



University of Tennessee, Knoxville
**Trace: Tennessee Research and Creative
Exchange**

Tennessee Department of State, Opinions from the
Administrative Procedures Division

Law

6-13-2006

DEPARTMENT OF SAFETY vs. \$628, 871.00 in
U.S. Currency, \$2882.27 in U.S. Currency, One
HarborMaster Houseboat, VIN #:
HBA47C85F686, One 2000 Dodge Q25, VIN #:
3B7KF2362YG106279, One 1996 Nissan, VIN #:
JN1AS44D4TW055378, One 1995 Mazda 929,
VIN #: JM1HD4618S0401667, One 1995
Econoline, VIN #: 1FTHS24H7SHB75942, One
1993 Eagle Talon, VIN #: 4E3CF44E1PE041459,
40 Guns – See list attached, Other Miscellaneous
Property, Seized from: Larry Ross, Seizure date:
May 4th and 5th, 2005, Claimants: Larry Ross/
Patricia Clark

Follow this and additional works at: http://trace.tennessee.edu/utk_lawopinions

This Initial Order by the Administrative Judges of the Administrative Procedures Division, Tennessee Department of State, is a public document made available by the College of Law Library, and the Tennessee Department of State, Administrative Procedures Division. For more information about this public document, please contact administrative.procedures@tn.gov

**BEFORE THE COMMISSIONER OF THE
TENNESSEE DEPARTMENT OF SAFETY**

IN THE MATTER OF:

DEPARTMENT OF SAFETY

v.

**\$628,871.00 in U.S. Currency
\$2882.27 in U.S. Currency
One HarborMaster Houseboat
VIN#: HBA47C85F686
One 2000 Dodge Q25
VIN#: 3B7KF2362YG106279
One 1996 Nissan
VIN#: JN1AS44D4TW055378
One 1995 Mazda 929
VIN#: JM1HD4618S0401667
One 1995 Econoline
VIN#: 1FTHS24H7SHB75942
One 1993 Eagle Talon
VIN#: 4E3CF44E1PE041459
40 Guns – See list attached
Other Miscellaneous Property
Seized from: Larry Ross
Seizure date: May 4th and 5th, 2005
Claimants: Larry Ross/Patricia Clark**

DOCKET NO: 19.01-072981J

**D1361, D1362, D1363, D1364,
D1365, D1360, D1345, D1346**

INITIAL ORDER

The contested case hearing of this matter was held on multiple dates between June 13, 2005, and June 13, 2006, in Memphis, Tennessee, before Rob Wilson, Administrative Judge,

assigned by the Secretary of State and sitting for the Commissioner of the Tennessee Department of Safety. The Department of Safety was represented by staff attorneys Joe Bartlett and Trey Phillips. Attorney Terry J. Leonard represented claimant Larry Ross. Robert T. Keeton, III, represented claimant Patricia Clark.

At issue was the proposed forfeiture of the above-captioned currency, houseboat, miscellaneous automobiles and miscellaneous other property for alleged violations of the Tennessee Drug Control Act.

After consideration of the record in this matter, it is determined that all currency and property at issue should be returned to the Claimants. This decision is based on the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On or about May 4, 2004, the Camden Police Department executed a search warrant for 140 Fern Avenue, Camden, Tennessee, which is the location of Ross Construction. Patrol Officer Kenneth Beal stated that the search warrant was obtained based on information from a confidential informant.
2. Officer Beal's search of the property revealed a sheet rock bucket containing bundles of partially mutilated paper currency totaling approximately \$628,871. Officer Beal also found pieces of burnt tin foil, a converted pen, and other paraphernalia used by drug users. A gun collection was also found at the property. Officer Beal then performed a pat-down search of Larry Ross and discovered several items in the chest pocket of Mr. Ross' overalls. A motion to suppress was filed, initially in the Circuit Court of Benton County, for the 24th Judicial District and then in this Court. The findings of the Circuit Court Judge were adopted and the Motion to Suppress was granted, thereby excluding as evidence the contents of Mr. Ross' pocket.

