

In The  
**Supreme Court of the United States**

—◆—  
LISA O. LEONARD,

*Petitioner,*

vs.

STATE OF TEXAS,

*Respondent.*

—◆—  
**On Petition For A Writ Of Certiorari  
To The Court Of Appeals For The  
Ninth Supreme Judicial District, Beaumont, Texas**

—◆—  
**BRIEF IN OPPOSITION**  
—◆—

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**LIST OF PARTIES AND COUNSEL**

**PARTIES**

**PETITIONER(s):**

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Katy, Texas 77494  
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**RESPONDENT(s):**

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Liberty County District Attorney's Office  
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**BRIEF IN OPPOSITION  
STATEMENT OF THE CASE**

This is an appeal from a FINAL JUDGMENT OF FORFEITURE, entered October 3, 2014, by HON. MARK MOREFIELD, Presiding Judge in the 75th Judicial District Court of Liberty County, Texas.

On April 1, 2013, at approximately 3:30 A.M., JAMES H. LEONARD (hereinafter "J. LEONARD") was stopped for speeding by Officer PAUL YOUNG (hereinafter "YOUNG") of the City of Cleveland Police Department, Liberty County, Texas. The stop of J. LEONARD's rental vehicle and events thereafter were recorded on YOUNG's in-car audio/video dash cam. The video recording of the traffic stop reflects that J. LEONARD's rental vehicle was traveling at 71 ½ MPH in a 65 MPH zone, and that J. LEONARD's rental vehicle was following too closely to the vehicle ahead of it.

During the traffic stop, it was determined that J. LEONARD did not have a valid driver's license. When asked, J. LEONARD advised that his last arrest was in 2008. Later, it was discovered that J. LEONARD's last arrest was in November 2011, for Possession of Cocaine. When asked what he did for a living, J. LEONARD advised that he is a landlord. J. LEONARD advised that he was carrying only \$800. J. LEONARD was not the individual who rented the vehicle; nor was J. LEONARD listed as an alternate driver on the rental agreement.

NICOSA DESHA KANE (hereinafter “KANE”), the passenger in the rental vehicle, advised YOUNG that J. LEONARD worked at an auto shop. KANE advised that she was carrying only \$1,000. YOUNG requested consent to search the rental vehicle; consent to search the rental vehicle was given by KANE, who rented the vehicle, and was listed on the rental agreement as the sole driver. YOUNG discovered a safe in the trunk of the rental vehicle. J. LEONARD advised YOUNG that it is his “Mother’s safe.” KANE advised YOUNG, “It is ‘our’ safe”; that the safe contained \$10,000.00; later, KANE advised YOUNG that the safe contained \$100,000.00. KANE advised YOUNG that the money came from an apartment “we rent out; it’s ours, all of our money.” KANE advised YOUNG that J. LEONARD “sold Marijuana and Cocaine.”

During the traffic stop, the following colloquy took place between YOUNG and KANE:

YOUNG: Do you feel the money inside the safe has been gained by illegal means?

KANE: Um, I mean, not a lot of it.

YOUNG: A lot of it?

KANE: Not a lot of it.

...

YOUNG: But some of it has been made from the sale of drugs?

KANE: Um, a little bit. . . .

YOUNG secured a search warrant to open and search the safe. (APPENDIX “U”). On April 2, 2013, after securing the warrant, a video recording of the opening of the safe was made. \$201,100.00 in U.S. Currency was discovered inside the safe. Thereafter, on April 9, 2013, the State of Texas, by and through the Liberty County District Attorney’s Office, filed its ORIGINAL NOTICE OF SEIZURE AND INTENDED FORFEITURE of \$201,100.00 in U.S. Currency, naming Petitioner(s) as “possessors and owners” of said U.S. Currency. (APPENDIX “V”).

On September 22, 2014, in Cause No. CV1306798, Petitioner(s) appeared before HON. MARK MOREFIELD, Presiding Judge in the 75th Judicial District Court of Liberty County, Texas, for a bench trial regarding the forfeiture of \$201,100.00 in U.S. Currency. On October 3, 2014, the Trial Court entered its FINAL JUDGMENT OF FORFEITURE, holding: Petitioner(s) were the possessors and/or owners of \$201,100.00 in U.S. Currency; that the \$201,100.00 in U.S. Currency seized by the Cleveland Police Department, Liberty County, Texas, was contraband; and, that a substantial connection exists between the \$201,100.00 in U.S. Currency and criminal activity as defined by **TEX. CODE CRIM. PROC. ANN., art. 59.01**. (APPENDIX “W”). The Trial Court then forfeited the \$201,100.00 to the State.

Petitioner(s) timely appealed the FINAL JUDGMENT OF FORFEITURE to the Court of Appeals, 9th Supreme Judicial District, Beaumont, Texas. On February 13, 2015, in Cause No. 09-14-00478-CV,

Petitioner(s) filed their Appellate Brief. (APPENDIX “X”). On July 16, 2015, in Cause No. 09-14-00478-CV, the Court of Appeals **AFFIRMED** the Trial Court’s Judgment. (APPENDIX “Y”). Petitioner(s) timely filed a Petition for Review with the Supreme Court of Texas. On October 23, 2015, in Cause No. 15-0630, the Supreme Court of Texas **DENIED** Petitioner(s) Petition for Review. On December 11, 2015, in Cause No. 15-0630, the Supreme Court of Texas **DENIED** Petitioner(s) MOTION FOR REHEARING. On December 14, 2015, the Court of Appeals, 9th Supreme Judicial District, Beaumont, Texas, issued its **MANDATE**. (APPENDIX “Z”).

### **QUESTIONS PRESENTED BY PETITIONER**

1. DOES THE HYBRID NATURE OF FORFEITURE PROCEEDINGS SUPPORT THE ADOPTION OF A CLEAR AND CONVINCING STANDARD OF PROOF?
2. DOES THE NINTH DISTRICT COURT OF APPEALS AT BEAUMONT, TEXAS’ REJECTION OF PETITIONER’S 8TH AMENDMENT ASSERTION VIOLATE DUE PROCESS RIGHTS?
3. DO THE ADJUDICATING AND PROSECUTING TRIBUNALS’ DIRECT PECUNIARY INTERESTS IN THE OUTCOME OF FORFEITURE PROCEEDINGS, INFRINGE ON THE NEUTRALITY REQUIREMENT OF DUE PROCESS, AND CREATE A CULTURE OF INHERENT CONFLICT OF INTEREST?



4. IS THE TEXAS CODE OF CRIMINAL PROCEDURE, TITLE 1, CHAPTER 59, AS APPLIED TO THIS LINE OF CASES, IMPERMISSIBLY VAGUE IN ENUMERATING INNOCENT OWNER EXPECTATIONS?



## REASONS FOR DENYING THE PETITION

1. **THE HYBRID NATURE OF FORFEITURE PROCEEDINGS SUPPORT THE ADOPTION OF A CLEAR AND CONVINCING STANDARD OF PROOF.**

### ARGUMENT

Texas law permits the State to obtain by seizure and forfeiture certain property qualifying as “contraband.” “Contraband” broadly encompasses “property of any nature” that is “used or intended to be used in the commission of . . . any felony under” (among other statutes) the Texas Controlled Substances Act. **TEX. CODE CRIM. PROC. ANN., art. 59.01(2)**. To exercise its forfeiture power, the State must commence a forfeiture proceeding under **TEXAS CODE OF CRIMINAL PROCEDURE CHAPTER 59**, entitled **FORFEITURE OF CONTRABAND**. Though found in the Code of Criminal Procedure, such forfeiture proceedings are distinctly civil in nature: “parties must comply with the rules of pleading as required in civil suits,” cases “proceed to trial in the same manner as in other civil cases,” and “the state has the burden of proving by a **preponderance of the evidence** that

property is subject to forfeiture.” **TEX. CODE CRIM. PROC. ANN., art. 59.05.**

If the State carries its burden and “the Court finds that all or any part of the property is subject to forfeiture, the Judge *shall* forfeit the property to the State.” **TEX. CODE CRIM. PROC. ANN., art. 59.05(e).** **Chapter 59** forfeitures are expressly civil and non-punitive, “[i]t is the intention of the legislature that asset forfeiture is *remedial* in nature and *not* a form of punishment.” In other words, “[a **Chapter 59**] civil forfeiture action is an *in rem* proceeding against *contraband*,” not a quasi-criminal proceeding against a person. *State v. One (1) 2004 Lincoln Navigator*, 494 S.W.3d 690, 698 (Tex. 2016) (citing *State v. Silver Chevrolet Pickup*, 140 S.W.3d 691, 692 (Tex. 2004)).

