

IN THE SUPREME COURT OF THE UNITED STATES

WANDA TUBBS,

Petitioner

Docket No. _____

v.

JEFF LONG, as Commissioner of Tennessee Department
of Safety and Homeland Security,

Respondent

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

TABLE OF CONTENTS

APPENDIX A

Opinion and Judgment of the Tennessee Court of
Appeals.....3

APPENDIX B

Petition for Rehearing filed in the Tennessee Court of
Appeals.....23

APPENDIX C

Order of the Tennessee Court of Appeals, Denying
Rehearing.....32

APPENDIX D

Order of the Tennessee Supreme Court, Denying
Discretionary Review.....33

APPENDIX E

Oral Ruling of the Tennessee Commissioner of Safety, Denying Motion to Suppress.....	34
---	----

APPENDIX F

Order of the Tennessee Commissioner of Safety, Granting Forfeiture.....	42
--	----

APPENDIX G

Judgment of the Davidson County Circuit Court.....	51
---	----

APPENDIX H

Search Warrant.....	54
---------------------	----

APPENDIX I

Written Motion to Suppress.....	60
---------------------------------	----

APPENDIX J

Testimony of Isaac Smith in Motion to Suppress.....	64
---	----

APPENDIX K

Testimony of Terrance Martin in Motion to Suppress.....	71
---	----

APPENDIX L

Testimony (Excerpt Only) of Investigator Brandon Gullet in Motion to Suppress.....	82
---	----

APPENDIX M

Testimony (Excerpt) of Wanda Tubbs on Merits of Forfeiture.....	85
--	----

3a
APPENDIX A

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
February 4, 2020 Session



**WANDA TUBBS v. JEFF LONG, AS COMMISSIONER OF TENNESSEE
DEPARTMENT OF SAFETY AND HOMELAND SECURITY¹**

**Appeal from the Circuit Court for Davidson County
No. 18C2254 Kelvin D. Jones, Judge**

No. M2019-00627-COA-R3-CV

This case involves the seizure of a Michael Kors bag containing approximately \$95,000 in United States currency by police officers who were executing a search warrant at the petitioner's property during a criminal investigation in May 2017. The petitioner rented the home to her son and his girlfriend, but the petitioner did not reside there. In addition to the \$95,000 at issue, officers also discovered at the residence other paraphernalia, including cocaine, marijuana, prescription drugs, several handguns, electronic scales, a money counter, and additional currency. The total amount of currency discovered by officers at the residence was \$153,652. Officers seized all currency and sought a forfeiture warrant on the grounds that the money constituted proceeds considered traceable to a violation of the Tennessee Drug Control Act. *See* Tenn. Code Ann. § 53-11-451(a)(6)(A) (Supp. 2019). The petitioner's son subsequently pled guilty to several counts of possession with the intent to distribute controlled substances and being a felon in possession of a firearm. The petitioner filed a petition with the Tennessee Department of Safety and Homeland Security ("the State"), requesting an administrative hearing regarding "the majority of" the amount of currency that was seized by law enforcement. Following a hearing, the administrative law judge ("ALJ") entered a final order, determining that the personal property in question was properly seized and thereby subject to forfeiture. The petitioner subsequently filed a petition for judicial review with the Circuit Court of Davidson County ("trial court"). Following a hearing, the trial court, employing a substantial and material evidence standard of review, affirmed the ALJ's determination that the currency was subject to forfeiture. The petitioner has appealed. Discerning no reversible error, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed; Case Remanded**

¹ We note that during the pendency of this case, Commissioner Jeff Long was substituted for David Purkey, the former commissioner of the Tennessee Department of Safety and Homeland Security.

THOMAS R. FRIERSON, II, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and W. NEAL MCBRAYER, J., joined.

Drew Justice, Murfreesboro, Tennessee, for the appellant, Wanda Tubbs.

Herbert H. Slatery, III, Attorney General and Reporter, and Miranda Jones, Assistant Attorney General, for the appellee, Commissioner, Tennessee Department of Safety and Homeland Security.

OPINION

I. Factual and Procedural Background

This appeal arose from the trial court's order affirming the ALJ's findings and determination that \$153,652 in United States currency was properly seized by the State as proceeds from drug trafficking and, as such, was subject to forfeiture. The petitioner, Wanda Tubbs, co-owned the mobile home where the seizure occurred ("the residence") but did not reside there. Ms. Tubbs leased the residence to her son, Terrance Martin, who was engaged to be married to Shaundra Smith. Mr. Martin and Ms. Smith lived together in the residence, along with Ms. Smith's seventeen-year-old son, I.S., at all times relevant to this appeal.

According to essentially undisputed findings of fact contained in the ALJ's order, three individuals broke into the residence on February 17, 2017, and held Ms. Smith and I.S. at gunpoint. Mr. Martin was not present at the time. It is further undisputed that the intruders demanded money stored in a safe within the house and stole approximately five to ten thousand dollars. After the intruders allegedly forced I.S. to drive them to a location where they subsequently fled, Ms. Smith and her son reported the incident to the Cannon County Sheriff's Department ("Sheriff's Department"). Investigator Brandon Gullett, a narcotics officer with the Sheriff's Department, responded to the call. Upon Investigator Gullett's arrival at the residence, he detected the aroma of raw marijuana emanating from the house. When Investigator Gullett entered the home, he and accompanying officers located approximately one ounce of raw marijuana and some remnants of smoked marijuana, as well as a marijuana grinder and a set of electric scales.

Upon conducting his investigation of the home invasion, Investigator Gullett determined that I.S. had been found in possession of marijuana on a prior occasion. Investigator Gullett also learned that Mr. Martin lived at the residence and was on probation for felony drug charges. Subsequently, Investigator Gullett conducted surveillance of the residence to determine if drug trafficking activities were taking place.

On May 4, 2017, Deputy Brandon King with the Sheriff's Department arrived at the residence to serve Mr. Martin with civil process. I.S. came to the door and accepted

the paperwork from Deputy King. It is undisputed that Deputy King reported to Investigator Gullett that he detected a strong odor of raw marijuana coming from the residence. Investigator Gullett subsequently obtained a search warrant, which he executed at the residence. While conducting the search of the home, Investigator Gullett and other officers discovered approximately 0.5 ounces of marijuana, 13.14 grams of crack cocaine, and a large number of Oxycodone tablets found in pill bottles bearing names of persons unknown to the investigation, some of which had been filled in other states. Officers also discovered a money counter, electronic scales, several handguns, and a drug sales ledger.

In addition to the drug paraphernalia, officers discovered a Sun City bag containing \$26,000; a grocery bag containing \$21,000; and a purse containing approximately \$12,000. Pertinent to this appeal, officers also discovered a wooden box in an upstairs hallway that contained a Michael Kors bag containing \$93,740. All of the currency discovered by law enforcement was packaged in \$1,000 or \$5,000 bundles, held together by rubber bands that were placed in similar fashion on each bundle. Law enforcement subsequently arrested both Mr. Martin and Ms. Smith.

Based on evidence proffered during the hearing, the ALJ made several findings of fact concerning the incident, including that either Ms. Smith or I.S. summoned Ms. Tubbs to the residence. When Ms. Tubbs arrived at the home, officers were still executing the search warrant. Ms. Tubbs initially told officers that she owned the residence and that there was \$150,000 in currency in the home belonging to her. She also explained to officers that in 2013 she had received a settlement for a work-related injury in the amount of \$150,000. Ms. Tubbs then related to officers that she had transferred \$50,000 of the settlement to Mr. Martin as a gift and had entrusted Mr. Martin with the \$95,000 in the Michael Kors bag while she went on vacation to Mississippi. According to Ms. Tubbs's testimony, she habitually left her money with Mr. Martin or her sister when she travelled on vacation because she distrusted banks.

Ms. Tubbs filed a petition with the Tennessee Department of Safety and Homeland Security on June 15, 2017, requesting a hearing concerning all of the \$153,652 seized and stating: "The majority of this amount seized belonged to me."² The ALJ scheduled the case for a trial on January 30, 2018. On December 22, 2017, Ms. Tubbs filed a "Motion to Suppress Evidence and to Return Unlawfully Seized Property," wherein she alleged that the search warrant procured to search her residence was insufficient because it was predicated on "two separate falsehoods." The State subsequently filed a response on January 22, 2018, wherein it defended the validity of the search warrant and asserted, *inter alia*, that Ms. Tubbs lacked standing to contest the

² Following the January 30, 2018 trial, the ALJ determined, as reflected in his findings of fact, that the exact amount of currency claimed by Ms. Tubbs was \$93,740 because that was the amount seized from within the Michael Kors bag.

search.

Following the trial on January 30, 2018, both parties filed post-hearing briefs. On June 14, 2018, the ALJ issued a final order with the following “Summary of Determination”:

It is **DETERMINED** that [the State] showed, by a preponderance of the evidence, that the \$153,652 was properly seized and is subject to forfeiture. The burden then shifted to [Ms. Tubbs] to show, by a preponderance of the evidence, that she has an ownership interest in the \$93,740 she claims. [Ms. Tubbs] has failed to make this showing. Accordingly, the entire \$153,652 is forfeited to the seizing agency.

In the order, the ALJ also delineated his respective findings of fact and conclusions of law and ordered the dismissal of Ms. Tubbs’s claim.

On August 13, 2018, Ms. Tubbs filed a petition for judicial review with the trial court, wherein she requested, *inter alia*, that the trial court reverse the ALJ’s judgment and “order the return of the \$95,000 stored in the Michael Kors bag.” Following a hearing conducted on February 22, 2019, the trial court affirmed the ALJ’s decision on March 7, 2019. In its order, the trial court determined that the ALJ “made the correct findings of facts and properly applied the facts to the law in determining the property was subject to forfeiture.”

Ms. Tubbs timely filed her notice of appeal to this Court along with a purported statement of the evidence. Following the State’s objection, the trial court denied the statement of the evidence because a stenographic report of the proceedings was available pursuant to Tennessee Rule of Appellate Procedure 24(b). According to the trial court’s directive, the respective transcript is included in the record on appeal.

II. Issues Presented

Ms. Tubbs has presented three issues on appeal, which we have restated and reordered:

1. Whether the trial court applied the appropriate standard of review.
2. Whether, under the proper standard of review, the trial court erred by finding that the currency in question did not belong to Ms. Tubbs.
3. Whether, under the proper standard of review, the trial court erred by declining to find that the ALJ improperly denied the motion to suppress.

The State presents three additional issues on appeal, which we have restated, reordered, and consolidated as two issues as follows:

4. Whether the trial court erred by finding that the ALJ had correctly determined that Ms. Tubbs lacked standing based on her failure to demonstrate an ownership interest in the seized property.
5. Whether the trial court erred by affirming the ALJ's determination that the search warrant was valid.

III. Standard of Review

Concerning the standard applicable to review of administrative forfeiture decisions, such as the instant cause, this Court has explained:

Prior to 1994, the courts reviewed administrative forfeiture decisions using the Uniform Administrative Procedures Act's now familiar standard of review found in Tenn. Code Ann. § 4-5-322(h) (Supp. 2004). This standard required reviewing courts to ascertain whether an agency's decision is supported by substantial and material evidence. Tenn. Code Ann. § 4-5-322(h)(5). When the Tennessee General Assembly rewrote the procedures governing the forfeiture of personal property in 1994, it replaced the "substantial and material evidence" standard with the "preponderance of the evidence" standard. Tenn. Code Ann. § 40-33-213(a) (2003). Except for this change, the remaining provisions of Tenn. Code Ann. § 4-5-322(h) continue to govern the judicial review of forfeiture proceedings. Tenn. Code Ann. § 40-33-213(b).

One of the chief purposes of the Uniform Administrative Procedures Act was to provide a single method for obtaining judicial review of the decisions of state agencies. Accordingly, with several exceptions not applicable here, petitions for review have, for over thirty years now, replaced petitions for a common-law writ of certiorari as the procedural device for obtaining judicial review. Thus, in forfeiture proceedings, the standard of review in Tenn. Code Ann. § 4-5-322(h), as modified by Tenn. Code Ann. § 40-33-213(a), has supplanted the standard of review in Tenn. Code Ann. § 27-8-101. . . .

* * *

The "preponderance of evidence" standard now applies to all seizures occurring after the effective date of the amendment.

McEwen v. Tenn. Dep't of Safety, 173 S.W.3d 815, 819-20 (Tenn. Ct. App. 2005) (footnotes omitted).

Thus, aside from replacing the substantial and material evidence standard with the preponderance of the evidence standard in subsection (5)(A), Tennessee Code Annotated § 4-5-322(h) (Supp. 2019) governs judicial review of forfeiture proceedings, providing:

The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
 - (2) In excess of the statutory authority of the agency;
 - (3) Made upon unlawful procedure;
 - (4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
 - (5)(A) Supported by evidence that is both substantial and material in the light of the entire record.
- (B) In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

As the *McEwen* Court explained with regard to the requirements of Tennessee Code Annotated § 4-5-322:

Tenn. Code Ann. § 4-5-322 requires courts to engage in a three-step analysis when they review a final administrative order. The court must first determine whether the agency has identified the appropriate legal principles applicable to the case. Then, the court must examine the agency's factual findings to determine whether they are supported by substantial and material evidence. Finally, the reviewing court must examine how the agency applied the law to the facts. This step is, of course, a highly judgmental process involving mixed questions of law and fact, and great deference must be accorded to the agency.^[fn] At this stage, the court must

determine whether a reasoning mind could reasonably have reached the conclusion reached by the agency, consistent with a proper application of the controlling legal principles. *State Comm'n on Human Relations v. Kaydon Ring & Seal, Inc.*, 149 Md. App. 666, 818 A.2d 259, 275 (2003).

Courts reviewing administrative forfeiture orders use essentially the same three-step analysis. However, instead of reviewing the agency's findings of fact using the substantial and material evidence standard in Tenn. Code Ann. § 4-5-322(h)(5), the courts must review the sufficiency of the State's evidence using the preponderance of the evidence standard required by [Tenn. Code Ann. §] 40-33-213(a).

^[fn] See *Bobbitt v. Shell*, 115 S.W.3d 506, 512 (Tenn. Ct. App. 2003) (courts must defer to an agency's decision when there is a sound basis for it); *Martin v. Sizemore*, 78 S.W.3d at 268 (courts customarily defer to adjudicatory determinations made by agencies acting within their area of specialized knowledge, experience, and expertise).

McEwen, 173 S.W.3d at 820-21 (2005) (additional footnotes omitted). Effective at the time of the filing of Ms. Tubbs's petition for judicial review, Tennessee Code Annotated § 40-33-213(a) (2018) provided:

The party aggrieved by the decision of the applicable agency may seek judicial review of the decision by filing of a written notice of review. The reviewing court shall use the preponderance of evidence standard in determining whether to sustain or reverse the final order of the applicable agency. The burden of proof on review shall be the same as in the proceedings before the applicable agency.

Judicial review is conducted without a jury and is limited to the administrative record, except to the extent that Tennessee Code Annotated §§ 4-5-322(e) and -322(g) permit the introduction of additional evidence.” *Helms v. Tenn. Dep't. of Safety*, 987 S.W.2d 545, 547 (Tenn. 1999).

IV. Preponderance of the Evidence Standard of Review

As a threshold matter, we first consider Ms. Tubbs's issue of whether the trial court erred by applying an improper standard of review for this case. The parties are in accord that the proper standard of review of the final agency decision in this cause should have been the preponderance of the evidence standard set forth in Tennessee Code Annotated § 40-33-213(a). We agree.

The trial court ostensibly assessed the sufficiency of the State's evidence by

employing the substantial and material evidence standard found in Tennessee Code Annotated § 4-5-322(h)(5).³ Furthermore, in rendering its ruling during the February 22, 2019 hearing, and reflected in its March 7, 2019 order, the trial court expressly relied on *Nixon v. City of Murfreesboro*, No. M2009-01347-COA-R3-CV, 2010 WL 2730565 (Tenn. Ct. App. July 9, 2010). In *Nixon*, a city employee sued to challenge her dismissal for violating the city's drug and alcohol policy. *Id.* at *1. The employee sought judicial review of the city disciplinary review board's decision to terminate her employment, and the trial court affirmed the board's decision based on the existence of substantial and material evidence pursuant to Tennessee Code Annotated § 4-5-322. *Id.* at *7. On appeal, the employee argued that she was entitled to *de novo* review by the trial court and that the board's decision was not supported by substantial and material evidence. *Id.* This Court determined that the trial court had applied the correct standard of review, pursuant to Tennessee Code Annotated § 4-5-322, and had properly denied *de novo* review as to the agency's factual findings. *Id.* at *9. Accordingly, this Court affirmed the trial court's decision upon concluding that substantial and material evidence had supported the board's decision. *Id.* at *17.

Unlike *Nixon*, the case at bar is an administrative forfeiture case, thus triggering the requisite use of the preponderance of the evidence standard applicable to judicial review in forfeiture proceedings under Tennessee Code Annotated § 40-33-213(a). See *Fisher v. Tenn. Dep't of Safety & Homeland Sec.*, No. M2018-02041-COA-R3-CV, 2020 WL 1932487, at *2 n.3 (Tenn. Ct. App. Apr. 21, 2020) (citing *McEwen*, 173 S.W.3d at 824-25). In *McEwen*, the appellant sought judicial review of the Tennessee Department of Safety's forfeiture order, which had directed forfeiture of several items of property that were seized incident to a criminal investigation of controlled substances. *Id.* at 817. Incorporating the substantial and material evidence standard of review, the trial court had affirmed the forfeiture order. *Id.* at 819. On appeal, this Court acknowledged that preponderance of the evidence, not substantial and material evidence, was the proper standard of review in the case. *Id.* at 821. Notwithstanding the trial court's error, this Court stated: "We will not compound the error on appeal, and accordingly, we will employ the 'preponderance of evidence' standard as required by Tennessee Code Annotated § 40-33-213(a)." *Id.* (footnote omitted). Although the trial court's use of the substantial and material evidence standard of review was rejected, this Court employed the preponderance of the evidence standard of review on appeal under Tennessee Code Annotated § 40-33-213(a) and affirmed the trial court's decision after determining that the evidence preponderated in favor of the forfeiture order. *Id.* at 828.

Ms. Tubbs asserts that the trial court's failure to apply the proper standard of review in this case necessitates reversal of the trial court's ruling. Although we agree that

³ Although not clear from the trial court's March 7, 2019 order, we note that, as reflected by the transcript of the trial court's ruling at the February 22, 2019 hearing, the trial court employed the substantial and material evidence standard when affirming the ALJ's findings.

preponderance of the evidence, not substantial and material evidence, is the proper standard of review, we conclude that the trial court's use of the incorrect standard does not mandate reversal. *See id.* at 821. We will therefore employ the preponderance of evidence standard of review on appeal as required by Tennessee Code Annotated § 40-33-213(a). Our analysis and review will thus focus on determining whether the evidence preponderates in favor of the ALJ's forfeiture determination.

V. Ms. Tubbs's Standing to Challenge Forfeiture

Having determined this issue to be dispositive, we next address the State's issue concerning Ms. Tubbs's standing to challenge the forfeiture. At the outset, we must review civil forfeiture proceedings in general. As this Court has recently explained concerning the procedures related to property seized under the provisions of Tennessee Code Annotated § 53-11-451:

Pursuant to Tennessee Code Annotated section 53-11-451(a), certain property is subject to forfeiture, including controlled substances, vehicles used or intended for use to transport or facilitating the transportation of controlled substances, and all "moneys . . . used, or intended to be used, to facilitate any violation of the Tennessee Drug Control Act" Tenn. Code Ann. § 53-11-451(a). Property seized under section 53-11-451(a) is subject to the forfeiture scheme outlined in Tennessee Code Annotated section 40-33-201, *et seq.* ("All personal property, including conveyances, subject to forfeiture under . . . § 53-11-451 . . . shall be seized and forfeited in accordance with the procedure set out in this part."). The Tennessee Supreme Court has described the procedure applicable in this situation "as following 'an administrative model for the forfeiture of property.'" *State v. Sprunger*, 458 S.W.3d 482, 495 (Tenn. 2015) (quoting *Helms v. Tennessee Dep't of Safety*, 987 S.W.2d 545, 547 (Tenn. 1999)).

Augustin v. Bradley Cty. Sheriff's Office, No. E2018-00281-COA-R3-CV, 2019 WL 4862240, at *6 (Tenn. Ct. App. Oct. 2, 2019).

This Court has recently elucidated the nature, scope, and constitutional parameters of civil forfeiture proceedings as follows:

The Tennessee Supreme Court has defined forfeiture as "[t]he divestiture of property without compensation." *State v. Sprunger*, 458 S.W.3d 482, 492 (Tenn. 2015) (quoting Black's Law Dictionary 722 (9th ed. 2009)). In the present case, as in *Sprunger*, "the divestiture occurs because of a crime and title to the forfeited property is transferred to the government." *Id.* (citing Black's Law Dictionary 722 (9th ed. 2009)). Despite often being based on the same underlying facts as criminal

prosecutions, forfeiture actions remain civil proceedings. *Id.* As a result, the Department only needs to prove “by a preponderance of the evidence that the property is subject to forfeiture.” *Id.* at 493 (quoting *Stuart v. State Dep’t of Safety*, 963 S.W.2d 28, 34 (Tenn. 1998)).

