift from a friend who owed it to him." *Id.* The officer then asked for the name and telephone of the friend who had given Tagle the money, and Tagle responded that he would like to talk to an attorney. At that point, the questioning ceased, and the officer asked Tagle to follow him to a near-by work center for a more thorough search of the vehicle. *Id.* Tagle complied with the officer's request, without hesitation or deviation.

At the close of the hearing, the trial court entered a Judgment for Forfeiture. The trial court found:

(1) that the officer did not have probable cause to search the car, (2) that the officer did have a right to ask to search the car, which he did, pursuant to valid consent given by Tagle, (3) that the circumstances surrounding the finding of the money did amount to probable cause to search the balance of the car, and finally, (4) that Tagle's statement that the money was china, that the money was given by an unnamed, unidentified friend, and the amount of the money found, taken together and absent anything else created grounds for the State to have the money forfeited.

*Tagle*, 643 So. 2d at 919-20.

The procedural history of *Tagle* is slightly different than in the case *sub judice*. In *Tagle*, the claimant did not file a motion for partial summary judgment. Instead, after the trial court entered its judgment of forfeiture, Tagle appealed filed his direct appeal. *Id.* at 918.

On appeal, the Mississippi Supreme Court noted that it "has on many occasions decided forfeiture questions under" Mississippi Code Section 41-29-153; however it had "never specifically dealt with a forfeiture case where not a trace of drugs or paraphernalia were found."

*Id.* at 921. Additionally, Tagle refused to comply with discovery requests and refused to testify at the hearing, other than asserting his Fifth Amendment right against self-incrimination. *Id.* The State argued that the Court should apply drug-courier factors of *United States v. \$38,000.00 in U.S. Currency*, 784 F.2d 694 (5th Cir. 1986). The Court found that, even in taking those factors into consideration that:

the evidence presented by the State failed to show that the seized amount was found in close proximity to any of the following: (1) forfeitable controlled substances or (2) forfeitable drug manufacturing or distributing paraphernalia, or (3) forfeitable bill of records of importation, manufacture or distribution of controlled substances. Additionally, the state did not introduce any evidence at all that the [money] seized was intended to be furnished in exchange for a controlled substance or were proceeds traceable to such an exchange or were to be used or intended to be used to facilitate any violation of Article 41-29-153 through 41-29-185. Further the State did not establish any connection between the money and any drugs or drug trafficking. The State stipulated that this case did not involve drugs . . . .

*Tagle*, 643 So. 2d at 921.

In consideration of the above-quoted language and the lack of evidence presented by the State, the Court held that “the State must prove that it is more likely than not that the currency was possessed by the claimant with the intent to be used in connection with an illegal narcotics trafficking scheme.” *Id.* at 922 (citing *Reed v. State*, 460 So. 2d 115, 118 (Miss. 1984)). Moreover, the Court “held that for forfeitures to be decreed or adjudged, they must come within the terms of the statute imposing liability.” *Id.* at 923 (citing *Neely v. State*, 623 So. 2d 1376, 1381 (Miss. 1993)). Furthermore:

The forfeiture statute requires that in order to be subject to forfeiture the seized money be used or intended to be used in violation of Uniform Controlled Substances Law. The statutes also require that before the property may be seized without process the seizing officer must have “probable cause” to believe the

money was used or intended to be used in violation of the article.

*Id.* The Court found that the State had not carried its burden and reversed and rendered that case in favor of Tagle. *Id.*

In the case *sub judice*, as in *Tagle*, because there was no trace of drugs or other paraphernalia found in Ricks's tractor trailer, his truck, or on his person, there was an insufficient nexus between any alleged illegal activity and the monies seized to justify forfeiture of said monies. Moreover, the Rankin County Sheriff's officer lacked probable to stop Ricks on September 6, 2006. A Rankin County Sheriff's officer admitted that he pulled Ricks over for "improper lane usage." (R.E. ; R. 1:51.) The officer's reasoning for pulling Ricks over was far more tenuous than that in *Tagle*. Here, Ricks was merely following the directive signs posted along Interstate 20 directing him to travel in the left-hand lane through that portion of the interstate. At least, in *Tagle*, the officer was able to say that he pulled Tagle over because he thought Tagle might be driving under the influence of alcohol or some other drug. The trial court was clearly in error for not following the explicit rule set forth in *Tagle*, that, in order for monies to be forfeited, it must be proven that the claimant used or intended to use the money in violation of the Uniform Controlled Substances Law, *and* that the officer had probable cause to believe that the money had been or was intended to be used in violation of that article. *Id.* at 923. The record in this case clearly provides that Ricks was not in possession of any illegal drug, controlled substance, or paraphernalia. Further, it is clear from the record that the officers neither had probable cause to stop Ricks nor probable cause to believe that the money was intended for any illegal purpose. Accordingly, this Court should reverse this case and rendered in favor of Paul Ricks.