The State’s only burden is proving by a **preponderance of the evidence** that the property is subject to forfeiture, which includes proving probable cause as defined in the civil-forfeiture context. *State v. \$90,235.00*, 390 S.W.3d 289, 293 (Tex. 2013). Thus, the State must prove, considering all the evidence, that it was more reasonably probable than not that the seized property was either intended for use in, or derived from, a violation of any one of the offenses enumerated in the forfeiture statute. *\$9,050.00 in U.S. Currency v. State*, 874 S.W.2d 158 (Tex.App. – Houston [14th Dist.] 1994, *writ denied*).

**TEX. CODE CRIM. PROC. ANN., art. 59** provides an affirmative defense to forfeiture. The Trial Court may not forfeit an owner’s interest in property if

the owner proves by a preponderance of the evidence that (1) the owner acquired and perfected an interest in the property before or during the act or omission giving rise to the forfeiture, and (2) the owner did not know or should not reasonably have known (a) of the act or omission giving rise to the forfeiture or (b) that it was likely to occur at or before the time of acquiring and perfecting the interest. After the State has met its burden by proving the property is contraband, the burden shifts to the party claiming the innocent-owner defense to prove it by a **preponderance of the evidence. TEX. CODE CRIM. PROC. ANN., art. 59.02(c).**

“While the right of trial by jury in actions of law is secured by the Constitution, the forms of proceeding and the rules of evidence are within the control of the Legislature. The constitutional power of the Legislature to prescribe rules of evidence is well settled. This power has often been exercised by the Legislature, with the sanction of the Courts, so as to change the burden of proof, or to affect the question what shall be prima facie evidence at the trial before the jury.” *Com. v. Uhrig*, 146 Mass. 132, 15 N.E. 156 (1888). At no time, either prior to or during trial, did Petitioner complain regarding the burden of proof. Since the Texas Legislature has determined the burden of proof in civil cases, Petitioner should contact her State representatives, and seek to have them change the burden of proof. It is not the duty of the Supreme Court of the United States to determine the burden of proof associated with State civil cases. Therefore, Petitioner’s **REASON NO. 1** is

not sufficient for the Supreme Court of the United States to grant the Petition.

**2. THE NINTH DISTRICT COURT OF APPEALS AT BEAUMONT, TEXAS' REJECTION OF PETITIONER'S 8TH AMENDMENT ASSERTION VIOLATED DUE PROCESS RIGHTS.**

**ARGUMENT**

At the conclusion of the State's case-in-chief, the following colloquy occurred between PAUL LaVALLE, Petitioner's Trial Counsel and the Trial Court: (RPTR. REC. II-62).

MR. LaVALLE: Your Honor, at this time we would move for a directed verdict that there simply has not been enough put out there to make a link between this money and some sort of criminal activity.

THE COURT: **DENIED.** Call your first.

In Petitioner(s) Brief in Cause No. 09-14-00478-CV (APPENDIX "X"), in the 9th Supreme Judicial District, Beaumont, Texas, Petitioner(s) presented the following ISSUE NUMBER ONE:

The trial court erred in denying the Defendant's Motion for a Directed Verdict due to the fact that the evidence adduced is legally and factually insufficient to sustain the Judgment of the trial court.

In response, the Court of Appeals held: “In this case, the State presented sufficient circumstantial evidence to satisfy its burden of proving that the money constituted contraband. Viewing the evidence in the light most favorable to the verdict, we conclude that the trial court could reasonably determine that the money was used or intended to be used in the commission of a felony or the proceeds were gained from the commission of a felony. The State was not required to exclude every possible way through which the money may have been acquired. The evidence is not so weak, nor so against the great weight and preponderance of the evidence, as to render the verdict clearly wrong and unjust.” (APPENDIX “Y”).

Furthermore, Petitioner(s) asserted: “Lastly, the illegal seizure and forfeiture of this currency is excessive, bears no correlation to any damages sustained by society or to the cost of enforcing the law, thus violating the Eighth Amendment to the United States Constitution.” (APPENDIX “X”). In response, the Court of Appeals held: “[Petitioner(s)] also contends that forfeiture of the funds violates the Eighth Amendment, but the record does not indicate that [Petitioner(s)] presented this argument to the trial court. ‘[A] claim, including a constitutional claim, must have been asserted in the trial court in order to be raised on appeal.’ We **OVER-RULE ISSUE ONE.**” (APPENDIX “Y”).

In Petitioner(s) Brief in Cause No. 09-14-00478-CV (APPENDIX “Y”), in the 9th Supreme Judicial District, Beaumont, Texas, Petitioner(s) presented the following ISSUE NUMBER TWO:

The testimonial and documentary evidence supplied by LISA OLIVIA LEONARD proved, by a preponderance of the evidence, her affirmative defense of an innocent owner as identified by **TEX. CODE CRIM. PROC. ANN., art. 59.02(h)(1)(c)**.

Pursuant to **TEX. CODE CRIM. PROC. ANN., art. 59.02(h)(1)(c)**, an owner or interest holder's interest in property may not be forfeited under this chapter if the owner or interest holder proves by a preponderance of the evidence that the owner or interest holder acquired and perfected the interest:

- (1) Before or during the act or omission giving rise to forfeiture or, if the property is real property, he acquired an ownership interest, security interest, or lien interest before a lis pendens notice was filed under **Article 59.04(g)** of this code and did not know or should not reasonably have known of the act or omission giving rise to the forfeiture or that it was likely to occur at or before the time of acquiring and perfecting the interest or, if the property is real property, at or before the time of acquiring the ownership interest, security interest, or lien interest; or
- (2) After the act or omission giving rise to the forfeiture, but before the seizure of the property, and only if the owner or interest holder:

- (A) was, at the time that the interest in the property was acquired, an owner or interest holder for value; and
- (B) was without reasonable cause to believe that the property was contraband and did not purposefully avoid learning that the property was contraband.

In response, the Court of Appeals held: “Lisa’s documents reflecting the sales and purchases of homes and her bank account balances do not explain how the safe came to contain the specific amount of \$201,000. Under the circumstances of this case, the trial court could reasonably conclude that Lisa had failed to demonstrate that she acquired or perfected her interest in the money before or during the act giving rise to forfeiture. Because Lisa failed to conclusively establish all vital facts in support of her affirmative defense of innocent owner, we **OVERRULE ISSUE TWO** and need not address the second prong of the innocent owner affirmative defense.” (APPENDIX “Y”).

The trial court rejected Petitioner(s) claim of ‘innocent owner’ and the Court of Appeals agreed with the trial court’s determination. Therefore, Petitioner’s **REASON NO. 2** is not sufficient for the Supreme Court of the United States to grant the Petition.

**3. THE ADJUDICATING AND PROSECUTING TRIBUNALS' DIRECT PECUNIARY INTERESTS IN THE OUTCOME OF FORFEITURE PROCEEDINGS, INFRINGE ON THE NEUTRALITY REQUIREMENT OF DUE PROCESS, AND CREATE A CULTURE OF INHERENT CONFLICT OF INTEREST.**

**ARGUMENT**

“Attorney representing the State” means the prosecutor with felony jurisdiction in the County in which a forfeiture proceeding is held. . . . **TEX. CODE CRIM. PROC. ANN., art. 59.01(1)**. Property that is contraband is subject to seizure and forfeiture. . . . **TEX. CODE CRIM. PROC. ANN., art. 59.02(a)**. A peace officer who identifies proceeds that are gained from the commission of an offense listed . . . shall provide the Attorney representing the State with an affidavit that identifies the amount of the proceeds and that states probable cause that the proceeds are contraband subject to forfeiture. On receiving the affidavit, the Attorney representing the State may file for a judgment in the amount of the proceeds in a District Court in the county in which the proceeds were seized. **TEX. CODE CRIM. PROC. ANN., art. 59.023(a)**. If a peace officer seizes property . . . the Attorney representing the State shall commence proceedings . . . not later than the 30th day after the date of the seizure. **TEX. CODE CRIM. PROC. ANN., art. 59.04(a)**.

The Government has a pecuniary interest in forfeiture that goes beyond merely separating a criminal from his ill-gotten gains; that legitimate interest



extends to recovering *all* forfeiture assets, for such assets are deposited in a Fund that supports law-enforcement efforts in a variety of important and useful ways. *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 629 (1989). Each state with a forfeiture statute sets out who shall represent the interests of the State. In Texas, **TEX. CODE CRIM. PROC. ANN., art. 59** specifically designates who the “Attorney representing the State” shall be.

Petitioner(s) contends that participation by the “Attorney representing the State” in a forfeiture proceeding infringes on the neutrality requirement of DUE PROCESS, and creates a culture of inherent conflict of interests. The burden of showing a conflict of interest, whether it be ‘inherent’ or ‘actual,’ is on Petitioner(s). Petitioner(s) failed to present to the trial court the complaint of an actual conflict of interest at any time during the proceedings. Petitioner(s) failed to present to the trial court the complaint of an inherent conflict of interest at any time during the proceedings. Petitioner(s) has failed to show how the “Attorney representing the State’s” participation in the proceedings would in any manner deny Petitioner(s) a fair trial or due process of law under the Constitution and laws of the State of Texas and of the United States.

