IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE[1]

STATE OF TENNESSEE,	)	
	)	
Petitioner/Appellee,	)	
	)	
	)	**Supreme Court Case No.**
v.	)	**E2011-02573-SC-R11-CV**
	)	
CHARLES D. SPRUNGER,	)	**Court of Appeals Case No.**
	)	**E2011-02573-COA-R3-CV**
Respondent/Appellant.	)	

BRIEF OF APPELLANT/RESPONDENT SPRUNGER

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Oral Argument Requested

[1] This case was transferred from Knoxville to Nashville for briefing and oral argument by this Court's order of December 12, 2013.

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Jurisdictional Statement

Jurisdiction for this appeal is based upon this Court's Order of December 12, 2013 granting Mr. Sprunger's permission to appeal pursuant to Tennessee Rule of Appellate Procedure 11.

Statement of the Issues

I. The Evidence Was Insufficient to Justify Forfeiture of Mr. Sprunger's House for Possession of Illegal Images

II. Procedural Deficiencies in the Forfeiture Warrant Proceedings Nullify the Forfeiture

III. The Forfeiture Constitutes an Excessive Fine

Statement of the Case

This is an appeal of an Order granting the forfeiture of proceeds from the sale of Mr. Charles Sprunger's house following his conviction of sexual exploitation of a minor. After a hearing, the Chancery Court of Cumberland County entered an Order of Judicial Forfeiture on October 24, 2011. (T.R. Vol. I, pp. 57-64).[1] Mr. Sprunger filed a timely appeal. He filed a Motion to Supplement the Record on Appeal, which was denied. (T.R. Vol. III, p. 7). A second request to supplement the record on appeal was also denied. (T.R. Vol. IV, p. 5). On August 26, 2013, the Court of Appeals affirmed the trial court's forfeiture order in a Memorandum Opinion. *State v. Sprunger*, No. E2011-02573-COA-R3CV, 2013 WL 4647685 (Tenn. Ct. App. Aug. 26, 2013).

On December 12, 2013, this Court granted Mr. Sprunger's application for permission to appeal, appointed the undersigned counsel for representation on a pro bono basis, and transferred this appeal from Knoxville to Nashville for briefing and oral argument.

[1] Citations to the technical record will be abbreviated as "T.R." and include reference to the volume and page number. The technical record consists of four volumes, the second of which contains a separate collection of exhibits.

Statement of Facts

On July 4, 2008, Charles Sprunger contacted a computer repair technician for repair of his personal computer because it had been infected with a virus and he needed to extract business records. (T.R. Vol. II, Forfeiture Hearing, p. 5). After inspecting the computer, the technician contacted law enforcement and stated he had found child pornography on it. (*Id.*). Specifically, the technician found a conspicuous "bubble" on the home desktop screen with a message indicating that some files were ready to be written on a CD, and observed that those files appeared to be illegal images. (*Id.* at 13-14). Testimony from the criminal trial revealed that 126 illegal images were on the computer.

On July 8, 2008, Detective John Haynes of the Cumberland County Sheriff's Department obtained and executed a search warrant on Mr. Sprunger's residence. (*Id.* at 26-27). After a thorough search of the house, three other computers, and presumably all CDs present, Det. Haynes did not discover any additional child pornography. He would later testify that it is unusual not to find additional illegal images at the home of someone found to possess such materials. (*Id.* at 35-36).

On May 19, 2009, Detective John Haynes appeared before Judge David Patterson, who issued a Forfeiture Warrant against the real property of Mr. Sprunger, namely a single family dwelling located at 2286 Peavine Road, in Cumberland County Tennessee, located on 6.29 acres, which was Mr. Sprunger's residence. (*Id.* at 6; T.R. Vol. I, Forfeiture Warrant, p. 11). No hearing was held on the petition. (T.R. Vol. I, Order, p. 60). Det. Haynes did not seek a forfeiture warrant for the computer at issue, or any

electronic equipment within the house. On May 20, 2009, Det. Haynes filed an Abstract of Suit and Notice of Lien Lis Pendens. (T.R. Vol. II, Ex. 3, p. 3). Both the Forfeiture Warrant and the Notice alleged that Mr. Sprunger was guilty of Tenn. Code Ann. § 39-17-1004.

Mr. Sprunger was arrested for possession of child pornography on July 6, 2009 and did not receive the Notice of Property Seizure until August 29, 2009, which was 102 days after the Forfeiture Warrant was issued. (T.R. Vol. I, p. 10). This Notice specifically lists as cause for seizure "Category IV, Other (TCA 39-17-1008)" and instructed him to "Refer to instructions provided by seizing agency for filing a claim on the above property," although no such instructions were provided. (*Id.*).

As Mr. Sprunger's criminal case proceeded to trial, he was deprived of funds from his primary asset—his residence—for purposes of hiring the attorney of his choice and funding expert witnesses who could validate his defense that his computer had been hacked and remotely accessed. (*See* T.R. Vol. II, Hearing Transcript, pp. 20-21).

On August 19, 2010, a jury found Mr. Sprunger guilty of Sexual Exploitation, Tenn. Code Ann. § 39-17-1003, and he was sentenced to eight years in prison to be served at 100%. (T.R. Vol. I, Judgment, p. 9).

The judgment was entered on October 4, 2012. That same day, the State filed a Complaint in Chancery Court for Judicial Forfeiture and a Restraining Order against Mr. Sprunger and his mortgage lender. (T.R. Vol. I, p. 2). The Complaint indicated that Mr. Sprunger had taken out a loan in 1997 for $84,000 and still owed about half that amount, $47,813.65. (*Id.* at 3).

On November 3, 2010, the mortgage lender filed a Petition indicating that, upon default, Mr. Sprunger's property had been auctioned for the price of $85,000.[2] The lender kept $53,393.74 of the sale price (for its principal, interest, and other fees) which left proceeds of $31,606.26. (*Id.* at 34-38).

To contest the forfeiture of his house's proceeds, Mr. Sprunger submitted to the court two letters from jail raising various concerns on October 6, 2010 (*id.* at 21) and December 11, 2010 (*id.* at 45), as well as a request to be transported to the contested hearing (*id.* at 56).

On October 21, 2011 a hearing was held in Chancery Court, at which Mr. Sprunger appeared pro se via telephone from prison. (T.R. Vol. II, Hearing Transcript). The court held in favor of the State and entered an Order of Judicial Forfeiture on October 24, 2011. (T.R. Vol. I, pp. 57-64). The court's Order "specifically finds that Charles D. Sprunger used the real property . . . in violation of violation of T.C.A. title 40, chapter 33, part 2 thus making the property and its proceeds subject to forfeiture." (*Id.* at 61). However, nothing in the Order purports to explain *how* his property was so used. As a result of the Order, Mr. Sprunger lost the proceeds from the auction of his house, which is the subject of this appeal.

[2] Although the record does not contain the sale price for which Mr. Sprunger obtained his property in 1997, it is notable that his *mortgage* at that time was almost exactly the same amount as the auction price in 2010, suggesting that the property was auctioned by the lender well under its current value.

Standard of Review

Because this case was tried by a court, sitting without a jury, this Court conducts a *de novo* review of the trial court's decision with a presumption of correctness as to the trial court's findings of fact, unless the evidence preponderates against those findings. *Wood v. Starko*, 197 S.W.3d 255, 257 (Tenn. Ct. App. 2006). For the evidence to preponderate against a trial court's finding of fact, it must support another finding of fact with greater convincing effect. *Walker v. Sidney Gilreath & Assocs.*, 40 S.W.3d 66, 71 (Tenn. Ct. App. 2000); *The Realty Shop, Inc. v. R.R. Westminster Holding, Inc.*, 7 S.W.3d 581, 596 (Tenn. Ct. App. 1999). This Court reviews the trial court's resolution of legal issues without a presumption of correctness. *Johnson v. Johnson*, 37 S.W.3d 892, 894 (Tenn. 2001).

Argument

I. The Evidence Was Insufficient to Justify Forfeiture of Mr. Sprunger's House for Possession of Illegal Images

The forfeiture statute at issue provides: "Any conveyance or real or personal property used in the commission of [a child exploitation offense] is subject to forfeiture." Tenn. Code Ann. § 39-17-1008(a). The exploitation offense of which Mr. Sprunger was convicted makes it "unlawful for any person to knowingly possess material that includes a minor engaged in" sexual or simulated sexual activity. *Id.* at § 39-17-1003.[3]

A dispositive issue in this case is whether the evidence established by a preponderance of the evidence that Mr. Sprunger "use[d]" his house "in the commission of" possessing illegal images. Neither the trial nor the intermediate court provided any analysis into whether his house was so "used." The trial court's Forfeiture Order simply contains a conclusory statement that the court "specifically finds" that the house was "used" in violation of the statute, but failed to provide any reasoning.[4] (T.R. Vol. I, p. 61). The trial court had stated at the end of the contested hearing that its holding was based on the facts that the images "remained in the house" and that "at the house, there

[3] The higher offense of *Aggravated* Sexual Exploitation makes it "unlawful for a person to knowingly promote, sell, distribute, transport, purchase or exchange material, or possess with the intent to promote, sell, distribute, transport, purchase or exchange material, that includes a minor engaged in" sexual activity. *Id.* at § 39-17-1004. Mr. Sprunger was not convicted of this offense, and the State has abandoned its initial theory that forfeiture is justified by same.

[4] The Order actually states that the property was used "in violation of T.C.A. title 40, chapter 33, part 2." That section of the Code refers to forfeiture procedure, rather than the offense of which Mr. Sprunger was convicted, namely Tenn. Code Ann. § 39-17-1003.

was Internet service provided, and also other computers there."[5] (T.R. Vol. II, Transcript, p. 45). In affirming the forfeiture order, the intermediate court noted that the computer was "kept" at the property, the house had electrical outlets,[6] and the house had an internet connection. (Slip Op. at 11).

Likewise, no Tennessee court in any other case has explored or set forth a standard or test for what constitutes "use" of real property in a forfeiture proceeding. Mr. Sprunger asserts that the word "use" connotes a more active and direct employment than occurred in this case. In short, there was no "active" nexus between the unlawful computer activity and his dwelling where the computer happened to reside. The overly-broad construction of "use" by the trial court failed to follow this Court's guidance that "confiscations are not favored and every statute purporting to authorize confiscation must be strictly construed and strictly pursued." *Biggs v. State*, 341 S.W.2d 737, 740 (Tenn. 1960).

For support, Mr. Sprunger relies on common usage found in dictionary definitions, the legislative history of the child exploitation forfeiture statute, other Tennessee forfeiture laws, and forfeiture laws in other jurisdictions.

A. Dictionary Definitions

On its face, the statute in question may appear clear and unambiguous. In such circumstances, courts "apply the statute's plain language in its normal and accepted use."

[5] Of course, the evidence at the hearing showed that no illegal images were found elsewhere in the house or on any other computers. (*Id.* at 35-36).

[6] Mr. Sprunger notes that the trial court did not rely on the supply of electricity in its oral or written reasoning for its holding.

Shore v. Maple Lane Farms, LLC, 411 S.W.3d 405, 420 (Tenn. 2013). The term "use" has varying definitions, including "to put or bring into action or service; employ for or apply to a given purpose." Webster's New World College Dictionary (4th ed. 1999). "Use" is defined in Black's Law Dictionary as "The application or employment of something; esp., a long-continued possession and employment of a thing for the purpose for which it is adapted, as distinguished from a possession and employment that is merely temporary or occasional." (9th ed. 2009).

As a matter of common usage, Mr. Sprunger surely "put into action," "applied," and "employed" his *computer* in possessing the illegal materials. The same simply cannot be said of his house.[7] "Use" of the house was, at best, merely indirect and incidental through contents within the house. Certainly the house was not "adapted" to possess illegal materials, and there was no evidence presented as to how long Mr. Sprunger possessed same in his house.

It is difficult to conceive how a person can "use" most forms of property to possess a thing, other than perhaps as a container. This is particularly true here, where the offensive thing is literally just a series of digital "0"s and "1"s that can be constructed by a machine into recognizable images. *See* Jacqueline D Lipton, *To (c) or Not to (c)? Copyright and Innovation in the Digital Typeface Industry*, 43 U.C. Davis L. Rev. 143,

[7] Perhaps one day the average home will be fully interconnected through a central computer system with all functions fully integrated with the building itself, such as temperature, security, music, television, and internet. *See* P.C. Control, "Bill Gates introduces E-home technology in the 'Home of Today,' " http://www.pc-control.net/pdf/012005/pcc_hdg_e.pdf, accessed on Jan. 14, 2014. For now, the "Home of Today" remains the Home of Tomorrow, at least for folks such as Mr. Sprunger.

165-66 (2009). Certainly a computer (or independent electronic storage device) is "used" to store those "0"s and "1"s, but no other kind of property is necessary or sufficient for such storage.

It is a closer call of how a person might "use" other kinds of property to "promote, sell, distribute, transport, purchase or exchange material." *See* Tenn. Code Ann. § 39-17-1004. For example, a remote piece of property at which child pornography is filmed or marijuana plants are grown may constitute illicit "use" of that property "in the commission of" an offense. The case at bar is limited to the narrower act of mere possession.

Although much more can (and will) be written below about the meaning of "use," Mr. Sprunger asserts that this Court can rely on common usage and common sense to conclude that he did not "use" his house to possess the illegal images.

