



OPINIONS
OF
THE SUPREME COURT
AND
COURT OF APPEALS
OF
SOUTH CAROLINA

ADVANCE SHEET NO. 26

July 3, 2006
Daniel E. Shearouse, Clerk
Columbia, South Carolina
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CONTENTS
THE SUPREME COURT OF SOUTH CAROLINA
PUBLISHED OPINIONS AND ORDERS

26177 – In re: Matter of Ulmer (Patrick v. Ulmer)	15
26178 – David W. Goldman v. RBC	21
26179 – Thomas Pope v. Willie Gordon	29
26180 – Theodore Kirkman v. Parex Inc.	37
Order – In the Matter of Richard A. Blackmon	46
Order – Theodore Edith v. State	47

UNPUBLISHED OPINIONS

2006-MO-024 – James Charping v. Jon Ozmint
(Lexington County – Judge J.C. Buddy Nicholson, Jr.)

PETITIONS – UNITED STATES SUPREME COURT

26087 – The State v. Brad Keith Sigmon	Pending
26101 – Robert Lee Nance v. R. Dodge Frederick	Pending

PETITIONS FOR REHEARING

26152 – Charleston County DSS v. Pamela King	Pending
26155 – The State v. Bynum Rayfield	Pending
26172 – The State v. Charles Pagan	Pending

EXTENSION OF TIME TO FILE PETITION FOR REHEARING

26167 – The State v. Helen Marie Douglas	Granted 6/30/2006
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THE SOUTH CAROLINA COURT OF APPEALS

PUBLISHED OPINIONS

	<u>Page</u>
4108-Middleton v. Johnson (Revised June 28, 2006)	50
4130-SCDSS Child Support Enforcement v. Ralph Mangle	69
4131-Town of Hilton Head Island v. Montgomery Godwin	73
4132-John Doe v. Jane Doe	78
4133-Patrick M. Siau and Nancy S. Siau, as co-trustees of the Siau Qualified Personal Residence Trust dated January 25, 2002, Raymond A. Pendleton and Jean Pendleton v. Kal Kassel, Millard Dozier, and Robert M. Rogerson	91

UNPUBLISHED OPINIONS

None

PETITIONS FOR REHEARING

4040-Commander Healthcare v. SCDHEC	Pending
4043-Simmons v. Simmons	Pending
4104-Hambrick v. GMAC	Pending
4106-Kelley v. Kelley	Pending
4107-State v. R. Rice	Pending
4108-Middleton v. Johnson	Pending
4109-Thompson v. SC Steel	Pending
4111-LandBank VII v. Dickerson	Pending
4112-Douan v. Charleston Cty.	Pending
4113-Pirri v. Pirri	Pending

4114-Martin v. Rapid Plumbing	Pending
4115-Smith v. NCCI, Inc,	Pending
4118-Richardson v. Donald Hawkins Const.	Pending
2006-UP-158-State v. R. Edmonds	Pending
2006-UP-191-State v. N. Boan	Pending
2006-UP-194-State v. E. Johnson	Pending
2006-UP-203-Sammy Garrison Const. v. Russo	Pending
2006-UP-211-Cunningham v. Mixon	Pending
2006-UP-218-Luther Smith v. State	Pending
2006-UP-222-State v. T. Lilly	Pending
2006-UP-230-Ex Parte: Van Osdell In re: Babb v. Graham	Pending
2006-UP-235-We Do Alterations v. Powell	Pending
2006-UP-237-SCDOT v. McDonald's Corp.	Pending
2006-UP-238-SCDSS v. Hutson	Pending
2006-UP-239-SCDSS v. Glenn	Pending
2006-UP-243-SunTrust Mortgage v. Gobbi	Pending
2006-UP-245-Gobbi v. Peoples' Fed. Bank	Pending
2006-UP-246-Gobbi v. Simerman	Pending
2006-UP-247-State v. S. Hastings	Pending
2006-UP-249-State v. L. Fleming	Pending
2006-UP-251-Rabon v. SCDHPT	Pending

2006-UP-256-Fulmer v. Cain	Pending
2006-UP-258-SCDSS v. Smith	Pending
2006-UP-262-Norton v. Wellman	Pending
2006-UP-265-Brown v. Harris	Pending
2006-UP-267-Barnum v. Sto Corp.	Pending
2006-UP-268-DSS v. Mother et al.	Pending