Petitioner(s) failed to preserve anything for appellate review. Therefore, Petitioner’s **REASON NO. 3** is not sufficient for the Supreme Court of the United States to grant the Petition.

**4. THE TEXAS CODE OF CRIMINAL PROCEDURE, TITLE 1, CHAPTER 59, AS IMPLIED TO THIS LINE OF CASES, IMPERMISSIBLY VAGUE IN ENUMERATING INNOCENT OWNER EXCEPTIONS.**

**ARGUMENT**

**TEX. CODE CRIM. PROC. ANN., art. 59** is not unconstitutional “as applied to the property rights of an innocent owner who entrusts his [property] to another.” *State v. Richards*, 301 S.W.2d 597, 603 (Tex.Crim.App. 1957). “[Reaffirming the] long and unbroken line of cases [that] holds that an owner’s interest in property may be forfeited by reason of the use to which the property is put even though the owner did not know that it was put to such use.” *Bennis v. Michigan*, 516 U.S. 442, 446 (1996).

**TEX. CODE CRIM. PROC. ANN., art. 59.02(h)(1)(c)** specifically sets out how an owner or interest holder’s interest in property may not be forfeited. Petitioner(s) failed to present to the trial court any complaint that **TEX. CODE CRIM. PROC. ANN., art. 59** was “impermissibly vague in enumerating innocent owner exceptions” at any time during the proceedings.

Petitioner(s) failed to preserve anything for appellate review. Therefore, Petitioner’s **REASON NO. 4** is not sufficient for the Supreme Court of the United States to grant the Petition.



**CONCLUSION**

Because of the above stated reasons, the Petition for Writ of Certiorari should not be granted.

Respectfully submitted,

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Liberty County District Attorney

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**APPENDIX U**

**AS12**

THE STATE OF TEXAS     §   DOCKET #  
COUNTY OF LIBERTY     §   COURT:

**AFFIDAVIT FOR SEARCH WARRANT  
(Article 18.02(12), Texas Code of  
Criminal Procedure)**

BEFORE ME, THE UNDERSIGNED AUTHORITY, PERSONALLY APPEARED THE AFFIANT HEREIN, A PEACE OFFICER UNDER THE LAWS OF TEXAS, WHO, BEING DULY SWORN, ON OATH MADE THE FOLLOWING STATEMENTS:

My name is John Shaver and I am commissioned as a peace officer by Cleveland Police Department.

1. There is in Liberty County, Texas, a suspected place and premises described and located as follows: a single black in color Sentry Safe with a digital lock on the front which is square shaped and is approximately 17" by 17" by 17" in dimensions which is found to be under the control of the suspected party named below and in, on, or around which said suspected party may reasonably reposit or secrete property which is the object of the search requested herein. Attached hereto as Exhibit A is a picture of the safe which is to be searched; it is to be considered as part of this affidavit as if written herein.

2. It is the belief of affiant that the following described property is at said suspected place: 226 Peach

Street Cleveland, Liberty County, Texas (Cleveland Police Department) which is a secured location. Said property constitutes contraband as described and explained in Paragraph 3., below.

3. Affiant has probable cause for said belief by reason of the following facts and circumstances:

“On Monday, April 1st, 2013 at approximately 3:20am Officer P. Young of the Cleveland Police Department initiated a traffic stop on a gray in color 2012 Mazda 6 passenger car bearing Pennsylvania registration JBG0683, registered to Enterprise Rent-A-Car for traveling 70mph in a 65mph zone and following to close to the car in front, prohibiting the Mazda from avoiding a collision if the front vehicle suddenly stopped. The traffic stop was conducted in the 800 block of US Highway 59 southbound, near the Highway 105 exit.

Officer Young made contact with the occupants of the vehicle and identified the operator James Harold Leonard by a Pennsylvania identification card and the front seat passenger as Nicosia Desha Kane by a Pennsylvania driver's license. Upon meeting with the operator, Leonard, he advised that they were travelling to Katy, Texas to visit his mother. Leonard was requested to step to the front of the patrol unit, so that Officer Young could speak with him and check his identification.

Upon Leonard exiting the vehicle, Officer Young observed a large bulge in the front right pocket of the jogging/cotton type pants Leonard was wearing.

Officer Young asked Leonard for consent to search his persons, at which Leonard gave consent. Upon searching Leonard's person, Officer Young pulled out the bulging item from Leonard's front right pocket. Leonard advised the bulge was money and described the amount to be eight hundred dollars. Officer Young later discovered during the book-in process the amount of fourteen-hundred and fifty dollars. While speaking with Leonard, Officer Young was advised by Leonard that Leonard had a past drug problem and the last time he was arrested was in 2008. When asked what kind of work Leonard did, he responded that he was a landlord.

Officer Young also met and questioned Nicosia Desha Kane. Upon speaking with Kane, Officer Young established that Leonard and Kane are currently engaged and live together. They have a four month old child together which was present in the vehicle. Upon speaking with Kane, Officer Young asked what type of work Leonard did and she advised that he worked at a paint and body shop. Kane was asked if that was the only way Leonard made money and she stated that it was, at the time never mentioning him being a landlord. Kane was asked about Leonard's past arrest and she advised that he had just been arrested last year for drugs. A check of Leonard's Criminal History revealed that he had been arrested in November 2011 for Possession of a Controlled Substance in Pennsylvania, not 2008 as he claimed. In addition, he had an extensive criminal history for narcotic arrests.

Due to the inconsistencies, Officer Young asked Kane if they were in the possession of any illegal narcotics, guns or large quantity of currency and Kane advised that they were not and that she had only a thousand dollars. Kane attempted to show Officer Young the money and opened a wallet and she was only in possession of a few bills and then stated that she had her money card which did not make sense to Officer Young.

The vehicle was rented by Kane and she was the only person approved as a driver of the vehicle. Officer Young asked Kane for permission to search the vehicle due to her being the person on the rental agreement and Kane gave verbal consent. Officer Young requested Kane to take control of her dog and stand at the front of her vehicle while he conducted the search. Upon gaining consent from Kane, who was the renter of the vehicle, Officer Young observed Leonard to begin yelling at Kane. It became apparent that Leonard did not want Officer Young searching the vehicle due to him yelling for Kane.

Upon entering the trunk of the vehicle, Officer Young located a large black Sentry Safe that was placed underneath the luggage. Officer Young asked Leonard what was inside the safe and he advised money. When asked how much money was inside the safe, Leonard began stating that Officer Young needed to call his mother. When asked about the code to open the safe, Leonard just continued to state that Officer Young needed to call his mother and that she could answer my questions.

Officer Young then made contact with Kane and asked her who the safe belonged to and she advised that the safe belonged to Leonard and her. Officer Young asked what was inside the safe and she stated money. When she was asked the quantity of currency in the safe, she began to shake uncontrollably, avoided eye contact and began mumbling. Kane eventually advised Officer Young that there was approximately ten thousand dollars in the safe.

Upon concluding the traffic stop, Officer Young made the determination to arrest Leonard for traffic charges of Driving While License Suspended/Invalid. Leonard was taken into custody and secured in the back of patrol unit number 0879, Officer Young explained to Kane that they will probably both be taken into custody for Money Laundering and that Child Protective Services would be called for the child if she didn't have anyone to take the child. Kane became visibly upset and began telling Officer Young that she couldn't have a charge and that he could keep the money.

Officer Young Mirandized Kane and she advised that the safe contained more like one hundred thousand dollars. Kane was asked about the rental properties and she advised that they owned four properties. Kane was unable to provide specific addresses to the properties. Kane advised that two of the properties were just recently purchased approximately five months ago and are under renovation, with no rent being collected. The other two properties have been rented approximately eight months, but the tenants are approximately two months behind on rent.



Officer Young asked how they were paid for rent and Kane advised that the tenants make payments at a convenience store and it is placed on her debit card, she does not receive cash. Kane was asked if any of the money in the safe was from the rental properties and she advised there wasn't any from the rental properties.

Officer Young asked Kane when the last time she had seen Leonard sell narcotics and she advised when he last got arrested in 2011. Kane was asked what narcotics Leonard sold and she advised "Marijuana" and "Cocaine". Officer Young asked if the money in the safe was from illegal sales of narcotics and Kane advised "Not Most it".

Officer Young advised Kane that she would be released but there may be pending charges once the investigation of the contents of the safe was completed for Money Laundering. The safe was confiscated and secured in the trunk of patrol unit#0879 and both the safe and Leonard were transported to the Cleveland Police Department and the safe was kept in a secure location.