B. Public Policy

The statute may not be as clear as it seems at first blush. The United States Supreme Court has recognized that

> the word "use" poses some interpretational difficulties because of the different meanings attributable to it. Consider the paradoxical statement: "I *use* a gun to protect my house, but I've never had to *use* it." "Use" draws meaning from its context . . . .

Bailey v. United States, 516 U.S. 137, 143 (1995).

Where statutory language is unclear, courts may consider sources beyond the statutory text, such as "the broader statutory scheme, the history and purpose of the legislation, public policy . . . and the legislative history of the statute." *Shore*, 411

S.W.3d at 421.

Public policy on forfeitures is well-established in Tennessee: "confiscations are not favored and every statute purporting to authorize confiscation must be strictly construed and strictly pursued." *Biggs v. State*, 341 S.W.2d 737, 740 (Tenn. 1960). "Before a confiscation statute may be used to deprive a person of his property **the facts must fall both within the spirit and the letter of the confiscation law** under which the sovereign proposes to act." *Id.* (emphasis added); *see also Wells v. McCanless*, 198 S.W.2d 641, 643 (Tenn. 1947) (quoting *United States v. One 1936 Model Ford V-8 De Luxe Coach*, 307 U.S. 219, 226 (1939)). This policy applies even when the criminal conduct triggering forfeiture is "abhorrent to, and potentially as destructive of, our civilization." *Goldsmith v. Roberts*, 622 S.W.2d 438, 440 (Tenn. Ct. App. 1981) (discussing drug forfeitures).

These forfeiture public policy doctrines are applied without exception throughout our country. *See, e.g., Jamison v. Knosby*, 423 N.W.2d 2, 4-5 (Iowa 1988) ("[I]t is the general rule that equity abhors a forfeiture. In adherence to that rule, forfeiture statutes are to be construed strictly against a forfeiture, with the burden to show full and strict compliance with the statutory procedures upon the party seeking forfeiture."); *Pirkey v. State ex rel. Martin*, 327 P.2d 463, 467 (Okla. 1958) ("It has generally been held that courts abhor forfeitures and all provisions providing therefor in statutes or deeds will be strictly construed and forfeitures will not be decreed except when required by clear language contained in the statute or deed.").

Public policy also dictates that forfeiture statutes be written, and applied, so as to

provide "fair warning" such that a "person of common intelligence" can reasonably understand what is proscribed. *See State v. Burkhart*, 58 S.W.3d 694, 697 (Tenn. 2001) (discussing due process considerations for holding a statute void for vagueness). The forfeiture statute at issue in this case did not provide fair warning that possession of illegal images on a single computer would result in forfeiture of a house under the theory that the house was "used" for possession.

Mr. Sprunger's "use" of his house to possess illegal materials was, at best, attenuated, incidental, and indirect. The State's strained use of its limited seizure authority in this case follows neither the spirit nor the letter of the law, and thus constitutes an abuse of power that is abhorrent to our public policy.

C. Legislative History

A review of the legislative history behind the forfeiture statute at issue in this case, § 39-17-1008, reveals that our legislature intended for property to be forfeited only when there is a direct, substantial nexus between the property and the exploitation of children. The law was enacted through 2006 Pub. Ch. 960. The bill's chief senate sponsor, Sen. Tim Burchett, stated at a committee meeting that he came up with the idea for the law after watching a television program about adults meeting children via the internet. Upon seeing "one fellow in particular get out of a red sports car," Sen. Burchett "got to thinking that little sports car is what is he is going to use to lure that little girl." Sen. Burchett decided it would be "a great idea" if the state could seize such assets just as with "drugs when they use an automobile to transport drugs or a house to manufacture drugs." Hearing Before the Senate Finance, Ways, and Means Comm. (May 16, 2006) (statement

of Sen. Tim Burchett).

In front of the full senate, Sen. Burchett reaffirmed the same intent:

> What ends up happening a lot of times, we are finding out, a lot of these folks, they use the internet to lure these children in and then some of them will take them places in their cars, or maybe in their house, and this just allows us to seize those assets that were used in the commission of these crimes.

Hearing Before the Senate (May 23, 2006) (statement of Sen. Tim Burchett).

Although § 39-17-1008, by its terms, applies to any child exploitation offense (including possession), the legislative history shows that the intent was primarily to impose forfeiture in cases of the direct, personal victimization of a child, such as the offense of Especially Aggravated Sexual Exploitation, Tenn. Code Ann. § 39-17-1005.[8]

Nothing in the legislative history reveals that the legislature intended to allow forfeiture of real property against persons who possesses illegal images.

D. Other Tennessee Forfeiture Laws

We turn now to other Tennessee forfeiture laws for guidance. "Statutes 'in pari materia'—those relating to the same subject or having a common purpose—are to be construed together." *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995).

The closest statute to the one at bar is one which subjects real property to forfeiture if it is "used in any manner or part" to commit certain felony drug offenses.[9] Tenn. Code Ann. § 53-11-452. Unfortunately, a forfeiture under that provision has never

[8] For example, using a vehicle to entice and transport a minor to a secluded house for purposes of creating child pornography there might merit forfeiture of the vehicle and the house.

[9] As with many similar statutes, "proceeds" of illegal activity are also subject to forfeiture. Consideration of what may constitute "proceeds" are inapplicable to this case.

been challenged in an appellate court, and it is unclear how often the statute has been invoked.[10] It is notable that the child pornography forfeiture statute is far less expansive, in that it omits the "in any manner or part" modification of "use." *Cf. State ex rel. Oklahoma Bureau Of Narcotics And Dangerous Drugs Control v. One (1) Stevens 12 Ga. Shotgun*, 82 P.3d 110, 112 (Okla. Civ. App. 2003) (noting that "in any manner" modification of "use" expanded scope of forfeiture statute).

The most commonly used forfeiture statute, which concerns other property involved in drug offenses, has avoided discussion on the word "use" because the statute is written with more specificity. Rather than simply subjecting all property "used in the commission" of an offense to forfeiture, the statute only applies to property that is (1) a controlled substance itself, (2) materials used to produce drugs, (3) property that is used as a container for drugs, (4) conveyances and vehicles that are used to transport drugs, (5) research materials used in violation of the law, (6) proceeds or property furnished in exchange for drugs, or (7) drug paraphernalia. *Id.* at § 53-11-451.[11]

This drug forfeiture statute is evidence of the type of "use" for which the legislature deems forfeiture appropriate. It would likely be instructive in a challenge over the meaning of "use" for a forfeiture of real property pursuant to § 51-11-452. Certainly none of these categories would apply to a home in which a person possesses drugs.

[10] The fact that no appellate issues have arisen since the law's enactment by 1990 Pub. Acts Ch. 774 suggests that state forfeiture of real property is extraordinarily rare.

[11] This statute was modeled from a federal forfeiture statute, 21 U.S.C. § 881, which has been considered instructive for its Tennessee counterpart. *Hughes v. State Dep't of Safety*, 776 S.W.2d 111, 113 (Tenn. Ct. App. 1989).

Similarly, none apply to the home in which Mr. Sprunger possessed the illegal images.

Other forfeiture statutes have failed to produce relevant case law on the central issue in this case. *See* Tenn. Code Ann. §§ 39-14-307 (arson offenses); 47-25-1105 (unauthorized use for commerce); 55-50-504(h) (driving without valid license after DUI offense); 55-10-414 (repeat DUI offense), 57-3-411 (unlawful liquor sales); 57-5-409 (unlawful beer sales); 57-9-201 (unlawfully purchased alcohol); 67-4-1020 (unlawfully purchased tobacco); § 70-6-202 (wildlife laws).

In sum, a review of Tennessee's other forfeiture statutes produces no indication that forfeiture of a home for a possession offense would be permitted in any other context. Such a forfeiture should not be recognized in this one.

E. Forfeiture Statutes in Other Jurisdictions

What it means to "use" property "in the commission of" an offense has been examined by several state and federal courts, particularly with regard to drug forfeiture statutes. A survey of the resulting cases reveals a consensus that there must be a "substantial connection" between the seized property and the crime. In fact, Congress codified this standard in federal law in the Civil Asset Forfeiture Reform Act of 2000. 18 U.S.C. § 983(c)(3).

The Michigan Supreme Court, in clarifying when property is "used" to "facilitate" a crime, determined that the "substantial connection" test "strikes the proper balance between the rights of the individual property owners and the state[]" because it is "unreasonable" to allow "forfeiture of property which has only an incidental or fortuitous connection to the unlawful activity." *In re Forfeiture of $5,264*, 439 N.W.2d 246, 254-55

(Mich. 1989). The Iowa Supreme Court, clarifying a similar statute, also adopted a "substantial connection" standard because "[t]he legislature would not have intended the forfeiture statute to divest private property based on an unsubstantial connection between the property and the underlying criminal activity." *Matter of Kaster*, 454 N.W.2d 876, 879 (Iowa 1990). Texas has a "substantial connection" test as well. *State v. Ninety Thousand Two Hundred Thirty-Five Dollars & No Cents in U.S. Currency ($90,235)*, 390 S.W.3d 289, 293 (Tex. 2013); *see also State v. Batten*, 997 P.2d 350 (Wash. 2000) ("the use of the motor vehicle must contribute in some reasonable degree to the commission of the felony"); *People v. Poindexter*, 258 Cal. Rptr. 680 (Cal. Ct. App. 1989) (property "must contribute in some reasonable degree" to crime).

Some states, such as Ohio and Illinois, require that property be "**integral**" to the offense in order to be considered "used" in the "commission" of that crime. *State v. Anthony*, 772 N.E.2d 1167, 1171 (Ohio 2002) (emphasis added); *People ex rel. Waller v. 1996 Saturn, VIN 1G82H5282TZ113572*, 699 N.E.2d 223, 225 (Ill. App. Ct. 1998) (citing *People ex rel. Hanrahan v. One 1965 Oldsmobile*, 284 N.E.2d 646 (Ill. 1972)).

Several courts have imposed heightened scrutiny of forfeitures involving "pervasive" kinds of property such as vehicles and houses. In holding that a vehicle had not been "used" to commit or facilitate a crime, the Minnesota Supreme Court explained:

> With respect to vehicular conveyances in particular, "common sense dictates that the law require a **substantially significant connection** with criminal activity before an ordinary automobile may be seized and forfeited to the Government." The reason is that the **use of the automobile in our society is pervasive**. A car by itself is not contraband and there is **little activity that the use of a car does not "facilitate" to some degree**.

Riley v. 1987 Station Wagon, 650 N.W.2d 441, 445 (Minn. 2002) (quoting *United States v. One 1972 Datsun Vehicle Identification No. LB1100355950*, 378 F. Supp. 1200, 1206 (D.N.H. 1974)).

Similarly, the Indiana Supreme Court held that the mere presence of drugs in a vehicle is insufficient to demonstrate that "an adequate nexus exists between the property sought in forfeiture, and the underlying offense":

> The Indiana forfeiture statute **requires more than a mere demonstration that the vehicle's operator possessed cocaine**. . . . This **nexus requirement is a means to guarantee that the government is seizing actual instruments** of the illegal drug trade. The language of the statute is directed toward instruments of this illicit activity, in hopes of retarding, through asset forfeiture, expanding drug commerce. **Depriving persons of their property such as vehicles unrelated to the drug trade will do little to advance our Legislature's intent**.

Katner v. State, 655 N.E.2d 345, 349 (Ind. 1995) (emphasis added). The *Katner* court created the following test to determine whether a sufficient nexus exists: "that the property sought in forfeiture was used '**for the purpose of** committing, attempting to commit, or conspiring to commit' an enumerated offense." *Id.* (emphasis added).

Katner was followed by an Oklahoma court, even though that state does not apply a "substantial connection" test because its forfeiture statute applies to firearms used "in any manner" to facilitate an offense. *State of Oklahoma ex rel. Oklahoma Bureau of Narcotics and Dangerous Drugs Control v. One (1) Stevens 12 Ga. Shotgun*, 82 P.3d 110, 112 (Okla. Civ. App. 2003) (cited with approval by *State ex rel. Redman v. $122.44*, 231 P.3d 1150, 1153 (Okla. 2010)). As the Oklahoma court explained:

> The establishment of **some link or nexus is particularly important in cases involving a residence where people commonly keep all of their possessions (both legal and illegal) to which they want ready access**. If **mere**

> **presence** with drugs and a dangerous capability to protect the drugs were alone sufficient to support forfeiture, a child's baseball bat, kitchen knives, ordinary scissors, sharp tools, and even the family dog who displays aggressiveness toward strangers would all be subject to forfeiture as "available weapons" if found in the same room as drugs.

Id. Certainly houses are even more pervasive in our society than vehicles. Accordingly, the Oklahoma Supreme Court recognized heightened protection not only for houses themselves, but property found within a person's house:

> The establishment of **some link or nexus is particularly important in cases involving a residence** where people commonly keep all of their possessions (both legal and illegal) to which they want ready access. Mere presence of an item with drugs and a dangerous capability of the item to protect the drugs are not alone sufficient to establish the nexus necessary for forfeiture. To forfeit under [the statute], the State must demonstrate that the "weapon" has somehow "facilitated" the offense or offenses that serve as the basis of its forfeiture.

State ex rel. Redman v. $122.44, 231 P.3d 1150, 1153-54 (Okla. 2010) (emphasis added). As a result, the court limited forfeiture to property whose use is "more than incidental or fortuitous . . . in order to guarantee that the State is seizing *actual* instruments of the illegal drug trade." *Id.* at 1153. Applying that standard, the court found that a drug dealer's firearms had been wrongly forfeited.