3. Investigator Frank Stockdale from the Camden Police Department testified that he and other law enforcement officers had Mr. Ross under surveillance for approximately seven months prior to the execution of the search warrant and stated that no illegal drug activities were observed. Officers Michael Scott, Kenneth Beal, Ken Wright, and Chief George Smith all testified that they had never observed Larry Ross engaged in a drug transaction. Deputies Bryant Allen, Mickie Howe, and Clarence Hassell also stated that they had never observed Mr. Ross engaged in a drug transaction.

4. Investigator Frank Stockdale testified that he has known Larry Ross all of his life and that Larry Ross had a reputation in Benton County for being truthful. Officer Stockdale stated that Larry Ross had built hundreds of homes in Benton County and neighboring counties. Officer Stockdale also stated that Larry Ross had no arrests or convictions prior to May 4, 2004.

5. Sgt. Bryant Allen stated that he found components for a methamphetamine lab in a bag near an out building on Larry Ross' property, but there was no evidence presented to establish how the bag got there or who owned it. No fingerprints were lifted from the bag.

5. Officer James Yeager testified about the value of the guns seized. He also stated that he had no idea how Mr. Ross came to possess the guns, that Mr. Ross had a reputation for being a contractor/carpenter, and that Mr. Ross had no reputation of being a drug dealer or drug trafficker.

6. Dr. Neil Riley stated that he is a Ph. D. of finance. Dr. Riley concluded that Larry Ross could not have generated \$628,000 over a 6 year period, but admitted that his allocation of the revenue was for the years between 1999 and 2004, even though he was aware that Mr. Ross was engaged in the construction business for more than twenty years.

7. Inmate Julie Smothers stated that she knew Larry Ross as a contractor. Ms. Smothers stated that she was told her children would not be taken into DCS custody over an unrelated drug charge if she testified against Larry Ross. [Transcript, June 13, 2006, page 130, lines 8-17, and page 132, lines 9-14]

8. The State called as a witness inmate Kevin Trull and his previously taped interview was admitted into the record. Mr. Trull stated that he was being held on \$250,000 bond at the time of his initial interview and said that he would have said anything that would have helped him obtain a lower bond. At the actual forfeiture hearing Mr. Trull stated that he knew Larry Ross was in the home construction business and that he had never seen Larry Ross engaged in any illegal drug activity.

9. Inmate Rusty Blagburn stated that he had worked for Larry Ross as a laborer and that he had never seen Larry Ross engage in any illegal drug activity. He advised that in his oral interview which he had previously given to Deputy Bryant Allen that he had heard what another inmate had done to get his sentence lessened and that if he could lie to help himself out he would.

10. Inmate David Miller's testimony was obtained by evidentiary deposition. Mr. Miller stated that he had sold methamphetamine to Larry Ross, but also stated that he had never known Larry Ross to sell methamphetamine. Mr. Miller was of the opinion that Larry Ross was a user but not a seller. An exhibit was filed evidencing that on December 1, 2005 a Motion was filed in Federal Court requesting that Mr. Miller's sentence be reduced for cooperation with the State of Tennessee. His deposition was taken and Mr. Miller did receive a reduction in his sentence.

11. Corey Christopher, a teller at the Bank of Camden, testified that he assisted in the counting of the currency that was seized from the Fern Avenue address. Mr. Christopher stated

that he knew Larry Ross as a contractor/carpenter. Mr. Christopher stated that Larry Ross would often come into the bank to cash homeowners' checks and insurance checks. Mr. Christopher estimated that during his nine years of employment at the Bank of Camden he cashed checks for Larry Ross in the amount of approximately \$250,000. Mr. Christopher further stated that the money seized from the Fern Avenue location was mostly mutilated money bundled with clips or rubber bands, and that in his opinion, the money was printed prior to the year 2000. Mr. Christopher opined that the seized currency had been stored somewhere and that it had not been in circulation.