PETITIONS - SOUTH CAROLINA SUPREME COURT

3787-State v. Horton	Pending
3900-State v. Wood	Pending
3903-Montgomery v. CSX Transportation	Pending
3906-State v. James	Pending
3914-Knox v. Greenville Hospital	Pending
3917-State v. Hubner	Pending
3918-State v. N. Mitchell	Pending
3926-Brenco v. SCDOT	Pending
3928-Cowden Enterprises v. East Coast	Pending
3929-Coakley v. Horace Mann	Pending
3935-Collins Entertainment v. White	Pending
3936-Rife v. Hitachi Construction et al.	Pending
3938-State v. E. Yarborough	Pending
3939-State v. R. Johnson	Pending

3940-State v. H. Fletcher	Pending
3949-Liberty Mutual v. S.C. Second Injury Fund	Pending
3950-State v. Passmore	Pending
3952-State v. K. Miller	Pending
3956-State v. Michael Light	Pending
3963-McMillan v. SC Dep't of Agriculture	Pending
3965-State v. McCall	Pending
3966-Lanier v. Lanier	Pending
3967-State v. A. Zeigler	Pending
3968-Abu-Shawareb v. S.C. State University	Pending
3971-State v. Wallace	Pending
3976-Mackela v. Bentley	Pending
3977-Ex parte: USAA In Re: Smith v. Moore	Pending
3978-State v. K. Roach	Pending
3981-Doe v. SCDDSN et al.	Pending
3982-LoPresti v. Burry	Pending
3983-State v. D. Young	Pending
3984-Martasin v. Hilton Head	Pending
3985-Brewer v. Stokes Kia	Pending
3988-Murphy v. Jefferson Pilot	Pending
3989-State v. Tuffour	Pending

3993-Thomas v. Lutch (Stevens)	Pending
3994-Huffines Co. v. Lockhart	Pending
3995-Cole v. Raut	Pending
3996-Bass v. Isochem	Pending
3998-Anderson v. Buonforte	Pending
4000-Alexander v. Forklifts Unlimited	Pending
4004-Historic Charleston v. Mallon	Pending
4005-Waters v. Southern Farm Bureau	Pending
4006-State v. B. Pinkard	Pending
4011-State v. W. Nicholson	Pending
4014-State v. D. Wharton	Pending
4015-Collins Music Co. v. IGT	Pending
4020-Englert, Inc. v. LeafGuard USA, Inc.	Pending
4022-Widdicombe v. Tucker-Cales	Pending
4025-Blind Tiger v. City of Charleston	Pending
4026-Wogan v. Kunze	Pending
4027-Mishoe v. QHG of Lake City	Pending
4028-Armstrong v. Collins	Pending
4033-State v. C. Washington	Pending
4034-Brown v. Greenwood Mills Inc.	Pending
4035-State v. J. Mekler	Pending

4036-State v. Pichardo & Reyes	Pending
4037-Eagle Cont. v. County of Newberry	Pending
4039-Shuler v. Gregory Electric et al.	Pending
4041-Bessinger v. Bi-Lo	Pending
4042-Honorage Nursing v. Florence Conval.	Pending
4043-Simmons v. Simmons	Pending
4044-Gordon v. Busbee	Pending
4045-State v. E. King	Pending
4047-Carolina Water v. Lexington County	Pending
4048-Lizee v. SCDMH	Pending
4052-Smith v. Hastie	Pending
4054-Cooke v. Palmetto Health	Pending
4058-State v. K. Williams	Pending
4061-Doe v. Howe et al.(2)	Pending
4062-Campbell v. Campbell	Pending
4064-Peek v. Spartanburg Regional	Pending
4065-Levine v. Spartanburg Regional	Pending
4068-McDill v. Mark's Auto Sales	Pending
4070-Tomlinson v. Mixon	Pending
4071-State v. K. Covert	Pending
4074-Schnellmann v. Roettger	Pending