The United States Supreme Court has grappled with the "use" of real estate in the context of the federal arson statute's requirement that such property be "used in interstate or foreign commerce." 18 U.S.C. § 844(i). In *Jones v. United States*, the Court reasoned that "use" requires "active employment":

> That qualification is most sensibly read to mean **active employment** for commercial purposes, and **not merely a passive, passing, or past connection** to commerce. Although "variously defined," the word "use," in legislation as in conversation, ordinarily signifies "active employment." *Bailey v. United States*, 516 U.S. 137, 143, 145 (1995); *see also Asgrow Seed Co. v. Winterboer*, 513 U.S.

179, 187 (1995) ("When terms used in a statute are undefined, we give them their ordinary meaning.").

> **It surely is not the common perception that a private, owner-occupied residence is "used" in the "activity" of receiving natural gas, a mortgage, or an insurance policy.** *Cf. Bailey*, 516 U.S., at 145, 116 S.Ct. 501 (interpreting the word "use," as it appears in 18 U.S.C. § 924(c)(1), to mean active employment of a firearm and rejecting the Government's argument that a gun is "used" whenever its presence "protect[s] drugs" or "embolden[s]" a drug dealer). . . .
>
> **[Under a broader definition], hardly a building in the land would fall outside the federal statute's domain.** Practically every building in our cities, towns, and rural areas is constructed with supplies that have moved in interstate commerce, served by utilities that have an interstate connection, financed or insured by enterprises that do business across state lines, or bears some other trace of interstate commerce. *See, e.g., FERC v. Mississippi*, 456 U.S. 742, 757 (1982) (observing that **electric energy is consumed "in virtually every home"** and that "[n]o State relies solely on its own resources" to meet its inhabitants' demand for the product).

529 U.S. 848, 855-57 (2000) (emphasis added). Following this precedent, the Seventh Circuit held that a Hells Angels chapter's activities, which included interstate travel, were "too passive, too minimal, and too indirect" to place its clubhouse under the statute. *United States v. Craft*, 484 F.3d 922, 929 (7th Cir. 2007).

It makes good sense that other jurisdictions have overwhelmingly required a substantial nexus between the property and an offense to constitute "use" when one considers the dictionary definitions of "use" and the strong public policy against forfeiture. A limited construction is particularly appropriate here in light of the legislative history suggesting that only the active abuse of children was considered in passing the forfeiture statute in question.

This Court should follow the examples of other jurisdictions in holding that "use," for purposes of Tennessee's forfeiture statutes, requires that the property (1) have a "substantial connection" to the offense, (2) was used "for the purpose of" the offense, (3)

was "actively employed" in the offense, and (4) was "integral" in the offense. A heightened standard should be applied to pervasive forms of property whose uses are expansive in our society, such as cars and houses.

Examination of the record in this case reveals no consideration by the trial and intermediate courts into whether any of these tests were met. Rather, they simply relied on the facts that the possession had occurred at the house, and that internet and electricity flowed through the house. It would appear that the trial court viewed forfeiture of any property with *some* connection to the offense as largely automatic upon conviction. The court erroneously failed to consider and make findings as to whether there was a *sufficient* connection between the property and the offense to justify forfeiture.

Just as the United States Supreme Court has held that a house is not "used" to obtain natural gas for purposes of establishing an interstate nexus, *Jones*, 529 U.S. at 855-56, this Court should hold that a house is not "used" to obtain internet services and electricity for purposes of possessing illegal images. Under the substantial connection/active employment test adopted by most jurisdictions, Mr. Sprunger is entitled to relief in this matter.

F. Proposed Balancing Test

Mr. Sprunger asserts that a common-sense reading of the dictionary, or at most the test articulated by the Supreme Court in *Jones*, is sufficient to resolve this matter in his favor. Anticipating that this Court may seek to offer additional guidance to lower courts, a non-exclusive list of factors is suggested:

1. Whether the property's use was direct or indirect in committing the offense.

2. Whether the property was obtained for the purpose of committing the offense.
3. The extent to which the property was used in committing the offense, compared with other acts.
4. The essentialness of the property to the commission of the offense.
5. The temporal and spatial connection of the property to the offense.
6. Whether the manner in which the property was used was pervasive in our society, as opposed to specialized for the offense.

The first factor considers the degree to which the property was actually used in committing the offense, in order to minimize forfeiture of property used only incidentally. Applying the first factor here, the use of Mr. Sprunger's house was, at best, indirect as a conduit of internet and electricity. By contrast, his computer was certainly used directly, just like a greenhouse would be in a marijuana growing operation.

The second factor considers whether the person obtained the property for the purpose of committing the offense, which reflects intent. Certainly property is more connected to the offense if it was obtained for that purpose, such as if someone bought a secluded property in order to transport and film children. By contrast, the eventual commission of illegal activity at property that has long been for legal purposes would suggest a weaker nexus. Here, nothing in the record suggests that Mr. Sprunger's purchase of the house in 1997 was impacted by his desire to later possess child pornography there.

The third factor considers the extent to which the property was used for legal, as opposed to illegal, activity. For example, a greenhouse used only to grow marijuana plants is illegally "used" more than a forty acre farm in which only a few plants are grown. Here, the number of illegal images found on Mr. Sprunger's computer suggests that computer may have been used somewhat proportionally to legal purposes. By

contrast, the possession of illegal images on just one of several computers was, at best, a minimal use of the house.

The fourth factor considers whether the property was essential to the commission of the offense. Certainly the computer (along with associated computer equipment) was essential to possessing digital images, just as a greenhouse might be for marijuana plants. Mr. Sprunger's house may have been helpful to the possession, but it was not essential: he could have downloaded the materials on a laptop in other locations, or on a computer at a place of business.[12]

The fifth factor considers the temporal and spatial connection between the property and the offense. A greenhouse used to produce marijuana for several years is more directly connected to the offense than a garden in which a single plant is grown and then transported to the greenhouse after a short time. Here, it would appear that all of the illegal images were downloaded on Mr. Sprunger's computer while in his house, but nothing in the record indicates how long the possession took place compared with the total time in which he owned the house.

Finally, the sixth factor considers whether the manner in which the property was used is pervasive in our society, as opposed to specialized for the offense. Most people do not have greenhouses, and most people that do own them do not use them to grow marijuana. By contrast, homes are extremely pervasive, and there is no evidence that Mr. Sprunger did anything to his house to make it better suited to possessing illegal materials.

[12] *See* Jaikumar Vijayan, *Federal Workers Caught Watching Porn at Work*, PCWorld, Apr. 25, 2010, http://www.pcworld.com/article/194932/federal_workers_caught_watching_porn_at_work.html.

Weighing all of these factors, the evidence preponderates heavily against a finding that Mr. Sprunger's house was "used in the commission" of possessing illegal images.

G. Conclusion

The State's forfeiture of Mr. Sprunger's house for a possession offense in this case is contrary to the plain meaning of the statute, public policy, legislative intent, and judicial interpretation of similar laws in a myriad of other jurisdictions. The trial court's Order reveals that it deemed forfeiture of essentially anything largely automatic pursuant to Tenn. Code Ann. § 39-17-1008 upon conviction of a covered offense. (T.R. Vol. I, p. 61). This Court should make clear that a more searching inquiry into the nexus between the property and the offense is required, and that an insufficient nexus exists in this case to allow for forfeiture.

II. Procedural Deficiencies in the Forfeiture Warrant Proceedings Nullify the Forfeiture

Mr. Sprunger asserts that two failures to follow the statutory forfeiture procedure should render the forfeiture a nullity. First, the seizing officer did not provide the required "Notice of Seizure" in compliance with Tenn. Code Ann. § 40-33-203(c). Second, the government did not comply with the hearing and recording requirements of Tenn. Code Ann. § 40-33-204(b).

A. Notice of Seizure Requirement

Seizing officers are required to provide certain information to the owner of the property to be forfeited:

> Upon the seizure of any personal property subject to forfeiture pursuant to § 40-33-201, the seizing officer shall provide the person found in possession of the

> property, if known, a receipt titled a "Notice of Seizure." The notice of seizure shall contain the following:
> . . .
> (5) The procedure by which recovery of the property may be sought, including any time periods during which a claim for recovery must be submitted.

Tenn. Code Ann. § 40-33-203(c).[13] Mr. Sprunger received a Notice of Seizure, but the Notice did not include any information regarding "the procedure by which recovery of the property may be sought." (T.R. Vol. I, Notice, p. 10).

The Notice contains four "categories" of offenses. The first three are particular classes of offenses and contain specific recovery instructions. The fourth category, which was checked in Mr. Sprunger's notice, simply states "Refer to instructions provided by seizing agency for filing a claim on the above property." (T.R. Vol. I, Notice, p. 10). No such instructions were provided.

In pro se filings to the court, Mr. Sprunger expressly challenged the noncompliance:

> The officer who delivered the receipt of seizure and forfeiture failed to provide me with instruction as stated under 53-11-201B,[14] the procedure by which recovery of the property may be sought. I assert my rights under this provision have been violated.

(T.R. Vol. I, Oct. 6, 2010 Letter, p. 22). At the contested hearing, the trial court accepted Mr. Sprunger's letters as a formal Answer in the proceedings. (T.R. Vol. II, Transcript, p. 4). Yet the trial court never asked Mr. Sprunger before or during the hearing about this

[13] Although this statute has been amended since the seizure, this language remains unchanged.

[14] Tenn. Code Ann. § 53-11-201(a)(1)(B) addresses drug seizures and contains a requirement that the property owner be informed of "the procedure by which recovery of the property or conveyance may be sought," which is effectively identical to the notice requirement in § 40-33-203(c).

or other collateral concerns, and failed to rule on the statutory deficiency. Mr. Sprunger expressly raised this issue on appeal to the intermediate court, contending that the government's failure to follow the procedural requirements rendered the forfeiture "null and void." (Sprunger Court of Appeals Br. at 11-12).

The intermediate court never considered Mr. Sprunger's arguments on the Tenn. Code Ann. § 40-33-203(c) violation, despite the fact that the issue had been raised before that court and the trial court. Instead, the intermediate court reviewed only Mr. Sprunger's claim that the ex parte hearing failed to comply with § 40-33-204(b), which the court found had been waived. Despite the lower courts' failure to review this claim, there is no waiver which would preclude review by this Court.[15]

This Court has held that, where, as here, forfeiture is not a mandatory consequence of conviction, the state's failure to give proper notice required by forfeiture procedure nullifies the forfeiture *ab initio*:

> The forfeiture demanded is a proceeding in rem under the procedure provided by the [forfeiture statute], and **such procedure must be complied with in order to divest the owner of his title**. . . . This statute gives a new power, a power to divest title from the owner of property, and the statute provides means of enforcing such power, which is controlling.
>
> In other words, the proceeding is conditioned upon compliance with the conditions prescribed. Admittedly **these conditions have not been complied with. Consequently no forfeiture or confiscation has occurred.**

Wells v. McCanless, 198 S.W.2d 641 (Tenn. 1947) (emphasis added). Rejecting the State's argument that requirements to appraise a seized vehicle and give a receipt to the respondent were "merely directory, not mandatory," this Court stated:

[15] Mr. Sprunger notes that this issue was identified in his application for permission to appeal to this Court. (Sprunger Application at 12-13).

> We think that the Legislature meant to prescribe conditions under which and under which alone the confiscation could be accomplished, and that **such provisions are not mere idle suggestions to be disregarded at will by the officers of the State**.

Id. at 643 (emphasis added); *see also Toyota Motor Credit Corp. v. State Dep't of Safety*, No. M2003-00147-COA-R3CV, 2003 WL 22519810 (Tenn. Ct. App. Nov. 7, 2003) (holding that the State's failure to give adequate notice of forfeiture is fatal to forfeiture).

Here, where the conditions of the statute were not fully complied with, "no forfeiture . . . has occurred" and Mr. Sprunger should be entitled to the proceeds of the sale of his home. Mr. Sprunger contends that the requirement to give him proper notice for challenging the forfeiture is similarly not a "mere idle suggestion[] to be disregarded at will."

This Court should reject any contention from the State that Mr. Sprunger waived this argument for failure to *re*-raise it at the trial court. Tennessee courts provide leniency to pro se litigants:

> Parties who decide to represent themselves are entitled to fair and equal treatment by the courts. The courts should take into account that many pro se litigants have no legal training and little familiarity with the judicial system. However, the courts must also be mindful of the boundary between fairness to a pro se litigant and unfairness to the pro se litigant's adversary.

Hessmer v. Hessmer, 138 S.W.3d 901, 903 (Tenn. Ct. App. 2003) (citations omitted). Here, Mr. Sprunger did not "decide" to represent himself. He was unable to afford an attorney because the State seized his most valuable asset and the trial court denied his request for counsel.[16] (T.R. Vol. I, Letter from Sprunger to Court, p. 21; T.R. Vol. I,

[16] Of course, the seizure of his house prevented him from using money from that asset to defend himself in his criminal trial as well. (T.R. Vol. II, Transcript, p. 8 ("I had no money to properly

Order Denying Appointment, p. 51). Instead, he was forced to appear at the contested hearing via telephone from prison, opposite an experienced elected district attorney.