12. Dr. Neil Riley, the State's forensic accounting expert, testified that it was not likely that the seized currency was proceeds from Ross Construction. Dr. Riley stated that he is not sure where the money came from, [Transcript, January 19, 2006, page 28, lines 19-21] and also stated that he only reviewed financial records from 1999 through 2004. [Transcript, January 19, 2006, page 30, lines 9-11].

12. Officer George Smith testified that he had been in the law enforcement profession for twenty years in Benton County. Mr. Smith stated that he had never arrested Larry Ross and was not aware of Larry Ross ever being arrested for any drug offense or other criminal offense. Mr. Smith stated that he knew Larry Ross as a contractor and carpenter in the community.

13. Larry Dobson, the owner of Midway Materials, stated that he has sold concrete, concrete blocks, and other building materials to Larry Ross for many years, and also stated that Larry Ross is known in the community as a builder of homes.

14. Donnie Holland, Joe Woodard, Hulon Douglas, Todd Prince, David Arnold, Steve King, Ben Marks, Mark Algood, Troy Kelly, David McDaniel, and William Taylor, all contractors in

and around Benton County, all testified that they had previously done business with Ross Construction and that Larry Ross' reputation in the community was that of a contractor.

15. Karen Seaton testified that she has been employed as the head teller at the Bank of Camden for 32 years, and that she has known and provided banking services to Larry Ross for the past twenty years. She stated that Larry Ross frequently cashed homeowner and insurance checks. Ms. Seaton approximated that Mr. Ross cashed checks in the amount of \$300,000 to \$500,000. Ms. Seaton stated that knew Larry Ross as a contractor.

Ms. Seaton testified that she made the determination as to which of the seized money was mutilated. She stated that there was approximately \$42,000 in mutilated money and that this came mostly from the top and bottom bills of each bundle due to the fact that the paper clips that held the bundles together had rusted and caused stains on each side. She also stated that the mutilated money was consistent to the remaining money in each of the bundles that was put back into circulation. Ms. Seaton stated that the musty smell of the seized money led her to believe that the seized money had been stored and hidden and out of circulation.

16. Steve Lee testified that he was an investigator for the District Attorney General's Office and the Director for the 24th Judicial Task Force, which covered Benton, Carroll, Decatur, Hardin, and Henry Counties. Mr. Lee stated that the 24th Judicial Task Force had never been advised or provided information that Larry Ross was buying, selling, or trafficking in drugs. Prior to May 4, 2004 he had never heard of Larry Ross. He was not advised that the City of Camden had Mr. Ross under surveillance. Mr. Lee stated that if his agency had received information that someone was trafficking in large quantities of drugs he would have set up a controlled buy.

17. Larry Ross testified that he had been working in the house building and remodeling business for about 30 years. Mr. Ross testified that his grandfather was an eccentric man who often kept money hidden in jars that he buried in a smokehouse. Larry Ross stated that his grandfather and his father would often give him gifts of money.

18. Larry Ross stated that he had been very fortunate in that he could always find work. He stated that his goal was to save a million dollars.

19. Mr. Ross stated that the money seized from the 140 Fern Avenue was actually one million dollars that he had managed to save since he was fifteen years old, and added that not one dime or one dollar of the million dollars came from the sale of drugs.

20. There was very limited testimony pertaining to Patricia Clark. Ms. Clark was not present during the May 4, 2004 seizure at the Fern Avenue Property. No drugs were found in the vehicles being claimed by Patricia Clark. There was no testimony offered to prove any connection between Patricia Clark and the manufacture or sale of drugs.

CONCLUSIONS OF LAW AND ANALYSIS

1. T.C.A. §53-11-451 (a)(2) authorizes the forfeiture of:

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 of title 39, chapter 17 part 4-

2. T.C.A. §53-11-451 (a)(3) authorizes the forfeiture of:

All property which is used, or intended for use, as a container for property described in Subdivision (a)(1) or (2).

3. T.C.A. §53-11-451 (a)(4) authorizes the forfeiture of:

All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner facilitate the transportation, sale or receipt of drugs

in violation of part 3 and 4 of this chapter or title 39, chapter 17, part 4.