Officer Young who has had extensive training with regards to narcotics interdiction, believed the money in question is related to Money Laundering, which is commonly associated with the illegal narcotics trade. Officer Young is a certified narcotic K-9 handler, and has over 1500 hours of continuing education through TCLEOSE. Officer Young is the designated K-9/Narcotics Patrol Officer for the Cleveland Police

Department. Officer Young has been a Certified Peace Officer for the State of Texas for approximately 10 plus years.

4. In my experience, carrying large amounts of U.S. currency is commonly associated with the illegal narcotics trade. In my experience, US Highway 59 is a main thoroughfare for the transport of U.S. currency and narcotics in the illegal drug trade.

5. Said suspected place is in the charge of and controlled by each of the following named and/or described suspected parties, to wit: James Harold Leonard DOB 07/30/1979 SS # XXX-XX-5704 who is a black male that is 33 years of age. Leonard is 5'7" and weighs 180 pounds. Leonard has a Pennsylvania ID # of XXXX7758. The suspected place, being the inside of the safe described herein, is believed to contain evidence of criminal activity based on the facts stated in this affidavit. It is the belief of the undersigned, that it is necessary to open the described safe to ascertain the contents and investigate their connection to illegal activities.

Wherefore, affiant asks for issuance of a warrant that will authorize him to search said suspected place and premises for the property described above and seize same.

John Shaver  
Affiant

App. 8

SWORN TO AND SUBSCRIBED BEFORE ME  
BY SAID AFFIANT ON THIS THE 1st DAY OF April,  
2013 at 3:37 pm

/s/ Mark Morefield  
MAGISTRATE, LIBERTY  
COUNTY, TEXAS  
75th District Court

---

**EXHIBIT A**



THE STATE OF TEXAS     §   DOCKET #  
COUNTY OF LIBERTY     §   COURT:

**SEARCH AND ARREST WARRANT**  
**(Article 18.02(1-9), Texas Code of**  
**Criminal Procedure)**

The State of Texas: To the Sheriff or any Peace Officer of Liberty County, Texas, or any Peace Officer of the State of Texas:

Whereas, the affiant whose name appears on the affidavit attached hereto is a peace officer under the laws of Texas and did heretofore this day subscribe and swear to said affidavit before me (which said affidavit is here now made a part hereof for all purposes and incorporated herein as if written verbatim within the confines of this Warrant), and whereas I find that the verified facts stated by affiant in said affidavit show that affiant has probable cause for the belief he/she expresses herein and establishes existence of proper grounds for issuance of this Warrant;

Now, therefore, you are commanded to enter the safe, described in said affidavit, to-wit: a single black in color Sentry Safe with a digital lock on the front which is square shaped and is approximately 17" by 17" by 17" in dimensions. Inside the safe you shall search for and, if same be found, seize and bring before me the property described in the affidavit which the suspected party, or others in control of the safe, are alleged to be concealing and to have in his/her possession in violation of the laws of the State of Texas, to-wit: a

single black in color Sentry Safe with a digital lock on the front which is square shaped and is approximately 17" by 17" by 17" in dimension containing U.S. currency derived from or used in the sale of illegal narcotics or any and all other items of illegal contraband or evidence of such.

Further, you are commanded to arrest and search each suspected party named and described in said affidavit, to-wit: James Harold Leonard DOB 07/30/1979 SS # XXX-XX-5704 who is a black male that is 33 years of age. Leonard is 5'7" and weighs 180 pounds. Leonard has a Pennsylvania ID # of XXXX7758. This individual is accused of an offense against the laws of the State, namely, Money Laundering.

Herein fail not, but have you then and there this Warrant within three days, exclusive of the day of its execution, with your return thereon, showing how you have executed same.

Issued this the 1st day of April, 2013, at 3:40 o'clock P.M. to certify which witness my hand this day.

Mark Morefield  
\_\_\_\_\_  
MAGISTRATE, LIBERTY  
COUNTY, TEXAS  
75th District Court

---

**APPENDIX V**

NO. CV1306798

THE STATE OF TEXAS § IN THE 75TH JUDICIAL  
V. § DISTRICT COURT OF  
\$201,100.00 § LIBERTY COUNTY,  
U.S. CURRENCY § TEXAS

**PLAINTIFF'S ORIGINAL NOTICE  
OF SEIZURE AND INTENDED FORFEITURE**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the State of Texas as Plaintiff by and through her District Attorney and files this Original Notice of Seizure and Intended Forfeiture of \$201,100.00 U.S. CURRENCY, and alleges the following:

I.

This proceeding is brought under and by virtue of Chapter 59 of the Texas Code of Criminal Procedure. Plaintiff alleges that discovery is intended to be conducted under Level 2, pursuant to Texas Rule of Civil Procedure 190.3 of the Texas Rules of Civil Procedure.

II.

Jurisdiction is conferred upon this Court by virtue of Article V, Section 8 of the Texas Constitution and Article 59.04 of the Code of Criminal Procedure.

III.

Petitioner complains of JAMES HAROLD LEONARD and NICOSA DESHA KANE and LISA OLIVIA LEONARD, hereinafter referred to as RESPONDENT(S), as possessors and owners of said \$201,100.00 U.S. CURRENCY.

IV.

Petitioner alleges that said property is contraband as defined by Article 59.01 of the Code of Criminal Procedure, and is subject to forfeiture by virtue of it being:

- (A) used in the commission of:
  - (i) any first or second degree felony under the Penal Code;
  - (ii) any felony under Section 15.031(b), 20.05, 21.11, 38.04, or Chapter 43, 20A, 29, 30, 31, 32, 33, 33A, or 35, Penal Code;
  - (iii) any felony under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes); or
  - (iv) any offense under Chapter 49, Penal Code, that is punishable as a felony of the third degree or state jail felony, if the defendant has been previously convicted three times of an offense under that chapter;
- (B) used or intended to be used in the commission of:

App. 13

- (i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);
- (ii) any felony under Chapter 483, Health and Safety Code;
- (iii) a felony under Chapter 153, Finance Code;
- (iv) any felony under Chapter 34, Penal Code;
- (v) a Class A misdemeanor under Subchapter B, Chapter 365, Health and Safety Code, if the defendant has been previously convicted twice of an offense under that subchapter;
- (vi) any felony under Chapter 152, Finance Code;
- (vii) any felony under Chapter 32, Human Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that involves the state Medicaid program;
- (viii) a Class B misdemeanor under Chapter 522, Business & Commerce Code;
- (ix) a Class A misdemeanor under Section 306.051, Business & Commerce Code;
- (x) any offense under Section 42.10, Penal Code;
- (xi) any offense under Section 46.06(a)(1) or 46.14, Penal Code;



- (xii) any offense under Chapter 71, Penal Code; or
- (xiii) any offense under Section 20.05, Penal Code;
- (C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) above, a misdemeanor listed in Paragraph (B)(viii), (x), (xi), or (xii) above, or a crime of violence;
- (D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) above, a misdemeanor listed in Paragraph (B)(viii), (x), (xi), or (xii) above, or a crime of violence;
- (E) used to facilitate or intended to be used to facilitate the commission of a felony under Section 15.031 or 43.25, Penal Code; or
- (F) used to facilitate or intended to be used to facilitate the commission of a felony under Section 20A.02 or Chapter 43, Penal Code.

Said property was seized in Liberty County, Texas on April 1, 2013.

V.

Petitioner certifies that a copy of this notice will be served upon the RESPONDENT(S), JAMES HAROLD LEONARD and NICOSA DESHA KANE and LISA OLIVIA LEONARD by and through their attorney, Paul H. LaValle. Said attorney has requested service be perfected by facsimile, 409-945-2310.

VI.

Petitioner alleges that the above property bears no liens or other encumbrances by any other person or entity.

WHEREFORE, PREMISES CONSIDERED, the State of Texas prays that upon hearing, this Court enter a finding that the said \$201,100.00 U.S. CURRENCY is contraband, and upon such finding to order the forfeiture of said property to the State of Texas with the District Attorney's Office acting as agent for the State, and then to be administered and disposed of by said office in compliance with Article 59.06 of the Code of Criminal Procedure.

Respectfully submitted,

/s/ Joe W. Warren  
JOE W. WARREN  
Assistant District Attorney  
Liberty County, Texas  
1923 Sam Houston, Suite 112  
Liberty, Texas 77575  
936-336-4609  
936-336-4644 Fax  
TBN 00785182  
Attorney for Plaintiff

---

**AFFIDAVIT OF SEIZING OFFICER**

STATE OF TEXAS           §  
  §  
COUNTY OF LIBERTY     §

Came unto me this day, April 1, 2013, a person known and upon oath swears as follows:

“My name is Officer Paul Young #132. I am over the age of 18. I have personal knowledge of the facts asserted below and am competent to testify to those facts.”

“Affiant, Officer Paul Young #132 is employed by the City of Cleveland Police Department and is currently assigned to the Patrol Division of said Department.”