This Court has observed that "forfeiture proceedings are *quasi criminal* in nature." *Garrett v. State, Dep't of Safety*, 717 S.W.2d 290, 291 (Tenn. 1986). Although forfeiture respondents may not be entitled to the full scope of rights guaranteed to criminal defendants, they are surely entitled to heightened rights and protections than are available to ordinary civil litigants.

The opportunity to re-raise this issue was never "reasonably available" to Mr. Sprunger. *See* Tenn. R. App. P. 36(a). At no point was he made aware that the hearing was for anything other than a direct contest over the merits of the "use" of the property. He was never given anything to make him aware that procedural or constitutional challenges must be made at or before the hearing, or how to make such a challenge. And he was never asked to further discuss this issue, even though he had raised it in his pre-trial filings.

It should be noted that the State stacked the deck even further against Mr. Sprunger by alleging he had committed a more serious offense to secure the ex parte seizure, and then abandoning that position at the contested hearing. In the initial forfeiture warrant, the State asserted that Mr. Sprunger was guilty of § 39-17-1004—the offense of manufacturing and distributing child pornography—which would certainly make a stronger case for forfeiture. (T.R. Vol. I, p. 11). Even after Mr. Sprunger was

---

defend myself and that is because they had secured this forfeiture warrant and subsequent lien.")).

convicted only of possession under § 39-17-1003, the State *continued* asserting to the trial court that Mr. Sprunger was guilty of the higher offense. (T.R. Vol. I, Complaint, p. 3, para. 4). Mr. Sprunger devoted much of his pro se filings to the court with rebutting the accusation of the higher charge. (T.R. Vol. I, Oct. 6, 2010 Letter, pp. 21-22; T.R. Vol. I, Nov. 11, 2010, pp. 45-46). Even at the end of the contested hearing, Mr. Sprunger continued to express confusion over why the State had asserted the higher charge earlier in the proceedings and attempted to respond to that contention. (Vol. II, Transcript, p. 42). Although it is true that forfeiture is authorized under either statute, the State induced Mr. Sprunger into defending against more difficult attack than he needed to challenge.

Most importantly, the statute puts the burden on the *government* to provide proper notice. The government's failure to follow this duty should not be easily excused. The forfeiture procedure law repeatedly provides that all forfeitures "shall" follow statutory procedure. Tenn. Code Ann. § 40-33-201 (property shall be seized and forfeited in accordance with the procedure set out" in the rest of the part); Tenn. Code Ann. § 40-33-204(a) (2012) ("[N]o forfeiture action shall proceed unless a forfeiture warrant is issued in accordance with this section."). The use of the word "shall" is mandatory where, as here, the mode of action is essential to the thing to be accomplished. *Myers v. AMISUB (SFH), Inc.*, 382 S.W.3d 300, 309 (Tenn. 2012).

Mr. Sprunger also notes that this issue is a purely legal question which would be reviewed de novo anyway. The only relevant question is the effect of the government's non-compliance. No questions of fact were left answerless because of any failure to re-raise the objection, making a second objection to the trial court unnecessary to expanding

the record. This Court is fully equipped to grapple with that issue in the first instance, especially in light of *Wells*.

The balance of "fairness" surely allows this Court to consider and decide the consequence of the government's illegal, non-complaint seizure of Mr. Sprunger's home. There is nothing fair about Mr. Sprunger being punished for the government's own failures to follow the statute. Finding waiver on this issue would be as if Mr. Sprunger was challenged to a boxing match by a heavyweight champion, forced to tie one hand behind his back, and then penalized for not being able to simultaneously defend himself and attack his opponent.

This Court should uphold Mr. Sprunger's right to have his property forfeited only by full compliance with the statute.

B. Ex Parte Hearing Requirements

At the time of the ex parte forfeiture warrant hearing, the forfeiture procedure statute provided:

> The officer making the seizure shall apply for a forfeiture warrant by filing a sworn affidavit within five (5) working days following the property seizure. The forfeiture warrant shall be based upon proof by affidavit and shall have attached to it a copy of the notice of seizure. **The hearing on the application for a forfeiture warrant shall be ex parte and shall be recorded. It is the duty of the court to maintain the recording.** Certified copies of the proceeding shall be made available to any party requesting them, and the same shall be admissible as evidence.

Tenn. Code Ann. § 40-33-204(b).[17] The trial court found in its Forfeiture Order that "no

[17] This statute was amended by 2013 Pub. Ch. 382 in various ways, but without substantive amendment to the requirements in the quoted passage.

hearing was held" on the forfeiture warrant petition.[18] (T.R. Vol. I, p. 60). Rather, the judge simply signed the warrant.

In his appeal to the intermediate court, Mr. Sprunger contended that he is entitled to relief because of the insufficiency of the forfeiture proceedings. That court held that he waived that issue for failing to raise it before the hearing. (Slip. Op. at 8).

This Court should grant relief to Mr. Sprunger because of the State's second undisputed lack of statutory compliance. As discussed above, the government's failure to comply with forfeiture procedure renders forfeiture void *ab initio*. *Wells v. McCanless*, 198 S.W.2d 641 (Tenn. 1947). Here, where no hearing occurred (and no recording was made or kept), the forfeiture was simply invalid.

This Court should reject the intermediate court's finding of waiver as a matter of due process under the unique circumstances of this case, most importantly the magnitude of forfeiture and the fact that the forfeiture deprived Mr. Sprunger of the ability to obtain counsel for the contested hearing. Mr. Sprunger relies on the substantive and equitable arguments against waiver raised in the previous subsection, including the facts that the forfeiture deprived Mr. Sprunger of the opportunity to obtain counsel and that the statute puts the burden of compliance on the government.

This Court should reject the lower court's finding of waiver and uphold Mr. Sprunger's right to have his property forfeited only by full compliance with the statute, which did not happen here.

[18] The State has conceded earlier in this litigation that no hearing was held. (T.R. Vol. III, State's Reply to Notice of Incomplete Record Appeal, p. 5)

III. The Forfeiture Constitutes an Excessive Fine

Mr. Sprunger also asserts that this Court should reach and decide the issue of whether the forfeiture in this case constitutes an excessive fine. This Court has held that forfeitures are subject to the excessive fine protections guaranteed to citizens by Article I, § 16 of the Tennessee Constitution and the Eighth Amendment to the United States Constitution. *Stuart v. State Dep't of Safety*, 963 S.W.2d 28, 34 (Tenn. 1998).

Mr. Sprunger acknowledges that he has not expressly raised this issue below. However, he urges the Court to consider it because of the magnitude of the forfeiture in light of Mr. Sprunger's constitutional rights, and the equitable arguments against waiver discussed above.

Analysis under the excessive fines clause must include a proportionality test considering these factors, none of which are dispositive:

> (1) the harshness of the penalty compared with the gravity of the underlying offense;
> (2) the harshness of the penalty compared with the culpability of the claimant; and
> (3) the relationship between the property and the offense, including whether use of the property was (a) important to the success of the crime, (b) deliberate and planned or merely incidental and fortuitous, and (c) extensive in terms of time and spatial use.

Id. at 35-36.

With respect to the first two factors, certainly the underlying offense and Mr. Sprunger's culpability weigh against him. This Court has explained how to consider the "harshness of the penalty":

> When determining the harshness of the penalty imposed under the first and second factors of the excessive fines analysis, **courts should consider the monetary value of the property forfeited, particularly in light of the claimant's financial**

> **resources.** A forfeiture is less likely to be excessive when the claimant has the financial ability to replace the property without undue hardship. Conversely, a forfeited vehicle may be worth little, but undue hardship may still result if the claimant's family cannot afford to replace it and has no other means of transportation. Finally, **the intangible value of the forfeited property should be considered**. For example, real property, especially **a home, has a higher intangible value than personal property.**

Id. at 36 (emphasis added). Here, the harshness of the penalty weighs heavily in Mr. Sprunger's favor. Not only did Mr. Sprunger lack the ability to replace the property, the loss of the value of the property prejudiced his ability to contest both his criminal defense and the forfeiture itself. And since the property was his home, it has high intangible value.

As for the third factor, the house was hardly "important to the success of the crime" or "deliberate and planned" in that the only operative property used was the computer and, at most, other electronic equipment such as the internet modem and power cables. There was no testimony or evidence as to the amount of time in which Mr. Sprunger used his house to download the illegal images. *See id.* at 36-37.

In sum, forfeiture of Mr. Sprunger's house, which comprised his only substantive asset, for the crime of possessing illegal images constitutes an excessive fine in violation of the United States and Tennessee Constitutions.

Conclusion

For the above reasons, Mr. Sprunger respectfully requests that this Court vacate the Forfeiture Order issued by the trial court and remand so that the proceeds from the sale of his house may be provided to him. Additionally, Mr. Sprunger asserts that he is entitled to statutory interest from the date of the initial ex parte forfeiture order because he has been wrongly deprived of his property (and its proceeds) from that day forward, and that the trial court should be ordered to impose such interest on remand. Tenn. Code Ann. §§ 47-14-121, -122.

Respectfully submitted,

HOLLINS, RAYBIN & WEISSMAN, P.C.

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Attorney for Appellant/Respondent

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via U.S. Mail to Ben Whitehouse, Assistant State Attorney General, Office of the Attorney General, P.O. Box 20207, Nashville, Tennessee 37202-4015 on this the ____ day of February, 2014 which is the date of the filing of this Brief.

_____
Benjamin K. Raybin

Appendix

Appendix Table of Contents

IN THE CRIMINAL/CIRCUIT COURT OF CUMBERLAND COUNTY, TENNESSEE

Case Number: 09-0212 Count # 1 Attorney for the State: GARY S. McKENZIE

Judicial District: 13th Judicial Division: II Counsel for Defendant: JAMES S. SMITH, JR.

☑ Retained ☐ Appointed ☐ Public Defender ☐ Counsel Waived ☐ Pro Se

State of Tennessee

vs.

Defendant: CHARLES D. SPRUNGER Alias:

Date of Birth: 4/19/1968 Sex: Male Race: White SSN: 283-68-8982

Indictment Filing Date: 7/6/2009 TDOC #: State Control #:

State ID #: County Offender ID #:

JUDGMENT

☑ Original ☐ Amended ☐ Corrected

Comes the District Attorney General for the State and the defendant with counsel of record for entry of judgment.

On the 19th day of August, 2010, the defendant:

☐ Pled Guilty ☐ Dismissed/Nolle Prosequi
☐ Nolo Contendere ☐ Retired/Unapprehended Defendant
☐ Guilty Plea – Pursuant to 40-35-313

Is found: ☑ Guilty ☐ Not Guilty
☑ Jury Verdict ☐ Not Guilty by Reason of Insanity
☐ Bench Trial

Indictment: Class (circle one) 1st A **B** C D E ☑ Felony ☐ Misdemeanor
Offense: SEXUAL EXPLOITATION OF A MINOR
Amended Charge:
Offense Date: 7/8/2008 County: Cumberland
Conviction Offense: SEXUAL EXPLOITATION OF A MINOR
Is this conviction offense methamphetamine related? ☐ Yes ☑ No
TCA #: 39-17-1003 Sentence Imposed Date: 9/15/2010
Conviction: Class (circle one) 1st A **B** C D E ☑ Felony ☐ Misdemeanor

After considering the evidence, the entire record, & all factors in T.C.A. Title 40 Chapter 35, all of which are incorporated by reference herein, the Court's findings & rulings are:

Sentence Reform Act of 1989

Offender Status (Check One): ☐ Mitigated ☑ Standard ☐ Multiple ☐ Persistent ☐ Career ☐ Repeat Violent

Release Eligibility (Check One): ☐ Mitigated 20% ☐ Mitigated 30% ☐ Standard 30% ☐ Multiple 35% ☐ Persistent 45% ☐ Career 60% ☑ Violent 100%

☐ Multiple Rapist 100% ☐ Child Rapist 100% ☐ Repeat Violent 100% ☐ Child Predator 100% ☐ 1st Degree Murder ☐ Drug Free Zone ☐ Gang Related

Concurrent with: Case # (if any)

Consecutive to:

Pretrial Jail Credit Period(s):
From 8/19/10 to 9/10/10
From ____ to ____
From ____ to ____
From ____ to ____

Sentenced To: ☑ TDOC ☐ County Jail ☐ Workhouse

Sentence Length: 8 Years ____ Months ____ Days ____ Hours ____ Weekends ☐ Life ☐ Life w/out Parole ☐ Death

Mandatory Minimum Sentence Length: ____ 39-17-417, 39-13-513, 39-13-514 in Drug Free Zone *or* ____ 55-10-401 DUI 4th Offense *or* ____ 39-17-1324 Possession/Employment of Firearm

Period of incarceration to be served prior to release on probation: ____ Months ____ Days ____ Hours ____ Weekends

Minimum service prior to eligibility for work release, furlough, trusty status and rehabilitative programs: ____ % (Misdemeanor Only)

Alternative Sentence: ☐ Probation ☐ Diversion ☐ Drug Court ☐ Community Based Alternative - Specify

____ Years ____ Months ____ Days Effective: 9/15/2010

FILED 10-4-2010 at 3:45 AM/PM

Court Ordered Fees and Fines: Cost to be Paid by ☑ Defendant ☐ State

$ ____ Court Costs
$ ____ Fine Assessed
$ ____ Traumatic Brain Injury Fund (Drag Racing)
$ ____ Drug Testing Fund (TN Drug Control Act)
$ ____ CICF $ ____ Sex Offender Tax
$ ____ Other:

Restitution: Victim Name Date 10-4-10

Address Entered

SUE TOLLETT, CLERK & MASTER
Cumberland County, Crossville, TN

Total Amount $ ____ Per Month $ ____ BY

☐ Unpaid Community Service: ____ Hours ____ Days ____ Weeks ____ Months

☑ The Defendant having been found guilty is rendered infamous and ordered to provide a biological specimen for the purpose of DNA analysis.