Taking a person’s property without compensation constitutes “an extraordinary exercise of the State’s police power.” *Id.*; see also *Redd v. Tenn. Dep’t of Safety*, 895 S.W.2d 332, 335 (Tenn. 1995). Thus, although Tennessee law permits civil forfeitures, they are not favored and statutes authorizing them “are to be strictly construed.” *Sprunger*, 458 S.W.3d at 494 (quoting *Watson v. Tenn. Dep’t of Safety*, 361 S.W.3d 549, 555 (Tenn. Ct. App. 2011)). “[S]trict compliance with our state’s forfeiture statutes is not excused simply because the failure involves only ‘technical violations’ of the applicable statutes or the fact that the property owner is not prejudiced by the failure.” *Ally Fin. [v. Tenn. Dep’t of Safety & Homeland Sec.]*, 530 S.W.3d [659,] 664 [(Tenn. Ct. App. 2017)] (citing *Sprunger*, 458 S.W.3d at 499). In addition to strictly complying with applicable statutes, forfeiture proceedings must also strictly comply with constitutional due process protections because the harsh nature of the proceedings implicates the Fifth and Fourteenth Amendments of the United States Constitution and Article 1, Section 8 of the Tennessee Constitution. See *Sprunger*, 458 S.W.3d at 493-94 (citing *Wells v. McCanless*, 198 S.W.2d 641, 642-43 (Tenn. 1947), and *Redd*, 895 S.W.2d at 334-35); see also *Ally Fin.*, 530 S.W.3d at 664. The Department bears the burden of satisfying due process requirements. *Sprunger*, 458 S.W.3d at 499.

Nicholas v. Tenn. Dep’t of Safety & Homeland Sec., No. M2017-01674-COA-R3-CV, 2018 WL 3831518, at *2-3 (Tenn. Ct. App. Aug. 13, 2018).

In order to challenge a forfeiture proceeding, a party must have sufficient standing, see *Am. Civil Liberties Union of Tenn. v. Darnell*, 195 S.W.3d 612, 619 (Tenn. 2006), demonstrated by an ownership interest in the property that is subject to forfeiture. See Tenn. Code Ann. § 53-11-201(f)(1) (2008); see also *Urquhart v. State, Dep’t. of Safety*, No. M2006-02240-COA-R3-CV, 2008 WL 2019458, at *5 (Tenn. Ct. App. May 9, 2008). Tennessee Code Annotated § 53-11-201(f)(1) governs the requirement for standing in cases where property is seized under the Drug Control Act, such as the case at bar. This subsection states:

(f)(1) Whenever, in any proceeding under this section, a claim is filed for any property seized, as provided in this section, by an owner or other person asserting the interest of the owner, the commissioner shall not allow the claim unless and until the claimant proves that the claimant:

- (A) Has an interest in the property, which the claimant acquired in good faith; and
- (B) Had at no time any knowledge or reason to believe that it was being or would be used in violation of the laws of the United States or of the state relating to narcotic drugs or marijuana.

Tenn. Code Ann. § 53-11-201(f)(1). Contrary to Ms. Tubbs's argument that she has standing to contest the forfeiture of the currency by virtue of her ownership interest in the searched residence, we emphasize that in order to contest the forfeiture proceeding, Ms. Tubbs was required to prove, among other things, that she has an ownership interest in the seized property, i.e., the seized currency in this action. *See* Tenn. Code Ann. § 53-11-201(f)(1)(A).

The State contends that Ms. Tubbs is required to carry the initial burden to establish standing, demonstrated by an ownership interest in the seized property. *See* Tenn. Code Ann. § 53-11-201(f)(1). However, as the State correctly notes, the ALJ did not determine whether Ms. Tubbs had carried her burden to establish standing, demonstrated by an ownership interest, until after the ALJ determined that the State had carried its burden of showing that the seized currency was subject to forfeiture. Tennessee Code Annotated § 40-33-210 (2018) provides in relevant part:

- (a) In order to forfeit any property or any person's interest in the property pursuant to §§ 39-14-307, 47-25-1105, 53-11-451, 55-10-414, 55-16-104, 55-50-504(g), 57-3-411, 57-5-409, 57-9-201, 67-4-1020 or 70-6-202, the state shall have the burden to prove by a preponderance of evidence that:
 - (1) The seized property was of a nature making its possession illegal or was used in a manner making it subject to forfeiture under the sections set out in this subsection (a); and
 - (2) The owner or co-owner of the property knew that the property was of a nature making its possession illegal or was being used in a manner making it subject to forfeiture, or, in the case of a secured party, that the standards set out in subsection (f) are met.
- (b) Failure to carry the burden of proof shall operate as a bar to any forfeiture and the property shall be immediately returned to the claimant.

(Emphasis added.) Based in part on his reliance on these statutory provisions, the ALJ required the State to carry the initial burden of proof under Tennessee Code Annotated § 40-33-210.

Although the State does not disagree with the ALJ's ultimate factual findings and conclusions of law regarding forfeiture of the seized property, the State takes issue with the ALJ's determination that the State, not Ms. Tubbs, carried the initial burden of proof in this case. Stated differently, the State posits that Ms. Tubbs was required to establish her burden of proof concerning standing, demonstrated by an ownership interest under Tennessee Code Annotated § 53-11-201(f)(1), before the State was required to prove its burden under Tennessee Code Annotated § 40-33-210.

Concerning this issue, the ALJ found in his final order that “[o]nce the [State] has made [an] initial showing that the seized property was legally seized, the burden shift[s] to those claiming an interest in the property to prove their ownership interest” under Tennessee Code Annotated § 53-11-201(f)(1). In further support of his determination that the State must bear the initial burden in this case, the ALJ quoted our Supreme Court’s decision in *State v. Sprunger*, 458 S.W.3d 482, 499-500 (Tenn. 2015), which instructs:

In forfeiture proceedings, the governmental authority seeking forfeiture must present affirmative proof that it has complied with both the procedural and the substantive requirements in the forfeiture statutes enacted by our Legislature. Consistent with the civil nature of forfeiture proceedings, the State’s burden of proof as to both the procedural and substantive statutory requirements is by a preponderance of the evidence.

In *Sprunger*, the State sought forfeiture of the appellant’s home after he was convicted of possessing child pornography stored on his home computer in violation of Tennessee Code Annotated § 39-17-1004 (2018).⁴ *Id.* at 484-85. The forfeiture warrant solely addressed the appellant’s real property; it did not seek the forfeiture of any personal property within the residence. *Id.* at 485. No dispute existed concerning the appellant’s ownership interest in the property at issue because he had secured a mortgage on the residence, owned personal effects within the residence, and had sustained the attachment of a perfected statutory lien regarding the residence in connection with his criminal violation. *Id.* at 487. Notably, the State bypassed the administrative proceedings and instead commenced the forfeiture proceedings by filing a complaint in chancery court. *Id.* at 498.

⁴ The forfeiture warrant was sought pursuant to Tennessee Code Annotated § 39-17-1008 (2018), which provides in pertinent part, “Any conveyance or real or personal property used in the commission of an offense under this part is subject to forfeiture under title 40, chapter 33, part 2.”

Following a trial regarding the forfeiture complaint, the chancery court in *Sprunger* ordered forfeiture of the sale proceeds of the *pro se* appellant's real property. *Id.* at 490. On appeal, the appellant argued, *inter alia*, that the forfeiture warrant was insufficient, but this Court affirmed the chancery court's judgment. *Id.* at 490-91. The Tennessee Supreme Court granted *certiorari* and vacated the forfeiture, holding that the State had not complied with the procedural requirements in the applicable forfeiture statutes. *Id.* at 500. Specifically, the Supreme Court noted that the affidavit supporting the forfeiture warrant, the record of any *ex parte* hearing on the application for the warrant, and the instructions to the property owner directing how to contest the forfeiture, all of which were statutorily required, were either absent or never existed. *Id.* at 499-500. Consequently, our High Court vacated the forfeiture of the proceeds from the sale of the appellant's real property. *Id.* at 500.

We find *Sprunger* to be distinguishable from the forfeiture case at bar. In *Sprunger*, because the appellant's ownership interest in the real property was never disputed, the requirement of standing was not at issue. By contrast, in the case at bar, a dispute exists as to who maintained an ownership interest in the seized currency because it was located in a residence shared by at least two individuals and packaged in the same manner as other currency found within the residence. Furthermore, the *Sprunger* Court noted that Tennessee Code Annotated § 53-11-201, the standing statute applicable here, was not applicable to that case because "it sets forth the forfeiture and confiscation procedures pertaining to drugs and narcotics." *Id.* at 488 n.14. Also significant is the fact that in *Sprunger*, police sought forfeiture of the property under Tennessee Code Annotated § 39-17-1008 based on the appellant's criminal violation for knowingly possessing child pornography, *id.* at 485, whereas here Ms. Tubbs was never charged with any crime, and law enforcement sought forfeiture of the personal property pursuant to Tennessee Code Annotated § 53-11-451(a)(6)(A), as proceeds from illegal drug activities.

We determine this Court's decision in *Urquhart*, 2008 WL 2019458, to be instructive in our analysis of the case at bar. In *Urquhart*, the claimant contracted with a storage facility to clean out abandoned storage units in exchange for permission to retain the contents he discovered. *Id.* at *1. In one of the storage units, the claimant found \$40,000 in United States currency. *Id.* He delivered the funds to an attorney, who deposited them into an interest-bearing account and reported the find to law enforcement. *Id.* During the investigation, it was determined that the claimant had emptied the wrong storage unit based on an error made by the storage facility. *Id.* The investigation further revealed that the currency was traceable to illegal drug transactions, and the police consequently seized the money, seeking forfeiture of it pursuant to Tennessee Code Annotated § 53-11-451(a). *Id.* at *2.

The *Urquhart* claimant filed an administrative claim for the return of the \$40,000, contending that he had a legitimate ownership interest in the currency. *Id.* at *1. The

administrative law judge ruled that the currency was properly seized and forfeited it to the State. *Id.* On appeal, the chancery court held in favor of the State, agreeing with the administrative law judge that the claimant had not demonstrated an ownership interest in the currency. *Id.* at *3. This Court subsequently affirmed the chancery court's ruling after determining as a threshold issue that the claimant lacked standing to challenge the forfeiture proceeding based on the claimant's failure to demonstrate an ownership interest in the currency under Tennessee Code Annotated § 53-11-201(f)(1). *Id.* at *8. This Court further declined to address any additional issues raised by the claimant, including the issue of whether the currency did in fact constitute proceeds of illegal drug sales, stating, "the Claimant lacks standing to contest the forfeiture, so we need not decide whether the evidence was sufficient to sustain the trial court's conclusion as to the origin of the disputed money." *Id.* Accordingly, the *Urquhart* Court determined the other issues on appeal to be pretermitted. *Id.*

Although our research reveals that precedent concerning the interplay between a forfeiture claimant's burden to prove that she has standing under Tennessee Code Annotated § 53-11-201(f)(1)(A) and the State's burden to demonstrate that the seized property was subject to forfeiture pursuant to Tennessee Code Annotated § 40-33-210 is scant, we conclude that under these facts, this Court's analysis in *Urquhart* and well-established principles of standing require a claimant's standing to be a threshold determination. See *Darnell*, 195 S.W.3d at 619 ("[T]he doctrine of standing precludes courts from adjudicating 'an action at the instance of one whose rights have not been invaded or infringed.'" (quoting *Mayhew v. Wilder*, 46 S.W.3d 760, 767 (Tenn. Ct. App. 2001)); see also *Daimler Chrysler Corp. v. Cuno*, 547 U.S. 332, 333 (2006) (explaining that standing enforces the constitutional case-or-controversy requirement that is "crucial in maintaining the 'tripartite allocation of power' set forth in the Constitution."));⁵ Inasmuch as the doctrine of standing restricts "[t]he exercise of judicial power" "to litigants who can show 'injury in fact' resulting from the action which they seek to have the court adjudicate," *Darnell*, 195 S.W.3d at 620 (quoting *Valley Forge Christian Coll. v. Am. United for Separation of Church & State, Inc.*, 454 U.S. 464, 473 (1982)), we determine that the initial burden rests with the forfeiture claimant to demonstrate that she has standing to contest the forfeiture at issue. Because standing in this case must be

⁵ Concerning forfeiture proceedings and standing, our research also revealed a federal decision, *United States v. \$515,060.42 in U.S. Currency*, 152 F.3d 491 (6th Cir. 1998), wherein the Sixth Circuit Court of Appeals determined as a threshold issue whether the claimant maintained standing to challenge the forfeiture proceedings, demonstrated by an ownership interest in the seized property, before the court analyzed other issues related to the forfeiture. *Id.* at 497. Although we acknowledge that this case provides only persuasive authority regarding the instant action, we find it instructive inasmuch as it demonstrates the principle that, in forfeiture actions, the issue of standing is a threshold issue, to be adjudicated before any other issue raised on appeal. See *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 430 (Tenn. 2011) (noting that "federal judicial decisions 'interpreting rules similar to our own are persuasive authority for purposes of construing the Tennessee rule.'" (quoting *Harris v. Chern*, 33 S.W.3d 741, 745 n.2 (Tenn. 2000))).

established by the claimant demonstrating an ownership interest in the seized property, *see Urquhart*, 2008 WL 2019458 at *5, Ms. Tubbs was required to carry the initial burden to demonstrate that she maintained an ownership interest in the seized currency. Without such an ownership interest, she lacked standing to challenge the forfeiture. *See id* (citing *United States. v. \$515,060.42 in U.S. Currency*, 152 F.3d 491, 497 (6th Cir. 1998)).

In his ruling and in his “Final Order,” the ALJ concluded that Ms. Tubbs lacked standing because she failed to show that she had any ownership interest in the seized currency. The trial court subsequently affirmed this finding by the ALJ. Upon careful review, we conclude that the evidence preponderates in favor of the trial court’s affirmance of this determination.

Ms. Tubbs argues that the trial court erred in affirming the ALJ in part because the ALJ should have accredited her testimony, as well as the testimonies of I.S. and Mr. Martin, regarding her ownership interest in the Michael Kors bag containing approximately \$95,000.00 of the seized currency. Specifically, Ms. Tubbs asserts that three eyewitnesses, including herself, had verified that the Michael Kors bag containing the currency in question belonged to her. She further maintains that while law enforcement was executing the search warrant, she told at least one officer about the Michael Kors bag and its contents. She thereby contends that this proves that she did not fabricate a claim after the fact.

Ms. Tubbs testified that she habitually left her money with her son or her sister when she was out of town; that she had left town on the occasion in question for vacation in Tunica, Mississippi; and that she provided corroborating proof that she had left town for Tunica. Ms. Tubbs explained that she typically left her money with others while she was away by reason of her general distrust of banking institutions, compounded with the fear that her money would be stolen from her residence while she was absent. Additionally, Ms. Tubbs argues that the State’s proof was devoid of any witnesses to contradict her testimony regarding her alleged ownership of the Michael Kors bag and the approximately \$95,000 it contained.

In determining that Ms. Tubbs failed to establish that she had an ownership interest in the approximately \$95,000 she claimed was hers, the ALJ made the following findings of fact:

Officers also found a Sun City bag with \$26,000. They discovered a grocery bag with \$21,000. They found a little over \$12,000 in a purse [Ms.] Smith claimed as hers. They found a wooden box in an upstairs hallway that contained a Michael Kors bag with \$93,740. Martin had \$600 on his person. Law enforcement seized all the currency as proceeds from drug trafficking.

The currency from all four locations was packaged in either \$1,000 or \$5,000 bundles. Rubber bands held these bundles together. Photos show all the money was bundled and rubber bands placed exactly in the same [manner] on all the bundles. In other words, a bundle from the Michael Kors bag was indistinguishable from a bundle from one of the other locations.

* * *

Either [Ms.] Smith or [I.S.] summoned Tubbs to the house during the search. Tubbs initially told officers that there was \$150,000 in the home that belonged to her. She first said \$50,000 then said there was an additional \$100,000 for a total of \$150,000.

Tubbs and Martin both filed claims indicating that they each owned all the money and wanted it all returned. Smith filed a claim as well, but the record does not indicate the amount of her claim. Neither Tubbs nor Martin knew how much money was in the house in total. Neither knew the amount in the Michael Kors bag.

Tubbs' testimony was not credible. This determination is based upon: 1) Tubbs' supposed decision to leave money at a home that was recently the subject of a home invasion robbery, 2) her unawareness of the amount of money in the bag, 3) inconsistencies between her testimony and other witnesses' testimonies concerning when she went to Tunica; 4) her supposed distrust of financial institutions, yet she has several accounts with them; 5) her initial claim for all the seized currency; 6) her explanation of her finances concerning her cash purchase of the relocated home and land, and 7) her explanation of her finances in general.

The [State] has shown, by a preponderance of the evidence, that the \$153,652 of seized currency was proceeds of drug trafficking and properly seized by law enforcement.

(Paragraph numbering omitted.)

Regarding the ALJ's determination that Ms. Tubbs's testimony was not credible, the trial court was required, as we must in turn, to defer to the ALJ's credibility determination "because of [the ALJ's] opportunity to observe the demeanor of the witnesses." *McEwen*, 173 S.W.3d at 823 (citing *Dep't of Health & Mental Hygiene v. Shrieves*, 641 A.2d 899, 906 (Md. Ct. Spec. App. 1994)). As this Court has previously stated, "[s]o long as there is a sound basis in the record to support the agency's decision,

this court must defer to that decision.” *See Bobbitt v. Shell*, 115 S.W.3d 506, 512 (Tenn. Ct. App. 2003); *see also Martin v. Sizemore*, 78 S.W.3d 249, 269 (Tenn. Ct. App. 2001) (“Courts customarily defer to adjudicatory determinations made by administrative agencies acting within their area of specialized knowledge.”). Our careful review of the record and the ALJ’s final order indicates that the trial court properly concluded that the ALJ did not exceed his authority when determining that Ms. Tubbs’s testimony was not credible. *See* Tenn. Code Ann. § 4-5-322(h).

Having determined that Ms. Tubbs’s testimony concerning her ownership of the seized currency was not credible, the ALJ further concluded that Ms. Tubbs had failed to demonstrate an ownership interest in the seized currency under Tennessee Code Annotated § 53-11-201(f)(1). As noted previously, absent such an ownership interest, a party lacks necessary standing to challenge the forfeiture. *See Urquhart*, 2008 WL 2019458, at *5. Concerning our review of the issue of standing, this Court has previously stated that the “issue of whether a party has standing is a question of law.” *See Cox v. Shell Oil Co.*, 196 S.W.3d 747, 758 (Tenn. Ct. App. 2005). Therefore, our review is “*de novo* upon the record with no presumption of correctness accompanying the trial court’s conclusions of law.” *See Massengale v. City of E. Ridge*, 399 S.W.3d 118, 123-24 (Tenn. Ct. App. 2012) (quoting *Cox*, 196 S.W.3d at 758). Upon our *de novo* review of the administrative record in this matter, we conclude that the trial court properly affirmed the ALJ’s finding that Ms. Tubbs lacked standing to contest the forfeiture as demonstrated by her lack of ownership interest in the seized property pursuant to Tennessee Code Annotated § 53-11-201.

Ms. Tubbs avers that she left the Michael Kors bag containing approximately \$93,740 with her son while she travelled on vacation. The administrative record indicates that Mr. Martin’s residence had been burglarized in recent weeks. When questioned on direct examination during the January 30, 2018 trial why she would choose to leave a large sum of money at a residence that had recently been burglarized, Ms. Tubbs responded that it “did not bother” her that Mr. Martin’s residence had been burglarized and that “you just can’t let stuff scare you.” Ms. Tubbs also acknowledged that she possessed a safe at her residence where she typically kept her money. According to Ms. Tubbs, she generally distrusted banks because of at least one prior bad situation she had experienced with a banking institution. Although we note Ms. Tubbs’s testimony that she held a general distrust for financial institutions, she also testified that, at the time of the January 30, 2018 trial, she had two open and active bank accounts.

The administrative record also demonstrates numerous inconsistencies regarding how much currency Ms. Tubbs claimed as hers. During the January 2018 trial, Investigator Gullet testified that Ms. Tubbs had provided officers with at least three different amounts of money that she claimed belonged to her. In her subsequent petition requesting a hearing, she listed the amount of \$153,652 with an annotation stating: “The majority of this amount seized belongs to me.” Furthermore, during the trial, when Ms.

Tubbs was asked how much money she believed to be in the Michael Kors bag, she stated, “I was thinking between \$95,000 and \$97,000.” When she was told that only \$93,740 was found in the Michael Kors bag, she stated, “I just don’t find that accurate. I don’t.”

In addition, Ms. Tubbs’s testimony regarding the chronology of her vacation was inconsistent with the testimony of other witnesses. Specifically, Ms. Tubbs stated that she departed for vacation on the morning of May 5, 2017. However, Mr. Martin testified that Ms. Tubbs had returned from vacation on May 4, 2017, the date when the search warrant was executed at the residence. Mr. Martin further testified that Ms. Tubbs did not travel on vacation following the execution of the search warrant.

Furthermore, as the State noted, Ms. Tubbs’s explanation of her expenditures, when compared to the amount of seized currency that she claimed was hers, is irreconcilable. According to Ms. Tubbs’s testimony and exhibits presented at trial, in 2011 she obtained a workers’ compensation settlement in the amount of \$141,356. From the settlement, she gifted Mr. Martin \$50,000. She further related that she paid anywhere from \$30,000 to \$40,000 in cash to relocate and install the mobile home so that Mr. Martin could reside there. Ms. Tubbs testified that she paid an additional unspecified amount furnishing the house with appliances, furniture, and décor.

Insofar as her monthly expenditures, Ms. Tubbs testified that her mortgage and utilities totaled approximately \$800 per month, plus expenses for food. She further explained that she visited the casinos not infrequently, bringing with her “no more than \$500 to \$600” each visit. In addition to her travel expenses, Ms. Tubbs, over the years, had acquired several designer handbags, one of which she claimed she purchased for \$400. She indicated that her monthly expenses often consumed all of her monthly income. Regarding her income, Ms. Tubbs also testified that it was limited to a monthly Social Security Disability Insurance check in the amount of \$1,500 and rent payments ranging from \$350 to \$500 per month from Mr. Martin and Ms. Smith. Notwithstanding her expenditures and limited income, Ms. Tubbs claimed that she had saved \$95,000.

