

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

NO. 2015-CP-01097

**DARRYL JEROME BOBO, II
ONE HUNDRED THIRTY SEVEN THOUSAND
THREE HUNDRED TWENTY FIVE DOLLARS
(\$137,325.00) IN UNITED STATES CURRENCY
AND ONE (1) 2006 FORD 500 BEARING VIN#
1FAFP24146G171666**

APPELLANT

VS.

**STATE OF MISSISSIPPI, EX REL
PELAHATCHIE POLICE DEPARTMENT**

APPELLEE

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

BRIEF OF APPELLEE STATE OF MISSISSIPPI

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STATEMENT OF THE CASE

The State of Mississippi, ex rel. Pelahatchie Police Department, hereinafter “State,” commenced this civil action by filing its complaint, “Petition for Forfeiture,” *in rem* in the County Court of Rankin County, Mississippi Cause No. 2012-1641 on or about November 14, 2012. The Petition was answered by Darryl Jerome Bobo, II, hereinafter “Bobo,” on or about December 12, 2012. On or about September 22, 2014, the matter was set for a hearing on the merits before the Honorable Kent McDaniel in Rankin County Court. At the conclusion of the hearing, the Court ordered the seized property forfeited to the State. The *Order of Forfeiture* was filed on or about October 2, 2014. Bobo filed his *Notice of Appeal* from the court’s *Order of Forfeiture* on November 3, 2014 in the Circuit Court of Rankin County, Mississippi, Civil Action No. 61CI1:14-cv-00285-c. On or about June 18, 2015, the court affirmed the *Order of Forfeiture* in its *Judgement* filed on June 19, 2015. Bobo filed his *Notice of Appeal* from the court’s *Judgment* on or about July 20, 2015.

STATEMENT OF THE FACTS

On November 8th, 2012, Lieutenant Nick McLendon with the Richland Police Department initiated a traffic stop on a 2006 Ford 500 for speeding on Interstate 20 westbound around mile marker 65. (R. (2) at 16). The Ford 500 had a South Carolina license plate and was recently registered to Darryl Jerome Bobo. (R. (2) at 16-17). Bobo was not in the vehicle at the time of the stop. (R. (2) at 17).

Parrish Norfleet was driving the vehicle. (R. (2) at 17). Mr. Norfleet told Lt. McLendon he was a rapper and was traveling from Georgia to California to visit family. (R. (2) at 17). Lt. McLendon observed an overnight bag in the back seat, numerous air fresheners, and a single key

in the ignition. (R. (2) at 17). Lt. Mclendon asked for permission to search the vehicle while waiting for the NCIC returns to come back. (R. (2) at 17).

Norfleet refused consent and Lt. Mclendon deployed his K9 for a free air sniff. (R. (2) at 17). Lt. Mclendon is a certified K9 officer who trains regularly with his certified Belgian Malinois, Rocky. (R. (2) at 18-19).

Rocky jumped inside the open passenger window and alerted to the seam of the back seat and the trunk. (R. (2) at 19). Lt. Mclendon called Detective John Harris for backup and advised Norfleet he would be conducting a probable cause search of the vehicle. (R (2) at 20). Norfleet's return came back and showed a prior drug history. (R (2) at 19). Norfleet was checked for weapons. (R. (2) at 19).

Lt. Mclendon and Det. Harris began searching the vehicle and noticed an aftermarket modification to the trunk commonly used to conceal contraband. (R. (2) at 20). Lt. Mclendon pried up the edge of the compartment and could see bundles inside. (R. (2) at 20). He found an allen key in a tool bag in the trunk to access the compartment. (R. (2) 20-21). Five bundles of currency were in the compartment. (R. (2) at 21). The vehicle was transported to the Richland narcotics office and Homeland Security Investigations was contacted. (R. (2) at 20-21).

At the narcotics office, the vehicle was photographed and the bundles were removed from the compartment. (R. (2) at 21). The bundles contained one hundred thirty seven thousand three hundred and twenty five dollars in United States currency. (R. (2) at 21-22). Norfleet denied any knowledge of the compartment or the money. (R. (2) at 21-22).

Oil change receipts, tire receipts, and a ticket were recovered from the vehicle. (R. (2) at 22). The documents showed that the vehicle had around 24,000 miles on it in January of 2012 and

122,000 miles October 19th of 2012. (R. (2) at 23). The receipts document trips from Georgia to California and show the car traveled 98,000 miles in less than a year. (R. (2) at 22-23).

Staff Sergeant Brad Vincent with the Mississippi Highway Patrol testified and was accepted as an expert witness in the methods, techniques, instrumentalities, procedures and practices utilized by drug traffickers and couriers in transporting, concealing and storage of drugs and their proceeds. (R. (2) at 60-77). Sgt. Vincent reviewed the police report, the photographs, the vehicle, the rubber bands and wrappings that the money was found in, the tools, and listened to Lt. McLendon's testimony. (R. (2) at 78-79).