☐ Pursuant to 39-13-521 the defendant is ordered to provide a biological specimen for the purpose of HIV testing.

Special Conditions ☐ Pursuant to 39-13-524 the defendant is sentenced to community supervision for life following sentence expiration.

Defendant is to register on the Sex Offender Registry.

ENTERED
Larry Sherrill
OCT 04 2010
CIRCUIT COURT CLERK

HON DAVID A. PATTERSON
Judge's Name

Judge's Signature

Date 9-30-10

Attorney for State/Signature (optional)

Defendant's Attorney/Signature (o

A 9

CR-3419 (Rev. 1/08)

STATE OF TENNESSEE
NOTICE OF PROPERTY SEIZURE AND FORFEITURE OF CONVEYANCES

The property described below has been seized upon the authority of the Tennessee Code Annotated section indicated. Such property shall be subject to forfeiture, sale, destruction or court disposition pursuant to the following provisions and procedures:

☐ CATEGORY I Narcotics and Drug Related (TCA 53-11-201 et seq., 40-33-201 et seq.)
☐ CATEGORY II ☐(a) DUI-Second or Subsequent Violation (TCA 55-10-401, et seq., 40-33-201 et seq.):
☐(b) Driving on Revoked Due to DUI (TCA 55-50-504, 40-33-201 et seq.)
☐ CATEGORY III Alteration of Vehicle Identification Numbers (TCA 55-5-108 et seq.)
☒ CATEGORY IV Other (TCA 39-17-1008)

SEIZING AGENCY/DEPT.		AGENCY NO.
Cumberland County Sheriff's Office		TN0180000
AGENCY ADDRESS		
90 Justice Center Drive - Crossville, TN 38555		
SEIZING AGENT		TELEPHONE NO.
Investigator John Haynes		(931) 484-6176
COUNTY OF SEIZURE	CITY OF SEIZURE	DATE OF SEIZURE
Cumberland	Crossville	05/18/2009

D.O.S. No.

SUBJECT

PERSON IN POSSESSION AT TIME OF SEIZURE

NAME	RACE	SEX	DATE OF BIRTH	DRIVER LICENSE NO.	STATE
Charles David Sprunger	W	M	04/19/1968	064597434	TN
ADDRESS	CITY	STATE	ZIP	TELEPHONE NO.	
2286 Peavine Road	Crossville	TN	38571	(931) 456-5913	

OWNER OF SEIZED PROPERTY

NAME	RACE	SEX	DATE OF BIRTH	DRIVER LICENSE NO.	STATE
Charles David Sprunger	W	M	04/19/1968	064597434	TN
ADDRESS	CITY	STATE	ZIP	TELEPHONE NO.	
2286 Peavine Road	Crossville	TN	38571	(931) 456-5913	

LIENHOLDER(S)

NAME	ADDRESS	CITY/STATE/ZIP	TELEPHONE NO.
Highland Federal Savings&Loan	106 S. Main Street, Suite 103	Crossville, TN 38555	(931) 484-6178

PROPERTY

CONVEYANCE

YEAR	MAKE	MODEL	VIN	PLATE NO.	STATE	MILEAGE

OTHER PROPERTY

DESCRIPTION: Real Property - 2286 Peavine Road - Crossville, TN 38571 (Deed Bk 1009, Pg 861 - Registers Office)

CURRENCY

TOTAL AMOUNT SEIZED: $

DRUGS

DRUG/SUBSTANCE	AMOUNT (APPROX.)

☐ I certify that the above property was seized for violation of the designated statute. I certify that on the _____ day of _____, I have delivered the original of this notice of seizure to the above named person from whom the listed property was seized.

Agent/Giver (Print Name) Investigator John Haynes Signature: _____ Date: 5-19-09

☒ I hereby acknowledge receipt of the seizure notice.
Signature: _____ Date: 5-19-09 Witness: _____

☐ **CATEGORY I - NARCOTICS RELATED** (TCA 53-11-201 et seq, 40-33-201 et seq)
The vehicle or other property described above was seized in accordance with TCA 53-11-451, upon reasonable belief that said property was used or intended for use to transport, or in some manner facilitate the sale or receipt of contraband goods or that said property was otherwise used or intended for use in violation of TCA 53-11-451. The vehicle or other property described above will be forfeited and subject to public sale or other lawful disposition after thirty (30) days from notice that a forfeiture warrant has been issued unless any claimant to the seized goods shall file with the Dept. of Safety, Legal Division, 1150 Foster Avenue, Nashville, TN 37249-1000, a claim in writing stating his interest in the seized goods and requesting a hearing pursuant to 40-33-201 et seq. Any claimant shall file with his claim a cost bond in the sum of three hundred fifty dollars ($350.00) payable to the State of Tennessee. Upon affidavit that he or she is unable to bear the costs of the proceeding, such claimant may file in forma/pauperis without posting bond. (Claims must be received on or before the thirtieth (30th) day; postmarked date is not acceptable. **Failure to request a hearing in a timely manner will result in your losing your interest in the above property.) This is not a Forfeiture Warrant.**

☐ **CATEGORY II**
☐ (a) DUI-Second or Subsequent Violation (TCA 55-10-401, 55-10-403 and 40-33-201 et seq.):
☐ (b) Driving on Revoked License Due to DUI (TCA 55-50-504, 40-33-201 et seq.)
The vehicle described above was seized in accordance with TCA 55-10-403/TCA 55-50-504, upon reasonable belief that said property was used in the commission of the person's second or subsequent violation of TCA 55-10-401, or the second or subsequent violation of any combination of TCA 55-10-401, and a statute in any other state prohibiting driving under the influence of an intoxicant or the vehicle was used in the commission of a person's violation of TCA 55-50-504, when the original suspension or revocation was made for a violation of TCA 55-10-401. The vehicle described above will be subject to forfeiture and public sale or other lawful disposition after thirty (30) days from notice that a forfeiture warrant has been issued unless any claimant to the seized property shall file with the Department of Safety, Legal Division, 1150 Foster Avenue, Nashville, TN 37249-1000, a claim in writing his interest in the seized property and requesting a hearing pursuant to 40-33-201 et seq.. Any claimant shall file with his claim a cost bond in the sum of three hundred fifty dollars ($350.00) payable to the State of Tennessee. Upon affidavit that he or she is unable to bear the cost of the proceedings, such claimant may file in forma/pauperis without posting bond. (Claims must be received on or before the thirtieth (30th) day; postmarked date is not acceptable. **Failure to request a hearing in a timely manner will result in your losing your interest in the above property.) This is not a Forfeiture Warrant.**

☐ **CATEGORY III - ALTERATIONS OF VEHICLE IDENTIFICATION NUMBERS** (TCA 55-5-108)
The vehicle or component parts listed above have been seized pursuant to Tennessee Code Annotated 55-5-108 by the Criminal Investigations Division of the Department of Safety. Paragraph (b) (1) of TCA 55-5-108 states in part that "any vehicle or component part thereof on which the manufacturer's serial number, identification number, engine number, transmission number or identifying mark has been removed, defaced, covered, altered, destroyed or otherwise rendered unidentifiable is hereby declared to be contraband and subject to forfeiture to the State". TCA 55-5-108 et seq. entitles the seized-from party to an administrative hearing concerning the above property. A written hearing request must be received by this office within ten (10) days of the date of this seizure. **Failure to request such a hearing in a timely manner acts as a waiver of your ownership interest in the above property.** Send hearing requests to: Dept. of Safety, Legal Division, 1150 Foster Avenue, Nashville, TN 37249-1000.

☒ **CATEGORY IV**
Refer to instructions provided by seizing agency for filing a claim on the above property.

Date 10-4 2010 at 3:45 AM PM

SF-0539 (REV. 7/96)

COURT Entered: _____
SUE TOLLETT, CLERK & MASTER
Cumberland County, Crossville, TN
BY _____

Sprunger App x p 2

B 10

STATE OF TENNESSEE
REAL PROPERTY ASSET
FORFEITURE WARRANT

STATE OF TENNESSEE,

COUNTY OF Cumberland

Proof by Affidavit having been made before me by John Haynes, Investigator
(Officer's Name and Title)

of the Cumberland County Sheriff's Department (Agency) that there is probable cause to believe that

Real property consisting of a single family residential dwelling with a base area square feet of 2798 and aux. base of square feet of 1927. This property is located at 2286 Peavine Rd. Crossville Tn. 38571. This property has a front car port and a rear wood deck. There is also a detached garage in poor condition. This property is located on 6.29 acres.

(Describe Property: Be specific, include VIN Number) is subject to forfeiture pursuant to:

☑ TCA 39-17-1008. Forfeiture of any conveyance or real or personal property used in commission of an offense under this part. Any conveyance or real or personal property used in the commission of an offense under this part is subject to forfeiture under the provisions of Title 40, Chapter 33, Part 2.

2286 Peavine Rd, in Crossville, in Cumberland County Tennessee, in violation of TCA 39-17-1004, at that the said property is subject to seizure and forfeitures in accordance with TCA 39-17-1008. The original deed vesting title in the said Charles David Sprunger is of record in Deed Book 1009, Page 861, Registers Office, Cumberland County, Tennessee. This property is further encumbered by mortgages and liens which are of record in Deed Book 1043, Page 1099 in Registers Office, Cumberland County Tennessee. This forfeiter is to seize and forfeit all rights, title and interest of your defendant and above described property without limitations.

The following questions have been asked of the officer(s) seeking to secure this forfeiture warrant against the interest of the secured party, owner or co-owner who was not present at the time of seizure.

☑ What is the officer's probable cause that the owner, co-owner or secured party 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.

☑ What is the officer's probable cause that the owners, co-owners, or secured parties who are not in possession of the property at the time of seizure were co-conspirators to the activity making the property subject to forfeiture.

☑ Any other question deemed necessary to determine the legal and factual basis for forfeiture of such owner, co-owner or secured party's interest.

There is further probable cause to believe that HIGHLAND FEDERAL S+L
(Owners/Co-owners/Lienholders)

has an ownership or security interest in said property and that such interest is subject to forfeiture in that said individual had knowledge of or participated in the use of the above-described property in violation of the above indicated statute.

You are THEREFORE COMMANDED to seize and/or hold said property until such time as the Commissioner of the Tennessee Department of Safety shall legally dispose of said property pursuant to Title 40, Chapter 33, Part Two of The Tennessee Code Annotated.

This the 19 day of May 2009
(year)

Dissent Patterson
Judge

Crim Ct. Pt II
Court, Part

By signature above, I affirm that I have made the requisite finding of probable cause to issue the forfeiture warrant.

DENIAL ORDER

This Judge finds that the Seizing Officer has failed to establish probable cause to believe that the property is subject to forfeiture and therefore a Forfeiture Warrant is denied. After a determination is made that the property is not needed as evidence in a criminal proceeding, the seizing agency is hereby ORDERED to immediately return the property to the owner or, if the owner cannot be determined, to the person in possession of the property at the time of seizure. T.C.A. § 40-33-204(f).

This the _____ day of _____, _____
(year)

_____
Judge

_____
Court, Part

RDA 1819

SP-1100 (Rev. 7/98)

11

October, 6, 2010 Case Number 2010-ch-389

To: Honorable Ronald Thurman Chancellor

Re: Charles D Sprunger

I submit for your consideration:

You have before you on behalf of the petitioner, the state of Tennessee, A Complaint for judicial forfeiture and complaint for restraining order against myself Charles D Sprunger. I am currently incarcerated at the Cumberland County Justice Center awaiting transfer to TDOC. As I am uncertain as to whether or not I will be able to appear before you, I am submitting my response in part, to the complaints against me as convicted felon; it seems I have no voice in the matter. I trust this is not the case. Please give due consideration to my responses and challenge. Also please keep in mind I am not a lawyer and, as I am unable to afford one, I have not sought council from a lawyer. Please forgive my ignorance in preparing this brief, as I also do not have adequate resources not have I had adequate time to prepare a defense. Thanks for listening to me.