Finally, the administrative record reflects that all of the seized currency within the residence was packaged and bundled in similar fashion. Photographs taken by law enforcement at the scene demonstrate that each bundle of currency was packaged in either \$1,000 or \$5,000 bundles. Ms. Tubbs failed to provide a sufficient explanation as to why the seized currency she claimed as hers was packaged and bundled in the same manner as the seized currency discovered elsewhere in the residence.

Based on our thorough review of the record, we conclude that the evidence preponderates in favor of the ALJ’s determination that Ms. Tubbs failed to carry her burden of demonstrating an ownership interest in the seized currency under Tennessee Code Annotated § 53-11-201(f)(1). See *McEwen*, 173 S.W.3d at 828. Consequently, she

VI. Remaining Issues

Ms. Tubbs also asserts that the trial court erred by affirming the ALJ's determination that the State had carried its burden to prove that the seized currency constituted proceeds from illegal drug activity pursuant to Tennessee Code Annotated § 40-33-210. Having determined that Ms. Tubbs lacked standing to contest the forfeiture of the seized currency, we further determine that any issue concerning whether the currency constituted proceeds from illegal drug activity is pretermitted as moot. *See Urquhart*, 2008 WL 2019458, at *8. Furthermore, because Ms. Tubbs does not have standing to contest the forfeiture, the remaining issues raised by the parties, which concern the validity of the search warrant and Ms. Tubbs's "Motion to Suppress," are also pretermitted.

VII. Conclusion

For the foregoing reasons, we affirm the trial court in determining that Ms. Tubbs lacked standing to challenge the forfeiture of the seized currency in question. We further determine that the trial court's application of the incorrect standard of review constituted harmless error because under the correct standard of review, the evidence preponderated in favor of the ALJ's determination that Ms. Tubbs failed to carry her burden of demonstrating an ownership interest in the seized currency. This case is remanded to the trial court for enforcement of the judgment and collection of costs set below. Costs on appeal are assessed to the appellant, Wanda Tubbs.


THOMAS R. FRIERSON, II, JUDGE

FILED

04/28/2020

Clerk of the
Appellate Courts**IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE**

February 4, 2020 Session

**WANDA TUBBS v. JEFF LONG, AS COMMISSIONER OF TENNESSEE
DEPARTMENT OF SAFETY AND HOMELAND SECURITY****Circuit Court for Davidson County
No. 18C2254 Kelvin D. Jones, Judge**

No. M2019-00627-COA-R3-CV

JUDGMENT

This appeal came on to be heard upon the record from the Circuit Court for Davidson County, arguments of counsel, and briefs filed on behalf of the respective parties. Upon consideration thereof, this Court is of the opinion that there is no reversible error in the trial court's judgment.

It is, therefore, ORDERED and ADJUDGED by this Court that the judgment of the trial court is affirmed. Costs on appeal are assessed to the appellant, Wanda Tubbs. This case is remanded to the trial court, pursuant to applicable law, for enforcement of the trial court's judgment and collection of costs.

PER CURIAM

**IN THE TENNESSEE COURT OF APPEALS
AT NASHVILLE**

WANDA TUBBS,

Petitioner-Appellant

v.

M2019-00627-COA-R3-CV

JEFF LONG, Commissioner,

Respondent-Appellee

PETITION TO REHEAR

Pursuant to Tenn. R. App. P. 39, Wanda Tubbs respectfully asks for rehearing. Further consideration is required because, by failing to adjudicate the suppression claim, the Court is violating the Fourteenth Amendment, in addition to relying on an argument that the State never even raised.

STANDARD OF REVIEW

Rule 39 of Appellate Procedure permits rehearing where, among other grounds, the Court's opinion conflicts with a prior decision, has misapprehended important facts, or has ruled on an issue without letting the parties be fully heard. Such grounds apply here. In terms of prior precedent, the opinion contradicts (and fails to address) multiple

Supreme Court cases about the extent of the exclusionary rule, and how Fourth Amendment "standing" relates to it. In terms of misapprehended facts, the Court has mistakenly read the State's brief to raise an argument that the State never even raised at trial or on appeal (and which, if raised, would be unconstitutional). In the same way, the Court has based its whole Fourth Amendment decision on a point on which the parties were not fully heard.

FACTUAL BACKGROUND

This case was a judicial review of an asset forfeiture, namely about money found in a house owned by Wanda Tubbs. (Technical Record p. 1). The State claimed it was drug money, whereas Ms. Tubbs claimed that it was hers, and that it was acquired legally. (Tech. R. 16, 40, 53). This appeal concerned the preponderance of the evidence, and also the denial of a motion to suppress. (Opinion, p. 2-3).

The motion to suppress was heard prior to the merits. Primarily, the administrative judge denied the motion to suppress based on a finding that Ms. Tubbs had no authority to challenge the search of her house, since she only owned it instead of living there. (Administrative Record p. 113). The administrative judge also made some other questionable rulings on the Fourth Amendment, such as finding that officers may lie to each other to generate probable cause, and that a handful of marijuana is a large amount. (*See* Admin. R. 110-112). Importantly, the State never asserted that there was anything wrong

with the procedural sequence. For example, they never argued that Ms. Tubbs should only be allowed to suppress evidence if she could first prove that the money was hers. (*See, e.g.*, State's Brief, p. 22) (Requiring only evidence of a privacy interest in the "residence"). Finally, after hearing all the merits of the case including evidence derived from searching the house, the administrative judge ruled that the money did not, in fact, belong to Ms. Tubbs. (Admin. R. 576-580).

Ten days ago on April 28, 2020, this Court issued its opinion. The Court held that on the merits of the case, it must defer to the factual findings of the administrative judge. (Opinion, p. 16-17). On the Fourth Amendment claim, the Court held that it had no authority to adjudicate the matter because the administrative judge had already found (i.e., based on evidence derived from the house) that the money did not belong to Ms. Tubbs. (Opinion, p. 19). Again the Court apparently deferred to the credibility determinations of the agency judge. (Opinion p. 16-19). Based on the overall merits evidence, which were heard after the denial of the motion to suppress, the Court found that Ms. Tubbs lacked "standing" to argue for the suppression of any evidence. (*Id.*)

ARGUMENT

The Court has rejected a Fourth Amendment claim based on the merits evidence of a case, itself gathered in violation of the Fourth Amendment. In effect, the Court's ruling on the suppression issue is circular. Worse, applying circular reasoning to reject a motion to

suppress violates the due process clause of the Fourteenth Amendment, because that provision mandates application of the exclusionary rule to state asset forfeiture hearings. If all the harmful evidence were first considered when deciding whether even to apply the exclusionary rule, the exclusionary rule would be meaningless. Here the problem is amplified further by the fact that the Court has expressly deferred to the credibility determinations of the same administrative judge who sat through it all. Finally, it deserves note that the Court's position about Fourth Amendment standing is one that the State never even raised — and rightly so, because it would be unconstitutional, and incorrect. The position is waived. For these reasons, rehearing is warranted.

Importantly, the exclusionary rule is not optional here. The United States Supreme Court has squarely held that the Fourth Amendment, including its exclusionary rule, is incorporated against the states through the due process clause. *Mapp v. Ohio*, 367 U.S. 643 (1961). Likewise, the Supreme Court has long held that the Fourth Amendment applies in asset forfeiture proceedings. *Boyd v. United States*, 116 U.S. 616 (1886). Later bringing these same points together, the Supreme Court has squarely held that the Fourth Amendment's exclusionary rule does apply in state forfeiture proceedings. *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693 (1965). As such, a state court may not rely on evidence unconstitutionally gathered in order to rule in such cases. *Id.*; *see also Ware v. Greene*, 984 S.W.2d 610, 613 (Tenn. Ct. App. 1998). Given these precedents, the Court lacks

constitutional authority to bar Wanda Tubbs from asserting a Fourth Amendment claim. Nor may the Court rule against her in such proceeding based on evidence that is itself fruit of the poisonous tree. In the present case, the administrative judge did not even hear any testimony about who owned the money before he ruled on the motion to suppress. (*See* Admin. R. 1-113). That was the right sequence. And if the motion had been granted, Ms. Tubbs would have won on the merits.

Next, the Court is not at liberty to disregard the Fourth Amendment claim on any separate basis that Ms. Tubbs lacks "standing." Instead, the Supreme Court has squarely held that "standing" is not even a separate doctrine under modern Fourth Amendment jurisprudence. *Rakas v. Illinois*, 439 U.S. 128, 139 (1978). In fact, for over forty years, the Supreme Court has frowned upon even using the terminology of "standing" in reference to the Fourth Amendment. *Id.* at 132-133. Instead, what used to be called standing is now simply analyzed for whether the claimant has a "privacy interest" in the area searched. *Id.* at 138-139. Ownership of the item seized has effectively nothing to do with whether the person has a right to contest the search. *Rawlings v. Kentucky*, 448 U.S. 98, 105-106 (1980). Even though lawyers sometimes still use the term "standing" today, typically they only use it as a shorthand for this Fourth Amendment privacy interest. *See, e.g., id.* at 104 (Describing the ruling of the Kentucky Supreme Court in that case). Regardless, standing is not a separate

issue from the basic Fourth Amendment claim itself. It cannot serve as a justification to avoid ruling on the constitutional issues.

Nor has the State even claimed otherwise. Although the Court has said that the government disputes "Ms. Tubbs's standing to contest the forfeiture," that assessment is basically mistaken. (*Cf.* Opinion, p. 9). At the State's urging, the administrative judge merely found that Ms. Tubbs lacked a privacy interest in the place searched, thereby using the word "standing" in that context. On appeal, the State likewise defended the ruling. There was never any argument that Ms. Tubbs lacked standing even to *argue* for the money on the merits, or to assert a procedural constitutional defense beforehand. In terms of the suppression issue, the only dispute was this: The State argued that Ms. Tubbs had no Fourth Amendment rights in her house, whereas Ms. Tubbs argued that she did have such rights. There was no argument to bar a Fourth Amendment claim based on the purported non-ownership of the money. As the State conceded, "In order to establish standing for purposes of the exclusionary rule, Petitioner [only] had to establish that she had an actual, subjective expectation of privacy *in the residence* and that her expectation of privacy was reasonable and justifiable under the circumstances." (State's Brief, p. 22) (emphasis added).

Likewise, the administrative judge never made any finding that Ms. Tubbs's purported lack of ownership of the money precluded her from arguing a motion to suppress. In fact, he could not possibly have done so: He waited until well *after* he had already shot down the

Fourth Amendment claim before hearing any evidence about the money's ownership. (Admin. R. 1-113). Again, no one contested that procedural sequence.

The Court's opinion has cited Tenn. Code Ann. § 53-11-201(f)(1)(A) for the position that Ms. Tubbs must prove the money is hers before she can rely on the Fourth Amendment. (Opinion, p. 10-11, 19). As perhaps a testament to the State's commitment to our Constitution, the State has not asserted that position. Instead, when the State mentioned the statute at all, it only did so for the rather noncontroversial point that, once the hearing reached the merits, Ms. Tubbs needed to prove the money was hers. (State's Brief, p. 15-16). The State has never argued — at trial, or even on appeal — that non-ownership of the money precludes a Fourth Amendment claim. By failing to make the argument, any such procedural objection is waived. *See, e.g., Martin v. Rolling Hills Hospital, LLC*, M2016-02214-SC-R11-CV slip op. at *17 (Tenn. April 29, 2020). Regardless, for the reasons already described, the statute would be unconstitutional if applied in such way.¹

In its ruling, the Court also cited a federal case about "standing" being determined at the threshold. (Opinion, p. 14 n. 5). The federal courts are a good bit different from what this citation implies. They only require a "facially colorable" assertion of standing. *United States v.*

1 The same statute also purports to require proof, before a claim can proceed, that the property was unconnected with drugs. Tenn. Code Ann. § 53-11-201(f)(1)(B). If applied in this way, that part is also unconstitutional.

\$515,060.42 in U.S. Currency, 152 F.3d 491, 498 (6th Cir. 1998). Such threshold is met by simply asserting ownership, and then providing some details of the story surrounding the property. *Id.* As in Tennessee, in federal court the government is free to waive the hurdle altogether. *See id.* at 499. In any event, the burden is specifically said to be "forgiving." *United States v. Hall*, F.3d 676, 682 (6th Cir. 2017) (internal citation omitted). In fact, the defendant is not actually required to prove the ownership. *United States v. \$557,933.89, More or Less, in U.S. Funds*, 287 F.3d 66, 79 (2nd Cir. 2002) (Affidavit sufficient). In such a loose framework, it is hard to imagine how the "standing" requirement would ever conflict with the Fourth Amendment. Regardless, here the State never asserted that ownership of the money was a threshold. It was simply argued with the merits.

In the end, Ms. Tubbs absolutely does have a right under the Fourteenth and Fourth Amendments to claim violations against her property, namely the house, in order to exclude illegal evidence from being used in her forfeiture hearing. The government cannot force her to prove her entire case before giving her the benefits of the exclusionary rule. The Court may not declare a forfeiture based on the merits of the case, when such merits are based on illegally gathered evidence. *See One 1958 Plymouth Sedan*, 380 U.S. 693. In the end, the Court has used evidence gathered illegally, in order to find that the merits of the case weigh against Ms. Tubbs (or at least "defer[red]" on that point), and then used those same merits to decline to rule on

whether the evidence was gathered illegally in the first place. Such a thing the Court may not do.

CONCLUSION

WHEREFORE, Wanda Tubbs respectfully asks for rehearing, modification of the opinion, reversal of the judgment, and the return of her life savings and her expensive purse.

Respectfully submitted,

/s/ Drew Justice
 Drew Justice #29247
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Certificate of Service

The undersigned lawyer certifies that this May 08, 2020, he has delivered a copy of this filing via the Court's e-filing system to Miranda Jones, P.O. Box 20207, Nashville, TN 37202.

/s/ Drew Justice
 Drew Justice #29247

Certificate of Compliance

This filing complies with Tenn. Sup. Ct. R. 46 because it is less than 15 pages (even when the typeset is changed to double-spaced), and the rule does not set any word limit.

/s/ Drew Justice
 Drew Justice #29247

APPENDIX C

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
February 4, 2020 Session

FILED

05/14/2020

Clerk of the
Appellate Courts

**WANDA TUBBS v. JEFF LONG, AS COMMISSIONER OF TENNESSEE
DEPARTMENT OF SAFETY AND HOMELAND SECURITY**

**Appeal from the Circuit Court for Davidson County
No. 18C2254 Kelvin D. Jones, Judge**

No. M2019-00627-COA-R3-CV

ORDER ON PETITION FOR REHEARING

The appellant, Wanda Tubbs, filed a petition for rehearing pursuant to Tennessee Rule of Appellate Procedure 39. We determine that the issues raised in the petition were fully argued by Ms. Tubbs in her brief, considered by this Court, and sufficiently addressed in our Opinion. We therefore find that the petition is not well taken, and it is DENIED. Costs related to the Rule 39 petition are taxed to the appellant, Wanda Tubbs.

PER CURIAM

APPENDIX D

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

09/16/2020

Clerk of the
Appellate Courts

**WANDA TUBBS v. JEFF LONG, AS COMMISSIONER OF SAFETY AND
HOMELAND SECURITY**

**Circuit Court for Davidson County
No. 18C2254**

No. M2019-00627-SC-R11-CV

ORDER

Upon consideration of the application for permission to appeal of Wanda Tubbs and the record before us, the application is denied.

PER CURIAM

APPENDIX E

1

1 IN RE:

2 STATE OF TENNESSEE)
 3 DEPARTMENT OF SAFETY AND)
 4 HOMELAND SECURITY)

5 VS.)

6 WANDA TUBBS,)

7 CLAIMANT.)

CASE NO.

03407N2017M

19.01-145268J

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 SECRETARY OF STATE

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 10 Transcript of Proceedings
 heard before:

11 ADMINISTRATIVE JUDGE STEPHEN R. DARNELL

12 January 30, 2018
 13
 14
 15

16 APPEARANCES:

17 FOR THE STATE:

MR. PATRICK RICE, ESQ.

STATE OF TENNESSEE

1150 Foster Avenue

Nashville, Tennessee 37243

(615)251-5296

20 FOR THE CLAIMANT:

MR. DREW JUSTICE

1902 Cypress Drive

Murfreesboro, Tennessee 37130

23 Tina M. Carter, LCR

TMC REPORTING

24 P.O. Box 2543

Cookeville, Tennessee 38502

25 931-526-8691

ORIGINAL

TINA CARTER, LCR #484

1 didn't say it was, he didn't say it was smoked
2 marijuana. In any event, we haven't heard
3 from that individual. And so there's just,
4 there's no testimony that the house did smell
5 of raw marijuana.

6
7 **MOTION TO SUPPRESS**

8 **COURT'S RULING:**

9 **THE COURT:** All right. Thank you,
10 Mr. Justice. All right. Well, the search was
11 made subject to a Search Warrant. So the
12 burden is on Ms. Tubbs to show that the Search
13 Warrant was invalid.

14 The Search Warrant is presumed to be
15 valid. The two allegations of fact made here
16 in the Search Warrant -- the first one is,
17 "Your affiant states that on February 17, 2017
18 I was called to investigate a home invasion
19 involving Shaundra Smith and her juvenile
20 son."

21 "During that investigation, I was
22 given written consent to enter the residence
23 located at Jim Cummings Highway. During that
24 investigation, it was alleged that three black
25 males forced their way into the residence with

1 guns, taking over ten thousand dollars in
2 cash."

3 "Your affiant locked a large amount
4 of marijuana" -- located, I'm sorry. "Your
5 affiant located a large amount of marijuana
6 inside the residence during the course of my
7 investigation."

8 "Your affiant states that further
9 investigation found that the juvenile" -- who
10 testified earlier, I will note -- "was found
11 at Cannon County High School in possession of
12 marijuana."

13 "Your affiant has continued to
14 investigate this residence for selling
15 narcotics. Your affiant also states that
16 Terrance Ledell Martin is currently out on
17 probation for felony drug charges out of
18 Rutherford County and Putnam County."

19 "Your affiant has further found that
20 Terrance Ledell Martin has 208 South Bright
21 Street, Smithville, Tennessee listed as his
22 residence. Your affiant states that
23 surveillance of 3689 Jim Cummings Highway
24 residence appears that Terrance L. Martin
25 lives at that residence."

1 So as I understand the jurisprudence
2 on the 4th Amendment suppression, the burden
3 of proof is on Ms. Tubbs to show that that
4 statement -- it's kind of twisted because
5 we've got some case law since *Capps* came out.
6 This is a good faith exception now from our
7 Supreme Court, U.S. Supreme Court. Our
8 Tennessee Supreme Court, to my knowledge, has
9 not addressed that.

10 But it's not the State's obligation
11 to show that the warrant is valid. The burden
12 is on Ms. Tubbs to show that it's invalid.
13 Here she alleges it was made on false grounds.
14 She alleges that the officer either made,
15 knowingly made misstatements to the
16 Magistrate, or was reckless in doing that.

17 What that leaves out is not the
18 reckless statements to the Magistrate, but
19 potentially false statements to the Magistrate
20 that were made in good faith by the officer.
21 The U.S. Supreme Court has found that there is
22 a good faith exception. So that's an awful
23 high hurdle to get over now.

24 I don't believe on that allegation
25 there's any proof presented by Ms. Tubbs that

1 the officer's statement was incorrect. I
2 think that that is consistent with the
3 testimony I've heard here, that he
4 investigated a home burglary or a home
5 invasion burglary, and there was cash taken.

6 The son, the juvenile, was in
7 possession of drugs, and there was an ounce of
8 marijuana in the house at that time. So I
9 don't find that that portion of the Affidavit
10 was even false.

11 The second allegation is Item 4, and
12 it reads, "Your affiant further states that on
13 May 3rd, 2017, Deputy Brandon King went to
14 3869 Jim Cummings Highway in Cannon County to
15 serve Terrance Ledell Martin with a show cause
16 order to appear in DeKalb County Criminal
17 Court on May 17, 2017."

18 "Your affiant states that Deputy
19 Brandon King stated that the odor of raw
20 marijuana coming from inside the residence was
21 very strong. Your affiant states that Deputy
22 Brandon King's statements are reliable not
23 only due to the fact of him being a sworn law
24 enforcement officer with Cannon County
25 Sheriff's Department, but Deputy Brandon King

1 prior to coming to Cannon County Sheriff's
2 Department was a K-9 handler with the Grundy
3 County Sheriff's Department for three years,
4 having dealt with narcotics to include
5 marijuana during this time."

6 "Your affiant was advised by Deputy
7 King that the smell of raw marijuana, not
8 burnt marijuana" -- "that the smell was of raw
9 marijuana, not burnt marijuana. Deputy
10 Brandon King during his six years of law
11 enforcement career" -- "during his six year of
12 law enforcement career has made numerous
13 arrests for marijuana. Deputy King has made
14 arrests dealing with raw marijuana to include
15 growing marijuana, processed marijuana.
16 Deputy King has also had the opportunity to
17 search vehicles and suspects who have been
18 smoking marijuana."

19 So the issue now, is there proof in
20 the record to prove that Investigator Gullett
21 either made a false statement to the
22 Magistrate concerning that, or was he reckless
23 in making that statement? And I don't find
24 that the record contains any proof of that.

25 Of course, there's a significant

1 amount of case law on confidential informants.
2 If they are credible, the officer can rely on
3 that and relay that to the Magistrate to
4 secure a warrant.

5 Here, he relied on Deputy King's
6 statements to him. Deputy King may have been
7 lying to him. But it doesn't make any
8 difference. There's no proof that Gullett
9 conspired with him or knew about that. He
10 conveyed what he was told by another law
11 enforcement officer about it. And these
12 statements are here.

13 I would have liked to have heard more
14 evidence to that. I accept this, these
15 statements here. They could be argued to be
16 hearsay. Although, I think they are so
17 relevant to the case, there's probably an
18 exception to them.