“On the 1 day of April, 2013, the Cleveland Police Department seized \$201,100.00 of U.S. Currency. I believe this property, further described in attachment “A-U.S. Currency” is contraband as defined in Chapter 59 of the Texas Code of Criminal Procedure.”

/s/ Paul Young  
Seizing Officer

SUBSCRIBED AND SWORN TO before me, the undersigned Notary Public, on this the 1 day of April, 2013.

/s/ Cindy Foxworth  
Notary Public in and for the  
State of Texas

[NOTARY SEAL]

**ATTACHMENT "A-U.S. Currency"  
SEIZED PROPERTY**

**United States Currency**

1871	\$100.00 Federal Reserve Notes
200	\$50.00 Federal Reserve Notes
200	\$20.00 Federal Reserve Notes
0	\$10.00 Federal Reserve Notes
0	\$5.00 Federal Reserve Notes
0	\$1.00 Federal Reserve Notes
0	Coins
\$201,100	TOTAL SEIZED

[FILED

at 3:30 o'clock PM

APR 09 2013

DONNA G. BROWN

Clerk, District Court, Liberty, TX

BY /s/ Frances Kester DEPUTY]

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**APPENDIX W**  
**NO. CV1306798**

**STATE OF TEXAS** § **IN THE DISTRICT COURT**  
**VS.** § **75TH JUDICIAL DISTRICT**  
**\$201,100.00 U.S.** § **LIBERTY COUNTY, TEXAS**  
**CURRENCY** §

**FINAL JUDGMENT OF FORFEITURE**

On September 22, 2014 the above-styled and numbered cause was called for trial. The State of Texas, Plaintiff, appeared by her District Attorney, Logan Pickett, and the Respondents/Defendants, James Harold Leonard, Lisa Olivia Leonard, and Nicosia Desha Kane, appeared by counsel, Paul H. Lavalley. The Court has jurisdiction of the subject matter and the necessary parties. A jury was waived and all matters of fact and controversy were submitted to the Court. The Court FINDS as follows:

1. Respondents, James Harold Leonard, Lisa Olivia Leonard, and Nicosia Desha Kane, were the possessors and/or owners of the above \$201,100.00 U.S. Currency.
2. The \$201,100.00 seized by the Cleveland Police Department is contraband.
3. A substantial connection exists between the \$201,100.00 and criminal activity defined by Article 59.01 of the Texas Code of Criminal Procedure.

It is, therefore, ORDERED, ADJUDGED, and DECREED by the Court that the \$201,100.00 and all interest thereon be awarded to Plaintiff, after court costs are deducted by the Liberty County District Clerk. The portion awarded to Plaintiff in this Judgment is to be divided as follows: Sixty (60) percent shall go to the CLEVELAND POLICE DEPARTMENT and the remainder shall go to the LIBERTY COUNTY DISTRICT ATTORNEY'S OFFICE. Any interest on the money the subject of this forfeiture shall be distributed as follows: ALL INTEREST shall go to the CLEVELAND POLICE DEPARTMENT.

It is further ORDERED, ADJUDGED, and DECREED that all costs are assessed against the party incurring same. All other relief not expressly granted herein is denied.

SIGNED this the 3rd day of October, 2014.

/s/ Mark Morefield  
JUDGE PRESIDING  
75TH JUDICIAL  
DISTRICT COURT  
LIBERTY COUNTY, TEXAS

Agreed as to form:

Logan Pickett, Attorney for Plaintiff

App. 20

**FILED**

at 5:00 o'clock pm M

OCT 3 2014

DONNA G. BROWN

Clerk, District Court, Liberty, TX

By /s/ Melissa Wells DEPUTY

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**APPENDIX X**

**No. 09-14-00478-CV**

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**IN THE  
COURT OF APPEALS  
FOR THE  
NINTH SUPREME JUDICIAL DISTRICT  
OF  
TEXAS  
AT BEAUMONT, TEXAS**

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**JAMES H. LEONARD, LISA OLIVIA LEONARD  
AND NICOSA D. KANE,  
Appellants,**

**vs.**

**THE STATE OF TEXAS,  
Appellee.**

---

**Appeal from the 75th Judicial District  
Court of Liberty, County, Texas**

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**BRIEF OF APPELLANTS**

(Filed Feb. 13, 2015)

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**WILLIE & ASSOCIATES, P.C.**

**Joseph R. Willie, II, D.D.S., J.D.  
4151 Southwest Freeway, Suite 490  
Houston, Texas 77027**



**(713) 659-7330**  
**(713) 599-1659 (FAX)**  
**SBOT# 21633500**  
**attyjrwii@wisamlawyers.com**

**ATTORNEY FOR APPELLANTS**  
**JAMES H. LEONARD, LISA OLIVIA**  
**LEONARD AND NICOSA CANE**

**ORAL ARGUMENT REQUESTED**

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**[ii] IDENTITY OF PARTIES AND COUNSEL**

The following is a complete list of all parties to the trial court's final judgment, as well as the names and addresses of all trial and appellate counsel.

<b>PARTIES</b>	<b>COUNSEL</b>
Appellants: James H. Leonard Lisa Olivia Leonard Nicosia Kane	Willie & Associates, P.C. Joseph R. Willie, II, D.D.S., J.D. 4151 Southwest Freeway, Suite 490 Houston, Texas 77027 Appellate Counsel for Appellants  Law Offices of Paul Houston LaValle & Associates, P.C. Paul H. LaValle, Esquire 2501 Palmer Highway, Suite 112 Texas City, Texas 77592 Trial Counsel for Appellants

The State of Texas      Liberty County District  
                                 Attorney's Office  
                                 Logan Pickett, Esquire  
                                 Assistant District Attorney  
                                 Joe W. Warren, Esquire  
                                 Assistant District Attorney  
                                 1923 Sam Houston Street,  
                                 Suite 112  
                                 Liberty, Texas 77575  
                                 Trial Counsel for Appellee

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[vi] **STATEMENT OF THE CASE**

- Nature of the Case:* This is a forfeiture of contraband cause of action brought by the State of Texas, by and through the Liberty County District Attorney's Office.
- Trial Court:* The Honorable Mark Morefield, 75th Judicial District Court, Liberty County, Texas.
- Parties in Trial Court:* The State of Texas – Plaintiff; James H. Leonard, Lisa Olivia Leonard and Nicosia Kane – Defendants.
- Trial Court Disposition:* Judgment of forfeiture rendered in favor of the Plaintiff.

**ISSUES PRESENTED**

The trial court erred in denying the Defendant's Motion for a Directed Verdict due to the fact that the evidence adduced is legally and factually insufficient to sustain the judgment of the trial court.

The testimonial and documentary evidence supplied by Lisa Olivia Leonard proved, by a preponderance of the evidence, her affirmative Defense of an innocent owner as defined by TEX. CODE CRIM. PROC. art. 59.02(h)(1)(c).

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**STATEMENT OF FACTS**

On April 1, 2014, James H. Leonard and his passenger, Nicosia Kane, were stopped for the traffic offense of speeding by Officer Paul Young of the Cleveland Police Department. Officer Young searched the vehicle and found the trunk to contain luggage and a safe. No drugs or firearms were found in the vehicle. Mr. Leonard was subsequently arrested for the offense of driving without a license and a search warrant was obtained to open the safe. Upon opening the safe, currency in the amount of \$201,100.00 and a Bill of Sale for a Pennsylvania home was found.

On April 9, 2014, the State of Texas, by and through the Liberty County District Attorney's Office, filed its Original Notice of Seizure and Intended Forfeiture. (C.R. 2-6.)

On April 18, 2015, James H. Leonard, Lisa Olivia Leonard and Nicosia Kane filed their Sworn Original Answers. (C.R. 7-18.)

On September 22, 2014, trial on the merits commenced on the forfeiture cause of action. At the end of the trial, the trial court took all of the evidence and testimony under advisement. (2 C.R.R. 6-128.)

On October 3, 2014, the trial court entered and signed a final judgment in favor of the State of Texas and ordered the currency forfeited to the same. (C.R. 24-25.)

[2] The Defendants timely perfected their appeal to the Court of Appeals for the Ninth Supreme Judicial District of Texas. (C.R. 26-27.)

### **SUMMARY OF THE ARGUMENT**

The State of Texas failed to carry its burden of proof that the currency seized from the trunk of the automobile in which James H. Leonard was the driver and Nicosia Kane was the passenger was contraband, as described by TEX. CODE CRIM. PROC. art. 59.01(2). The actions of the trial court run counter to the applicable case law announced in *\$27,877.00 v. State of Texas*, 331 S.W.3d 110, 114-115 (Tex. App. – Fort Worth 2010, pet. denied); *\$763.30 v. State of Texas*, No. 09-05-0437-CV, 2007 WL 474967, at \*3 (Tex. App. – Beaumont Feb. 15, 2007, no pet.); *Bochas v. State of Texas*, 951 S.W.2d 64, 70 (Tex. App. – Corpus Christi 1997, writ denied).