In response to part 4 of the complaint: As T.C.A. 39-17-1004 it is unlawful for a person to knowingly promote, sell, distribute, transport, purchase or exchange material which includes a minor engaged in sexual activity. I was never charged with nor convicted of violating this statute. No evidence was presented at my trial that stated or implied the afore-mententioned activities took place on my property. In fact absolutely no evidence of child pornography was discovered on my premises in any form or fashion, not one picture or video, DVD, c-rom or any other medium was found on my property which contained child pornography. All material confiscated during the search conducted by Det Haynes yielded no evidence of any illegal nature (see attached transcript). In addition Det. Haynes stated that in the majority of cases he had worked involving child pornography it was not uncommon, infact more common that not to find additional child pornography in various forms stashed about the house, yet none was found at my home. The only evidence used against me at the trial came from a computer that was not even taken from my house, but was confiscated from a bank vault used by a computer technician, Tabor Computer Shop. Also, no evidence was given at the trial that stated or implied that in any way I

profited from the sale, distributor or exchange of child pornography. No evidence was given at the trial that stated or implied I had purchases, transported, or promoted child pornography to conclude, my property located at 2286 Peavine Road was in no way used for any kind of criminal enterprise pursuant to TCA 39-17-1004 and therefore the proceeds from the sale of my property are not subject to forfeiture pursuant to TCA 39-17-1008. In response to part 5 of the complaint: That Charles D Sprunger is guilty of the offense outlined in TCA 39-17-103, etseq; TCA 39-17-103 has to do with abandonment of containers. I was never charged with or convicted of this offense and fail to the relevance. In response to part 6 of the complaint: That pursuant to TCA 39-17-408 the real property is subject to seizure and forfeiture by the state of Tennessee TCA 39-17-408 contorted substances is related to drug offenses I was never charges with convicted of any offenses related to drugs, and therefore, I fail to see the relevance . In response to part seven and part eight of the complaint: That the state of Tennessee filed a lien lis pendens. The statutory lien for violation of 39-17-408 and that at or about the same time the lien lis pendens was filed, the State of Tennessee sought and received the forfeiture warrant that duly executed by Judge David Paterson pursuant to 53-11-201. The office who delivered the receipt of seizure and forfeiture failed to provide me with instruction as stated under 53-11-201B, the procedure by which recovery of the property may be sought. I assert my rights under this provision have been violated. In addition to my stated responses, I would also like to submit the fact that Highland Federal Savings and Loan is not my only creditor. That forfeiture of the proceeds of the sale of my property to the State of Tennessee will cause irreparable harm to my creditors which include the following: Internal Revenue Service in excess of $20,000, Discover Card $12,373.79, Citi Bank $4,243.19, Chase $4,027.46, and Visa $7,742.33. I also ask any judgment entered against me will also take into consideration all my creditors stated above in addition to Highland Federal Savings and Loan. I am seeking to preserve their interest in this procedure. In summary: The State has failed to prove that violation of TCA 39-17-1004 took place at my residence. Therefore, I request pursuant to 53-11-201 (2) failure to carry the burden of proof shall operate as a bar to any forfeiture under the chapter this petition be denied. Thank you for your consideration in this matter.

Sincerely yours,

Charles D Sprunger

November 11, 2010

RECEIVED
12-6-10

Honorable Judge Ronald Thurman
321 E Spring Street
Cookeville, TN 38501

FILED
Date 12-6 2010 at 2:30 AM PM
Entered:
SUE TOLLETT, CLERK & MASTER
Cumberland County, Crossville, TN
BY CT

RE: Charles D. Sprunger
Case No: 2010-CH-389

To: Honorable Ronald Thurman

I am writing again with regards to Case Number 2010-CH-389. My situation has changed somewhat as I am currently being classified at Morgan County Correctional. It has become increasingly more difficult to defend this action against, but I feel I must. Heretofore I have been denied legal representation in this matter. I submitted a request while at Cumberland County, however, that request has fallen on deaf ears. So here I am again coming before you in a manner of speaking.

First I draw your attention to a cover letter submitted by DAG Randall York dated October 5, 2010. In this letter he states the following:

> TCA 39-17-1008 allows the forfeiture of real and personal property Used in connection of the possession **AND** distribution of child pornography.

It is, therefore, not enough, according to DAG Randall York, that I was found guilty of possessing but I would also have had to distribute child pornography in order for the State to be able to lay claim to my real property according to TCA 39-17-1008.

Your Honor, I cannot assert anymore strongly that the State of Tennessee in acquiring a forfeiture warrant and subsequent lien violated my constitutional right to a fair trial by denying me access to the equity I had invested in my home that could have and most certainly would have been used in my defense. As further evidence of this I ask you to consider the following time line of events.

On May 19, 2009 Det. John Haynes provided an affidavit for Judge Patterson alleging proof that my home was being used in violation of TCA 39-17-1004. I have not been given a copy of the affidavit and do not know how to obtain a copy. I request a copy of the affidavit as I believe this would bolster my defense. With the affidavit submitted, Judge Patterson signed the warrant.

On May 29, 2009 I was given a copy of the Lien Les Penders. I took the copy to Attorney Kevin Bryant at Crossville where he advised me that this was a tool employed by D.A.'s to "tie the hands" of the accused financially whereby preventing them from adequately defending themselves.

Honorable Judge Ronald Thurman

On July 19, 2009 I made my first court appearance where my charge was promptly reduced from TCA 39-17-1004 to TCA 39-17-1003. If they had reasonable concerns I was in violation of 39-17-1004, concerned enough just 2 months prior to appearing before Judge Patterson to acquire a forfeiture warrant, what changed in those 2 months? Why reduce the charge? Because they had what they needed. What the state accomplished by securing a forfeiture warrant and subsequent lien on my property effectively rendered me unable to adequately defend myself as I had no means of raising additional money. The State's Attorney egregiously misrepresented the evidence against me. Now they are asking to be compensated for their misdeed. I implore, Your Honor, do not let them profit from this.

Lastly, Your Honor, my home was never used in the manner the D.A asserts. Rather my home was used for 2 purposes—running my business and helping people in need. I owned the same business for 28 years until the time of my incarceration. Since 1998 my business was run from 2286 Peavine Road. My home has also been used to house people in need. In July 2002 I was approached by a fellow church member Ted Meeker , who needed help moving. I asked him what was happening and he told me his family was being evicted from their home. I offered to move him and his family into my home that night and they were there for 2 ½ years. They stayed rent free while they got back on their feet. This is what my home was used for.

I received a settlement offer from the State in the amount of 10,000 which represents 1/3 of the proceeds from the sale of my home. This amount is not even close to what I owe in other debts and I have declined it. What I am asking, Your Honor, is for you to rule in my favor so that I can pay my remaining debts, so that when I am released from prison I can at least begin my life again at zero. I would still prefer to appear before you in person so that I can answer for myself or at least postpone the action so that I can be represented by legal council. Thank you for your consideration in this matter.

Respectfully submitted.

Charles D. Sprunger.

IN THE CHANCERY COURT FOR CUMBERLAND COUNTY, TENNESSEE

STATE OF TENNESSEE Petitioner,	)	
VS.	)	Case No. 2010-CH-389
CHARLES D. SPRUNGER Respondent.	)	

FILED
Date 10-24 2011 at 10:45 AM PM
Entered: 10-24-11
SUE TOLLETT, CLERK & MASTER
Cumberland County, Crossville, TN
BY

ORDER FOR JUDICIAL FORFEITURE

This cause came on to be heard on the 24th day of October 2011 on the petition for a judicial forfeiture filed by the State of Tennessee. Service of process had been properly perfected upon the defendant and the defendant participated in the hearing by telephone. The defendant is presently incarcerated in the Tennessee Department of Corrections. Based upon the proof at trial, statements of witnesses, and statement of the defendant, the court does hereby affirmatively find as follows:

1. That this Petition was filed by the District Attorney General for the 13th Judicial District of the State of Tennessee. Cumberland County, Tennessee, is located within the 13th Judicial District of the State of Tennessee.
2. That Charles D. Sprunger was the owner of a tract or parcel of property that is more particularly described in a deed from Jan H. Olson and wife Janet L. Olson to Charles D. Sprunger which is of record in Book 1009, Page 861, Register's office, Cumberland County, Tennessee.

3. That on or about December 29, 1997, Charles D. Sprunger encumbered this property with a Deed of Trust to Jack Chadwell, Trustee for Highland Federal Savings and Loan Association of Crossville, Tennessee, in the principal sum of $84,000.00. This Deed of Trust is recorded in Book 1009; Page 863 Registers Office, Cumberland County, Tennessee. That due to nonpayment of this mortgage, Highland Federal Savings and Loan Association foreclosed upon the subject property on October 22, 2010. The property was purchased by Eldon C. Burgess and wife Katherine H. Burgess for the sum of $85,000.00. The Court further finds that after the payment of Highland Federal Savings and Loan there was a balance of $31,606.26 that was paid into the Court and is being held by the Clerk and Master.
4. The lien of the State of Tennessee as hereinafter described was not extinguished by the subsequent foreclosure by Highland Federal Savings and Loan. The lien in favor of the State of Tennessee was preserved as it relates to the excess funds from the said foreclosure.
5. That in 2008, the Respondent, Charles D. Sprunger, became involved in the unlawful possession of material that includes a minor engaged in (1) Sexual activity; or (2) Simulated sexual activity that is patently offensive that is described in T.C.A. 39-17-1003 and that he possessed more than 100 images and materials of said pornography in violation of Tennessee Code Annotated 39-17-1003 while on the property described in paragraph two above.

6. That on July 8, 2008, Mr. John Haynes was contacted by Mr. McKinley Tabor who is a computer technician. He advised that a computer was brought into his office by Mr. Charles Sprunger and that it contained images of child pornography on it. He had been instructed to retrieve business records from the computer.
7. The computer was seized and analyzed by the Tennessee Bureau of Investigation and confirmed that child pornography photos and videos were on this computer.
8. That on May 19, 2009, Mr. John A. Haynes, a Criminal Investigator of the Cumberland County Sheriff's Department prepared and filed an affidavit to Judge David A. Patterson, Criminal Court Judge of Cumberland County, Tennessee. At the same time, there was a forfeiture warrant and a notice of seizure and forfeiture of conveyances filed in accordance with T.C.A. 39-17-1008.
9. On May 20, 2009, an Abstract of Suit and a *lien lis pendens* was filed in the Cumberland County Register of Deeds, and was recorded in Book 1318, Page 593.
10. That the State of Tennessee filed a *lien lis pendens* to perfect the statutory lien for violation of the aforementioned statute. This lien is of record in Record Book 1318, Page 593, Register's Office, Cumberland County, Tennessee.

11. That at or about the same time that the *lien lis pendens* was filed, the State of Tennessee sought and received the forfeiture warrant that was duly executed by Judge David A. Patterson, who is the Criminal Court Judge for Cumberland County, Tennessee. That the State of Tennessee filed its petition for the forfeiture in accordance with T.C.A. 39-17-1008; however, no hearing was had on this petition.

12. That on July 6, 2009, the Cumberland County Grand Jury indicted the defendant for Sexual Exploitation of a Minor in case 09-0212.

13. The Defendant applied for Pre-Trial Diversion. In his application for Pre-Trial Diversion, the defendant's statement of facts reads as follows: "July 2008 I had computer problems. I picked up a virus and tried to rectify the problem to no avail. I took my computer to McKinnley Tabor to pull my business records from the infected computer. In the course of looking for business information, Mr. Tabor found illegal images. He reported it. I was taken in for questioning and arrested a year later (July 6, 2009). I did not know the images were on my computer. (I have looked at adult pornography in the past – but not those images.)"

14. That the Respondent Charles D. Sprunger is guilty of the offense outlined in Tennessee Code Annotated 39-17-103, et seq. Specifically, the Respondent was charged with a criminal indictment of violating Tennessee Code Annotated 39-17-103, et seq.. The respondent pled not guilty and a trial was had in Cumberland County, Tennessee, wherein the Respondent was found

guilty of the offense charged. A sentencing hearing was held on September 15, 2010, and the Respondent was sentenced to eight years' incarceration with the Tennessee Department of Corrections.

15. That pursuant to Tennessee Code Annotated 39-17-1008 the real property and the funds resulting from its subsequent foreclosure that is described in paragraph one is subject to seizure and forfeiture by the State of Tennessee. This section specifically provides as follows, to-wit:

"(a) Any conveyance or real or personal property used in the commission of an offense under this part is subject to forfeiture under the provisions of title 40, chapter 33, part 2." The Court specifically finds that Charles D. Sprunger used the real property that is described in paragraph two (2) above in violation of T.C.A. title 40, chapter 33, part 2 thus making the property and its proceeds subject to forfeiture.

16. That these funds, pursuant to Tennessee Code Annotated 39-13-530 are required to be sent to the general fund of the State of Tennessee where the funds shall be disbursed with 25% of the monies being appropriated for the court appointed special advocate (CASA); 50% of the monies being appropriated to the child advocacy fund and 25% of the funds being appropriated to the child abuse prevention fund.

It is therefore **ORDERED, ADJUDGED AND DECREED** as follows:

1. That Charles D. Sprunger is guilty of possessing material that includes a minor engaged in (1) Sexual activity; or (2) Simulated sexual activity that is

patently offensive that is described in T.C.A. 39-17-1003 and that he possessed more than 100 images and materials of said child pornography.

2. That Charles D. Sprunger was the owner of a tract or parcel of property that is more particularly described in a deed from Jan H. Olson and wife Janet L. Olson to Charles D. Sprunger which is of record in Book 1009, Page 861, Register's Office, Cumberland County, Tennessee, and that this home was utilized and used in the commission of the offense described above.
3. That the State of Tennessee has a lien on the funds that are on deposit with this Court resulting from the foreclosure of the property described in paragraph two above.
4. That any interest that the Respondent Charles D. Sprunger has in and to the above funds on deposit in the Cumberland County Clerk and Masters Office in the amount of $31,606.26 be divested from him and invested in the State of Tennessee.
5. That the Clerk and Master shall deduct from these funds all court costs and that the balance of the funds be remitted to the State of Tennessee (Tennessee State Treasurer, Tennessee State Capitol, 1st Floor, 600 Charlotte Avenue, Nashville, Tennessee 37243-0225, phone 615-741-2956 or such other state agency as the Treasurer requires), pursuant to T.C.A. 39-17-1008. It is specifically ordered that these funds be deposited into a special account pursuant to Tennessee Code Annotated 39-13-530 and disbursed in accordance with foregoing statute. Further, the Clerk shall forward a certified

copy of this order with these funds when they are transmitted to the State of Tennessee.

