

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

NOVEMBER 1996 SESSION

FILED
February 13, 1997
Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
)
 APPELLEE,)
)
)
 v.)
)
)
 LARRY GENE HOPSON,)
)
)
 APPELLANT.)

No. 03-C-01-9603-CC-00108

Anderson County

James B. Scott, Jr., Judge

(Interlocutory Appeal)

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OPINION FILED: _____

AFFIRMED IN PART AND REVERSED IN PART

Joe B. Jones, Presiding Judge

O P I N I O N

This Court granted the appellant's application for permission to appeal¹ to decide whether the Double Jeopardy Clause contained in the United States Constitution and the Tennessee Constitution bars a criminal prosecution when a law enforcement officer has seized the property of an accused (a) used in the commission of the crime or (b) constituted the fruits of the crime. After a thorough review of the record, the excellent briefs submitted by the parties, and the authorities which govern this issue, it is the opinion of this Court the judgment of the trial court should be affirmed in part and reversed in part. The judgment is affirmed to the extent the trial court denied the motion to dismiss several counts of the indictment. The judgment is reversed to the extent the trial court granted the motion as to one count of the indictment.

This Court has addressed the issue presented for review in three prior cases. See State v. Charles Don Vance, Sevier County No. 03-C-01-9601-CC-00026 (Tenn. Crim. App., Knoxville, September 9, 1996), per. app. filed September 19, 1996; State v. James C. Bradley and Mickey Eller, Monroe County No. 03-C-01-9510-CC-00318 (Tenn. Crim. App., Knoxville, September 4, 1996), per. app. filed November 5, 1996; State v. Grapel Simpson, McNairy County No. 02-C-01-9508-CC-00239 (Tenn. Crim. App., Jackson, August 2, 1996), per. app. filed September 20, 1996. These decisions are predicated upon the holding of the United States Supreme Court in United States v. Ursery, _____ U.S. _____, 116 S.Ct. 2135 (1996). Ursery is not binding on this Court. The Supreme Court interpreted the federal forfeiture laws. However, it is an important decision as the United States and Tennessee forfeiture statutes are almost identical. The General Assembly made very few changes when enacting this statutory scheme.

The doctrine of stare decisis requires this Court to follow its holdings in Vance, Bradley, and Simpson. Moreover, this Court believes the result reached in each case is eminently correct, and the reasoning in these opinions is adopted by this Court.

The judgment of the trial court dismissing one count of the indictment is reversed,

¹Tenn. R. App. P. 9.

and that count of the indictment is reinstated. Otherwise, the judgment of the trial court is affirmed.

JOE B. JONES, PRESIDING JUDGE

CONCUR:

PAUL G. SUMMERS, JUDGE

JOHN K. BYERS, SENIOR JUDGE