4079-State v. R. Bailey	Pending
4080-Lukich v. Lukich	Pending
4082-State v. Elmore	Pending
4085-Sloan Construction Co. v. Southco	Pending
4088-SC Mun. Ins. & Risk Fund v. City of Myrtle Beach	Pending
4091-West v. Alliance Capital	Pending
4092-Cedar Cove v. DiPietro	Pending
4093-State v. J. Rogers	Pending
2003-UP-757-State v. Johnson	Pending
2004-UP-271-Hilton Head v. Bergman	Pending
2004-UP-487-State v. Burnett	Pending
2004-UP-537-Reliford v. Mitsubishi Motors	Pending
2004-UP-605-Moring v. Moring	Pending
2004-UP-606-Walker Investment v. Carolina First	Pending
2004-UP-610-Owenby v. Kiesau et al.	Pending
2004-UP-617-Raysor v. State	Pending
2004-UP-650-Garrett v. Est. of Jerry Marsh	Pending
2004-UP-653-State v. R. Blanding	Pending
2005-UP-001-Hill v. Marsh et al.	Pending
2005-UP-014-Dodd v. Exide Battery Corp. et al.	Pending
2005-UP-016-Averette v. Browning	Pending

2005-UP-018-State v. Byers	Pending
2005-UP-022-Ex parte Dunagin	Pending
2005-UP-023-Cantrell v. SCDPS	Pending
2005-UP-054-Reliford v. Sussman	Pending
2005-UP-058-Johnson v. Fort Mill Chrysler	Pending
2005-UP-113-McCallum v. Beaufort Co. Sch. Dt.	Pending
2005-UP-115-Toner v. SC Employment Sec. Comm'n	Pending
2005-UP-116-S.C. Farm Bureau v. Hawkins	Pending
2005-UP-122-State v. K. Sowell	Pending
2005-UP-124-Norris v. Allstate Ins. Co.	Pending
2005-UP-128-Discount Auto Center v. Jonas	Pending
2005-UP-130-Gadson v. ECO Services	Pending
2005-UP-138-N. Charleston Sewer v. Berkeley County	Pending
2005-UP-139-Smith v. Dockside Association	Pending
2005-UP-152-State v. T. Davis	Pending
2005-UP-163-State v. L. Staten	Pending
2005-UP-165-Long v. Long	Pending
2005-UP-170-State v. Wilbanks	Pending
2005-UP-171-GB&S Corp. v. Cnty. of Florence et al.	Pending
2005-UP-174-Suber v. Suber	Pending
2005-UP-188-State v. T. Zeigler	Pending

2005-UP-192-Mathias v. Rural Comm. Ins. Co.	Pending
2005-UP-195-Babb v. Floyd	Pending
2005-UP-197-State v. L. Cowan	Pending
2005-UP-216-Hiott v. Kelly et al.	Pending
2005-UP-219-Ralphs v. Trexler (Nordstrom)	Pending
2005-UP-222-State v. E. Rieb	Pending
2005-UP-256-State v. T. Edwards	Pending
2005-UP-274-State v. R. Tyler	Pending
2005-UP-283-Hill v. Harbert	Pending
2005-UP-296-State v. B. Jewell	Pending
2005-UP-297-Shamrock Ent. v. The Beach Market	Pending
2005-UP-298-Rosenblum v. Carbone et al.	Pending
2005-UP-303-Bowen v. Bowen	Pending
2005-UP-305-State v. Boseman	Pending
2005-UP-319-Powers v. Graham	Pending
2005-UP-337-Griffin v. White Oak Prop.	Pending
2005-UP-340-Hansson v. Scalise	Pending
2005-UP-345-State v. B. Cantrell	Pending
2005-UP-348-State v. L. Stokes	Pending
2005-UP-354-Fleshman v. Trilogy & CarOrder	Pending
2005-UP-361-State v. J. Galbreath	Pending

2005-UP-365-Maxwell v. SCDOT	Pending
2005-UP-373-State v. Summersett	Pending
2005-UP-375-State v. V. Mathis	Pending
2005-UP-422-Zepssa v. Randazzo	Pending
2005-UP-425-Reid v. Maytag Corp.	Pending
2005-UP-459-Seabrook v. Simmons	Pending
2005-UP-460-State v. McHam	Pending
2005-UP-471-Whitworth v. Window World et al.	Pending
2005-UP-472-Roddey v. NationsWaste et al.	Pending
2005-UP-490-Widdicombe v. Dupree	Pending
2005-UP-506-Dabbs v. Davis et al.	Pending
2005-UP-517-Turbevile v. Wilson	Pending
2005-UP-519-Talley v. Jonas	Pending
2005-UP-530-Moseley v. Oswald	Pending
2005-UP-535-Tindall v. H&S Homes	Pending
2005-UP-540-Fair v. Gary Realty	Pending
2005-UP-541-State v. Samuel Cunningham	Pending
2005-UP-543-Jamrok v. Rogers	Pending
2005-UP-556-Russell Corp. v. Gregg	Pending
2005-UP-557-State v. A. Mickle	Pending
2005-UP-574-State v. T. Phillips	Pending