6. That these funds, pursuant to Tennessee Code Annotated 39-13-530 are required to be sent to the general fund of the State of Tennessee where the funds shall be disbursed with 25% of the monies being appropriated for the court appointed special advocate (CASA); 50% of the monies being appropriated to the child advocacy fund and 25% of the funds being appropriated to the child abuse prevention fund.

ENTERED this the 24 day of October 2011.

Ronald Thurman

Ronald Thurman, Chancellor

Approved for Entry:

State of Tennessee

By:

Randall A. York #10166
District Attorney General
1519A East Spring Street
Cookeville, TN 38506
1-931-528-5015

COURT: All right, in reviewing the evidence before the Court here, I'm looking at these statutes. And this is governed by TCA Section 39-17-1008, "Catch and Forfeiture of any conveyance or real or personal property used in the commission of an Offense" under this Part. Under A, it basically talks - this statute talks about this section as it relates to Exploitation of a Minor. It does not, in my reading of it, limit it to any one of these subsections. As such, it isn't limited to 39-17-1004; it encompasses also 39-17-1003.

With that being said, upon Mr. Sprunger being convicted as evidenced by Exhibit #1 - that occurring on 9/30/2010 in front of the Honorable David Patterson, Criminal Court Judge here in Cumberland County - that sets in motion, upon the filing of this Forfeiture by the State, this statute that we're here on, 39-17-1008.

The proof before the Court today was that part of the computer remained in the house in this loft area in Mr. Sprunger's house located here in Cumberland County - that actually came off the computer that was taken in to Mr. Tabor for investigation and repair; that at the home, there was Internet service provided, and also other computers there.

The Court also notes that this was a desktop opposed to a laptop, which would tend to suggest

that it stays on one site. Laptops normally would be something you would carry from place to place. Being as this is a desktop, it would be more likely to stay at the home place, since it's more difficult to move.

Based on all the evidence, it is clear in this Court's mind that the proof is such that the property should be forfeited; the balance of the proceeds that are in the Clerk and Master's Office should be forfeited. As such, the Court will sign an order to that effect.

Mr. Sprunger, you have a right to appeal this. I'm going to request that Mr. York... Well, I'll have our Clerk and Master file this today, and I'll instruct the Clerk and Master to send Mr. York, with the Attorney General's Office, a copy, and also to forward a copy directly to you at your place of incarceration. That way, you will have it so that you can... If you disagree with the Court's ruling, you have the appeal remedy available to you.

MR. SPRUNGER: What about my other creditors?

COURT: Your other creditors?

MR. SPRUNGER: Yes.

COURT: It's the opinion of the Court that that isn't relative in this analysis. The analysis is whether this statute applies and if so, whether the State has produced evidence to meet its burden of proof under this

statute. And the Court finds that it has. I don't find anywhere under this statute that gives the Court the discretion of discounting or giving credit for other debt owed to other entities, such as the IRS, for these monies. That's not available, in the Court's mind. I don't see it in this statute that I'm looking at, so I would have to decline that.

Based on that, that will conclude the hearing of today. Mr. Sprunger, I'm going to disconnect this now. Have a good day, sir.

(WHEREUPON, this concludes the telephonic Hearing with Mr. Sprunger on October 21, 2011.)

by: Virgilene T Lotze

Virgilene T. Lotze
Court Reporter and Notary Public at Large for the State of Tennessee

VIRGILENE T. LOTZE
STATE OF TENNESSEE NOTARY PUBLIC
CUMBERLAND COUNTY

(My Commission expires 6-6-15)

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs July 29, 2013

STATE OF TENNESSEE v. CHARLES D. SPRUNGER

Direct Appeal from the Chancery Court for Cumberland County
No. 2010-CH-389 Ronald Thurman, Chancellor

No. E2011-02573-COA-R3-CV-FILED-AUGUST 26, 2013

This is a forfeiture case. Appellant was convicted of a Class B felony for sexual exploitation of children pursuant to Tennessee Code Annotated Section 39-17-1003. Appellant tendered his home computer to a repair shop. Upon examination of the hard drive, the technician discovered unlawful images and notified local law enforcement. A search warrant was subsequently executed for Appellant's home, where parts of the computer in question were discovered. After Appellant's arrest, a forfeiture warrant was executed and, after his mortgage indebtedness was satisfied, proceeds from the sale of Appellant's real property were forfeited to the State pursuant to Tennessee Code Annotated Section 39-17-1008. Appellant appeals the forfeiture of these proceeds. Discerning no error, we affirm and remand.

Tenn. R. App. P. 3. Appeal as of Right; Judgment of the Chancery Court Affirmed and Remanded

J. STEVEN STAFFORD, J., delivered the opinion of the Court, in which ALAN E. HIGHERS, P.J.,W.S., and DAVID R. FARMER, J., joined.

Charles D. Sprunger, Only, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; William E. Young, Solicitor General; Benjamin A. Whitehouse, Assistant Attorney General, for appellee, State of Tennessee.

MEMORANDUM OPINION[1]

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[1] Rule 10 of the Rules of the Court of Appeals of Tennessee states:

(continued...)

On July 4, 2008, Appellant Charles D. Sprunger contacted McKinley Tabor, a computer technician in Crossville, Tennessee, complaining that a virus had disabled his personal computer. Mr. Sprunger made arrangements to drop his computer off with Mr. Tabor on July 8, 2008. According to Mr. Tabor's testimony, Mr. Sprunger was anxious to get the computer repaired and informed Mr. Tabor that the computer was used for Mr. Sprunger's business, Trinity Lawn Service. When Mr. Tabor received the computer, it was partially disassembled, and its external shell case had been damaged and partially removed. Upon initial examination of the data stored on the computer, Mr. Tabor found a large number of child-pornography images; he immediately contacted law enforcement.

John Haynes, an investigator with the Cumberland County Sheriff's Department, reviewed the images and obtained a search warrant for Mr. Sprunger's home at 2286 Peavine Road, Crossville, Tennessee (the "Property"). The search warrant was executed on the evening of July 8, 2008. According to Detective Haynes' testimony, when Mr. Sprunger answered the door, the officers explained that the warrant was based upon the images found on Mr. Sprunger's computer and that the officers were at the Property to search for additional child pornography. Detective Haynes testified that Mr. Sprunger responded: "You won't find **anymore**." (Emphasis added). Indeed, the search revealed no additional child pornography in the home; however, the search revealed a room containing computer equipment, including the missing parts of the computer that had been delivered to Mr. Tabor. Exhibit 5 to the October 21, 2011 hearing was a compilation of photos, taken by Detective Haynes, showing the missing parts of the computer in question lying on the floor of Mr. Sprunger's home. In addition, Detective Haynes testified that the room where the missing computer parts were found also contained power outlets and an internet connection.

Detective Haynes testified that Mr. Sprunger was taken into custody and, after being advised of his rights, signed a waiver and agreed to talk with Detective Haynes. Concerning the conversation he had with Mr. Sprunger, Detective Haynes testified:

> He told me that the computer in question that he had dropped off at Mr. Tabor's, he had had for two to three years; he had used it at his business; he kept it in his home; and he was the only one

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[1](...continued)

> This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

that had access to it.

Based upon this evidence, on May 19, 2009, Detective Haynes obtained a forfeiture warrant for Mr. Sprunger's Property. The forfeiture warrant, which was admitted as trial Exhibit 6, states that Mr. Sprunger was in violation of Tennessee Code Annotated Section 39-17-1004.[2] General York clarified that, although Mr. Sprunger had initially been charged with violation of Section 39-17-1004, the indictment was subsequently amended and the State proceeded against Mr. Sprunger for violation of Section 39-17-1003.

On August 19, 2010, after a jury trial, Mr. Sprunger was convicted of sexual exploitation of a minor under Tennessee Code Annotated Section 39-17-1003.[3] He was

---

[2] The statute provides:

> (a)(1) It is unlawful for a person to knowingly promote, sell, distribute, transport, purchase or exchange material, or possess with the intent to promote, sell, distribute, transport, purchase or exchange material, that includes a minor engaged in:
> (A) Sexual activity; or
> (B) Simulated sexual activity that is patently offensive.
>
> (2) A person who violates subdivision (a)(1) may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation. Where the number of materials involved in a violation under subdivision (a)(1) is greater than twenty-five (25), the person may be charged in a single count to enhance the class of offense under subdivision (a)(4).

[3] The statute provides:

> (a) It is unlawful for any person to knowingly possess material that includes a minor engaged in:
> (1) Sexual activity; or
> (2) Simulated sexual activity that is patently offensive.
>
> (b) A person possessing material that violates subsection (a) may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation. Where the number of materials possessed is greater than fifty (50), the person may be charged in a single count to enhance the class of offense under subsection (d).
>
> * * *

(continued...)

sentenced to eight years in the Tennessee Department of Correction for commission of a Class B felony.

On October 4, 2010, Appellee State of Tennessee (the "State"), through District Attorney General Randy York, filed a complaint for a restraining order under Tennessee Code Annotated Section 39-17-1006,[4] and for judicial forfeiture under Tennessee Code Annotated Section 39-17-1008, which provides, in relevant part: "Any conveyance or real or personal property used in the commission of an offense under this part is subject to forfeiture under the provisions of title 40, chapter 33, part 2." The complaint was filed against Appellant and Highland Federal Savings and Loan Association ("Highland"), seeking

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[3](...continued)

> (d) A violation of this section is a Class D felony; however, if the number of individual images, materials, or combination of images and materials, that are possessed is more than fifty (50), then the offense shall be a Class C felony. If the number of individual images, materials, or combination of images and materials, exceeds one hundred (100), the offense shall be a Class B felony.

[4] The statute provides:

> If the district attorney general is of the opinion that §§ 39-17-1001 [through] 39-17-1005 are being violated, the district attorney general may file a petition in a circuit, chancery or criminal court of that district relating the opinion, and request the court to issue a temporary restraining order or a temporary injunction enjoining the person named in the petition from removing the material in question from the jurisdiction of the court pending an adversary hearing on the petition. If a temporary restraining order or, after notice, a temporary injunction is so issued, the person enjoined shall answer within the time set by the court, which time shall be set by the court at not more than sixty (60) days. The adversary hearing on the petition shall be held within two (2) days after the joinder of issues. At the conclusion of the hearing, or within two (2) days thereafter, the court will determine whether or not the material in question is in violation of §§ 39-17-1001--39-17-1005. On a finding of a violation, the court shall grant a temporary injunction or continue its injunction in full force and effect for a period not to exceed forty-five (45) days or until an indictment on the matter has been submitted to the grand jury. If forty-five (45) days elapse and the grand jury has taken no action, the injunction terminates. The injunction also terminates on the grand jury returning a no true bill. On the return of a true bill of indictment, the court shall order the material in question delivered into the hands of the court clerk or district attorney general, there to be held as evidence in the case.

forfeiture of Appellant's Property. The complaint acknowledged that the Property was encumbered by a Deed of Trust in favor of Highland, as mortgagor, in the principal sum of $84,000.00, with a balance owing of $47,813.65. Highland had already initiated foreclosure proceedings against the Property at the time the complaint was filed and it was permitted to conclude those proceedings. The trial court then directed that excess proceeds in the amount of $31,606.26 be turned over to the Clerk and Master, and Highland was dismissed from the case.

On October 21, 2011, the trial court heard the forfeiture case. Appellant participated, *pro se*, by telephone. Following the hearing, the court ruled that the State had established that Appellant's Property was subject to forfeiture and ordered that the proceeds from the foreclosure sale be forfeited to the State and divided as provided by statute. On October 24, 2011, the trial court entered a final forfeiture order, which is the subject of this appeal.

Appellant filed a notice of appeal on November 28, 2011.[5] On April 17, 2012, nearly five months after the notice of appeal was filed, Appellant filed a motion in the trial court, seeking to include a transcript of the forfeiture warrant hearing in the record. This transcript was not introduced into evidence at the October 21, 2011 trial, nor did Mr. Sprunger raise any objection regarding the sufficiency of the forfeiture warrant in the trial court. The trial court denied the motion on August 23, 2012, after finding that Appellant had not asked for the transcript during the Chancery Court proceedings and had made no objection to the lack of such a transcript. Appellant filed a second motion on November 15, 2012, seeking to include a transcript of the hearing on the first motion to supplement. The trial court denied the motion on December 13, 2012.

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[5] Although the notice of appeal was filed after the thirty day time period set out in Tennessee Rule of Appellate Procedure 4(a), it is undisputed that Mr. Sprunger was being housed at a correctional facility at the time he filed his notice. The record indicates that the notice of appeal was mailed from the correctional facility on November 22, 2011, which was within thirty days of the filing of the final order on October 24, 2011. Tennessee Rule of Appellate Procedure 20(g) provides, in relevant part:

> **Filing by Pro Se Litigant Incarcerated in Correctional Facility**. If papers required or permitted to be filed pursuant to the rules of appellate procedure are prepared by or on behalf of a pro se litigant incarcerated in a correctional facility and are not received by the clerk of the court until after the time fixed for filing, filing shall be timely if the papers were delivered to the appropriate individual at the correctional facility within the time fixed for filing . . . . "Correctional facility" shall include a prison, jail, county workhouse or similar institution in which the pro se litigant is incarcerated . . . .