The testimonial and documentary evidence supplied by Lisa Olivia Leonard proved, by a preponderance of the evidence, her affirmative defense of an innocent owner as defined by TEX. CODE CRIM. PROC. art. 59.02(h)(1)(c). *See \$9,050.00 v. State of Texas*, 874 S.W.2d 158, 163 (Tex. App. – Houston [14th Dist.] 1994, writ denied).

[3] **ARGUMENT AND AUTHORITIES**

**The trial court erred in denying the Defendant's Motion for a Directed Verdict due to the fact that the evidence adduced is legally and factually insufficient to sustain the judgment of the trial court.**

The State of Texas failed to carry its burden of proof that the currency seized from the trunk of the automobile in which James H. Leonard was the driver and Nicosia Kane was the passenger was contraband, as described by TEX. CODE CRIM. PROC. art. 59.01(2).

The trial court made findings of fact and incorporated said findings in its Final Judgment of Forfeiture. (C.R. 24-25.) The Court is reminded that a separate instrument containing findings of fact is not required. *See Peterson v. Peterson*, 595 S.W.2d 889, 891 (Tex. Civ. App. – Austin 1980, writ dismissed); *Cottle v. Knapper*, 571 S.W.2d 59, 64 (Tex. Civ. App. – Tyler 1978, no writ). It is the contention of the Appellants that there is legally and factually insufficient evidence to support the findings and the judgment of the trial court.

The trial court erred in admitting the testimony of Richard Miller to authenticate an alleged tape recording between James H. Leonard and an alleged confidential informant in the State of Pennsylvania. Mr. Miller was not in the physical presence of Mr. Leonard and the alleged confidential informant when the conversation between them took place. (2 C.R.R. 18-20.) Defense counsel objected [4] to the admittance of State Exhibit No. 1 on the basis that the exhibit was not



properly authenticated, the State failed to lay the proper predicate for its admission and that the alleged DVD was not the best evidence of the alleged conversation. (2 C.R.R. 20.) State's Exhibit No. 1 is at best hearsay, is not admissible and no exception applies.

State's Exhibit No. I purports to be the DVD of the conversation alluded to above, however, the appellate record supplied by this Court to Appellants' counsel does not contain the business record affidavit of Deputy Attorney General Mutschler nor did the State move for the business record affidavit's admittance into evidence. The trial court erred in admitting into evidence State's Exhibit No. 1.

State's Exhibit No. 5 should not have been admitted into evidence due to the fact that the document was not properly authenticated pursuant to the mandates of TEX. R. EVID. 902(5). (C.R. 50-55; 2 C.R.R. 22-23.) The documents are neither books nor pamphlets, it is not clear on the face of the documents that they were purportedly issued by a public authority, the documents do not identify their source and there is no URL address (internet address) on the documents. *See Kishor v. TXU Energy Retail Co., L.L. C.*, No. 05-10-01496-CV. 2011 WL 5857215, at \*4 (Tex. App. – Dallas Nov. 17, 2011, no pet.). The trial court erred and abused its discretion in admitting State's Exhibit No. 5.

[5] The testimony of Officer Paul Young reveals that he stopped Mr. Leonard for the traffic violation of speeding. (2 C.R.R.25-26, 26-27, 29, 34.) Officer Young did not find any drugs or weapons during the search of

the vehicle in question. (2 C.R. 40-41, 45.) The State never introduced any evidence, testimonial or documentary, that it is, *per se*, illegal to transport a safe containing currency in the trunk of an automobile.

Unless there is a nexus between the seized property and the alleged criminal activity, the forfeiture will fail. *See* \$27,877.00 *v. State of Texas*, 331 S.W.3d 110, 114-115 (Tex. App. – Forth Worth 2010, pet. denied); \$763.30 *v. State of Texas*, No. 09-05-0437-CV, 2007 WL 474967, at \*3 (Tex. App. – Beaumont Feb. 15, 2007, no pet.); *Bochas v. State of Texas*, 951 S.W.2d 64, 70 (Tex. App. – Corpus Christi 1997, writ denied). *See also* *United States v. \$557,933.89*, 287 F.3d 66, 77 (2d Cir. 2002); *United States v. \$30,060.00*, 39 F.3d 1039, 1044 (9th Cir. 1994).

Officer Young testified that after seeing the safe, he arrested Mr. Leonard and Ms. Kane for the penal offense of money laundering. (2 C.R.R. 24-25, 34, 41.) Officer Young also testified that the safe contained a Bill of Sale from a house in Pennsylvania. (2 C.R.R. 42.) No charges were ever filed against Mr. Leonard or Ms. Kane concerning money laundering. (2 C.R.R. 46-47, 49-50.) Lastly, Officer Young testified that he spoke to Ms. Lisa Leonard, the mother of Mr. Leonard, who informed him that the safe and its contents belonged to her. (2 C.R.R. 51-52.)

[6] The State has not proved, by a preponderance of the evidence, that the funds that were in the safe were the proceeds of money laundering or any other enumerated penal offense listed in TEX. CODE CRIM.

PROC. art. 59.01(2). Additionally, the State has not offered any evidence that the funds in question were involved in any criminal activity. The judgment of the trial court should be reversed and rendered that the State take nothing by its suit.

**The testimonial and documentary evidence supplied by Lisa Olivia Leonard proved, by a preponderance of the evidence, her affirmative defense of an innocent owner as defined by TEX. CODE OF CRIM. PROC. art. 59.02(h)(1)(c).**

Ms. Leonard repeatedly testified throughout the trial and in her deposition testimony that was admitted into evidence at trial that she is a wealthy individual, that she consistently makes a six-figure income, that her husband received a large personal injury settlement and that she received a large inheritance from her father and that she places large sums of currency in her safe. (2 C.R.R. 62-89, 90-124; 3 C.R.R. 76-204.) Additionally, Officer Young testified that he spoke to Ms. Lisa Leonard, the mother of Mr. Leonard, who informed him that the safe and its contents belonged to her. (2 C.R.R. 51-52.)

Although not specifically denominated in her Sworn Original Answer, Ms. Leonard did aver that she was the sole legal rightful owner and claimant of the currency and that the issue concerning her affirmative defense was tried by consent [7] without any objection. *See, e.g., Roak v. Stallworth Oil & Gas, Inc.*, 813 S.W.2d

492, 495 (Tex. 1991). As part of her affirmative defense as an innocent owner of the currency that made the basis of this lawsuit, a Ms. Leonard must carry the burden of proving that she acquired an ownership interest in the property prior to, or during, the act giving rise to forfeiture. *See \$9,050.00 v. State of Texas*, 874 S.W.2d 158, 163 (Tex. App. – Houston [14th Dist.] 1994, writ denied). She must further prove that she did not know, or should not reasonably have known of the act that gave rise to the forfeiture, or that the act was likely to occur at a time, or before the time, that she acquired her interest in the property. *Id.* There is no evidence, documentary or testimonial, that Ms. Leonard knew of or participated in money laundering or in any penal offense enumerated in TEX. CODE CRIM. PROC. art. 59.01(2). There is no evidence that the funds in question were used in **any** illegal activity. Moreover, the documentary evidence shows that Ms. Leonard handles large sums of cash conducting her personal business and that the funds in the safe belonged to her. The State never proved the contrary. (4 C.R.R., Defendant's Exhibits 1-4, 8, 13-15, 17.) Lastly, the illegal seizure and forfeiture of this currency is excessive, bears no correlation to any damages sustained by society or to the cost of enforcing the law, thus violating the Eighth Amendment to the United States Constitution. *See United States v. Bajakajian*, 118 S.Ct. 2024, 2028 [8] (1998). The judgment of the trial court should be reversed and rendered that the State take nothing by its suit.

**PRAYER**

For the foregoing reasons, the Appellants, James H. Leonard, Lisa Olivia Leonard and Nicosia Kane, pray that the Court reverse the judgment of the trial court and render that the State take nothing by its suit.

Respectfully submitted,

WILLIE & ASSOCIATES, P.C.

By: /s/ Joseph R. Willie, II, D.D.S., J.D. \_\_\_\_\_

Joseph R. Willie, II, D.D.S., J.D.