Sgt. Vincent testified about the significance of the I-20 corridor. (R. (2) at 79). He explained that the typical flow of drugs travel east through our state and money travels west. (R. (2) at 79).

The State asked Sgt. Vincent about several photographs and their significance. (R. (2) 79-81). Sgt. Vincent discussed the significance of the single key in the photograph that is often seen in vehicles used for transporting narcotics and money; specifically, vehicles that contain hidden compartments and which may have different drivers. (R. (2) at 80). He testified about the air fresheners in the vehicle, a commonly used technique for masking odors. (R. (2) at 80). He discussed the significance of the small backpack that was not consistent with the general motoring public traveling coast to coast. (R. (2) at 80-81).

Sgt. Vincent testified about the registration of the vehicle. (R. (20) 81-82). He discussed organization size and vehicles being registered to a third party and mules that are paid to drive these vehicles. (R. (2) at 81-82). Sgt. Vincent talked about the significance of the hidden compartment in the vehicle. (R. (2) 82-83). He testified that this was a very good hidden compartment and based on his training and experience that hidden compartments almost always

contain drugs or money with the exception of one he could remember that contained a shipment of cartel firearms. (R. (2) at 82-83, 85-86). He testified that in his opinion the vehicle was being used to transport controlled substances. (R. (2) at 85).

The State asked Sgt. Vincent about the packaging of the money. (R. (2) at 83). He testified that the packaging of the money was consistent with how drug trafficking organizations wrap their money for transport. (R. (2) at 83-84). He testified that in his opinion the money in the hidden compartment was the proceeds of or intended to be used in the furtherance of a drug trafficking organization. (R. (2) at 86).

At the close of the hearing on September 22, 2014, the Honorable Kent McDaniel found by a preponderance of the evidence that the seized property was forfeitable and ordered the seized currency and the seized vehicle forfeited to the State. (R. (2) at 104-105).

SUMMARY OF THE ARGUMENT

The State seized one hundred thirty seven thousand, three hundred twenty five dollars (\$137,325.00) in United States currency and one (1) 2006 Ford 500 bearing VIN # 1FAFP24146G171666 registered to Darryl Jerome Bobo, II pursuant to § 41-29-153, Miss. Code Ann. (1972, as amended). Bobo's arguments are without merit and include multiple exhibits and assertions that are not a part of the record, accusations against the State, and accusations against his attorney; all of which compile a frivolous appeal that should be struck by the Court in its entirety. Bobo's allegation that his attorney, the Honorable Bernard C. Jones, Jr. had a conflict is without merit. The seized property was properly forfeited to the State after a hearing on the merits where the State put on a prima facie case that showed by a preponderance of the evidence that the seized currency was the proceeds of or intended to be used in the furtherance of a drug trafficking organization and that the seized vehicle was being used to transport controlled substances. The

State would ask the Court for reasonable costs and damages that the State has incurred as a result of Darryl Jerome Bobo, II's frivolous appeal.

ARGUMENT

I. APPELLATE'S BRIEF CONTAINS EXHIBITS AND ASSERTIONS THAT ARE NOT A PART OF THE RECORD AND SHOULD NOT BE CONSIDERED BY THE COURT IN THIS MATTER.

Darryl Jerome Bobo, II's, Appellate Brief, contains multiple exhibits and assertions that are not a part of the record and should not be considered by this Court. It is well established that in a trial conducted by a county court without a jury, the county court is the finder of fact, and that a circuit court sitting as an appellate court is bound by the judgment of the county court, if such judgment is supported by substantial evidence and not manifestly wrong. *Stewart v. Bridge Properties, LLC*, 62 So.3d 979, 1002 (Miss. Ct. App 2010). The Court cannot decide an issue based on assertions in the brief alone; rather issues must be proven by the record. *Jones v. State*, 776 So.2d 643 (Miss. 2000).

II. BOBO'S ALLEGATION THAT JONES HAD A CONFLICT IS WITHOUT MERIT.

Bobo's allegation that the Honorable Bernard C. Jones, Jr. should have identified a conflict because he is the Municipal Judge of the City of Bolton is without merit. The city of Bolton is not a part of the inter-local agreement that is attached as Exhibit A to State's Motion for Default Judgment. (R. (1) at 32-37). The city of Bolton did not stand to benefit from this matter.

III. THE TRAFFIC STOP WAS NOT UNREASONABLY EXTENDED.

Bobo's allegations that the traffic stop was extended and the evidence should be suppressed is without merit. Bobo was not present during the traffic stop (R. (2) at 17).