19 But I don't accept them to prove the
20 truth of the matter asserted -- that King
21 smelled marijuana -- just merely that here is
22 a commissioned law enforcement officer who
23 tells an investigator, "I was at the front
24 door, and I smelled raw marijuana."

25 Gullett has a right under the 4th

1 Amendment jurisprudence to rely on that and
2 convey that to the Magistrate. So I don't
3 find that Ms. Tubbs has carried her burden of
4 proof to show that the warrant is invalid.
5 And again, it's her burden to show it's
6 invalid. It's not the State's burden to show
7 that it's valid. It's presumed valid on it's
8 face.

9 In addition to that, I think probably
10 the greater issue here is Ms. Tubbs simply
11 does not have standing. She had no possessory
12 interest of this home. She is no more than a
13 landlord. Although she may have some sort of
14 different deal with Ms. Smith, she does not
15 have standing to object to a Search Warrant
16 that was issued for Ms. Smith and Mr. Martin's
17 home.

18 So I will deny the Motion to
19 Suppress, and we will proceed to the hearing
20 on the merits. And I will address that order
21 in the Final Order, my ruling on that.

22
23 **MR. JUSTICE:** All right.

24 **THE COURT:** Do you all need to take a
25 short break, or are you ready to go straight

42a
APPENDIX E

**BEFORE THE COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF SAFETY AND HOMELAND SECURITY**

IN THE MATTER OF:

Dept. of Safety and Homeland Security

v.

**\$153,652 in U.S. Currency
Seized From: Terrence Martin
Date of Seizure: May 4, 2017
Claimant: Wanda Tubbs¹**

**DOCKET NO: 19.01-145268J
D.O.S. Case No. 03407-N-2017-M**

FINAL ORDER

This matter was heard on January 30, 2018, in Cookeville, Tennessee before Steve R. Darnell, Administrative Law Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Commissioner of the Tennessee Department of Safety and Homeland Security (Department). Attorney Patrick Rice represented the Department at the hearing. Attorney Robert Broome now represents the Department. Attorney Drew Justice represents Claimant, Wanda Tubbs. The parties requested to file post-hearing briefs and did so. The record closed on March 16, 2018, when Claimant filed her brief. This Final Order is due 90 days later or by June 14, 2018.

ISSUES FOR DETERMINATION

1. Did the Department show, by a preponderance of the evidence, that law enforcement properly seized the \$153,652 in accordance with Tennessee law?
2. After the Department made its initial showing, did the Claimant show, by a preponderance of the evidence, that she had an ownership interest in the \$93,740 she claims?

¹ Terrence Martin and Shaundra Smith initially claimed the currency as well. They both withdrew their claims as part of the settlement in criminal court.

SUMMARY OF DETERMINATION

It is **DETERMINED** that the Department showed, by a preponderance of the evidence, that the \$153,652 was properly seized and is subject to forfeiture. The burden then shifted to Claimant to show, by a preponderance of the evidence, that she has an ownership interest in the \$93,740 she claims. Claimant has failed to make this showing. Accordingly, the entire \$153,652 is forfeited to the seizing agency. This determination is based upon the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Terrence Martin is the son of Claimant, Wanda Tubbs. Shuandra Smith is Martin's fiancée. They have cohabitated together for some time. Isaac Smith is Shaundra Smith's 17-year-old son from a previous relationship. Martin and Smith lived together at 3869 Jim Cummings Highway in Woodbury, Tennessee. Isaac lived there as well.
2. Wanda Tubbs purchased the house in Rutherford County and relocated it to the 3869 Jim Cummings Highway location. Tubbs acquired an interest in the real estate there from Mr. McMahan. McMahan is an associate of Martin. This was a cash transaction by Tubbs. Tubbs rented the home on Jim Cummings Highway to Martin and Smith. Tubbs did not live in the home.
3. Cannon County law enforcement observed McMahan and Martin were in Cannon County. One officer knew Martin from his previous assignment to the Drug Task Force in Smith County. Martin was charged with drug related crimes in Smith County. This occurred approximately six months before Tubbs moved the house to Woodbury. Martin also has felony drug convictions from Rutherford County and Putnam County. Law enforcement began surveilling Martin's home due to reports of drug trafficking.

4. On February 17, 2017, three men kicked in the rear door of the Martin/Smith home and held Smith and Isaac at gunpoint. Martin was not home. The men struck Smith and shot Smith's dog. The men told Smith, "All we want is the money. Where is the safe?" The men stole between \$5,000 and \$10,000 from the upstairs' safe. Smith could not confirm how much was in the safe. The men forced Isaac to drive them to a location and fled. Isaac and Smith reported the crime directly at a police station and went for medical treatment.

5. A narcotics officer who responded to the home invasion scene smelled raw marijuana emanating from the house upon exiting his vehicle. Upon entering the home, officers found one ounce of raw marijuana and remnants of smoked marijuana. They also observed a marijuana grinder with marijuana residue and electronic scales.

6. On May 4, 2017, an officer went to the home to serve civil process on Martin. Martin and Smith were not home. The officer had significant previous experience in drug cases. Isaac met the officer at the door and accepted the paperwork. The officer smelled raw marijuana emanating from the home. He reported this odor to his colleagues who work drug cases.

7. On May 4, 2017, law enforcement procured and executed a search warrant for the home located at 3869 Jim Cummings Highway. During the search, officers could smell the odor of raw marijuana in the home. Officers located approximately one-half ounce of marijuana, 13.14 grams of crack cocaine, and a large number of Oxycodone tablets. The Oxycodone was found in various locations in plastic sandwich bags, a decorative container, and pill bottles. Many of the pill bottles had names of persons unknown to the investigation. Some were filled out of state including in California.

8. Officers also found a Sun City bag with \$26,000. They discovered a grocery bag with \$21,000. They found a little over \$12,000 in a purse Smith claimed as hers. They found a

wooden box in an upstairs hallway that contained a Michael Kors bag with \$93,740. Martin had \$600 on his person. Law enforcement seized all the currency as proceeds from drug trafficking.

9. The currency from all four locations was packaged in either \$1,000 or \$5,000 bundles. Rubber bands held these bundles together. Photos show all the money was bundled and rubber bands placed exactly in the same on all the bundles. In other words, a bundle from the Michael Kors bag was indistinguishable from a bundle from one of the other locations.

10. Law enforcement also located a money counter, electronic scales, several handguns, and what appeared to be a drug sales ledger at the residence. They arrested Martin and Smith.

11. Either Smith or Isaac summoned Tubbs to the house during the search. Tubbs initially told officers that there was \$150,000 in the home that belonged to her. She first said \$50,000 then said there was an additional \$100,000 for a total of \$150,000.

12. Tubbs and Martin both filed claims indicating they each owned all the money and wanted it all returned. Smith filed a claim as well, but the record does not indicate the amount of her claim. Neither Tubbs nor Martin knew how much money was in the house in total. Neither knew the amount in the Michael Kors bag.

13. Tubbs' testimony was not credible. This determination is based upon: 1) Tubbs supposed decision to leave money at a home that was recently the subject of a home invasion robbery, 2) her unawareness of the amount of money in the bag, 3) inconsistencies between her testimony and other witnesses' testimonies concerning when she went to Tunica, 4) her supposed distrust of financial institutions, yet she has several accounts with them, 5) her initial claim for all the seized currency, 6) her explanation of her finances concerning her cash purchase of the relocated home and land, and 7) her explanation of her finances in general.

14. The Department has shown, by a preponderance of the evidence, that the \$153,652 of seized currency was proceeds of drug trafficking and properly seized by law enforcement.
15. Claimant has failed to show, by a preponderance of the evidence, that she has any ownership interest in the seized currency.
16. The \$153,652 is forfeited to the seizing agency.

CONCLUSIONS OF LAW

1. The Department bears the initial burden of proof in forfeiture cases.

In forfeiture proceedings, the governmental authority seeking forfeiture must present affirmative proof that it has complied with both the procedural and the substantive requirements in the forfeiture statutes enacted by our Legislature. Consistent with the civil nature of forfeiture proceedings, the State's burden of proof as to both the procedural and substantive statutory requirements is by a preponderance of the evidence. Tennessee v. Sprunger, 458 S.W.3d 482, 499 (2015).

2. Tennessee Code Annotated § 40-33-210 provides as follows:

(a) In order to forfeit any property or any person's interest in such property pursuant to §§ 39-14-307, 47-25-1105, 53-11-451, 55-10-403(k), 55-50-504(h), 57-3-411, 57-5-409, 57-9-201, 67-4-1020 and 70-6-202, the state shall have the burden to prove by a preponderance of evidence that:

(1) The seized property was of a nature making its possession illegal or was used in a manner making it subject to forfeiture under the sections set out in this subsection(a); and

(2) The owner or co-owner of the property knew that such property was of a nature making its possession illegal or was being used in a manner making it subject to forfeiture, or, in the case of a secured party, that the standards set out in subsection(f) are met.

(b)(1) Failure to carry the burden of proof shall operate as a bar to any forfeiture and the property shall be immediately returned to the claimant.

3. Tennessee Code Annotated §53-11-451 provides in relevant part as follows:

(1) All controlled substances which have been manufactured, distributed, dispensed or acquired in violation of parts 3 and 4 of this chapter or title 39, chapter 17, part 4;

(2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of parts 3 and 4 of this chapter or title 39, chapter 17, part 4;

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

(4) All conveyances, including aircraft, vehicles or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale or receipt of property described in subdivision (a)(1) or (2), but:

(A) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of parts 3 and 4 of this chapter or title 39, chapter 17, part 4;

(B) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without such owner's knowledge or consent;

(C) A conveyance is not subject to forfeiture for a violation of § 39-17-418(a) or (b) or § 39-17-425.

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

(5) All books, records, and research products and materials, including formulas, microfilm, tapes and data which are used, or intended for use, in violation of parts 3 and 4 of this chapter or title 39, chapter 17, part 4;

(6) (A) Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of the Tennessee Drug Control Act of 1989, as amended, compiled in parts 3 and 4 of this chapter and title 39, chapter 17, part 4, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of the Tennessee Drug Control Act, compiled in parts 3 and 4 of this chapter and title 39, chapter 17, part 4;

(B) No property shall be forfeited under subdivision (a) (6), to the extent of the interest of an owner, by reason of any act or omission established by such

owner to have been committed or omitted without such owner's knowledge or consent; and

(7) All drug paraphernalia as defined by § 39-17-402, T.C.A. § 53-11-451/

4. Once the Department has made initial showing that the seized property was legally seized, the burden shift to those claiming an interest in the property to prove their ownership interest. In the instant case, Claimant must prove, by a preponderance of the evidence, that she had an ownership interest in the vehicle. Urquhart v. Dept. of Safety, 2008 WL 2019458 (Tenn.Ct.App.). Tennessee Code Annotated §53-11-201 provides in relevant part as follows:

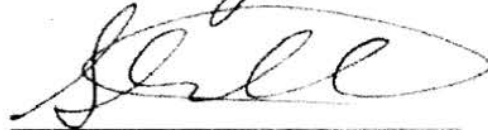
(f)(1) Whenever, in any proceeding under this section, a claim is filed for any property seized, as provided in this section, by an owner or other person asserting the interest of the owner, the commissioner shall not allow the claim unless and until the claimant proves that the claimant:

(A) **Has an interest in the property**, which the claimant acquired in good faith; and

(B) Had at no time any knowledge or reason to believe that it was being or would be used in violation of the laws of the United States or of the state relating to narcotic drugs or marijuana. (emphasis added).

IT IS THEREFORE ORDERED that Claimant's claim is dismissed. The \$153,652 in U.S. currency is forfeited to the seizing agency.

This Final Order entered and effective this 17th day of June, 2018.



Steve R. Darnell
Administrative Law Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 18th day of June, 2018.



J. Richard Collier, Director
Administrative Procedures Division

IN THE MATTER OF:

APD Case No. 19.01-145268J

SHAUNDRA SMITH (03407-N-2017-M)

NOTICE OF APPEAL PROCEDURES

REVIEW OF FINAL ORDER

Attached is the Administrative Judge's decision in your case with the **Tennessee Department of Safety and Homeland Security**, called a Final Order, with an entry date of **June 14, 2018**. If you disagree with this decision, you may take the following actions.

1. **File a Petition for Reconsideration:** You may ask the judge to reconsider the decision by filing a Petition for Reconsideration. Mail to the Administrative Procedures Division (APD) a document that includes your name, the above APD case number, and sets forth the specific reasons why you think the decision is wrong. The APD must **receive** your written Petition no later than **June 29, 2018 (FO date + 15 days)**.

The Administrative Judge has 20 days from receipt of your Petition to grant, deny, or take no action on your Petition for Reconsideration. If the Petition is granted, you will be notified about further proceedings, and the timeline for appealing (as discussed in paragraph 2 below) will be adjusted. If no action is taken within 20 days, the Petition is deemed denied. As discussed below, if the Petition is denied, you may file an Appeal no later than **August 14, 2018 (FO date + 60 days)**. See TENN. CODE ANN. § 4-5-317 and § 4-5-322.

2. **File an Appeal:** You may appeal the decision by filing a Notice of Review of the Final Order in the Chancery Court or Circuit Court of Davidson County within 60 days of the date of entry of the Final Order, which is no later than **August 14, 2018 (FO date + 60 days)**. See TENN. CODE ANN. §§ 4-5-322 & 40-33-213. The filing of a Petition for Reconsideration is not required before appealing. See TENN. CODE ANN. § 4-5-317.

STAY

In addition to the above actions, you may ask the Administrative Judge for a stay that will delay the effectiveness of the Final Order. Your request for a stay must be **received** within 7 days of the date of entry of the Final Order, which is not later than **June 21, 2018 (FO date + 7 days)**. See TENN. CODE ANN. § 4-5-316.

FILING

To file documents with the Administrative Procedures Division, use this address:

Secretary of State
Administrative Procedures Division
William R. Snodgrass Tower
312 Rosa Parks Avenue, 8th Floor
Nashville, TN 37243-1102
Fax: (615) 741-4472

APPENDIX G

✓
IN THE EIGHTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

WANDA TUBBS,

Petitioner,

v.

DAVID PURKEY, in his official
capacity as the COMMISSIONER
FOR THE TENNESSEE DEPARTMENT
OF SAFETY AND HOMELAND
SECURITY,

Respondent.

FILED
2019 MAR -7 AM 9:30
RICHARD R. ROOKER, CLERK
No.: 18C2254 *[Signature]*

ORDER

This cause came to be heard on February 22, 2019, on a Petition for Judicial Review. Pursuant to Tenn. Code Ann. § 4-5-322(h)(5)(B), the reviewing court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. A reviewing court may reject an agency decision only if a reasonable person would find differently based on the evidence. *Nixon v. City of Murfreesboro*, 2010 WL 2730565 at *15 (Tenn. Ct. App. 2010).

After review of the record this Court finds that the Administrative Law Judge made the correct findings of facts and properly applied the facts to the law in determining the property was subject to forfeiture. Therefore, the Final Order of the Administrative Law Judge is **AFFIRMED**.

Costs added to Petitioner. 7/11

It is so ORDERED on this the 7th day of March, 2019

[Signature]

THE HONORABLE KELVIN D. JONES

APPROVED FOR ENTRY:

HERBERT H. SLATERY III
Attorney General and Reporter



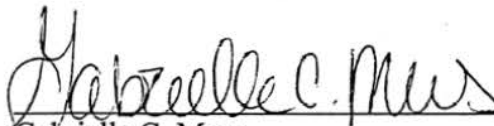
Gabrielle C. Mees (#036122)

Assistant Attorney General
Law Enforcement and
Special Prosecutions Division
P.O. Box 20207
Nashville, Tennessee 37202-0207
(615) 741-4087
gabrielle.mees@ag.tn.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been sent via first class U.S. mail, postage prepaid, on this the 1st day of March 2019 to:

Drew Justice, Esq.
1920 Cypress Drive
Murfreesboro, Tennessee 37130



Gabrielle C. Mees
Assistant Attorney General

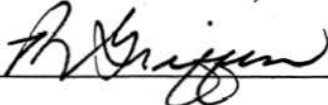
CERTIFICATE OF SERVICE**CASE NO. 18C2254**

Pursuant to Rule 58 (3) of the Tennessee Rules of Civil Procedure, I hereby certify that I have mailed a copy of the foregoing to the parties/counsel listed below, this 7th day of March, 2019.

Drew Justice, Attorney
1920 Cypress Drive
Murfreesboro, TN 37130

Gabrielle Mees, Attorney
P.O. Box 20207
Nashville, TN 37202-0207

RICHARD R. ROOKER, CIRCUIT COURT CLERK

By: , Deputy Clerk

original

SEARCH WARRANT

COUNTY OF CANNON

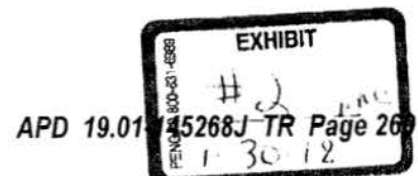
STATE OF TENNESSEE

TO ANY PEACE OFFICER WITHIN OR OF SAID COUNTY:

Proof by Affidavit having been made before SUSAN McHON Judge of the Cannon General Sessions Court by Investigator Brandon Gullett of the Cannon County Sheriff's Department that there is probable cause to believe that Shaundra Michelle Smith dob: 09/29/1981, Terrance Ladale Martin dob: 02/03/1982 of 3869 Jim Cummings Highway Woodbury TN, 37190, Cannon County, Tennessee this residence is owned by Wanda Tubbs and sits on the property of Robert L McMahan are now in possession and control of certain evidence of a crime to wit: violations of state laws as set forth in TCA Section TCA 39-17-417 Man/sell/deliver of controlled substance, TCA 53-11-401 Maintain a Dwelling to use/keep/store a controlled substance, TCA 39-17-425 Possession Drug Paraphernalia and that evidence of said crimes will be found at the location of 3869 Jim Cummings Highway Woodbury TN, 37190, Cannon County, Tennessee and the evidence to be searched for is as follows:

1. Any and all controlled substances to include (marijuana, methamphetamine, heroine, cocaine), and any other controlled substance listed under T.C.A 39-17-402 of the drug control act of 1989.
2. Any proceeds from the manufacture, sell, or distribution of a controlled substance. Also any vehicle's, outbuildings, and any other proceeds of drug activity.
3. This search is to also include any person's located on the property not listed above in the search warrant.
4. This search is also to include any locked or unlocked containers, safes, lockboxes, etc. located on said property.
5. Any drug paraphernalia to wit: any item used to store, hold, smoke, ingest, or otherwise maintain or convert a controlled substance or introduce into the human body.
6. Any ledgers, mail, or other paperwork with names and addresses on them deemed as evidence to identify other residences or parties not listed in this affidavit.
7. Any and all electronic devices, cellular phones, computers, etc located on said property.

YOU ARE THEREFOR COMMANDED to make an immediate search on the premises of 3869 Jim Cummings Highway Woodbury TN, 37190, Cannon County, Tennessee and in the premises used and occupied by the occupants of this residence located and more particularly described as follows:



The address of 3869 Jim Cummings Highway Woodbury TN, 37190, Cannon County, Tennessee is a two story residence constructed of wood with siding. The residence is light grey in color with dark grey shutters. This residence will have the numbers 3869 in white and black on the right side of the front door. The driveway that services this residence is just off of Jim Cummings Highway Highway, which is in Cannon County Tennessee. The home has a black metal roof. This residence will have a porch on the rear constructed of wood.

This search will include all person's, outbuildings, locked and unlocked containers, outhouses, trash receptacles, mailboxes, storage buildings, and other outside structures directly related to this location and all vehicles found thereon, for the aforesaid evidence; and if you find the same or any part thereof, you shall seize the evidence:

I HEREBY DELIVER THIS SEARCH WARRANT FOR EXECUTION TO:

INV. BRANDON Gullett

at 12:40 o'clock PM, on this 4th day of May, 2017.

Sue Melt
(Judge or Clerk)

OFFICER'S RETURN AND SUMMARY INVENTORY OF PROPERTY SEIZED

The within warrant came to hand, and executed on this 4th day of May, 2017, by searching the person(s) and premises herein described, and taking therefrom the following evidence which was seized:

Inv. B. Gullett

Special Agent, Deputy or Officer Executing Warrant

JUDGEMENT ON SEARCH WARRANT

Due and proper return having been made of the warrant, the property seized as described in the said return shall be retained, subject to the orders of the General Sessions or Criminal Court of Cannon County, and the within warrant, and return shall be filed in the office of the Clerk of said General Sessions or Criminal Court.

TKis 8th day of May, 2017.

Sue Melt
Judge of the Court

have the numbers 3869 in white and black on the right side of the front door. The driveway that services this residence is just off of Jim Cummings Highway Highway, which is in Cannon County Tennessee. The home has a black metal roof. This residence will have a porch on the rear constructed of wood. This search will include all person's, outbuildings, locked and unlocked containers, outhouses, trash receptacles, mailboxes, storage buildings, and other outside structures directly related to this location and all vehicles found thereon, for the aforesaid evidence; and if you find the same or any part thereof, you shall seize the evidence.

Statement of Facts In Support of Probable Cause

This affidavit is made by Investigator Brandon Gullett of the Cannon County Sheriff Department. Your Affiant has worked in the field of law enforcement for over 9 years and has been a Investigator with the Cannon County Sheriff Department since 2012. Your Affiant testifies that the information contained herein, unless otherwise stated, is based upon personal knowledge or information received from other law enforcement officers, and or confidential informants that your Affiant believes to be true. Your Affiant testifies that the following information contained in this affidavit is based on my training and experience, my personal participation in this investigation, and information provided to me by a confidential informant during this investigation. This affidavit does not provide each and every detail known by your affiant regarding this investigation, but rather provides information necessary to establish probable cause for the search of **3869 Jim Cummings Highway Woodbury TN, 37190, Cannon County, Tennessee**. Except where indicated, all statements referred to below are set forth in substance and in part, rather than verbatim.