Mr. Sprunger raises several issues for review. We perceive that there are three dispositive issues, which we state as follows:

> 1. Whether Appellant waived his right to challenge the forfeiture warrant by failing to raise the issue in the trial court?
>
> 2. Whether Tennessee Code Annotated Section 39-17-1008 authorizes the forfeiture of Appellant's Property, which was used to facilitate his commission of the criminal offense of sexual exploitation of a minor under Tennessee Code Annotated Section 39-17-1003?
>
> 3. Whether the evidence was sufficient to support the trial court's order of forfeiture under Tennessee Code Annotated Section 39-17-1008?

Before turning to the issues, we first note that we are cognizant of the fact that Mr. Sprunger has proceeded *pro se* throughout these proceedings. It is well settled that *pro se* litigants are held to the same procedural and substantive standards to which lawyers must adhere. As explained by this Court:

> Parties who decide to represent themselves are entitled to fair and equal treatment by the courts. The courts should take into account that many *pro se* litigants have no legal training and little familiarity with the judicial system. However, the courts must also be mindful of the boundary between fairness to a *pro se* litigant and unfairness to the *pro se* litigant's adversary. Thus, the courts must not excuse *pro se* litigants from complying with the same substantive and procedural rules that represented parties are expected to observe.

Jackson v. Lanphere, No. M2010-01401-COA-R3-CV, 2011 WL 3566978, at *3 (Tenn. Ct. App. Aug.12, 2011) (quoting ***Hessmer v. Hessmer***, 138 S.W.3d 901, 903 (Tenn. Ct. App. 2003)).

Because this case was tried by the court, sitting without a jury, this Court conducts a *de novo* review of the trial court's decision with a presumption of correctness as to the trial court's findings of fact, unless the evidence preponderates against those findings. ***Wood v. Starko***, 197 S.W.3d 255, 257 (Tenn. Ct. App. 2006). For the evidence to preponderate against a trial court's finding of fact, it must support another finding of fact with greater

convincing effect. ***Walker v. Sidney Gilreath & Assocs.***, 40 S.W.3d 66, 71 (Tenn. Ct. App. 2000); ***The Realty Shop, Inc. v. R.R. Westminster Holding, Inc***., 7 S.W.3d 581, 596 (Tenn. Ct. App. 1999). This Court reviews the trial court's resolution of legal issues without a presumption of correctness. ***Johnson v. Johnson***, 37 S.W.3d 892, 894 (Tenn. 2001).

Waiver of Sufficiency of Forfeiture Warrant

Tennessee Code Annotated Section 40-33-204(b) provides:

> (a) Once personal property is seized pursuant to an applicable provision of law, no forfeiture action shall proceed unless a forfeiture warrant is issued in accordance with this section by a general sessions, circuit, criminal court or popularly elected city judge. The forfeiture warrant shall authorize the institution of a forfeiture proceeding under this part . . . .
>
> (b) The officer making the seizure shall apply for a forfeiture warrant by filing a sworn affidavit within five (5) working days following the property seizure. The forfeiture warrant shall be based upon proof by affidavit and shall have attached to it a copy of the notice of seizure. **The hearing on the application for a forfeiture warrant shall be ex parte and shall be recorded. It is the duty of the court to maintain the recording. Certified copies of the proceeding shall be made available to any party requesting them, and the same shall be admissible as evidence** . . . .

(Emphasis added).[6] We have reviewed the entire record in this case and it is clear that Mr. Sprunger did not raise any issue concerning the sufficiency of the forfeiture warrant until after he had filed his notice of appeal. Moreover, there is no indication in the transcript of

[6] We note that the provisions of Title 40 Chapter 33, as used herein, contain law generally applicable to forfeitures in the State of Tennessee. Title 39, Chapter 17, Section 1008 is a specific forfeiture statute, concerning forfeiture for crimes committed under the Tennessee Protection of Children Against Sexual Exploitation Act. It is well settled that "where the mind of the legislature has been turned to the details of a subject and they have acted upon it, a statute treating the subject in a general manner should not be considered as intended to affect the more particular provision." ***Arnwine v. Union County Bd. of Educ.***, 120 S.W.3d 804, 809 (Tenn. 2003) (quoting ***Woodroof v. City of Nashville***, 192 S.W.2d 1013, 1015 (Tenn. 1946)). Thus, the provisions of a specific statute will control over conflicting provisions in a general statute. ***Id***.

the October 21, 2011 hearing that Mr. Sprunger requested that the transcript of the forfeiture hearing be admitted into evidence. Accordingly, it is clear that the trial court did not consider that transcript in reaching its decision that the Property was the proper subject of the forfeiture. Issues raised for the first time on appeal are generally held to be waived. ***Fayne v. Vincent***, 301 S.W.3d 162, 171 (Tenn. 2009); ***Black v. Blount***, 938 S.W.2d 394, 403 (Tenn.1996).

Mr. Sprunger argues that he requested the transcript of the forfeiture hearing, per the foregoing statute, sometime prior to the October 21, 2011 hearing. We have reviewed his correspondence with the trial court. Although Mr. Sprunger takes issue with the State's actions in this case, he does not appear to specifically request the transcript of the forfeiture hearing. Nonetheless, even if we allow, *arguendo*, that Mr. Sprunger made a valid request for the transcript, and that the trial court did not follow through on that request, it was incumbent upon Mr. Sprunger to remind the court of the request and to pursue his right to that transcript before the trial court ruled. Accordingly, the latest he could have made a valid request would have been at the October 21 hearing. As noted above, he did not raise this issue at that time; rather, he waited until after the court had ruled. We must conclude, therefore, that Mr. Sprunger has failed to preserve this issue for appeal. It is well established that issues not raised at trial will not be considered for the first time on appeal. *See* ***Lawrence v. Stanford***, 655 S.W.2d 927, 929 (Tenn.1983). "The jurisdiction of this court is appellate only and we consider those issues which are timely brought to the attention of the trial court." ***Mallicoat v. Poynter***, 722 S.W.2d 681, 682 (Tenn. Ct. App.1986). Furthermore, Tennessee Rule of Appellate Procedure 36 provides that an appellate court need not grant relief "to a party responsible for an error or who failed to take whatever action was reasonably available to prevent or nullify the harmful effect of an error." Tenn. R. App. P. 36(a); *see also* ***Alexander v. Armentrout***, 24 S.W.3d 267, 273 n. 9 (Tenn. 2000).

Here, Mr. Sprunger's failure to raise the issue of the transcript of the forfeiture warrant hearing resulted in the transcript not being admitted to evidence at the trial level. Accordingly, and as noted by the trial court, the transcript did not form the basis of the trial court's decision, nor was the transcript even considered by the trial court. We conclude, therefore, that the trial court properly held that the transcript was outside the matters considered at the trial, and was properly excluded under Tennessee Rule of Appellate Procedure 24(e) ("Any differences regarding whether the record accurately discloses what occurred in the trial court shall be submitted to and settled by the trial court regardless of whether the record has been transmitted to the appellate court. Absent extraordinary circumstances, the determination of the trial court is conclusive.").

Whether Real Property is Subject to Forfeiture

As set out above, Tennessee Code Annotated Section 39-17-1008 provides that: "Any conveyance **or real** or personal **property** used in the commission of an offense under [Part 10 of Chapter 17, which is known as the Tennessee Protection of Children Against Sexual Exploitation Act] is subject to forfeiture." (Emphasis added). Mr. Sprunger challenges the State's authority to seize and forfeit his real property.

It is undisputed that Mr. Sprunger was convicted of violation of Tennessee Code Annotated Section 39-17-1003, which is part of the Tennessee Protection of Children Against Sexual Exploitation Act. Accordingly, Tennessee Code Annotated Section 39-17-1008 was applicable in this case. However, Mr. Sprunger contends that the statute does not allow the State to seize his real property.

To the extent that this issue requires us to interpret the statutory provisions, it presents a question of law, which we review *de novo* with no presumption of correctness. Tenn. R. App. P. 13(d). The Tennessee Supreme Court recently outlined the applicable principles that apply to the question of statutory interpretation:

> When dealing with statutory interpretation . . . our primary objective is to carry out legislative intent without broadening or restricting the statute beyond its intended scope. ***Houghton v. Aramark Educ. Res., Inc.***, 90 S.W.3d 676, 678 (Tenn. 2002). In construing legislative enactments, we presume that every word in a statute has meaning and purpose and should be given full effect if the obvious intention of the General Assembly is not violated by so doing. ***In re C.K.G.***, 173 S.W.3d 714, 722 (Tenn. 2005). When a statute is clear, we apply the plain meaning without complicating the task. ***Eastman Chem. Co. v. Johnson***, 151 S.W.3d 503, 507 (Tenn. 2004). Our obligation is simply to enforce the written language. ***Abels ex rel. Hunt v. Genie Indus., Inc.***, 202 S.W.3d 99, 102 (Tenn. 2006).

Estate of French v. Stratford House, 333 S.W.3d 546, 554 (Tenn. 2011). Furthermore, statutes that are part of a broad statutory scheme should be interpreted *in pari materia*, so as to make that scheme consistent in all its parts. ***Wells v. Tennessee Bd. of Regents***, 231 S.W.3d 912, 917 (Tenn.2007); ***Lyons v. Rasar***, 872 S.W.2d 895, 897 (Tenn.1994); ***State v. Allman***, 68 S.W.2d 478, 479 (Tenn. 1934). Courts are required to construe a statute, or set of statutes, "so that the component parts are consistent and reasonable." ***In re Sidney J.***, 313 S.W.3d 772, 775 (Tenn. 2010) (quoting ***Cohen v. Cohen***, 937 S.W.2d 823, 827 (Tenn.1996)). We also have a duty to interpret a statute in a manner that makes no part inoperative. ***In re Sidney J.***, 313 S.W.3d at 775–76 (citing ***Tidwell v. Collins***, 522 S.W.2d

674, 676 (Tenn.1975)). Moreover, courts are bound to apply the remedy prescribed by the Tennessee General Assembly, and may not depart from that remedy. ***Guy v. Mut. of Omaha Ins. Co.***, 79 S.W.2d 528, 536 (Tenn. 2002) ("If a statute creates a new right and prescribes a remedy for its enforcement, then the prescribed remedy is exclusive.") (quoting ***Hodges v. S.C. Toof***, 833 S.W.2d at 896, 899 (Tenn.1992)).

Here, the question presented by Mr. Sprunger is whether the Legislature's use of "real property" in Tennessee Code Annotated Section 39-17-1008 authorized forfeiture of his Property. The Legislature does not define the term "real property" in the statute. However, in interpreting the meaning of a word or phrase in a statute, the court may use dictionary definitions. ***State v. Majors***, 318 S.W.3d 850, 859 (Tenn. 2010) (quoting ***State v. Williams***, 690 S.W.2d 517, 529 (Tenn. 1985)); *see also* 82 C.J.S. Statutes § 415 ("If the statute does not sufficiently define a word used therein, the court may consider all known definitions of the word, including dictionary definitions, in order to determine the plain and ordinary meaning of the word.") (footnotes omitted). Accordingly, we turn to Black's Law Dictionary (7th ed. 1999), which defines "real property" as:

> Land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land. Real property can be either corporeal (soil and buildings) or incorporeal (easements).

Black's Law Dictionary, at 1234. Based upon this definition, we can only conclude that, in enacting Tennessee Code Annotated Section 39-17-1008, the Legislature intended to include residential property within the scope of forfeiture.

Mr. Sprunger asserts that he can find no cases where real property has been the subject of forfeiture for the crime for which he has been convicted. Rather, he contends that the forfeiture of real property is usually triggered when a party is engaged in activities at the home such as growing marijuana. The fact that there are no cases directly on point is not dispositive of the Legislature's intent in enacting the statute. Rather, it is the plain language employed by the Legislature that directs the inquiry. Here, the plain language allows for forfeiture of real property, which under the foregoing definition would clearly include Mr. Sprunger's Property.

Sufficiency of the Evidence

Tennessee Code Annotated Section 40-33-210(a) provides:

> [T]he 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)(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.

Tennessee Code Annotated Section 39-17-1008 provides that property is "subject to forfeiture," as that phrase is used in the above statute, if the property at issue is "used in the commission" of the offense. Thus, Mr. Sprunger argues that the State failed to meet its burden to show that the Property was "used in the commission" of his offense. The only evidence presented on this question was the undisputed testimony of Detective Haynes, wherein he states that Mr. Sprunger informed him that the computer in question was kept at the Property. This statement is further supported by photos taken at the Property, which show the pieces of the computer in question that had been removed from the computer prior to Mr. Sprunger tendering it to Mr. Tabor, lying on the floor of the Property. In addition, Detective Haynes testified, without objection from Mr. Sprunger, that the room, in which the parts of the computer in question were found, also had power outlets and an internet connection. From the record, and the undisputed testimony of Detective Haynes, we cannot conclude that the evidence preponderates against the trial court's determination that the State satisfied its burden to show that the Property was used in the commission of Mr. Sprunger's crime.

For the foregoing reasons, we affirm the order of the trial court. The case is remanded for such further proceedings as may be necessary and are consistent with this Opinion. Costs of the appeal are assessed against the Appellant, Charles D. Sprunger. It appears from the record that Mr. Sprunger is proceeding *in forma pauperis*, and that he has satisfied the statutory requirements for pauper status for prisoners. Accordingly, execution may issue for costs if necessary.

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J. STEVEN STAFFORD, JUDGE