"If, during a traffic stop, a law enforcement officer develops reasonable, articulable suspicion of criminal activity other than what was originally suspected, the scope of the officer's

stop expands and includes the investigation of the newly-suspected criminal activity.” *Shelton v. State*, 45 So.3d 1203, 1209 (citing *Tate v. State*, 946 So.2d 376, 382 (Miss.Ct.App.2006). “Even without reasonable, articulable suspicion, the performance of a dog sniff of the outside of a vehicle by a trained canine during a routine, valid traffic stop is not a violation of one's Fourth Amendment rights against unreasonable searches and seizures.” *Id.* at 1209 (citing *Jaramillo v. State*, 950 So.2d 1104, 1107 (Miss.Ct.App.2007). The drug-detecting dog's positive alerts created probable cause for Deputy Sanders to search the trunk of the rental car. *Id.* at 1209 (citing *McNeal v. State*, 617 So.2d 999, 1006 (Miss.1993).” In *Shelton*, the officer stopped the vehicle for crossing over the fog line and after talking to the occupants asked for permission to search the vehicle. *Id.* at 1206. The occupants refused and the officer retrieved a drug-detecting dog from his patrol car that alerted to the trunk. *Id.* at 1207. The Court found that the circuit court did not abuse its discretion when it denied Shelton's motion to suppress the evidence. *Id.* at 1209.

Like in *Sanders*, Lt. McLendon deployed his canine, Rocky, while he was running Parish Norfleet's license. (R. (2) at 17). Rocky jumped inside the open passenger window and alerted to the seam of the back seat and the trunk. (R. (2) at 19). Lt. McLendon called Detective John Harris for backup after the dog alert. (R. (2) at 20). Lt. McLendon began his probable cause search of the vehicle and located the currency in a hidden compartment in the truck. (R. (2) at 20-21). Unlike *Valle-Tellez*, this case involved a canine sniff that occurred while Lt. McLendon ran Norfleet's license. (R. (2) at 17). Bobo makes accusations against the State and refuses to cite to the record alleging that the State lied to the court and that Rocky was not in Lt. McLendon's vehicle and had to be brought to the scene. These allegations are not supported by the record, impugn the integrity of the State and are outright made-up and ridiculous.

Bobo's argument is completely without merit and unsupported by the facts and the record in this case.

IV. THE STATE MADE A PRIMA FACIE CASE THAT THE SEIZED PROPERTY WAS FORFEITABLE AND SHOULD BE FORFEITED TO THE STATE.

Bobo incorrectly argues that even if his property was instrumental as the court found it was that it is in violation of the excessive fines clause of the eighth amendment. Unlike *One (1) Charter Arms, Bulldog 44 Special v. State ex rel. Moore*, 721 So. 2d 620 (Miss. 1998), where the Court held that forfeiture of a nine-year old Corvette was disproportionate to the crime that led to its seizure where the owner had only one rock of cocaine, this case involves a coast to coast drug trafficking organization traveling from Atlanta to California and back specifically on the Interstate 20 pipeline through the State of Mississippi.

"Forfeiture proceedings are not criminal prosecutions. Mississippi law requires that in a forfeiture proceeding, the State prove all facts requisite to the forfeiture by a "preponderance of the evidence."" Miss Code Ann. § 41-29-179(2) (1972, as amended); *Saik v. State ex rel. Mississippi Bureau of Narcotics*, 473 So.2d 188, 191 (Miss. 1985); *Reed v. State ex rel. Mississippi Bureau of Narcotics*, 460 So.2d 115, 117 (Miss. 1984); *Ervin v. State ex rel. Mississippi Bureau of Narcotics*, 434 So.2d 1324, 1326 (Miss. 1983).

The State set out in its Petition for Forfeiture that the 2006 Ford 500 bearing VIN # 1FAFP24146G171666 is subject to forfeiture pursuant to Miss. Code Ann. §41-29-153(a)(4) and the one hundred thirty seven thousand, three hundred twenty five dollars (\$137,325.00) in United States currency is subject to forfeiture under the provisions of Miss. Code Ann. Sections 41-29-

153(a)(5) and 41-29-153(a)(7) (1972, as amended).¹ Miss. Code Ann. § 41-29-153(a)(4)(5) and (7) states:

“(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 facilitate the transportation, sale, receipt, possession or concealment of property described in paragraph (1) or (2) of this subsection

(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 or in violation of Article 5 of this chapter;

(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...”