4. T.C.A. §53-11-451 (a)(5) authorizes the forfeiture of:

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...

5. T.C.A. §53-11-451 (a)(6) authorizes the forfeiture of:

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, complied 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.

6. The sole issue to be determined in this matter is whether the property seized was purchased with drug proceeds.¹

7. The State failed to prove by a preponderance of the evidence that any of the seized property was proceeds from the sale of drugs. Mr. Ross was under surveillance by law enforcement officials for at least seven months. During that seven month period the officer's involved were not able to set up even one controlled buy, or witness an exchange of drugs between Larry Ross and another person.

8. While the evidence preponderated that Larry Ross is, or at one time was, a meth user, there was absolutely no evidence presented to suggest that he made any money by drug trafficking. Mr. Ross has had a legitimate source of income since he was fifteen years old.

Karen Seaton stated that she had cashed legitimate business checks for Mr. Ross during the past twenty years, and that the total amount of these checks was between three hundred and five hundred thousand dollars. The State's forensic financial analyst admitted that he only reviewed

¹ In six out of the eight forfeiture warrants included in this matter the affiant checked the boxes relating to each and every sub-category of T.C.A. 53-11-451. This is obviously an error since it is not possible for any one item to be subject to forfeiture under all categories. For example, a seized automobile cannot be a book, record, or research product. However, since the largest part of the State's proof dealt with the source of the seized currency, it can be determined that the State is relying on T.C.A. §53-11-451(a)(6) as the basis for the forfeited items.

financial records between 1999 and 2004. Larry Ross never claimed that he had earned the seized money between 1999 and 2004.

9. Even if the State had proven that Larry Ross was a major drug dealer, there is not sufficient proof that the items seized from the 140 Fern Avenue location were drug proceeds. Mr. Ross testified that he started collecting guns as a child. There was no proof presented to establish that Mr. Ross purchased his gun collection with proceeds from drug trafficking.

10. According to the forfeiture warrants, the police seized a 1993 Eagle Talon, a 1995 Ford Econoline, a 1995 Mazda, a 1996 Nissan, and a 2000 Dodge Pickup truck. There was no proof presented to establish when these automobiles were purchased. There was no proof presented to establish if they were paid for outright with cash, as opposed to being financed. There was no proof presented to establish whether these cars were purchased from a car dealer or an individual. There was no proof presented to establish how much money was paid (if any) in exchange for these automobiles. Additionally, it was never even suggested that Mr. Ross or Ms. Clark used these automobiles to purchase or deliver drugs.

11. Larry Ross stated that he paid approximately \$26,000 for his houseboat. Officer Frank Stockdale testified that no methamphetamine was found on the houseboat. [Transcript, August 5, 2005, page 184 lines 9-14] There was no proof presented to establish that Mr. Ross' houseboat was purchased with the proceeds of drug trafficking.

12. The evidence presented by the State does make it more likely than not that Larry Ross is a meth user. However, *Stuart v. State of Tennessee Department of Safety*, 963 S.W. 2d 28 holds that "Tennessee's forfeiture statutes embrace the proportionality approach. Under [Tenn.Code Ann. § 53-11-451\(a\)\(4\)\(C\)\(Supp.1997\)](#), the simple possession of a small amount of drugs or

drug paraphernalia cannot trigger a forfeiture action. Apparently, the legislature has determined that forfeiture would be disproportionate to those crimes.”

13. The State had the burden of proving by a preponderance of the evidence that the property and currency seized was obtained through drug trafficking proceeds. It is CONCLUDED that the burden was not approached under the facts presented.

14. Accordingly, it is ORDERED that all property and currency seized shall be returned to Larry Ross, with the exception of the 1996 Nissan, the 1993 Eagle Talon and \$2,882.27 in currency, which was claimed by and should be returned to Patricia Clark.

This Initial Order entered and effective this 21st day of December, 2006.

Rob Wilson
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State,
this 21st day of December, 2006.


Charles C. Sullivan, II, Director
Administrative Procedures Division