4151 Southwest Freeway, Suite 490

Houston, Texas 77027

(713) 659-7330

(713) 599-1659 (FAX)

SBOT# 21633500

attyjrwii@wisamlawyers.com

ATTORNEY FOR APPELLANTS

JAMES H. LEONARD, LISA OLIVIA

LEONARD AND NICOSA CANE

\_\_\_\_\_  
[Certificate Of Service Omitted]

[Certificate Of Compliance Omitted]  
\_\_\_\_\_

**APPENDIX**

**Appendix 1**

**NO. CV1306798**

**STATE OF TEXAS § IN THE DISTRICT COURT**  
**VS. § 75TH JUDICIAL DISTRICT**  
**\$201,100.00 U.S. § LIBERTY COUNTY, TEXAS**  
**CURRENCY §**

**FINAL JUDGMENT OF FORFEITURE**

On September 22, 2014 the above-styled and numbered cause was called for trial. The State of Texas, Plaintiff, appeared by her District Attorney, Logan Pickett, and the Respondents/Defendants, James Harold Leonard, Lisa Olivia Leonard, and Nicosia Desha Kane, appeared by counsel, Paul H. Lavalley. The Court has jurisdiction of the subject matter and the necessary parties. A jury was waived and all matters of fact and controversy were submitted to the Court. The Court FINDS as follows:

1. Respondents, James Harold Leonard, Lisa Olivia Leonard, and Nicosia Desha Kane, were the possessors and/or owners of the above \$201,100.00 U.S. Currency.
2. The \$201,100.00 seized by the Cleveland Police Department is contraband.
3. A substantial connection exists between the \$201,100.00 and criminal activity defined by

Article 59.01 of the Texas Code of Criminal Procedure.

It is, therefore, ORDERED, ADJUDGED, and DECREED by the Court that the \$201,100.00 and all interest thereon be awarded to Plaintiff, after court costs are deducted by the Liberty County District Clerk. The portion awarded to Plaintiff in this Judgment is to be divided as follows: Sixty (60) percent shall go to the CLEVELAND POLICE DEPARTMENT and the remainder shall go to the LIBERTY COUNTY DISTRICT ATTORNEY'S OFFICE. Any interest on the money the subject of this forfeiture shall be distributed as follows: ALL INTEREST shall go to the CLEVELAND POLICE DEPARTMENT.

It is further ORDERED, ADJUDGED, and DECREED that all costs are assessed against the party incurring same. All other relief not expressly granted herein is denied

SIGNED this the 3rd day of October, 2014,

/s/ Mark Morefield  
JUDGE PRESIDING  
75TH JUDICIAL  
DISTRICT COURT  
LIBERTY COUNTY, TEXAS

Agreed as to form:

Logan Pickett, Attorney for Plaintiff

**FILED**

at 5:00 o'clock pm M

OCT 3 2014

DONNA G. BROWN

Clerk, District Court, Liberty, TX

By /s/ Melissa Wells DEPUTY

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**APPENDIX Y**

**In The**

***Court of Appeals***

***Ninth District of Texas at Beaumont***

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**NO. 09-14-00478-CV**

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**\$201,100.00 U.S. CURRENCY, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 75th District Court  
Liberty County, Texas  
Trial Cause No. CV1306798**

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**MEMORANDUM OPINION**

The State initiated forfeiture proceedings to seize \$201,100 in United States currency from James Harold Leonard, Nicosia Desha Kane, and Lisa Olivia Leonard (“appellants”). The trial court found that: (1) appellants were the “possessors and/or owners” of the \$201,100; (2) the \$201,100.00 is contraband; and (3) “[a] substantial connection exists between the \$201,100.00 and criminal activity defined by Article 59.01 of the Texas Code of Criminal Procedure.” The trial court then awarded the money to the State. In two appellate issues, appellants challenge the denial of

their motion for directed verdict and contend that the evidence supports the affirmative defense of innocent owner. We affirm the trial court's judgment.

### Factual Background

Officer Paul Young testified that he took James into custody for a traffic violation and suspicion of money laundering. According to the record, the vehicle was stopped around 3:20 a.m. for speeding and following another vehicle too closely. James was driving the vehicle and Kane was a passenger. James told Young that he was a landlord, was last arrested in 2008, and was in possession of \$800. Kane told Young that James worked at an auto body shop, James was last arrested in 2011, and she was in possession of around \$1,000. James's driver's license had also been suspended.

Kane consented to a search of the vehicle. During the search, Young found a safe in the trunk. Kane initially claimed that the safe belonged to her and James and she denied that the safe contained a large amount of money. James, however, told Young that the safe belonged to his mother, Lisa, and contained money. Kane changed her story and told Young the safe contained around \$10,000. At first, she claimed the money originated from rental income, but later stated that none of the money was rental income. Kane further changed her story, telling Young that the safe contained around \$100,000. When Young asked if any of the money derived from the sale of narcotics, Kane responded, "Not most of it." Young contacted Lisa, who claimed that the

safe's contents constituted "personal business[]" and she refused to give Young permission to open the safe.

Young obtained a search warrant and discovered that the safe contained approximately \$201,000 and a bill of sale for a Pennsylvania home. Young testified that there were no bank bands or demarcations on the money to indicate that the money had been removed from a bank. He explained that the money's packaging suggested currency obtained through drug sales. In an affidavit, Officer John Shaver stated:

In my experience, carrying large amounts of U.S. currency is commonly associated with the illegal narcotics trade. In my experience, [U.S.] Highway 59 is a main thoroughfare for the transport of U.S. currency and narcotics in the illegal drug trade.

In her deposition, Kane stated that she did not recall James placing the safe in the vehicle and she had no idea what the safe contained. She claimed that she told Young the safe belonged to Lisa and that she simply guessed when she told Young that the safe contained money. She did not recall suggesting that some of the money was derived from narcotics sales. She had no idea how the money was acquired. Lisa testified that she is an internal revenue agent and earns approximately \$111,000 per year. She further testified that her husband had received settlement money and she had received an inheritance from her father. When the stock market crashed in 2008, she began storing money in safes. She explained that, in 2008, she sold a home in Pennsylvania for \$216,000, deposited

\$213,000 into a bank account, later removed the funds, and placed them in the safe that Young found in the vehicle. She also testified that she used a majority of these funds to purchase her home in Texas. In her deposition, Lisa explained that in 2012, she took approximately \$250,000 to Pennsylvania to purchase another home, purchased a home for \$25,000, spent some of the remaining money while in Pennsylvania, and purchased a safe in which to store the remaining money. According to Lisa, James was bringing the safe back to Texas so that Lisa could use the money to purchase a home for James and Kane in Texas. Lisa testified that she is the sole claimant to the money found in the safe.

#### Motion for Directed Verdict

In issue one, appellants challenge the denial of their motion for directed verdict on grounds that the evidence is legally and factually insufficient. We review a trial court's denial of a motion for directed verdict under a legal sufficiency standard. *City of Keller v. Wilson*, 168 S.W.3d 802, 823 (Tex. 2005); *Cleveland Reg'l Med. Ctr., L.P. v. Celtic Props., L.C.*, 323 S.W.3d 322, 346 (Tex. App. – Beaumont 2010, pet. denied). We consider whether the evidence “would enable reasonable and fair-minded people to reach the verdict under review.” *Wilson*, 168 S.W.3d at 827. We view the evidence in the light most favorable to the verdict, credit favorable evidence if a reasonable factfinder could, and disregard contrary evidence unless a reasonable factfinder could not. *Del Lago Partners, Inc. v. Smith*, 307 S.W.3d 762, 770 (Tex. 2010). Under factual sufficiency

review, we consider and weigh all the evidence, and will set aside the verdict only if the evidence is so weak or so against the great weight and preponderance of the evidence that it is clearly wrong and unjust. *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 242 (Tex. 2001). A directed verdict for a defendant may be proper when the plaintiff (1) “fails to present evidence raising a fact issue essential to the plaintiffs right of recovery[;]” or (2) “admits or the evidence conclusively establishes a defense to the plaintiffs cause of action.” *Prudential Ins. Co. of Am. v. Fin. Review Servs., Inc.*, 29 S.W.3d 74, 77 (Tex. 2000).

In issue one, appellants contend the trial court erred by denying their motion for directed verdict because the evidence failed to establish that the currency seized from the safe constituted contraband. Within this same issue, appellants present arguments challenging the admission of certain evidence. “A point of error is multifarious when it generally attacks the trial court’s order with numerous arguments.” *Rich v. Olah*, 274 S.W.3d 878, 885 (Tex. App. Dallas 2008, no pet.). An appellate court has discretion to consider a multifarious issue if it can determine, with reasonable certainty, the error about which the complaint is made. *Id.*; *Quiroz v. Gray*, 441 S.W.3d 588, 591 (Tex. App. – El Paso 2014, no pet.). Because we are able to determine appellants’ complaints with reasonable certainty, we will address them both.