In *One Hundred Seven Thousand Dollars v. State of Mississippi*, 643 So.2d 917 (Miss. 1994.), the case involved the seizure of \$107,000.00 without any trace of drugs. “The State did not introduce any evidence at all that the \$107,000.00 seized was intended to be furnished in exchange for a controlled substance or were proceeds traceable to such an exchange for a controlled substance or were to be used or intended to be used to facilitate any violation of Article 41-29-153 through 41-29-185.” *Id.* at 921. The case did not involve a canine alert and the only similarity to the facts in the case sub judice and *One Hundred Seven Thousand Dollars* is that a controlled substance was not found in the vehicle at the time of the traffic stop. Miss. Code § 41-29-153 does not require that a controlled substance be in the vehicle at the time of the stop for the vehicle or the currency to be forfeitable.

“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. The

¹ R. (1) at 12-14.

forfeiture may be based wholly on circumstantial evidence and inference.” *Id.* at 922 (citing *Reed v. State*, 460 So.2d 115, 118 (Miss. 1984).

In *Hickman vs. State ex rel. Mississippi Dept. of Public Safety*, 592 So.2d 44 (Miss. 1991), the State tendered as an expert witness, MBN Agent Sam Owens, a twelve year employee of MBN. Owens was accepted “by reason of his training and experience, as an expert on the behavior of narcotics violators and traffickers.” *Id.* at 47. In *Hickman*, The Court accepted the use of evidence of drug courier profiles to support the forfeiture of the seized property. *Id.* As in *Hickman*, the State tendered Staff Sergeant Brad Vincent as an expert in the methods, techniques, instrumentalities, procedures, practices utilized by drug traffickers and couriers in transporting, concealing and storage of drugs and their proceeds. (R. (2) at 77). Staff Sergeant Vincent testified about the significance of (1) the I-20 corridor; (2) the single key in the ignition; (3) air fresheners; (4) the small backpack on a coast-to-coast trip; (5) mules and vehicles registered to a third party; (6) canine alert (7) hidden compartments; and (8) the wrapping of the currency. (R. (2) 79-86).

In *One Hundred Seven Thousand Dollars*, “the State did not present expert testimony and offered no evidence as to a drug courier profile.” *One Hundred Seven Thousand Dollars*, *supra*, at 922. The Court reversed the forfeiture finding no legal basis for the forfeiture and that a nexus between the drug activity and the money was completely lacking. *Id.* at 923. The Court said that in a forfeiture case without the presence of a controlled substance, the state must put on evidence of drug courier profile through expert testimony. *Id.* Unlike *One Hundred Thousand Dollars*, the State put on evidence of drug courier profile through the expert testimony of Sgt. Vincent. He testified that the packaging of the money was consistent with how drug trafficking organizations wrap their money for transport. (R. (2) 83-84). Sgt. Vincent was able to form an opinion that the money in the hidden compartment was the proceeds of or intended to be used in the furtherance of

a drug trafficking organization and the vehicle was being used to transport controlled substances. (R. (2) 85-86). Sgt. Vincent was also able to form an opinion that Mr. Bob was involved with a drug trafficking organization and was moving drugs and money with the vehicle in this case. (R. (2) at 86).

V. THE STATE IS ENTITLED TO COSTS AND DAMAGES THAT IT HAS INCURRED AS A RESULT OF BOBO'S FRIVOLOUS APPEAL.

Bobo's arguments are without merit and include multiple exhibits and assertions that are not a part of the record, accusations against the State, and accusations against his attorney; all of which compile a frivolous appeal that should be struck by the Court in its entirety. The State would ask the Court for reasonable costs and damages that the State has incurred as a result of Darryl Jerome Bobo, II's frivolous appeal.

CONCLUSION

At the hearing on the merits in the County Court of Rankin County before the Honorable Kent McDaniel, the court correctly ordered the property forfeited to the State. The State put on a prima facie case that the currency and the vehicle were forfeitable and should be forfeited to the State. For the reasons set forth hereinabove, the Order of Forfeiture forfeiting the one hundred thirty seven thousand, three hundred twenty five dollars (\$137,325.00) in United States currency and one (1) 2006 Ford 500 bearing VIN # 1FAFP24146G171666 to the Pelahatchie Police Department which was affirmed by the circuit court, should be affirmed by this Court.

Respectfully submitted, this the 5th day of April, 2016.

State of Mississippi, *ex rel.*
Pelahatchie Police Department

By: /s/ Todd McAlpin
Todd McAlpin (MSB # 104234)
Assistant District Attorney

CERTIFICATE OF SERVICE

I, Todd McAlpin, hereby certify that I have this day electronically filed a true and correct copy of the above and foregoing *Brief of Appellee State of Mississippi* with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

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Further, I hereby certify that I have mailed the above and forgoing document to the following non-MEC participants:

**Honorable Kent McDaniel
Rankin County Court Judge
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**Honorable William E. Chapman, III
Rankin Circuit Court Judge
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This the 5th day of April, 2016

/s/ Todd McAlpin
Todd McAlpin