1. The focus of this investigation is **Shaundra Michelle Smith dob: 09/29/1981, Terrance Ladale Martin dob:02/03/1982**. Your Affiant has been involved in an investigation involving the Man/Sell/Deliver of controlled substance, maintaining a dwelling to man/sell/del a controlled substance, possession of drug paraphernalia. Your affiant states that **Shaundra Michelle Smith dob: 09/29/1981, Terrance Ladale Martin dob:02/03/1982** lives at **3869 Jim Cummings Highway Woodbury TN, 37190, Cannon County, Tennessee**

2. Your affiant states that on February 17, 2017 I was called into investigate a Home Invasion involving Shaundra Smith and her juvenile son. During this investigation I was given written consent to enter the residence located at 3869 Jim Cummings Highway. During this investigation it was alledged that three black males forced their way into this residence armed with guns taking over \$10,000 in cash. Your affiant located a large amount of marijuna inside the residence during the course of my investigation. Your affiant states that further investigation found that the juvenile was found at Cannon County High School

in possession of marijuana. Your affiant has continued to investigate this residence for selling narcotics. Your affiant also states that Terrance Ladale Martin is currently out on Probation for felony drug charges out of Rutherford County and Putnam County. Your affiant has further found that Terrance Ladale Martin has 208 S Bright Hill Street Smithville TN, 37166 listed as his residence. Your affiant states that surveillance of 3869 Jim Cummings Highway residence appears that Terrance L Martin lives at this residence.

4. Your affiant further states that on May 3, 2017 Deputy Brandon King went to 3869 Jim Cummings Highway in Cannon County to serve Terrance Ladale Martin with a show cause order to appear in Dekalb County Criminal Court on May 17, 2017. Your affiant states that Deputy Brandon King stated that the odor of raw marijuana coming from inside the residence was very strong. Your affiant states that Deputy Brandon King's statements are reliable not only due to the fact of him being a sworn law enforcement officer with Cannon County Sheriff's Department, but Deputy Brandon King prior to coming to the Cannon County Sheriff's Department was a K-9 Handler with the Grundy County Sheriff's Department for 3 years having dealt with narcotics to include marijuana during this time. Your affiant was advised by Deputy King that the smell was of raw marijuana not burnt marijuana. Deputy Brandon King during his 6 years of law enforcement career has made numerous arrests for marijuana. Deputy King has made arrests dealing with raw marijuana to include growing marijuana, processed marijuana. Deputy King has also had the opportunity to search vehicles and suspects who had been smoking marijuana.

5. Your affiant states further that with this information it is requested that a search warrant be issued for **3869 Jim Cummings Highway Woodbury TN, 37190, Cannon County, Tennessee** being the residence occupied by **Shaundra Michelle Smith dob: 09/29/1981, Terrance Ladale Martin dob:02/03/1982** to preserve evidence of this crime.

Experience and Basis of Knowledge of Affiant

Your affiant is an investigator with the Cannon County Sheriff's Office and has been in investigations for (5) years and has been in Law Enforcement for over (10) years. Your affiant also states that during this time he has used overt and covert methods of investigations. Your Affiant has attended classes and training sessions on the subjects of search warrant executions, investigation of complex criminal organizations, asset forfeiture, Interview and Interrogations, Basic Methamphetamine Clan Lab Training, also attended the Authorized Central Storage class put on by the Tennessee Methamphetamine Task Force, which covered how to properly maintain, break down and the storage of meth labs and its components. Your affiant has attended numerous drug investigations classes pertaining to drug interdiction, and hidden compartments, which covered both rural county drug enforcement along with highway drug interdiction. Your Affiant has participated in, organized, and initiated several

investigative efforts that have targeted individuals involved in the crime of manufacture, sell, or delivery of a controlled substance. Your affiant has had the privilege to prepare and execute over 50 search warrants for various crimes related to drug investigations, thefts, and child pornography. These cases have resulted in felony arrest and convictions in State of Tennessee, Cannon County. Your affiant has had worked with numerous departments and agencies on the State, Federal, and Local levels along with the United States National Guard Counter Drug Unit, and the State of Tennessee Marijuana Eradication Task Force. Your affiant has been involved in the criminal investigations and has the opportunity to interview individuals involved in various crimes related to the manufacture of methamphetamine, theft of property, and crimes against children. Your affiant further states that he has had the opportunity to work confidential informants along with citizen informants in cases that have resulted in arrests and convictions in Cannon County Tennessee.

While conducting criminal investigations, your affiant has had the occasion to search residences, vehicles and other areas under the control of individuals who were involved in related crimes. Your affiant has debriefed and interviewed defendants and informants who have extensive knowledge of persons involved in related crimes of narcotics. Through experience and training, your Affiant is familiar with the habits, practices, and characteristics of individuals who are involved in the manufacture, sell, or delivery of a controlled substance. Your affiant has participated in the preparation and / or execution of over 50 search warrants. Through experience, training and consultation with other law enforcement officers with expertise in this area, your Affiant has learned the following facts:

A. Individuals who deal in controlled substances and / or narcotics very often place assets derived from their criminal activities in names of other persons or corporate entities other than their own names. These dealers will also use false names and identities in order to avoid detection of these assets by law enforcement agencies so as to avoid forfeiture of the same.

B. Individuals who deal in controlled substances and will maintain books, records, receipts, notes, ledgers, airline tickets, money orders, computer disk, tapes, papers, and other forms of information media relating to the transportation, ordering, sale, and distribution of controlled substances.

C. Persons who deal in controlled substances commonly maintain addresses and telephone numbers in books, papers, electronic devices or other forms of information media which reflect names addresses and telephone numbers of their associates or customers in the drug trafficking organizations.

D. Individuals who deal in controlled substances often possess photographs and / or videotapes of themselves, their criminal associates, their drugs, their weapons, and their property that are proceeds of illegal activities. They may also possess photographs and / or videotapes of themselves and their associates involved in activities that require the expenditure of large amounts of money that they have acquired through illegal activities.

E. Dealers in controlled substances commonly "front" or loan on consignment, drugs to their customers who must pay for their drugs from the proceeds of their re-sales. As a result, the drug dealers must keep records of transactions where they can have a quick and reliable means to recall the status of such transactions. Very often these

records will be maintained at the residence or business used by the drug dealer or one of his / her accomplices.

CONCLUSION

Therefore, considering the foregoing, your Affiant believes based on his knowledge, training, and experience that **Shaundra Michelle Smith dob: 09/29/1981, Terrance Ladale Martin dob:02/03/1982** is in possession of evidence of a crime and illegal narcotics at the residence located at **3869 Jim Cummings Highway Woodbury TN, 37190, Cannon County, Tennessee**. Your affiant states that through this investigation he has found that based on information obtained from said victim it is believed that **Shaundra Michelle Smith dob: 09/29/1981, Terrance Ladale Martin dob:02/03/1982** is in possession of evidence along with illegal narcotics at the above listed residence.

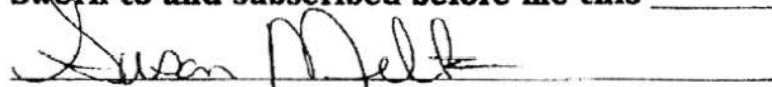
Your Affiant respectfully requests that a search warrant be issued for the location of **3869 Jim Cummings Highway Woodbury TN, 37190, Cannon County, Tennessee** for the aforementioned evidence so that this investigation may continue.

I SWEAR THE FOREGOING IS TRUE UNDER PENALTY OF PERJURY.


AFFIANT

5/4/17
(Date)

Sworn to and subscribed before me this 4th day of May, 2017.


Judge of the Court

60a
APPENDIX I

IN THE TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

IN RE: \$153,652 IN UNITED STATES CURRENCY

Claimant: Wanda Tubbs

1901-145268J

03407-N-2017-M-D1

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**MOTION TO SUPPRESS EVIDENCE AND
TO RETURN UNLAWFULLY SEIZED PROPERTY**

The Claimant, Wanda Tubbs, moves to suppress all evidence gained from the illegal search of her home. Namely, the warrant to search her residence was taken out based on an affidavit with two separate falsehoods — either one of which, according to the federal and state constitutions cited in *Franks v. Delaware*, 438 U.S. 154 (1978) and 560 S.W.2d 403 (Tenn. 1978), is sufficient to invalidate the warrant.

FACTUAL BACKGROUND

On 03 May 2017 around 10:00 p.m., a Cannon County deputy went to the residence, purportedly to serve a civil court summons on co-resident Terrance Martin. Mr. Martin was not home. Instead, the deputy spoke briefly to the son of Mr. Martin's girlfriend, who informed the deputy that Mr. Martin was away.

Immediately after leaving the house, the deputy (Brandon King) informed Sheriff's "Investigator" Brandon Gullett that he had smelled a "very strong" odor of raw marijuana in the residence, while standing at the front door. The investigator took out a search warrant for the house, which was then served the next day.

In procuring the warrant, the affiant Brandon Gullett testified about the purported strong smell of marijuana on the night in question. He also stated that when he was investigating a burglary at the home months before, he had uncovered a "large amount" of marijuana inside the residence. In reality, the house did not smell like raw marijuana. No significant quantity of marijuana was uncovered during the instant search. And the comment about uncovering a large quantity of marijuana from the same home months earlier was a complete fabrication.

ANALYSIS

Under the Fourth Amendment, a warrant based on sworn probable cause is required to search a home. Nonetheless, if police could procure warrants based on false testimony, then the Fourth Amendment's entire purpose would be subverted. Therefore, United States Supreme Court has ruled that false testimony contained in a warrant affidavit — whether made intentionally, or even recklessly — must be severed from the warrant, and then ignored for determining whether the warrant still had sufficient probable cause. *Franks v. Delaware*, 438 U.S. 154 (1978). The Tennessee Supreme Court has gone even further. Under the state constitution, namely Tenn. of Const. Art. I § 7, not only must a reckless falsehood be excised, but if the falsehood is intentional, then it *automatically invalidates the entire warrant* — regardless of whether the falsehood was about an issue of any importance. *State v. Little*, 560 S.W.2d 403, 407 (Tenn. 1978). In this case, there were two falsehoods — one material (i.e., important to a finding of probable cause), and one immaterial (i.e., irrelevant to probable cause). Arguably both falsehoods were intentional, but the second one most certainly was.

The first falsehood, the material one, was the claim that the house smelled strongly of raw

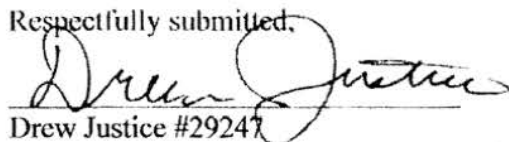
marijuana, when actually the house did not smell that way. Notably, the search uncovered only a very small quantity of raw marijuana, which was itself found inside a drawer in one of the upstairs bedrooms. Further, witness testimony will also undercut the false claim that the house smelled of marijuana. Given that the core of the evidence in this search warrant affidavit was based on this allegation of a "very strong" marijuana smell, the allegation was clearly material. Whether intentionally made, or even just recklessly made, the falsehood invalidates the search because it was about an important matter. Once this testimony is excised from the affidavit, no further probable cause remains.

Next, there was another falsehood about a more 'minor' issue, which is still important to this motion because it was done intentionally. Although a strong smell of marijuana would itself be enough for a warrant, law enforcement apparently tried to bolster their probable cause by making other false statements, with the intent of deceiving the court. Specifically, the affiant intended to deceive the court when he claimed that he had personally uncovered a "large amount" of marijuana from the same residence, months earlier. The statement was false. There is no reason to believe that the falsehood was accidental. The falsehood was ultimately immaterial to whether the search warrant should have been granted (because it alleged old and stale information, and because a "strong smell" would already be enough for a warrant, anyway). But the falsehood matters for this motion because it was apparently made intentionally. "[W]hether material or immaterial to the issue of probable cause," an intentional falsehood made to deceive the court will invalidate a warrant in Tennessee. *State v. Little*, 560 S.W.2d 403 (Tenn. 1978).

CONCLUSION

Therefore, all evidence of any potential wrongdoing in this matter must be suppressed.

Respectfully submitted,



Drew Justice #29247

Attorney for Wanda Tubbs

1902 Cypress Drive

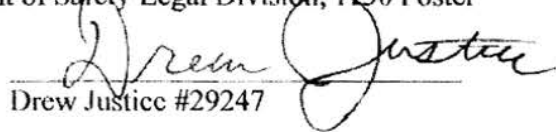
Murfreesboro, TN 37130

(615) 419-4994

drew@justicelawoffice.com

Certificate of Service

The undersigned lawyer certifies that this 22 December 2017, he has mailed and also faxed a copy of this motion to Robert Broome, Department of Safety Legal Division, 1150 Foster Ave, Nashville, TN 37243 <615-253-2098>.



Drew Justice #29247

64a
APPENDIX J

48

1 full name for the record.

2 WITNESS: Isaac Lee Smith.

3 THE COURT: Isaac Lee Smith?

4 WITNESS: Yes, sir.

5 THE COURT: All right. Your witness,
6 Mr. Justice.

7

8 DIRECT EXAMINATION OF

9 ISAAC SMITH

10 BY MR. JUSTICE:

11 Q All right. Mr. Smith, what is your connection
12 with Ms. Wanda Tubbs?

13 A That's -- well, that's like my grandma pretty
14 much.

15 Q She's like your grandma. What is your
16 connection to Shaundra Smith, one of the other former
17 Claimants in this case?

18 A That's my mom.

19 Q So Shaundra Smith is your mother. Wanda Tubbs
20 is like your grandmother?

21 A Yeah.

22 Q How old are you?

23 A I'm 17.

24 Q And were you living at this house at 3869 Jim
25 Cummings Highway?

1 A Yes, sir.

2 Q And about -- what can you tell us about the
3 events leading up to taking out the Search Warrant? Were
4 you home when a deputy came by your front door?

5 A Yeah. I was asleep on the couch. I was
6 laying with my dog, Remmy, at the time. And we were
7 watching Netflix. And then I got a knock on the door.
8 And I came to the door.

9 And we have like one of those open, like on
10 the door, you have like one of the latches where you can
11 open it and look through and see who it is. And so I
12 opened that, and I seen it was a police officer. So I
13 closed it back, and I went and opened the door.

14 And then my dog always likes to go and see who
15 it is because he's an attention freak. So I propped the
16 door open just a little bit. And he stepped back. And I
17 propped there, like I put half my body through like
18 outside the door. And I was like, "What do you need?"
19 And he asked if Terrance was home. And I said no; that
20 they had just left a couple hours ago. And he said,
21 "Okay. Well, can you make sure that he gets this?" And
22 I said, "Okay." And then I grabbed it and shut the
23 door.

24 Q Okay. So let me just go back a second. So he
25 asked if Terrance Martin, one of the other Claimants, was

1 home?

2 A Yeah. He asked if Terrance was home.

3 Q And he was not home at that point?

4 A No.

5 Q And you said you only opened the door
6 somewhat?

7 A Yeah.

8 Q Not all the way?

9 A Uh-hmm.

10 Q And that was because of why?

11 A Because Remmy likes to, like he likes to run
12 and attack and jump on top of people and stuff.

13 Q Okay. And the deputy was trying to bring by
14 what?

15 A It was -- I read it when I got it. It was
16 like child support papers, I think.

17 Q Okay. So he did actually hand it to you?

18 A Yeah.

19 Q And at that time -- when was this? Was this a
20 night or two before the arrests?

21 A Yeah. It was, yeah. It was like, I think the
22 night before, or two or three nights before.

23 Q Now, did the house -- did the house smell like
24 marijuana?

25 A No. No. Because I mean, I was -- I'd been

1 there, and I'd been in the living room watching TV. And
2 I just got done eating and everything.

3 Q Do you know what marijuana smells like?

4 A Yeah.

5 Q Do you -- it was mentioned in the Search
6 Warrant Affidavit that you had been charged with
7 possessing marijuana. Were you ever charged with that?

8 A Yeah.

9 Q What happened as a result -- what was the
10 conclusion of that case?

11 A It got closed. The person that had left the
12 marijuana in my car, he had came up and confessed about
13 it.

14 Q Okay. So you are saying you do know what it
15 smells like?

16 A Yes, sir.

17 Q And you don't believe your house smelled that
18 way?

19 A No.

20 Q Now, what about the following day when they
21 actually performed the search? Were you present during
22 that time?

23 A No. I was at school.

24 Q Okay. I probably will have some more
25 questions for you for the next phase of the hearing, or

1 if we get to that. But for right now, that's all of my
2 questions.

3

4 **THE COURT:** Questions, Mr. Rice?

5 **MR. RICE:** Yes, Your Honor.

6

7 **CROSS-EXAMINATION OF**

8 **ISAAC L. SMITH**

9 **BY MR. RICE:**

10 Q So you are Ms. Smith's son, correct?

11 A Yes.

12 Q And how long have you lived in the house?

13 A Maybe -- this is what, my sophomore year? So
14 we had been there since my freshman year. So it's been
15 about a year and a half.

16 Q Now, have you been present when anyone in the
17 house smoked marijuana?

18 A No.

19 Q And how do you know the smell of marijuana?

20 A The day that, the day that the SO Officer had
21 pulled me over, my car had smelled like -- it was like a
22 strong scent. It was kind of like skunk. And that's
23 really how I knew what it smelled like.

24 Q Okay. Have you ever been a user of marijuana?

25 A No.

1 Q Do you have friends that use marijuana?

2 A Yeah. I mean, I've had relatives and stuff
3 that's did it around me. And you know, I try to keep
4 away from them.

5 Q Okay. And at the time that they executed the
6 Search Warrant, had you been at the house that day?

7 A No. I mean, earlier that morning, yeah.
8 Because I had left.

9 Q Okay. And where were you at that time?

10 A At school.

11 Q You were at school?

12 A Yeah.

13 Q All right.

14

15 MR. RICE: No further, Your Honor.

16 THE COURT: All right. Redirect, Mr.
17 Justice?

18

19 REDIRECT EXAMINATION OF

20 ISAAC L. SMITH

21 BY MR. JUSTICE:

22 Q When you were at the house earlier that
23 morning of the search, did the house smell like marijuana
24 then?

25 A No. I mean, I got up, put my clothes on, took

1 a shower and left.

2 Q Okay. Nothing further.

3

4 THE COURT: All right. Thank you.

5 Do you want him to step back out?

6 MR. JUSTICE: Yeah, but just don't
7 take off. And then if we can bring Terrance
8 in?

9 THE COURT: Terrance Martin?

10 MR. JUSTICE: Yes, sir.

11 THE COURT: Will you ask him to come
12 back?

13 WITNESS: Yeah.

14 THE COURT: Thank you. How many
15 witnesses do you have?

16 MR. JUSTICE: This one, and I may
17 call the Investigator.

18 THE COURT: The Detective -- or the
19 Investigator?

20 MS. TUBBS: Would I have time to step
21 out and use the bathroom?

22 THE COURT: Close that door behind
23 you there. Yeah. We can take a break.

24 MR. JUSTICE: Yeah. Let's just take
25 a break before we begin.

71a
APPENDIX K

55

1 MR. RICE: You can come on in.

2 THE COURT: Yeah. We are going to
3 have you right here, Mr. Martin. Ms. Tubbs,
4 don't talk to any of the witnesses or
5 anything. Use the restroom and come back. We
6 are under the Rule.

7 MS. TUBBS: Oh, okay.

8 (BREAK TAKEN, THEN THE FOLLOWING:)

9 THE COURT: All right. All right.
10 Mr. Martin, if you'll raise your right hand,
11 I'll place you under oath.

12 TERRANCE MARTIN
13 was called as a witness, and after first being duly
14 sworn, testified as follows:

15
16 THE COURT: State your full name for
17 the record.

18 WITNESS: Terrance Ledell Martin.

19 THE COURT: Your witness, Mr.
20 Justice.

21
22 DIRECT EXAMINATION OF
23 TERRANCE MARTIN

24 BY MR. JUSTICE:

25 Q Mr. Martin, what's your connection with the

1 Claimant, Wanda Tubbs?

2 A That's my mother.

3 Q And who was -- were you living at the house at
4 3869 Jim Cummings Highway?

5 A Yeah.

6 Q At the time when this, when you were arrested?

7 A Yes.

8 Q Okay. And please speak to where everybody can
9 hear you, if you would. And did you own the house at
10 that time? Who owned the house?

11 A My mother.

12 Q Ms. Tubbs?

13 A Yes.

14 Q Now, were you present when the search was
15 executed?

16 A Yes.

17 Q And can you tell us a little bit about --
18 well, did your house smell like marijuana when the search
19 was executed?

20 A No. No, sir. Ain't no way.

21 Q Okay. Did the Detective make some kind of
22 comment to you that he smelled marijuana inside the
23 house?

24 A No. He said he had a Search Warrant for the
25 smell of marijuana the night before.

1 Q Okay. So you don't remember him even
2 specifically claiming to smell marijuana at the time?

3 A No. No, sir.

4 Q In any event, do you know what marijuana
5 smells like?

6 A Yes, sir.

7 Q You have multiple drug felonies. Is that
8 correct?

9 A Yes, sir.

10 Q Did any of those involve marijuana?

11 A No, sir.

12 Q But you are familiar -- are you familiar with
13 what it smells like?

14 A Yes, sir.

15 Q Did they find, did the Sheriff's deputies find
16 any sizeable amount of marijuana in your house that day?

17 A No, sir. They didn't find it. I gave it to
18 them.

19 Q And what did you give to them, specifically?

20 A It was a little small bag of marijuana.

21 Q Okay. And tell us how that came about. How
22 did they seize that?

23 A They asked if there was a large amount of
24 marijuana. They asked was there a large amount of
25 marijuana. I said, "No. There ain't no large amount of

1 marijuana in the house."