2005-UP-580-Garrett v. Garrett	Pending
2005-UP-584-Responsible Eco. v. Florence Consolid.	Pending
2005-UP-585-Newberry Elect. v. City of Newberry	Pending
2005-UP-590-Willis v. Grand Strand Sandwich Shop	Pending
2005-UP-592-Biser v. MUSC	Pending
2005-UP-595-Powell v. Powell	Pending
2005-UP-603-Vaughn v. Salem Carriers	Pending
2005-UP-604-Ex parte A-1 Bail In re State v. Larue	Pending
2005-UP-608-State v. (Mack.M) Isiah James	Pending
2005-UP-613-Browder v. Ross Marine	Pending
2005-UP-615-State v. L. Carter	Pending
2005-UP-635-State v. M. Cunningham	Pending
2006-UP-001-Heritage Plantation v. Paone	Pending
2006-UP-002-Johnson v. Estate of Smith	Pending
2006-UP-013-State v. H. Poplin	Pending
2006-UP-015-Watts Const. v. Feltes	Pending
2006-UP-022-Hendrix v. Duke Energy	Pending
2006-UP-025-State v. K. Blackwell	Pending
2006-UP-027-Costenbader v. Costenbader	Pending
2006-UP-030-State v. S. Simmons	Pending
2006-UP-037-State v. Henderson	Pending

2006-UP-038-Baldwin v. Peoples	Pending
2006-UP-047-Rowe v. Advance America	Pending
2006-UP-049-Rhine v. Swem	Pending
2006-UP-065-SCDSS v. Ferguson	Pending
2006-UP-066-Singleton v. Steven Shipping	Pending
2006-UP-071-Seibert v. Brooks	Pending
2006-UP-072-McCrea v. Gheraibeh	Pending
2006-UP-073-Oliver v. AT&T Nassau Metals	Pending
2006-UP-074-Casale v. Stivers Chrysler-Jeep	Pending
2006-UP-079-Ffrench v., Ffrench	Pending
2006-UP-088-Meehan v. Meehan	Pending
2006-UP-096-Smith v. Bloome	Pending
2006-UP-128-Heller v. Heller	Pending
2006-UP-130-Unger v. Leviton	Pending

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Thomas E. Pope, as Solicitor,
Sixteenth Judicial Circuit, Petitioner,

v.

Willie Edward Gordon, Jr., and
Twenty-five Thousand Three
Hundred Forty-one and
09/100's (25,341.09) Dollars in
U.S. Currency, One 1984 GMC
Pickup Truck; Two Motorola
Cellular Phones (Serial
Numbers; SUF1857M and
SUG1049B 230
L012QT16WF1); and One
Hundred Twenty-Eight &
no/100s (128.00) Dollars in
U.S. Currency, Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from York County
John Buford Grier, Circuit Court Judge

Opinion No. 26179
Heard June 6, 2006 – Filed July 3, 2006

AFFIRMED

Kristie H. Jordan, of York, for Petitioner.

Leland Bland Greeley, of Rock Hill, for Respondent.

CHIEF JUSTICE TOAL: The court of appeals held that the State failed to provide probable cause that the property sought to be forfeited was traceable to illegal drug activity. We affirm.

FACTUAL / PROCEDURAL BACKGROUND

In 1996, William Edward Gordon, Jr. (Respondent) was arrested for trafficking in crack cocaine. At the time of his arrest, Respondent owned a car cleaning and detailing business named Gordon's Car Cleaning Service. The primary customers of the service were automobile dealerships and individuals.