In a case not as firmly on point as *Tagle*, the Mississippi Supreme Court laid the ground work for *Tagle* by pronouncing the rule that there must be a nexus between the currency or other property to be forfeited and the controlled substance. *Neely*, 623 So. 2d at 1382. In *Neely*, a confidential informant notified the Tate County Sheriff's Department that Neely was dealing crack cocaine, that Neely was going to make a delivery that night, and informed the officers of the road on which Neely would be traveling that night. *Id.* at 1377. Officers stopped Neely's vehicle and searched the vehicle as well as Neely's person. The officers discovered two rocks of cocaine in the vehicle and \$1,270.00 in U.S. currency in Neely's pocket. Neely admitted to possession of the rocks of cocaine; however, he denied selling crack cocaine and maintained that the rocks were for his personal use. Thereafter, the State filed its petition for Forfeiture seeking the forfeiture of the \$1,270.00 in U.S. currency and Neely's vehicle. *Id.*

At the hearing on the petition, Neely moved for a directed verdict at the close of the State's case-in-chief, arguing that the State had failed to prove that a controlled substance was found inside the vehicle, and, therefore, the vehicle and money were not subject to forfeiture. *Id.* at 1378. Neely also moved for a dismissal, arguing that the search of the vehicle and seizure of the controlled substance and money were unconstitutional. *Id.* The trial court denied Neely's motions.

On appeal, Neely raised several arguments. Of importance to the case *sub judice*, Neely argued that there was insufficient evidence proving the necessary nexus between the crack cocaine and the money to warrant forfeiture of the monies. *Id.* at 1380. The same statutory scheme as the case *sub judice* and *Tagle* were considered in the *Neely* appeal.

In *Neely*, the Mississippi Supreme Court said that "[t]here is no question that this case

comes within the purview of Mississippi's forfeiture statutes. The question . . . is whether the money was used to facilitate the illegal transportation, sale, receipt, possession or concealment of controlled substances." *Id.* at 1381. The Court noted that "the Legislature created a rebuttable presumption that drugs and money found in close proximity are presumed to be forfeitable. However, where it is established that the drugs and money were not in close proximity, the presumption does not arise." *Id.* In that case, the drugs and money were not found in the same place: the crack cocaine was in the car and the money was in Neely's pocket. The Court held that "[o]bjects carried on the person are mobile and, in the context of this statute, should not ordinarily be viewed as in close proximity to anything not also on the person, unless the circumstances are such that the fact finder can reasonably infer that the object not found on the person had been on the person immediately prior to discovery, at a time when the object of forfeiture was also on the person." *Id.*

The Court reasoned that:

the controlled substance was in a match box. It was on the passenger side of a console dividing the driver and passenger and could easily have been placed there by Neely at the time that he was pulled over. On the other had, this record contains no evidence of furtive gestures or any other suggestion that Neely had handled the package in question. The question whether the close proximity presumption arose is therefore problematic. We need not decide whether the evidence is sufficient, however, for we conclude that even if the presumption arose it was sufficiently rebutted.

...

Neely denied that the money was in close proximity to the crack cocaine. He also offered a reason why he was carrying the money on his person at the time in question. Additionally, there was no evidence that Neely was a drug dealer. Evidence was adduced to show that Neely was gainfully employed and that he was earning more than \$300 per week. No evidence was offered to contradict the evidence offered by Neely . . . . [I]n the absence of direct proof of trafficking, where there is uncontradicted proof of an alternate source, the statutory

presumption has been rebutted and disappears. *See*, (sic) Miss. R. Evid. 301. *Id.* at 1381-82.

Finally, the Court held that “there is no direct proof that the money in question is forfeitable[,]” and that constructive possession of cocaine is not enough to prove that the money was forfeitable. *Id.* at 1382.

In the case *sub judice*, because the Rankin County Sheriff’s deputies were unable to find illegal drugs, other controlled substances, or paraphernalia, and there was no evidence to suggest that Ricks had been engaged in drug trafficking in violation of the Uniformed Controlled Substances Law, there is no nexus to demonstrate that the State of Mississippi, the County of Rankin, or the Rankin County Sheriff’s Department are entitled to the forfeiture of Ricks’s \$69,975.00. As such, this case should be reversed and remanded in favor of Paul Ricks.

### **CONCLUSION**

Based on the decisions of the Mississippi Supreme Court in *Tagle* and *Neely*, Paul Ricks is entitled to a judgment as a matter of law, as there are no genuine issues of material fact to be resolved by a trier of fact. *See Stuckey v. The Provident Bank*, 912 So. 2d 859, 866 (Miss. 2005).

**CERTIFICATE OF SERVICE**

I, Chuck McRae, do hereby certify that I have this the 29<sup>th</sup> day of August, 2011, sent a true and correct copy of the above and foregoing to the following:


Honorable Judge Kent McDaniel  
County Court Judge  
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THIS the 29<sup>th</sup> day of August, 2011.



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