2 Q Okay. And then they showed you a Search
3 Warrant at some point, is that correct?

4 A Right.

5 Q And when you -- so where was the marijuana
6 seized from, or where was it found?

7 A I gave it to them upstairs.

8 Q And upstairs, was it just sitting out on top
9 of a table, or on the floor, or how was it packaged?

10 A No. It was in my friend's shoe.

11 Q In a shoe?

12 A Yeah. It was in a shoe. I went and got it
13 and gave it to them.

14 Q Okay. Were the plant leaves themselves
15 actually in a shoe, or was there any kind of container?

16 A It was a bag, a little bag about like this.

17 Q And when you say there was a bag, what kind of
18 bag was this?

19 A A sandwich bag.

20 Q Like a Ziploc?

21 A No. It was a sandwich bag.

22 Q Okay. Was it closed or open?

23 A It was closed. It was tied in a knot.

24 Q Okay. So when you say an amount of marijuana
25 about like that, are you saying about like a handful

1 amount?

2 A Probably a little bit smaller than a handful.

3 Q So probably -- so you are saying that the
4 amount of marijuana seized was less than a handful?

5 A Yes, less than a handful.

6 Q Had you stored any large amount of marijuana
7 in your house in the -- I don't know -- week leading up
8 to that event?

9 A Never.

10 Q Okay. And again, you haven't pled guilty to
11 dealing marijuana. It was, you actually pled guilty to
12 dealing some harder stuff, is that right?

13 A That's right.

14 Q No further questions for this witness.

15

16 THE COURT: Questions, Mr. Rice?

17 MR. RICE: One moment, Your Honor.

18

19 CROSS-EXAMINATION OF

20 TERRANCE MARTIN

21 BY MR. RICE:

22 Q Okay. I've got a few pictures here I'd like
23 you to take a look at. Okay?

24

25 THE COURT: Can you see those okay,

1 Mr. Marlin?

2 WITNESS: Yes, sir.

3 THE COURT: All right.

4

5 Q BY MR. RICE: All right. So what does this
6 represent?

7 A The closet upstairs.

8 Q Okay. And do you see the shoe that you
9 presented to the officer --

10 A Yes, sir.

11 Q -- that had the marijuana in it?

12 A Yes, sir.

13 Q Which shoe was that?

14 A It was the white shoes up there, if I'm
15 correct.

16 Q Okay. Now, is that the marijuana you were
17 speaking of? Do you see that? And I'm sorry for having
18 to -- let me see if I can pull that forward.

19 A No, sir. I took the marijuana out of the shoe
20 and gave it to him.

21 Q Gave it to him?

22 A Yeah.

23 Q Okay. Does that look like the bag?

24 A Yeah. That looks like it.

25 Q Okay.

1 MR. RICE: Your Honor, I'd like to
2 have -- and of course, I will have these
3 printed out in color and distributed to both
4 myself and you. But I'd like to have it
5 marked as an exhibit, the last two pictures.

6 THE COURT: All right.

7 (EXHIBIT 4, PHOTOS.)

8 (ALL PHOTOS MARKED AFTER HEARING AS ONE
9 COLLECTIVE EXHIBIT 16, WHICH INCLUDES EXHIBIT 4.)

10 Q BY MR. RICE: Now, did you smoke marijuana in
11 the house?

12 A Have I smoked marijuana in the house?

13 Q Yes?

14 A I have, but I hadn't around that time.

15 Q Okay. Now, you are a user of marijuana. Is
16 that correct --

17 A Right.

18 Q -- to say? How often, what frequency would
19 you use marijuana at the house?

20 A I didn't smoke that much. Because at the
21 time, I was trying to clean up. Because it was about
22 time for me to do my trucking season.

23 Q Okay.

24 A And I was trying to get my system clean and
25 all that because I was fixing to go back out on the road

1 and start trucking.

2 Q And did Shaundra, did she smoke it?

3 A No.

4 Q No. Okay. I've got another picture here.

5 Can you identify what's in this picture?

6 A That's a half-rolled cigar wrap.

7 Q And had that been used to smoke marijuana?

8 A It had been used to smoke marijuana.

9 Q And where was that?

10

11 **MR. JUSTICE:** Could you repeat that?

12 I couldn't hear what you said.

13

14 A It had been used to smoke marijuana. But Ryan
15 Lyons was the one that had smoked that marijuana.

16 Q Okay. But it was smoked there at the house?

17 A Yeah. It's probably, I think it was out on
18 the back porch, specifically.

19 Q Okay. And so does that particular -- where is
20 that table?

21 A I think that's a dresser.

22 Q And where is that?

23 A That dresser was upstairs.

24 Q Upstairs. Okay. And about how long ago did
25 -- was that fresh? Was that within the last few days?

1 A I don't really remember how long or when that
2 was there.

3 Q Okay.

4 A You know, but he had got in casual arguments
5 with his girlfriend, and then he would come up there and
6 stay.

7 Q Okay.

8 A And I --

9 Q So was he a frequent user?

10 A Yeah.

11 Q And he smoked --

12 A Yeah.

13 Q Did he smoke it at the house?

14 A Yeah. He smoked it outside though. He went
15 out --

16 Q He smoked it outside?

17 A Yeah. Because we had kids on the inside.

18 Q Okay. Would it be reasonable for a person to
19 come on the front porch and if somebody were smoking it
20 in the back, to maybe smell that?

21 A No. From outside, you couldn't smell it. The
22 house is too big. That's all the way around the back.

23 Q Okay. All right.

24

25 **MR. RICE:** Your Honor, I have no

1 further questions.

2 **THE COURT:** Redirect, Mr. Justice?

3 **MR. RICE:** Oh, I do like to have that
4 admitted as an exhibit.

5 **THE COURT:** All right. Three
6 pictures. Will you be able to print those out
7 here?

8 **MR. RICE:** I think I can print them
9 out over at the color copy machine here.

10 **THE COURT:** Okay. Good. So we've
11 got three photos we'll mark as Collective
12 Exhibit 4.

13 **(EXHIBIT 4 PREVIOUSLY MARKED, THREE PHOTOS.)**

14
15 **MR. JUSTICE:** And I don't think I
16 have any further questions.

17 **THE COURT:** All right. Let's see.
18 Mr. Martin, if you will step back outside. Is
19 he free to go, or do you want to reserve him
20 for later?

21 **MR. JUSTICE:** We definitely need him
22 to stick around. We may need you. So you
23 both just stick around.

24 **WITNESS:** Okay.

25 **THE COURT:** Don't discuss your

1 further questions.

2 **THE COURT:** Redirect, Mr. Justice?

3 **MR. RICE:** Oh, I do like to have that
4 admitted as an exhibit.

5 **THE COURT:** All right. Three
6 pictures. Will you be able to print those out
7 here?

8 **MR. RICE:** I think I can print them
9 out over at the color copy machine here.

10 **THE COURT:** Okay. Good. So we've
11 got three photos we'll mark as Collective
12 Exhibit 4.

13 **(EXHIBIT 4 PREVIOUSLY MARKED, THREE PHOTOS.)**

14
15 **MR. JUSTICE:** And I don't think I
16 have any further questions.

17 **THE COURT:** All right. Let's see.
18 Mr. Martin, if you will step back outside. Is
19 he free to go, or do you want to reserve him
20 for later?

21 **MR. JUSTICE:** We definitely need him
22 to stick around. We may need you. So you
23 both just stick around.

24 **WITNESS:** Okay.

25 **THE COURT:** Don't discuss your

82a
APPENDIX L

65

1 testimony with anybody.
2 **WITNESS:** Okay.
3 **THE COURT:** All right. All right.
4 Other proof, Mr. Justice?
5 **MR. JUSTICE:** Yes, sir. I'll call
6 Investigator Gullett.
7 **THE COURT:** All right. If you'll
8 raise your right hand?
9
10 **BRANDON GULLETT**
11 was called as a witness, and after first being duly
12 sworn, testified as follows:
13
14 **THE COURT:** And state your full name
15 for us.
16 **INV. GULLETT:** It will be Brandon
17 Gullett.
18 **THE COURT:** All right. G-U-L-L-E-T?
19 **INV. GULLETT:** E-T-T.
20 **THE COURT:** Two T's. All right.
21 **INV. GULLETT:** Yes, sir.
22 **THE COURT:** Thank you.
23
24
25

**DIRECT EXAMINATION OF
BRANDON GULLETT**

BY MR. JUSTICE:

Q Investigator Gullett, did you investigate a break-in at the residence we are talking about on Jim Cummings Highway in February of 2017?

A Yes, sir, I did.

Q And pursuant to that investigation, did you go into the house?

A I did.

Q And did you recover any marijuana in that investigation?

A I did.

Q And can you -- and we will need to make this the next-numbered exhibit. Can you show us what marijuana you obtained?

A Yes, sir. I obtained marijuana in two separate places on that day. The first one is upstairs in the bedroom that we've been discussing all morning.

MR. RICE: Can you see that, Your Honor?

THE COURT: I can.

WITNESS: Can you see it now?

THE COURT: Yeah, I can see it. Can

1 you see it, Ms. Tubbs?

2 **MS. TUBBS:** No, I cannot.

3 **THE COURT:** Why don't you move back
4 over here?

5 **MS. TUBBS:** Okay.

6 **THE COURT:** Because I think we are
7 going to have more than one photograph here to
8 look at. If you'd rather stand, make yourself
9 comfortable.

10 **MS. TUBBS:** I would please like to
11 stand for a few minutes.

12 **THE COURT:** All right. Go ahead.

13
14 A This is the marijuana that was in a Tupperware
15 bowl. Hang on just a second. We've got too many things
16 open at one time.

17 Q BY MR. JUSTICE: Is that the photo we've
18 already looked at?

19 A It is. Here is another photo of it. It is a
20 photo of it on the inside.

21
22 **THE COURT:** Can you tilt that screen
23 toward -- right there is good. Thank you.

24
25 A Yes, sir. That was the marijuana that was

1 found upstairs. And then there was two rolled marijuana
2 joints or cigar rolls on the kitchen table, along with
3 some yellow pills.

4 Q BY MR. JUSTICE: And do you have any pictures
5 showing to scale this amount of marijuana we are looking
6 at? Okay. So would you agree that this amount of
7 marijuana you found could basically be held in someone's
8 hand, like a handful?

9 A An ounce of marijuana, yeah, it can be held in
10 somebody's hand.

11 Q Okay. So --

12 A And I can also hold a pound in my hand, too.

13 Q Okay. So would you consider a handful of
14 marijuana a large amount of marijuana?

15 A Yes, sir.

16 Q Okay. Is that the largest amount of marijuana
17 you've ever uncovered in Cannon County?

18 A No, sir.

19 Q How much -- what's the largest amount you've
20 uncovered?

21 A Plant-wise, or processed dope?

22 Q I guess processed?

23 A 74.6 pounds.

24 Q Okay. And you'd say that was, that would be
25 -- could you hold 74.6 pounds in your hand?

1 A No, sir.

2 Q Okay. But in February, you found a handful of
3 marijuana?

4 A Yes, sir.

5 Q Why did you write in your Search Warrant
6 Affidavit that you found a large amount of marijuana?

7 A A Tupperware bowl. In my mind, any dope is a
8 large amount of dope.

9 Q Okay. So in your mind, any amount would be a
10 large amount?

11 A Yes, sir.

12 Q Now, leading up to this Search Warrant, you
13 were already trying to investigate Mr. Martin for dealing
14 drugs. Isn't that true?

15 A I had already been investigating him, yes,
16 sir.

17 Q Okay. And so basically you were looking for a
18 reason, or could we even say an excuse to search that
19 house, weren't you?

20 A Can you repeat your question?

21 Q Were you looking for an excuse to search that
22 house?

23 A I wouldn't say I was nit-picking for a reason
24 to search the house, no, sir.

25 Q Okay.

87a
APPENDIX M

156

1 step back out. We will get to you when
2 Mr. Justice is ready to call him. All right.
3 Ms. Tubbs, if you will raise your right hand,
4 I'll place you under oath.

5 **(WITNESS SWORN.)**

6
7 **DIRECT EXAMINATION OF**

8 **WANDA TUBBS**

9 **BY MR. RICE:**

10 Q All right, Ms. Tubbs. It's been a long day,
11 hasn't it?

12 A Yes, indeed.

13 Q I've just got a few questions for you. All
14 right. So the currency in dispute is in this Michael
15 Kors bag, is that correct?

16 A That's correct.

17 Q Now, you see how it's bundled?

18 A I do.

19 Q And you've seen the proof and the pictures
20 from earlier, and it's bundled similarly throughout the
21 house. Is that correct, based on what you've seen?

22 A Yes.

23 Q Okay. Now, with that being said, how did the
24 money get bundled like that in the bag? Did you do that
25 yourself?

TINA CARTER, LCR #484

1 A I do that. That's how I bundle my money.

2 Q Okay. Can you tell me a little bit about the
3 denominations and what's in the bag?

4 A It was mostly hundreds, fifties, twenties.
5 You might find a five or ten every so often or something,
6 but that's how I mostly bundle my money. Even you know,
7 if I go out to my car right now and bring my purse in
8 here and look at it, you will see my money like that.

9 Q And where did you get this money?

10 A From when I had my settlement, you know. I
11 don't spend a great amount of money, you know. I got a
12 settlement of six figures.

13 Q How much was that settlement?

14 A I want to say it was like \$180,000, or
15 \$186,000, something like that. And then I had, in my
16 other court case, I had so much backpay on it. And I
17 don't remember the exact amount on it. I want to say it
18 might have been like twenty, thirty. It was less than
19 forty, I think, just in back pay.

20 Q When was this settlement?

21 A Let's see. I want to say it was right at
22 2010, '11, something like that.

23 Q And is this --

24 A He has the paperwork to show it. Because
25 going back in numbers and stuff and dates and stuff,

1 that's been so long. I'll honestly tell you I can't
2 remember every date. But I've got the proof to show you.

3 Q So you said this was roughly 2010-ish though,
4 right? We are good there?

5 A Yeah.

6 Q And it's roughly \$180,000?

7 A Uh-hmm.

8 Q Now, is that the same money that you were
9 awarded back at this settlement?

10 A That is some of that. That is the majority of
11 that. And then I've spent some, and then I put back, you
12 know, back and forth. Because I get a substantial lump
13 sum each month, too.

14 Q How much is your substantial lump sum each
15 month?

16 A It's right at \$1,500 or \$1,600 a month.

17 Q And the backpay, is that backpay related to
18 the settlement?

19 A No.

20 Q Did that happen about the same time?

21 A Yeah. Right at, close to right at the same
22 time. Because one of them is work comp disability. And
23 the other one is my settlement for where I had my
24 accident.

25 Q Okay. Now, have you -- in that time, have you

1 maintained any other employment?

2 A No.

3 Q Okay. And what are your expenses roughly
4 monthly?

5 A Probably \$700, \$800 a month.

6 Q And what are those expenses?

7 A My utilities. And my homeowners, which is
8 only like right at \$300. The rest of it is my utilities.

9 Q Now, where do you live?

10 A In Smithville.

11 Q Okay. And is it -- what kind of home is it?
12 Is it a rental? Did you buy it outright? Did you make a
13 payment on it?

14 A I bought it. I'm purchasing the home.

15 Q You are purchasing?

16 A Yes. It's not paid for.

17 Q Okay. And how much is your monthly payment to
18 the mortgage?

19 A I think it's \$302.

20 Q You think, or you know?

21 A I'm almost positive. It's some-odd cents, but
22 you know.

23 Q All right. So, and I'm just doing this
24 because I'm an attorney -- and not a very good one -- and
25 I don't do math well either. So I'm looking at you

1 saying \$700 or \$800 a month, and that includes your
2 utilities?

3 A Uh-hmm.

4 Q That includes your -- you know, you say
5 homeowner's? Do you mean your homeowner's insurance? Do
6 you mean --

7 A I mean my mortgage payment.

8 Q Mortgage payment. All right. That makes more
9 sense to me now.

10 A Okay. I'm sorry.

11 Q And when did you purchase this house?

12 A In '94 or '95. I'm not for sure which date.
13 I want to say -- let's see. It was either '94 or '95.

14 Q '94 or '95. And at any point have you
15 refinanced it --

16 A No.

17 Q -- or paid a lump sum down on it?

18 A I take that back. I did refinance it simply
19 because -- not to get more money on it. That's when I
20 went through that banking identify theft thing, the
21 reason why I pulled my money out of the bank.

22 And I financed it with a credit union to get
23 it away from that bank. Because that bank was merging
24 with the one in Smithville and the one in Lebanon. And
25 there was another lady that had the same first and last

1 name as me. So that's how I become of all of this.
2 Because I almost lost my home, two vehicles -- what
3 else? It was something else I had had.

4 Because at the time when I was working, I had
5 a part-time company. I was a Home Interior consultant.
6 And I sold stuff, the Home Interior decor stuff. And
7 that's where some of my income come from, too. And I
8 stayed in it four or five years, and made very good on
9 it.

10 Q Okay. And when was that that you did the
11 refinance, roughly? Was it after these settlements?

12 A No. No. It was after whatever date it was
13 that I quit doing with the bank and, you know. You will
14 have to ask my lawyer what that was. Because I can't
15 pinpoint a date. I can't.

16 Q All right. So --

17 A I wish I could help you more, but I can't
18 unless I look at the documents, and the paper, and stuff.
19 I'd have some idea that would be a guesstimation.

20 Q Now, did you at any point, have you made any
21 big purchases? Have you bought any cars? Have you gone
22 on any vacations, or bought anyone else gifts?

23 A I go to, I go with my friends, my retired
24 friends -- because most of them are broke down like me --
25 once a month, once every month, we will go to like

1 casinos. And it's not to gamble. Because I'm not a
2 big-time gambler. I only play like penny machines. But
3 it's just to get together for like two days, three days,
4 tops. And it's just to get together.

5 But as far as making a big purchase on
6 anything like that, no. Because I have a vehicle. And I
7 don't care how old it is, you know. I'm not the one
8 trying to keep up with the Joneses, so to speak. So you
9 know, until something is broke, I don't buy nothing.

10 Q When was the last time you did buy a car?

11 A Mine is a 2006. Maybe four or five years ago.
12 And I didn't buy it straight-out. I just traded my car
13 for it. Because it was hard for me to get in and out of
14 my truck by me having back surgery. And so I needed
15 something a little less. So my truck was newer, but my
16 car now is less in years. And so I came out a good deal
17 on it. And it was almost like half paid off. So see,
18 that helped me, too.

19 Q And have you had any other income throughout
20 this period? I know we had discussed earlier about --

21 A Just purchasing land and getting the money for
22 it. And I'd turn it right back in and purchase something
23 else.

24 Q Okay. And you --

25 A Not purchase something else, purchase like

1 more land, you know, to replace that.

2 Q Yeah. Now, what do you use to purchase this
3 land when you do your flips?

4 A I will either go through the bank and say,
5 "Hey, I want to borrow so much money." Or if Shaundra's
6 got the money, then I don't have to borrow any.

7 Q Okay.

8 A And if she borrows, or if she got the money to
9 do it, then you know, I will try to come up with -- like
10 go to good, good rummage sales or something like that and
11 buy appliances and stuff. You know, if you will fix it
12 up and you put stuff in there, it will sell a lot better.
13 But that last time, I had to purchase it.

14 Q At any point -- at what point did you realize
15 what was going on at the house, as far as the
16 investigation into the potential drug sales out of the
17 residence?

18 Q When I was there?

19 A When did you first learn of it?

20 A I think Shaundra had called me, or her son
21 might have called me and said, "Hey, the house is being
22 broken into," or "The police are down here searching the
23 house." And I said, "For what?" And they said, "Drugs
24 or something." They came in on a search warrant or
25 something, came in on a search warrant for, to serve

1 child support or something like that.

2 Q At any point did anyone, either Shaundra or
3 Terrance, ask you to claim the money in order to protect
4 it from being forfeited?

5 A No. They didn't have to. Why would I
6 jeopardize my life savings? You know, that's what I got,
7 you know, because I'm not going to work the rest of my
8 life.

9 Q Were you aware of the home invasion that
10 occurred where \$10,000 had been taken, and Shaundra was
11 hit in the head and pistol-whipped, I guess?

12 A I wasn't aware of it until like up in the
13 morning time. I don't know if her mother had called me
14 because she had called her mother, or someone had called
15 me. Because I went down there. Because I tried to call
16 her, and she said she had been broken into or something.
17 And she said she got to go to the doctor, or
18 something like that. I said, "Well, I'm on my way down
19 there." Because she told me that my son was out of town.
20 I didn't know he was out of town, gone to some basketball
21 game.

22 Q And knowing that this had previously happened,
23 you were still comfortable with taking money to her and
24 your son to leave at the house?

25 A I had no reason not to, you know. Because

1 I've always done it. I've done it for years. You know,
2 if I don't do them, then you know, I will take it to one
3 of my sisters in the next town.

4 But if I'm going toward east Tennessee, then I
5 will take it to my sister and stuff up there. If I'm
6 going down toward Mississippi, Kentucky, that way, then I
7 will just drop it off to them.

8 Q Now, at any point did it worry you or bother
9 you that --

10 A No, it didn't bother me.

11 Q -- this had happened, and now you are dropping
12 off what you claim to be your nest egg?

13 A No. Because I've done it for so many months,
14 you know. I didn't -- you know, you can't predict when
15 something is going to happen. You know, I've been broken
16 into when I -- back in '94, or something like that.

17 And you just can't let stuff scare you. You
18 know, it scared me when my house first got broken into.
19 And I had someone to stay with me, like two or three
20 weeks. That was when I first started, you know, maybe
21 like in '83 or '84.

22 There was a random, house invasions that they
23 hit like five or six houses in Smithville, up through
24 where I lived. And that was in the industrial area. And
25 they hit like four or five houses.