The Rock Hill Police Department arrested Respondent during a 1996 investigation. The Police Department's investigation of Respondent began in 1994. In January of 1994, the Police Department conducted a controlled buy of illegal drugs from Respondent. In February of 1994, the Police Department obtained a search warrant for Respondent's home and recovered crack cocaine and marijuana. While conducting an additional search at Respondent's home, the Police Department discovered crack cocaine in a well house near the home. Respondent plead guilty to possession of marijuana which was recovered during the 1994 investigation.

In September of 1996, the Police Department began a second investigation of Respondent following the arrest of another crack dealer in

the Rock Hill area who identified Respondent as the supplier. In addition, the same person identified Tommy Rhinehart (Rhinehart) as a dealer.

Rhinehart agreed to cooperate with the Police Department after he was arrested for possession of crack cocaine and other narcotics. The undisputed facts outlined by the court of appeals relating the sting operation are as follows:

The next day, Rhinehart met with Gordon to discuss future transactions. During the course of the conversation, Rhinehart told Gordon that he had “flushed” the crack cocaine during the Department's search of his residence. On September 26, 1996, Gordon and his nephew, Spencer, gave Rhinehart another bag of crack cocaine. Spencer stayed with Rhinehart while he sold some of the crack cocaine. On September 27, 1996, Rhinehart met with agents and turned over the proceeds from the sale and the remaining crack cocaine. At that time, the agents gave Rhinehart \$500 in marked money to pay Gordon for the crack cocaine that he had “fronted” him. In a recorded conversation, Rhinehart set up another transaction with Gordon. Gordon indicated that he needed to contact Spencer. Rhinehart was then instructed to meet Spencer at Gordon's car wash. At the car wash, Spencer gave Rhinehart two bags of crack cocaine, weighing 9.4 grams and 9.8 grams respectively, and collected \$500 for a previous transaction. Rhinehart then left, met with the agents, and turned over the crack cocaine.

On September 30, 1996, Rhinehart paged Gordon to arrange a meeting time so that he could pay for the two additional bags of crack cocaine. The agents gave Rhinehart \$1,000 in marked money and equipped him with a surveillance wire. Rhinehart met with Spencer at a designated location. He then gave Spencer the money received from the sale of the crack cocaine that was purchased earlier from Gordon. Spencer left and told Rhinehart he would return with more crack cocaine. Spencer met Gordon, who was driving the pickup truck, at the car wash. Spencer left the car wash, drove to NationsBank, and made a deposit. Shortly

thereafter, agents arrested Spencer and searched him. The agents found a bank deposit receipt for account number 790167308, the business account for Gordon's car wash. The balance of the account was \$22,209.85, which included the deposit.

During the same time period, Gordon was arrested while driving his pickup truck. He was found to be in possession of two cellular phones as well as \$1,584 in cash, \$880 of which was law enforcement funds given to Spencer earlier by Rhinehart. Pursuant to this arrest, the State seized the following property: the NationsBank operating account of Gordon's car wash business, \$22,209.85 plus \$726.24 from the payroll account; the \$1,584 in cash; the pickup truck; and two cellular phones.

The forfeiture action also included seizures of cash in the amount of \$821 and \$128. On September 29, 1996, agents seized \$821 in cash from Gordon when he was arrested on unrelated warrants during the search of another person's residence. On October 5, 1996, Gordon was arrested for obstruction of justice. While Rhinehart was wearing a surveillance wire, Gordon offered him \$5,000 to leave town and not testify against him. At the time of the arrest, the agents seized \$128 in cash from Gordon.

Pope v. Gordon, 359 S.C. 572, 598 S.E.2d 288 (Ct. App. 2004).

Ultimately, Respondent was convicted of trafficking in crack cocaine and sentenced to thirty years imprisonment and payment of a \$50,000 fine. The State then filed this forfeiture action, seeking to confirm the seizures made as a result of this investigation were proceeds of illegal drug activity.

The circuit court ordered that all seized property, with the exception of \$128 in “marked” cash be returned to Respondent. The court found that the State failed to meet its burden of showing probable cause that there was a nexus between the illegal drug activity and the property sought to be forfeited. The State appealed and the court of appeals affirmed. As a result, the State sought and this Court granted certiorari to review the following issue:

Did the court of appeals err in holding that the State failed to establish probable cause that the property sought to be forfeited was traceable to illegal drug transactions?