We first address the denial of appellants’ motion for directed verdict. “Currency derived from delivering or possessing a controlled substance is contraband

subject to forfeiture.” *\$567.00 in U.S. Currency v. State*, 282 S.W.3d 244, 247 (Tex. App. – Beaumont 2009, no pet.); *see also* Tex. Code Crim. Proc. Ann. arts. 59.01(2)(D), 59.02(a) (West Supp. 2014). The State must establish by a preponderance of the evidence a reasonable belief that there exists a substantial connection between the property to be forfeited and the statutorily-proscribed criminal activity. *\$567.00 in U.S. Currency*, 282 S.W.3d at 247. We consider

(1) the proximity of the money to the drugs and to evidence of drug trafficking, (2) evidence that the money was previously in contact with drugs, (3) suspicious activity consistent with drug trafficking, (4) the amount of money at issue, and (5) the presence of expert testimony indicating that there was probable cause to seize the property subject to forfeiture.

*Id.* at 248.

In this case, the State presented sufficient circumstantial evidence to satisfy its burden of proving that the money constituted contraband. The record indicates that James’s vehicle was stopped in the early morning hours and while traveling on a highway that serves as a “main thoroughfare for the transport of U.S. currency and narcotics in the illegal drug trade.” James and Kane offered Young inconsistent stories regarding (1) the owner of the safe and its contents; (2) the amount of money in their possession and whether that money derived from rental income; and (3) James’s employment and criminal history, which includes narcotics offenses, the most recent of which

he failed to disclose. The State admitted a recording of James speaking with a confidential informant, during which James discussed his role in the sale of narcotics. The trial court also heard evidence that Kane indicated that some of the money was acquired through drug sales. Young testified that it is not common for someone to carry a large safe. The trial court heard evidence that carrying large amounts of money is consistent with the illegal narcotics trade and that the money was packaged in such a way as to indicate that it originated from drug sales and not a financial institution.

Viewing the evidence in the light most favorable to the verdict, we conclude that the trial court could reasonably determine that the money was used or intended to be used in the commission of a felony or the proceeds were gained from the commission of a felony. *See* Tex. Code Crim. Proc. Ann. art. 59.01(2); *see also Smith*, 307 S.W.3d at 770. The State was not required to exclude every possible way through which the money may have been acquired. *See \$47,200.00 U.S. Currency v. State*, 883 S.W.2d 302, 308-09 (Tex. App. – El Paso 1994, writ denied). The evidence is not so weak, nor so against the great weight and preponderance of the evidence, as to render the verdict clearly wrong and unjust. *See Dow Chem. Co.*, 46 S.W.3d at 242. The trial court did not err by denying appellants' motion for directed verdict.

We now address appellants' challenges to the admission of the following evidence: (1) Richard Miller's testimony regarding an audio recording of James's

conversation with an informant; (2) the recorded conversation itself; and (3) a Pennsylvania court summary. “We review a trial court’s evidentiary rulings for abuse of discretion.” *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 906 (Tex. 2000).

Miller testified that he participated in a Pennsylvania investigation that involved James, during which he recorded James’s conversation with an informant in June 2013. He identified the voices on the recording as those of James and the informant. Appellants took Miller on voir dire, and Miller explained that surveillance of the conversation was being conducted while the audio recording was created. Appellants argued that the recording was not the best evidence of the conversation, was not properly authenticated, and resulted in hearsay, but the trial court overruled their objections.

On appeal, appellants contend the recording was not properly authenticated because Miller was not in the physical presence of James and the informant when the conversation took place. “To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” Tex. R. Evid. 901(a). Examples of authentication include testimony of a witness with knowledge that “an item is what it is claimed to be[]” and “[a]n opinion identifying a person’s voice – whether heard firsthand or through mechanical or electronic transmission or recording – based on hearing the voice at any time under circumstances that connect it with



the alleged speaker.” Tex. R. Evid. 901(b)(1), (5). The record demonstrates that, because of his participation in an investigation involving James, Miller had knowledge that the recording is what it was claimed to be and was able to identify the voices on the recording. *See id.*; *see generally Hines v. State*, 383 S.W.3d 615, 625 (Tex. App. – San Antonio 2012, pet. ref’d). The trial court did not abuse its discretion by admitting the recording into evidence.

The trial court also overruled appellants’ objection to admission of a Pennsylvania court summary on grounds that it was not attested to or certified. On appeal, appellants argue that the summary is not a book or pamphlet and that “it is not clear on the face of the documents that they were purportedly issued by a public authority[.]” An “official publication,” *i.e.*, a “book, pamphlet, or other publication purporting to be issued by a public authority[.]” is considered self-authenticating. Tex. R. Evid. 902(5).

According to the State, the summary was printed from the government website of the Allegheny County Court of Common Pleas. The summary is titled “Allegheny County Court of Common Pleas Court Summary” and describes James’s active and closed criminal cases, including cause numbers, charged offenses, offense dates, and disposition information. “[I]nformation on a government website is a ‘publication purporting to be issued by a public authority.’” *Williams Farms Produce Sales, Inc. v. R&G Produce Co.*, 443 S.W.3d 250, 258 (Tex. App. – Corpus Christi 2014, no pet.). Accordingly, “documents printed

from government websites are self-authenticating under Texas Rule of Evidence 902(5).” *Id.* at 259. We conclude that the trial court did not abuse its discretion by admitting the court summary into evidence. We overrule issue one.

### Affirmative Defense

In issue two, Lisa argues that the evidence supported her affirmative defense of being an innocent owner.<sup>1</sup> The innocent owner defense requires a person whose property has been seized for forfeiture to establish, by a preponderance of the evidence, that she: “(a) acquired or perfected her ownership interest before or during the act or omission giving rise to forfeiture; and (b) did not know and reasonably should not have known of that act or omission.” *1994 GMC v. State*, No. 14-10-00025-CV, 2011 Tex. App. LEXIS 1625, at \*\*6-7 (Tex. App. – Houston [14th Dist.] Mar. 8, 2011, no pet.) (mem. op.); see Tex. Code Crim. Proc. art. 59.02(c).

The trial court heard Lisa’s explanation that she has the financial ability to possess a large sum of money and that she sold a home for \$216,154.49 in 2008, approximately \$213,000 of which she placed in

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<sup>1</sup> Lisa also contends that forfeiture of the funds violates the Eighth Amendment, but the record does not indicate that she presented this argument to the trial court. “[A] claim, including a constitutional claim, must have been asserted in the trial court in order to be raised on appeal.” *Dreyer v. Greene*, 871 S.W.2d 697, 698 (Tex. 1993).

the safe. Her deposition testimony, which was also admitted into evidence, appears to present a different scenario. In her deposition, Lisa claimed to have purchased the safe in 2012 in Pennsylvania and placed the money in the safe when she went to Pennsylvania to purchase a home. Lisa's documents reflecting the sales and purchases of homes and her bank account balances do not explain how the safe came to contain the specific amount of \$201,000. Additionally, Lisa claimed only she and her husband could access the safe, but she admitted that someone else, such as Kane, possibly had access to the safe.

Under the circumstances of this case, the trial court could reasonably conclude that Lisa had failed to demonstrate that she acquired or perfected her interest in the money before or during the act giving rise to forfeiture. *See Herrera v. Stahl*, 441 S.W.3d 739, 741 (Tex. App. – San Antonio 2014, no pet.) (The preponderance of the evidence standard “means the greater weight and degree of credible evidence that would create a reasonable belief in the truth of the claim.”); *1994 GMC*, 2011 Tex. App. LEXIS 1625, at \*\*6-7; *see also* Tex. Code Crim. Proc. art. 59.02(c). Because Lisa failed to conclusively establish all vital facts in support of her affirmative defense of innocent owner, we overrule issue two and need not address the second prong of the innocent owner affirmative defense. *See Francis*, 46 S.W.3d at 241; *see also Stanley Works v. Wichita Falls Indep. Sch. Dist.*, 366 S.W.3d 816, 825 (Tex. App. – El Paso 2012, pet. denied); *see also* Tex. R. App. P. 47.1. We

overrule issue two and affirm the trial court's judgment.

AFFIRMED.

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STEVE McKEITHEN  
Chief Justice

Submitted on June 18, 2015  
Opinion Delivered July 16, 2015

Before McKeithen, C.J., Kreger and Johnson, JJ.

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**APPENDIX Z**  
**IN THE NINTH COURT OF APPEALS**

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09-14-00478-CV

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\$201,100.00 U. S. Currency, Appellant

v.

The State of Texas, Appellee

Appeal from the 75th District Court  
of Liberty County, Texas  
Trial Cause No. CV1306798

**MANDATE**

**TO THE 75TH DISTRICT COURT OF LIBERTY  
COUNTY, GREETINGS:**

Before our Court of Appeals, on July 16, 2015, the cause came upon appeal to revise or reverse your judgment was determined; and therein our said Court made its order in these words:

“THE NINTH COURT OF APPEALS, having considered this cause on appeal, concludes that the judgment of the trial court should be affirmed. IT IS THEREFORE ORDERED, in accordance with the Court’s opinion, that the judgment of the trial court is **AFFIRMED**. All costs of the appeal are assessed against the appellants, James Harold Leonard, Nicosia Desha Kane, and Lisa Olivia Leonard.”