1 And I honestly believe to this day because I
2 had written my boyfriend a note saying, "I will be home
3 today no later than," say like one o'clock. I don't
4 remember the time. I honestly believe had it not been
5 for that note sitting on top of my television for him to
6 read that, or for them to read that, that my house
7 probably would have been ransacked more.

8 Because when I came, it was right at that time
9 line. There was a cigarette that was still burning in my
10 carpet. And had I not got there, my house probably would
11 have been destroyed or whatever. So see?

12 Q But you seem pretty confident that your money
13 would be safer at their house versus in a financial
14 institution?

15 A Yeah. Because I've done been through, I've
16 been through a lot. You know, here is what got me away
17 from that, as well as the -- what do you call it --
18 identify theft. When I started at this bank, I put some
19 jewelry, and I put a little bit of money I had saved up.
20 And I put it in a time-vault thing.

21 Well, it was explained to me when I opened
22 this safe deposit box -- first time I ever done it.
23 Okay. They said, "Wanda, this is your key. This is our
24 key. We cannot go into that vault box without your key."
25 So I'm putting my trust in you.

1 So the next time I come there -- I don't know
2 if it was a month or two, or something like that, I
3 noticed that things had been moved around in my box. My
4 money that I had had -- you know the dollar bill thing,
5 the tape thing that says like \$100, \$200 -- the little
6 strip that goes on the money that it's wrapped around if
7 a teller gets money, you know, it will say like \$500 on
8 it, or something? That was on it.

9 And I said, "No. That's not true." I lost my
10 faith in them when they said, you know, "We can't go in
11 this box unless we got your key to match with ours."
12 Because she took me in there and showed me both keys has
13 to be in there to turn to open it. So that's the way it
14 was. You know, my mom and dad, they didn't believe in
15 using a bank and stuff growing up.

16
17 **MR. RICE:** No further questions, Your
18 Honor.

19 **THE COURT:** Questions?
20

21 **CROSS-EXAMINATION OF**

22 **WANDA TUBBS**

23 **BY MR. JUSTICE:**

24 Ms. Tubbs, why are you trying to get this
25 ninety-five or so thousand dollars?

1 A That's my money that I'm supposed to have to
2 live on the rest of my life, as far as, you know, me
3 living, my time life. You know, it was given to me. You
4 know, I'm sorry that it came out to this right here. But
5 I never suspected this to happen.

6 Q Okay.

7 A Had I thought that something like this was
8 going to happen, I wouldn't have gave it to them.

9 Q Okay. And in terms of what you are seeking,
10 are you clarifying that you are asking for whatever was
11 in the Michael Kors bag?

12 A Yes.

13 Q And you've said earlier today -- well, how
14 much do you think should have been in that bag?

15 A I was thinking between \$95,000 and \$97,000.

16 Q Okay.

17 A And I said give or take on it.

18 Q And you've heard some testimony so far that
19 there was only \$93,740 in there?

20 A Uh-hmm.

21 Q What is your reaction to that?

22 A I can't, speaking with an honest and clear
23 mind, I just don't find that accurate. I don't.

24 Q Okay.

25 A That's my personal opinion.

1 Q Are you saying you think there was really more
2 in that bag?

3 A I'm honestly saying it was at least \$95,000 to
4 \$97,000.

5 Q Did you specifically count it all up,
6 concretely, before you left it at that house?

7 A I did not.

8 Q Okay. Let's step back a little bit. And can
9 you tell me what this document is?

10 A This is my workers' compensation settlement.

11 Q Okay. And could we turn to about the -- it's
12 hard to find. Let me have you look at Page 7. And can
13 you tell us how much money was involved in this
14 settlement?

15 A \$184,518.

16 Q Okay. And was there some portion of that that
17 was then subtracted from that total to go towards your
18 attorney?

19 A Yes, \$36,903.60.

20 Q Okay. And how much does it say was left over
21 for you?

22 A \$141,356.73.

23 Q Okay. And if we could make this the next
24 -- and now you are saying -- let me clarify. Can you
25 tell us -- you say this is a settlement you got?

1 A It is.

2 Q How did you get that?

3 A I had an accident at the facility that I
4 worked for and --

5 Q Where were you working?

6 A At Tenneco Automotive. And I was there right
7 at like 18 years and something.

8 Q And then what happened?

9 A I stepped on a diamond-cut dock plate and fell
10 and had to have two fusions, one vertebra taken out, and
11 put a microfiber one in. I had surgery done on my left
12 leg, which crushed some nerves and stuff.

13 Q Okay. And this was a settlement you got to
14 compensate you for the fact that you could not continue
15 working?

16 A Right.

17

18 MR. JUSTICE: All right. If we could
19 make this judgment the next exhibit?

20 THE COURT: Any objection, Mr. Rice?

21 MR. RICE: No, Your Honor.

22 THE COURT: All right. Be admitted
23 and marked as Exhibit No. 11.

24 (EXHIBIT 11, WORK COMP SETTLEMENT.)

25

1 Q BY MR. JUSTICE: And can you tell us what this
2 document is?

3 A This is the document where I was approved for
4 Social Security disability.

5 Q Okay. And is this the document -- how was
6 that connected with your other civil judgment? In other
7 words, were they related at all?

8 A Somewhat, give and take. It's simply because
9 I wasn't going to be able to work up until the time of
10 retirement. So they had to settle with this type of
11 disability up until I become the age of retirement, and
12 then I will be able to receive my retirement on top of
13 this.

14 Q Okay. And is this the, is this the program
15 where you said you were now getting around \$1,500 a
16 month?

17 A Yes.

18 Q Can you turn to the bottom of the first page?
19 Did you start at \$1,500, or did it start a little bit
20 lower?

21 A No. It was lower than that.

22 Q Okay. And it seems to go up over time, --

23 A Yes.

24 Q -- according to some formula?
25

1 **MR. JUSTICE:** Okay. If we could make
2 this the next exhibit? It's a Social Security
3 Notice of Award.

4 **THE COURT:** Any objection, Mr. Rice?

5 **MR. RICE:** No, Your Honor.

6 **THE COURT:** All right. Be admitted
7 and marked as Exhibit No. 12.

8 **(EXHIBIT 12, SOCIAL SECURITY AWARD.)**

9
10 Q BY MR. JUSTICE: And could you verify from
11 looking at these records that you got these two
12 settlements or awards in 2010 or 2011?

13 A Uh-hmm, 2010.

14 Q And then this one it looks like may have been
15 filed in 2011, per the court document?

16 A Yes.

17 Q And you were asked whether you have had any
18 other regular employment since then. Or you were asked
19 whether you have any other employment since then. Are
20 you telling us that your only other employment has been
21 the flipping?

22 A That's it. And I don't know if you even call
23 it employment. I just, we just do it for -- I do it
24 because it's just fun, to have something to do. But I'm
25 sure Shaundra does it, and it counts as employment. I

1 mean, yeah.

2 Q And about how many -- including this house
3 that we are talking about where the drugs were found, how
4 many times did you say you've flipped either land, or a
5 house, or both?

6 A I know we've flipped one land. I traded it
7 out, or we traded it out for like a four-wheeler.
8 Because you know, when you -- we got this land through
9 repo, like at the courthouse and stuff like that.

10 So if it didn't bring much, then some, or
11 quite a bit of the land is like on cliff-sides, you know.
12 You couldn't put a house on it, unless you brought major,
13 major stuff in to build up the land. And so sometimes we
14 would trade it for whatever we can, you know.

15 Q Okay. But you said --

16 A A four-wheeler one time.

17 Q I'm just trying to get an estimate of how many
18 times you've done this. Was it twice, was it thrice, was
19 it more?

20 A Twice as I know of.

21 Q Okay. You don't remember for sure if you'd
22 done it more than that?

23 A Because it was this house and the house that
24 -- the land that had a house on it. But it had burnt
25 prior to us purchasing that. But it still had the

1 foundation. It was, you know, a basement of it. But the
2 house part wasn't on top.

3 Q Okay. So you clearly remember doing it twice?

4 A Yes.

5 Q Is it possible you did it any more than twice?

6 A Not to the best of my recollection, I don't.

7 Q What was the incident involving a
8 four-wheeler?

9 A A piece of land. We had posted, I think it
10 was on Craigslist or LSN, less than a half acre, or less
11 than an acre either to purchase it, or make an even trade
12 for something like that.

13 Q So was that a third or subsequent, other than
14 the -- there was the house on Jim Cummings Highway.
15 There was the house with the basement. And then there
16 was some other land with a, involving a four-wheeler
17 trade. Is that correct?

18 A Yeah. Yeah. But that wasn't money. That was
19 just --

20 Q Okay. And were you always doing it with
21 Ms. Smith, Ms. Shaundra Smith?

22 A Yes. Shaundra is the one who brought it to my
23 attention that they do repo's at the courthouse and
24 stuff, you know, every so often.

25 Q Okay. Now, you've mentioned, you've mentioned

1 your distrust of banks. And you've mentioned -- just to
2 clarify, what was it that went wrong with your safety
3 deposit box?

4 A I just explained it, you know.

5 Q There was some item that was moved, is that
6 right?

7 A There was items moved. My money had, I guess
8 it had been gone through. Because when I put the money
9 in there, it was, you know, folded up. And I had it
10 banded up. And when I came back to it a month or two
11 later, it was laid out flat. And it had that strip on
12 it.

13 Q Okay. So someone had repackaged your money,
14 it looked like?

15 A Yeah. So you know, to each his own. But
16 that's just how I believe. That's just how I am. It
17 might be wrong. A lot of people say, "I don't know why
18 you want to keep that large amount," but.

19 Q And you said there was some other incident
20 involving what you called identify theft?

21 A Uh-hmm.

22 Q Can you tell us about that?

23 A Wilson Bank & Trust was merging, had bought
24 out DeKalb Community Bank in Smithville. And they were
25 merging. And they said they had put out statements to

1 all of the, all of the accountants or people that had
2 bank accounts and stuff.

3 Now what went on with this, ever since I had
4 been employed with Tenneco Automotive -- which was in
5 '94. I think it was August or September of '94 -- it was
6 required that you have a bank account. They don't issue
7 checks. It had to be direct deposit. So never once did
8 I ever have a live check that come to me. My money
9 always went into the bank.

10 I had purchased a home. And I had one or two
11 vehicles because, you know, I worked a lot at that time
12 and made good money, you know. It was a good place to
13 work at. And in order for me to make payments -- I never
14 did have to make payments. I had it to automatically
15 withdraw from whenever my direct deposit would go in.

16 Each week my direct deposit would go in, and
17 they would draw so much out and apply it toward my house
18 payment, my vehicles. And they said they had sent out a
19 letter or something. I never received it. But I got
20 one, I think it was --

21 Q Let me slow you down a minute. They sent out
22 a letter saying what?

23 A That they were merging, and that they was
24 going to have to change the bank accounts. And I guess
25 the people in Smithville, they was either going to add

1 one number onto the end of their checking account number,
2 routing number, or whatever. And I never got that.

3 And so nevertheless, whether I got it or not,
4 I never did do anything. Because all of my stuff was
5 direct deposit. I didn't have to worry about anything.

6 And so I had got a letter one day, and it came
7 from Dekalb Community Bank. And it said, "You've got
8 until," say like this Friday or next Friday, "and we are
9 going to repossess your cars and close on your house."
10 And I said, "What?" You know, because I was working a
11 lot of hours then.

12 And so I literally had to take off. Because
13 we worked so much that everything was closed before I
14 went in, and it was closed after I got off work. So I
15 took off. And this is what I found out, that it was
16 merging.

17 And there's this lady. I will never forget.
18 She lives in Lebanon. And her name is Wanda Tubbs. And
19 we had -- so now whenever I sign something, the majority
20 of the time I sign it in a different way.

21 Q I need to be real clear about what it is you
22 are saying happened to your money?

23 A Oh. Oh, I'm sorry. I thought I was getting
24 to that. Whenever my direct deposit was going in, it was
25 going into her account. Because to make a long story

1 short, I didn't go out there and I guess verify that I
2 knew that there was going to be one number off, or
3 something like that. So I never did verify that. So it
4 was going into her account. And that's how it became all
5 of my money was going in her account and stuff.

6 Q So due to some sort of bank error, your money
7 was being given to someone else?

8 A Yeah.

9 Q Did they ever fix that when you called the
10 error to their attention?

11 A Yes. It took it right at like two weeks to a
12 month. And as soon as they fixed it, I pulled everything
13 out of that bank.

14 Q Okay. And can you tell us what this document
15 that I'm passing you refers to?

16 A This is a document that I went to the bank,
17 which now is Wilson Bank & Trust. And I had the lady
18 that knew me at the time, and she knew I always had the
19 dealings --

20 Q I've got a clearer version of it.

21 A -- of an account. And it showed the date that
22 when I closed that account.

23 Q All right. And the date when you closed that
24 account was about when?

25 A It says 12-1-04.

1 Q Okay. So you are saying this document just
2 reflects the bank account being closed that you had the
3 problems with?

4 A Uh-hmm. Uh-hmm.

5 Q And was it that same bank that you had both
6 problems with the identify theft and the safety deposit
7 box?

8 A Yes. Yes, both.

9

10 MR. JUSTICE: If we can make this
11 bank document the next exhibit?

12 THE COURT: Any objection?

13 MR. RICE: No, Your Honor.

14 (EXHIBIT 13, BANK ACCOUNT CLOSURE.)

15

16 Q BY MR. JUSTICE: Now, I wasn't real clear when
17 you were testifying about your house was broken into in
18 the '90's, is that right?

19 A Yes.

20 Q And you were basically saying that you thought
21 the burglar might have just left right before you
22 arrived?

23 A He had to just leave because there was a fresh
24 cigarette laying in my carpet when I walked through the
25 front door. And it was burning. My carpet was burning.

1 Q Okay. And so the point of that -- what did
2 you say about a note?

3 A I had left a note because my boyfriend was
4 going to come in. I don't know what we were doing, but I
5 remember I left him a note and telling him I would be
6 there. And I would be there no later than this time.

7 Q Okay.

8 A And I'm telling you, when I walked in my
9 house, it wasn't within five, ten minutes of that time
10 that I walked in the house.

11 Q Okay.

12 A And I --

13 Q So you are simply saying that you think the
14 fact that you were home, as opposed to being out of town,
15 might have prevented you from being burglarized any
16 worse --

17 A Yes. Because it would have shown activity, I
18 believe.

19 Q Okay. So what are your feelings on -- without
20 getting into all of the nitty-gritty details, when you
21 are not out of town where do you typically store your
22 money?

23 A In my home in my safe.

24 Q Okay. And you don't like leaving it there in
25 the safe while you are gone?

1 A No. Because, you know --

2 Q While you are gone out of town, I mean?

3 A To me -- I have a security system, but nothing
4 is secure. Nothing. You know, by the time -- sometimes
5 I think if security systems go off, by the time it calls,
6 or the police gets to it, or something like that, they
7 could be in and out. You never know. So I just always
8 try to take precautions.

9 Q Okay. What about the safe though? Wouldn't
10 the safe protect it?

11 A No. Nothing is written in stone now. No. I
12 just, it's safe while I'm there I think, you know. I'd
13 have a a fighting chance, but no.

14 Q Okay.

15 A Anything can get broken into. Anything can
16 get carried off.

17 Q Now, what specific trip were you going on
18 around this time when the search warrant was executed?

19 A I was going to Mississippi because it was one
20 of our girlfriend's birthday. And we was going to go out
21 that weekend. And they was having some type of big
22 event. I want to say it was like Cinco de Mayo,
23 something like that.

24 Q And when you say Mississippi, where
25 specifically in Mississippi?

1 A Tunica, Mississippi.

2 Q Okay. Is that one of the casinos that you say
3 you would often go to?

4 A Yes. That's the resort down there.

5 Q And can you identify for me what this document
6 in this envelope -- can you reach that? Let me get it.

7 A I can't get that.

8 Q Let me hand a copy of it to Mr. Rice.

9 A I just had them to give me a document to show
10 that I was there on these dates, on this date.

11 Q Well, just tell me, what is this document?
12 How did you get it?

13 A After this thing had happened and I realized
14 that, you know, my money was at jeopardy, I had to show
15 proof that, you know, I was still traveling, the purpose
16 of my travel, and the reason why my money was left there
17 at that time. So this is the place I was at.

18 Q In terms of -- let's just go back a couple
19 steps. About when, do you know when you left for Tunica?

20 A That morning.

21 Q The morning, you think it was the morning of
22 May 5th -- or May 4th, sorry?

23 A May 5th.

24 Q Okay. Well, the search was apparently
25 executed on May 4th.

1 A Uh-hmm.

2 Q So you are saying you think you left the next
3 morning?

4 A I left that next morning. I remember that.

5 Q Okay. And in relation to when the search
6 warrant was executed, when did you bring -- when and what
7 did you bring to your son's house?

8 A I brought my money in that Michael Kors bag a
9 day or two prior.

10 Q What is Michael Kors?

11 A Michael Kors is a, it's a designer bag.

12 Q Is that something most men know about?

13 A Well, some might because they buy their ladies
14 some. But it's an expensive designer bag, you know.
15 It's just like a Coach bag, or Louis Vuitton. You know,
16 it takes a woman to really explain.

17 Q Okay. And where did you get that?

18 A I had got that bag, I want to say it was in
19 Nashville.

20 Q Okay.

21 A It was either in Nashville or in Memphis.

22 Q And was that all of your savings that you had?
23 I mean, did you have any savings anywhere else, or keep
24 any cash on your person?

25 A I had a little with me, you know. I always

1 take enough if my house, I mean, my car breaks down, or
2 -- and I took some to gamble on. And I still have, you
3 know, just a little in my credit union, you know. Not
4 much, just a thousand or two thousand, something like
5 that. But yeah.

6 Q Okay. And so you brought that Michael Kors
7 bag full of cash to the house and left it there?

8 A Uh-hmm.

9 Q And when --

10

11 THE COURT: I'm sorry. Is that a
12 yes?

13

14 A Yes. I'm sorry. Thank you.

15 Q BY MR. JUSTICE: And in relation to the
16 execution of the search warrant, when did you do that?

17 A A day or two prior.

18 Q Okay. And did you see what -- how did that
19 go? Did you just open the front door and hand them the
20 money and say, "I'm leaving?" Or did you say anything to
21 them?

22 A Well, I always let them know that "Hey, I'm
23 going out of town." Because you know, anything can
24 happen. And then that way if something happened in the
25 family -- you know, somebody get hurt, somebody died --

1 they'd know to get in touch with me. If they can't get
2 in touch with me by phone, you know, what place to call,
3 you know, stuff like that.

4 Q Okay. And did you see where they hid the
5 money away -- where they hid the bag away afterward?

6 A I didn't at that specific time. Because I
7 never questioned them. Because you know, every time I
8 would take it there -- it wasn't my first time doing it.
9 You know, I'd always come back and get it. And how I'd
10 give it to them, they'd give it right back to me.

11 Q So how many, about how many times do you think
12 you had done that? Do you know?

13 A Since -- let's see. My friend had asked me.
14 Probably in 2016, I think might have been when we started
15 going, the latter part of '15 or '16.

16 Q So around once a month, starting sometime in
17 2016, or the latter part of 2015?

18 A Uh-hmm. Uh-hmm.

19

20 THE COURT: Is that a yes?

21

22 A Yes. Thank you. I'm so sorry.

23 Q BY MR. JUSTICE: Okay. And all right. So
24 after the money was seized, it looks like the next
25 morning or sometime that night, you did go to

1 Mississippi. Is that correct?

2 A I did.

3 Q Okay. And now tell us, what are these
4 documents?

5 A These are the documents that I had had the
6 hotel, or the casino that I went to, to show proof that I
7 was there.

8 Q Okay. And in terms of -- what is Gold Strike?

9 A It is a casino resort.

10 Q And what is this second page? Is it some sort
11 of booking document?

12 A It just shows the time that I arrived, my room
13 number, the day I departed.

14 Q Okay.

15 A Just proof showing that, you know, I did have
16 a trip. I was there.

17 Q So one way or another, you did go to Tunica
18 the day after this?

19 A I did.

20

21 MR. JUSTICE: Okay. Could we
22 introduce these documents as the next exhibit?

23 THE COURT: Certainly. Any
24 objection, Mr. Rice?

25 MR. RICE: Yes, Your Honor. I do

1 have an objection.

2 THE COURT: All right. What's the
3 objection?

4 MR. RICE: The objection is that it
5 appears to be modified, and parts of it left
6 off. If we are going to introduce a document
7 as such -- I mean, it doesn't have anything as
8 far as where it's from, what was taken off. I
9 just, I think it would be best if the original
10 were admitted.

11 MR. JUSTICE: I don't -- I think this
12 is the original.

13 WITNESS: That is the original.

14 THE COURT: I think he does have the
15 original. Show him what you have there.
16 Maybe you can --

17 MR. JUSTICE: I'm not sure what you
18 think is taken off.

19 MR. RICE: We are missing --

20 WITNESS: May I be able to say
21 something?

22 MR. JUSTICE: Just hang on a second.

23 MR. RICE: I mean, where are the
24 dates, the description of the charges and
25 credits? This is not like a normal hotel

1 folio.

2 MR. JUSTICE: Can you tell us how
3 you --

4 THE COURT: Let's let the -- yeah,
5 let's see if we can lay some additional
6 foundation.

7
8 Q BY MR. JUSTICE: Can you tell us how you would
9 have, or how you did pay the hotel on this occasion, and
10 how you set this appointment up, and all of that?

11 A Okay. I have a host that's there, you know.
12 Whenever, when you get so much in rank -- because you go
13 through tiers, you know. It's like five different steps,
14 four or five different steps.

15 Okay. As you climb those steps, you begin to
16 get benefits. And the benefits that I have is that you
17 have so much food credit. And you have so many
18 complimentary rooms. So see, when I go I don't have to
19 pay for my rooms. I don't have to buy any food because I
20 have food vouchers, or food credit.

21 And all I have to do is just charge them to my
22 room. And when you check out, they just make sure you
23 don't have a balance that you went over the amount. Say
24 like they give me \$100 a day for food vouchers. And
25 that's just in case you bring someone with you.

1 And when you go to check out, you have to stop
2 at the desk. And if you've got a balance left over, then
3 that's when you would have seen something down in this
4 area. But I don't, I can't even eat \$30 or \$40 a day,
5 much less \$100.

6 So that's the reason why there is no rooms
7 showing. And if I need to get more evidence than that, I
8 can. Or you know, I will try to stress to them that I
9 need it. But that's the reason why that's blank like
10 that.

11 Q So you are saying you don't think you actually
12 paid them either with a credit card or in cash on this
13 occasion?

14 A No. When you go there and you check in, you
15 have to show a valid credit card. And it's simply when
16 you go to check out, if your room is destroyed. Because
17 they keep that credit card on file for like two or three
18 days. If your room is destroyed, then they will charge
19 your credit card. And that's only fair, you know,
20 because for the damage and stuff. But other than that,
21 no, they don't charge your credit card.

22
23 **THE COURT:** All right. I'm going to
24 admit the document and mark it as 14. And you
25 can address it on cross-examination, if you

1 want to, Mr. Rice.

2 (EXHIBIT 14, CASINO RECEIPT.)

3

4 Q BY MR. JUSTICE: Let me pass you two receipts,
5 which we will make it collective. And tell us what these
6 are. Hang on a second. Let me give him a copy. So can
7 you tell us, what are the names -- are these two receipts
8 that you found?

9 A While I was there at the resort that weekend,
10 or those two or three days, I stopped in Jackson,
11 Tennessee and went into the Sam's store and purchased
12 some shorts. And I went to this ladies' store in the
13 Tanger Mall in South Haven, Tanger Outlet in South Haven,
14 Mississippi and purchased a dress there.

15 Q Okay.

16 A And that's what it shows.

17 Q Did you pay with a credit card, or cash?

18 A Cash.

19 Q Okay. When you went to visit Sam's Club, did
20 you give them a \$100 bill it looks like?

21 A I did.

22 Q And then when you went to the Charming
23 Charlie, what did you give them? Oh, let's see.

24 A I gave them cash.

25 Q Okay.

1 A When I travel out of town, I try not to use
2 credit cards like in gas machines, ATMs, anything like
3 that. Because you know, it's just a precaution. Because
4 they say, you know, people can insert those tracker
5 things and retrieve your information and stuff. I just
6 try to be very conscientious of my surroundings and how I
7 do things.

8 Q Now, it looks like you went to South Haven the
9 day after you arrived, or on May 6th in Mississippi?

10 A Uh-hmm.

11 Q You went to Charming Charlie on May 6th. And
12 that's in South Haven, Mississippi?

13 A It is. It's about 15 minutes from the casino.

14 Q Okay. And then this Jackson Sam's Club
15 receipt, it looks like you may have gone there on the day
16 you were coming home?

17 A Right.

18 Q And tell us, just for the record, where is
19 Jackson in relation to your route from Nashville to
20 Tunica?

21 A Once you hit Jackson -- it's on 40. You are
22 on route to --

23 Q Is it on the way there?

24 A It's on the way.

25 Q Okay.

1 A It's about an hour, hour and a half from
2 Tunica.

3 Q Okay. And did you drive to Tunica?

4 A I did.

5

6 **MR. JUSTICE:** All right. If we can
7 make these receipts either two different
8 exhibits, or one? I don't really mind, Judge.

9 **THE COURT:** Can I have the copied
10 ones and let you keep these of the
11 photocopies?

12 **MR. JUSTICE:** Sure. All right.

13 **THE COURT:** Okay. Any objection, Mr.
14 Rice?

15 **MR. RICE:** No, Your Honor.

16 **THE COURT:** All right. Let me mark
17 these as --

18 **WITNESS:** That's Sam's. There's the
19 Charming Charlie.

20 **THE COURT:** I'll staple them here.
21 I'm going to make them one Collective Exhibit
22 No. 15.

23 **WITNESS:** Oh, you only need one of
24 them. One of them is a double copy, I think.

25 **THE COURT:** The Charming Charlies I

1 think is a double page.

2 MR. JUSTICE: It's one big long
3 receipt, Judge.

4 THE COURT: Right. There's three
5 pages total, two receipts. All right.

6 (EXHIBIT 15, SHOPPING RECEIPTS.)
7

8 Q BY MR. JUSTICE: So one way or another, you
9 did apparently go to Mississippi?

10 A I did.

11 Q Okay. Did you go there just specifically to
12 make it look like you had been planning a vacation the
13 whole time?

14 A No. I had been planning it. But one of the
15 rules to the resort is that if you don't, if you don't
16 cancel within 72 hours, you get charged the full amount
17 -- which I didn't want to get charged the full amount
18 because I get complimentary rooms. So why should I get
19 charged for three days?

20 Q Okay. So in other words, you couldn't, you
21 couldn't really cancel?

22 A I couldn't really back out, unless I wanted to
23 lose money.

24 Q Okay. Now, when you were at the scene, did
25 you respond to the house when they were taking the money

1 and other items out of the house?

2 A I was sitting in the car. Because my back was
3 really giving me problems then. And I seen them taking
4 things out. Which I didn't question them. But when I
5 seen my Michael Kors bag going out, I asked Mr. -- I was
6 thinking it was -- is your name Matthew Stewart, the
7 Sheriff?

8

9 INV. GULLETT: Me? Young. Sheriff
10 Young.

11 WITNESS: Mr. Young?

12 THE COURT: Sheriff Young.

13

14 A I said, "Where are they going with my bag?"
15 And he said, "That's evidence," or something like that.
16 And I said, "Well, that's my money." And he stated to
17 me, he said, "Your money?" I said, "Yes." And he said,
18 "What do you mean?" I said, "That's my money that I
19 brought down here to my son and them." And he
20 specifically said, "Oh, that changes everything."

21 And then he came back a few minutes later, and
22 he said, "How did you give that to him?" I said, "From
23 my hand to his." He said, "No, how did you give it to
24 him?" I said, "No, honestly, I just said, 'Here.'" And
25 he said, "No. I'm talking about your money in

1 increments?" I said, "Hundreds, fifties, twenties." And
2 they never said anything else to me.

3 Q BY MR. JUSTICE: Did you tell the deputies you
4 had left a full \$150,000 on that occasion?

5 A No, never.

6 Q Did you ever -- so there was around \$94,000, I
7 guess, in the Michael Kors bag. You say you had left
8 that at the house on that occasion. Had you ever given
9 any money to Terrance?

10 A I had gave Terrance money when I first got my
11 settlement because --

12 Q Why did you do that?

13 A Because I am a person that like -- you know, a
14 lot of people when they have money, or inherit money, or
15 something like that when someone died, that's when you
16 get their money.

17 I always tell my friends and all of them,
18 "Don't wait until you die to give your children money."
19 You know, because you never know when they are going to
20 need it. You know, give them the money now and let them
21 do what they need to do with it, or want to do with it.
22 Because it's up to them. You give them the tools of
23 life. But what they choose to do with it is up to them.

24 So at that time when I got my settlement, he
25 was trying to build his trucking business. So I said,

1 "Here," you know, "this is what I'm going to give you. I
2 am not going to wait until I die. This is what I'm going
3 to give you." And that's how that went off.

4 Q And there was a mention -- when Detective
5 Cullett was testifying, he mentioned finding a business
6 ledger. Are you able to identify anything about that?

7 A The business ledger that I seen, he didn't
8 call it a business ledger. Because I brought it to your
9 attention. I said, "That's not a ledger -- that's not a
10 drug something." I said, "Because I notice that that is
11 the price of the Lularoe pants, and the dresses, and
12 stuff."

13 Q Okay. And what is Lularoe?

14 A Lularoe is a fashionable clothing, a clothing
15 business. And she was very good at it.

16 Q Who is "she?"

17 A Shaundra was. She would go live on Facebook.
18 And it's just like, you know, you'd be live. And she'd
19 have a dummy. And she'd put on this blouse, or this pair
20 of pants, or this shirt.

21 And you say, "Okay." "If you are interested
22 in this, you need to write in and say you want No. 45.
23 You want No. 62." And that would let her know. Because
24 on those clothing, it would be a number tagged to that
25 outfit. And she knew what to send you. And then as far

1 as the transaction, you have to show proof through
2 Paypal, or whatever that stuff is. So I didn't get into
3 all of that.

4 Q Okay. In terms of your direct knowledge of
5 exactly where all the other two claimants' money came
6 from, do you really have any -- do you know? Can you
7 really say?

8 A No. No.

9 Q Okay. But you are saying that the money in
10 the Michael Kors bag was whose?

11 A Wanda's.

12 Q All right. Nothing further.

13

14 THE COURT: Maybe I missed it. How
15 much did you give Mr. Martin?

16 WITNESS: For which time, sir?

17 MR. JUSTICE: That's the problem,
18 Your Honor. On our claim, we just wrote the
19 full amount, and then said the majority of
20 this belongs to her. And then we've specified
21 that the amount in the Michael Kors bag is
22 what we are claiming.

23 WITNESS: It was broke down.

24 THE COURT: Well, that's not my
25 question. She said when she got her

1 settlement, she gave him some money.

2 MR. JUSTICE: Oh, I'm sorry.

3 WITNESS: I did.

4 THE COURT: Did you say how much?

5 WITNESS: I gave them \$50,000.

6 THE COURT: Okay. \$50,000. Okay.

7 And one other question I wanted to clarify.

8 You said you had a savings account at a credit

9 union. Where is your Social Security

10 deposited to?

11 WITNESS: My Social Security deposit

12 goes into a Pinnacle Bank.

13 THE COURT: In Pinnacle Bank?

14 WITNESS: Uh-hmm.

15 THE COURT: So you've got a --

16 separate from the credit union account?

17 WITNESS: I did. If I can clarify

18 that?

19 THE COURT: Sure.

20 WITNESS: I had it going to Pinnacle

21 Bank simply because when my house -- I had to

22 refinance it. I refinanced it with this

23 credit union that I had been joined since like

24 '80 or '81. So I knew that was a sure thing.

25 So I put my house with them. I went directly

1 to them and done that.

2 And I wanted to take, put my money
3 into the Pinnacle bank. And each month I
4 would take so much out and put it into my
5 credit union to pay for my mortgage, you know,
6 and my cars and stuff. And anything else left
7 over went toward my insurance, my utility
8 bills, gas, groceries, something like that.

9 **THE COURT:** So but the credit union
10 is just a savings account there for you?

11 **WITNESS:** It's a checking account.
12 But I don't never use it.

13 **THE COURT:** Checking account.

14 **WITNESS:** It's just something they
15 just automatically draft from it.

16 **THE COURT:** Oh, I see. All right.
17 Questions, Mr. Rice?

18 **MR. RICE:** I do, Your Honor.

19

20 **REDIRECT EXAMINATION OF**

21 **WANDA TUBBS**

22 **BY MR. RICE:**

23 Q All right. So that clarified some of the
24 questions I had. So you said you do have credit cards?

25 A I do.

1 Q And do you have one, two?

2 A I have two. I have two or three. But I guess
3 you can say I've got more than that, but I don't use
4 them. Just like the only way I know to explain it is
5 just to give you an example. Like I have a Lowe's credit
6 card. I never charge on it, you know, outside of Lowe's.
7 I will go to Lowe's. And I will purchase something and
8 put it on my credit card. Immediately, I turn right
9 around and pay it off. Because it builds up your credit.

10 Q And how many checking accounts do you have
11 currently?

12 A Two.

13 Q You have two checking accounts?

14 A Yes.

15 Q And who are they with? One with Pinnacle --

16 A One at Pinnacle, and one at Ascend Federal
17 Credit Union.

18 Q Ascend Federal Credit Union. Okay. And now,
19 you had -- what are you living off of right now? If this
20 was your nest egg, how are you --

21 A I still get a monthly check. And I still have
22 a little bit of money, just like, you know. When I've
23 been to the casinos, I've hit two or three jackpots.

24 Q All right. How many vehicles do you have
25 registered in your name?

1 A Two.

2 Q And what are they?

3 A A Silverado truck and a Lincoln Navigator.

4 Q Okay. And how old are those?

5 A One is a 2002, and the other one is a 2006.

6 Q And did you buy Shaundra or Terrance a car?

7 A No. I purchased a car the year or year before

8 last because my back was beginning to get a little bad.

9 And it was a Buick LeSabre, or a Buick Skylark, something

10 like that. As soon as they seen it, or as soon as

11 Shaundra seen it, she said, "Can I please buy that from

12 you?" Because you know, that would be -- she could use

13 that a lot better on the mail route because she is a --

14 and I said, "Sure."

15 Q How much did that cost you?

16 A I think it was \$1,200.

17 Q How old was it?

18 A It's a 2001 or 2002. I don't buy no new cars.

19 Q Okay. So you made the comment -- and we all

20 have our bumps and bruises as we get older -- and

21 subsequently you had some injuries that has resulted in a

22 significant settlement?

23 A Uh-hmm.

24 Q Okay. Now, what kind of medical treatment do

25 you seek, as far as do you have regular doctors'

1 appointments? Do you have regular medical bills that
2 you've got to pay?

3 A I've got -- I don't have regular medical bills
4 because that's in with my settlement. I have got
5 lifetime medical through disability. But I go to a
6 primary care physician. It's usually like every two or
7 three months.

8 Q Okay.

9 A And I did have to go to pain management only
10 because the doctor that done my back surgery, he sent me
11 there. And he wanted me to attend there like every
12 month, or every two months, to make sure these rods and
13 stuff stay stabilized.

14 Q Okay. So there's no out-of-pocket expenses
15 for any of your medical care?

16 A No, sir. Well, for my primary care physician,
17 I have to pay like two dollars, three dollars, you know.

18 Q Okay. And you testified about your visits to
19 the casino?

20 A Yes.

21 Q It sounds like you are a pretty high roller.
22 You do pretty well for yourself there, huh?

23 A For a penny machine player.

24 Q Okay. You go there monthly though, right?

25 A Not every month, but you know.

1 Q How much do you generally spend when you go on
2 these trips?

3 A I take no more than \$500 to \$600. I'm there
4 to enjoy my friends and them. That's it.

5 Q Well, how did you get to the point to where
6 they are comping your -- usually that's reserved for
7 folks that, you know, spend a pretty penny, right?

8 A Yes. But I have hit a jackpot like -- a penny
9 machine jackpot -- like two or three times since I've
10 been going. And if you go on certain days, whenever you
11 are playing it's double point days. So your points add
12 up. The more points you have, the higher -- you go up to
13 the next step, next step. The next step you go to, the
14 more benefits you have.

15 Q Okay. Now, the Michael Kors bag, now we know
16 that's a designer bag?

17 A Uh-hmm.

18 Q How much does that bag cost?

19 A About anywhere -- it depends on which one you
20 get. Mine cost right at like \$400, or a little over
21 \$400.

22 Q Do you have any other bags like that?

23 A Uh-hmm.

24

25 THE COURT: Is that a yes?

1 A Yes. I'm sorry. You all need to help me.
2 I'm sorry.

3 Q BY MR. RICE: And those cost similarly?

4 A I have Coach bags, Bravado bags, Bellerose
5 bags. One or two of them was a gift.

6 Q Okay. And let's see. How much did the house
7 that you moved to, the 3869, how much did that residence
8 -- you had it moved. How much did you spend moving from
9 the location it was to installing it to where it
10 currently is?

11 A I think it was right at like \$30,000 or
12 \$40,000.

13 Q And did you pay that out of your pocket?

14 A A lot of it, yes.

15 Q Have you had any other expenses like that?

16 A No.

17 Q Now, was the \$30,000, was that specifically
18 just to move the house, or was that to move the house and
19 to set it up? Or is there other charges?

20 A That was to move the house, set it up, put it
21 back together.

22 Q Put it back together. And were there any
23 significant upgrades that you made as you were doing the
24 rebuild, so to speak?

25 A Just the paint, added, you know, I had to

1 replace the garage door.

2 Q Okay.

3 A You know, but not no major, no.

4 Q Okay. And about how much do you think you
5 spent on that?

6 A Maybe, I think the door was like \$300 or
7 \$400.

8 Q And how did you pay for it, the \$30,000, plus
9 the --

10 A Cash.

11 Q You paid cash?

12 A Uh-hmm.

13 Q Nothing further, Your Honor.

14

15 **RECROSS-EXAMINATION OF**

16 **WANDA TUBBS**

17 **BY MR. JUSTICE:**

18 Q To clarify, did you say you paid \$30,000 in
19 cash toward this house we are talking about?

20 A Uh-hmm.

21 Q Okay. I thought you had said you took out a
22 loan previously. Was that wrong?

23 A When I need something -- as far as taking out
24 a loan, you know, that was on my house that I moved that
25 I live in now. That was up at the Ascend Federal Credit

1 Union.

2 Q Okay.

3 A I had to get a loan up there for that house to
4 get it away from Wilson Bank & Trust.

5 Q Okay. And around the time when you got this
6 settlement, was your bank account just depleted, or did
7 you have any money of your own when -- in other words, we
8 are looking at this six-figure settlement, and then the
9 lump sum. Did you have just pretty much nothing at that
10 point, or did you already have any savings?

11 A I had a little bit of money saved up. And
12 which it wasn't in the bank. But I had to get family
13 members and friends to loan me some money because I had
14 pretty much used up all of my 401K, and any type of money
15 that I had saved. Because, you know, that was part of
16 it.

17 Q Okay. And you are essentially telling us that
18 this monthly payment you get is more than you absolutely
19 need to live on. Is that about an accurate --

20 A Give or take. Because, you know, like some
21 part of the year, you know, you have to pay your land
22 taxes, and you know, some things do happen, or something
23 you might tear up.

24 Q Okay.

25 A Just like right now, I'm going through this

1 roof problem. When I first purchased my home, and I
2 still had my other business, I remodeled that house with
3 my second job -- which was part-time, that Home Interior
4 consultant. And I replaced the roof. I replaced the
5 plumbing. I put siding on, raised the house up and put a
6 foundation on it.

7 Q Okay. So --

8 A I done stuff like that. And so now I'm
9 having, going through a roof problem right now, so.

10 Q And you were asked about your medical
11 expenses. Did the Court Judgment have anything to say
12 about coverage of those?

13 A No. Because they know I was going to go
14 through this. And I think it's stated in my medical
15 record that I am going to have to live with this pain for
16 the rest of my life.

17 Q Okay. Can you read Page 4 -- or no, Paragraph
18 4 on Page 6 of that Court Judgment we introduced?

19 A The part of Michael Ponce? Or "In addition to
20 the above-mentioned benefit, the employer and insurer
21 shall be liable for the reasonable and necessary future
22 medical expenses for treatment, services, and supplies
23 from authorized physicians."

24 Q Okay.

25 A And it goes into the code, Tennessee Code.

1 Q Okay. So in other words, the employer where
2 you used to work has been ordered to pay some or all of
3 your medical expenses?

4 A Yes.

5 Q All right. And about how much would you get
6 on these jackpots?

7 A One, I got like \$2,300. One, \$2,800.

8 Q Okay.

9 A You know, no big wild whoopity-doo.

10 Q Okay. Nothing further.

11

12 **THE COURT:** Questions?

13 **MR. RICE:** Just one or two
14 follow-ups, Your Honor.

15

16 **REDIRECT EXAMINATION (CONT'D) OF**
17 **WANDA TUBBS**

18 **BY MR. RICE:**

19 Q So you testified a few moments ago that you
20 have -- can you identify that vehicle?

21 A That's the Buick that I had bought. And
22 Shaundra and them -- Shaundra asked to buy it from me for
23 her mail car.

24 Q Okay. Now, how many cars did you testify that
25 you own?

1. A Two.

2 Q Two. Okay. That Armada, is that --

3 A That's not mine.

4 Q Not yours? Okay.

5 A That's up-to-date.

6

7 MR. RICE: No further, Your Honor.

8 THE COURT: I didn't understand your
9 testimony earlier about your 401K. Had you
10 drawn money out of it to repair your home?

11 WITNESS: No. I had drawn money
12 out, sir, when I was going through my Social
13 Security disability.

14 THE COURT: To live on while you are
15 waiting for that?

16 WITNESS: Yes.

17 THE COURT: Okay. Do you have a 401K
18 account now, or an IRA, or nothing?

19 WITNESS: I don't. Because I -- no.
20 Because I depleted it. Because I didn't know
21 how long it was going to take me to go through
22 that. And I think it was right at like a year
23 and a half, right at two. And you know,
24 fortunately I had -- you know, the guy that I
25 was dating at the time, he was pretty well off

1 and helped me out in those areas and stuff.

2 THE COURT: Okay. All right.

3 Anything else from this witness, Mr. Justice?

4 MR. JUSTICE: No, Your Honor.

5 THE COURT: Anything else, Mr. Rice?

6 MR. RICE: The State rests.

7 MR. JUSTICE: Oh, okay. We do want
8 to call Isaac Smith real briefly.

9 THE COURT: All right. Ms. Tubbs,
10 let me ask you to step back over here to the
11 other seat.

12 MR. RICE: Just as a preliminary
13 matter, do you mind if we address a couple of
14 scheduling issues?

15 THE COURT: Sure.

16 MR. RICE: First, I would like to, if
17 Counsel would agree, to reserve Closing
18 Arguments in the form of a brief. I would
19 also like the opportunity to address my
20 Proffer.

21 And there's been a lot to digest
22 here, and we still have another to go. I
23 would like to order the transcript and do our
24 brief, our closing brief, from the transcript
25 and have an opportunity to review it. Would