STANDARD OF REVIEW

An action for forfeiture of property is a civil action at law. *State v. 192 Coin-Operated Video Game Machs.*, 338 S.C. 176, 525 S.E.2d 872 (2000). In an action at law, tried without a jury, the appellate court standard of review extends only to the correction of errors of law. *Okatie River, L.L.C. v. Southeastern Site Prep, L.L.C.*, 353 S.C. 327, 577 S.E.2d 468 (Ct. App. 2004). The trial judge's findings of fact will not be disturbed on appeal unless the findings are wholly unsupported by the evidence or controlled by an erroneous conception of the application of the law. *Gordon v. Colonial Ins. Co.*, 342 S.C. 152, 536 S.E.2d 376 (Ct. App. 2000).

LAW / ANALYSIS

The State argues that the court of appeals erred in holding that the State failed to establish probable cause that the property sought to be forfeited was traceable to illegal drug transactions. We disagree.

The purpose of a forfeiture hearing is to confirm that the state had probable cause to seize the property forfeited. *Medlock v. One 1985 Jeep Cherokee VIN 1JCWB782FT129001*, 322 S.C. 127, 131, 470 S.E.2d 373, 376 (1996). The State has the initial burden of demonstrating probable cause for the belief that a substantial connection exists between the property to be forfeited and the criminal activity defined by statute. *United States v. Thomas*, 913 F.2d 1111, 1114 (4th Cir.1990) (quoting *Boas v. Smith*, 786 F.2d 605, 609 (4th Cir.1986)). If probable cause is shown, the burden then shifts to the owner to prove that he or she was not a consenting party to, or privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture. *Medlock*, 322 S.C. at 131, 470 S.E.2d at 376 (quoting S.C. Code Ann. § 44-53-586(b)(1) (2002)).

The relevant statute outlines that the following are subject to forfeiture in part:

all property including, but not limited to, monies, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, and all proceeds including, but not limited to, monies, and real and personal property traceable to any exchange.

S.C. Code Ann. § 44-53-520(a)(7) (2002).

The State urges this Court to adopt the rationale of the Fourth Circuit employed in *U.S. v. Thomas*. 913 F.2d 1111 (4th Cir. 1990).¹ While, the court in *Thomas* outlined the proper standard in a forfeiture action, the court employed a “totality of the circumstances” approach in finding that proceeds were traceable to illegal drug activity. *Thomas*, 913 F.2d at 1114-1115. The court noted the significance of the evidence presented, namely the possession of unusually large amounts of cash, or the making of uncommonly large purchases that may be circumstantial evidence of drug trafficking. *Thomas*, 913 F.2d at 1115. The court further relied on the fact that it appeared that Thomas’s cash expenditures exceeded any verifiable income in determining that the totality of the circumstances pointed to income derived from illegal drug activity. *Id.* As a result, the State urges this Court to view the evidence “as a total picture” and to employ a “practical, common sense” approach in determining that the probabilities point to the proceeds being derived from illegal drug transactions. *See Thomas*, 913 F.2d at 1114-1115.

In the present case, the State presented several witnesses who testified regarding Respondent’s finances. Christine Rogers, an employee of a property management company, testified she became acquainted with Respondent in 1995 or 1996 when she rented him an apartment in Rock Hill.

¹ The federal forfeiture statute at issue in *Thomas* contains similar language to the state statute at issue in the present case. *See* 21 U.S.C. § 881(a)(6) (Supp. 2000). However, we believe the language in the federal statute to be broader than that of our own state statute.

In 1996, Respondent entered into a commercial lease agreement for the purchase of property. The terms of the agreement required Respondent to provide a \$6,000 down payment and then a \$750 monthly lease payment. According to Rogers, Respondent paid cash for monthly rent for his apartment as well as the \$6,000 down payment.

The State also presented, John Comer, a South Carolina Department of Revenue employee. Comer testified the Department had no tax records for Respondent individually or for the car wash during the years of 1995 or 1996. Further, the State offered the testimony of Margaret Parsons, an accountant, who began assisting Respondent with his finances beginning in May or June 1996. Based on her review of Respondent's finances, Parsons believed Respondent's expenses exceeded his business income and that the balance of the expenses was paid for in cash.

In addition to this testimony, the State presented Respondent's voluminous NationsBank records into evidence. The record reflects that the NationsBank's documents contain extensive evidence that the bank accounts held legitimate business income, including checks from Rock Hill car dealerships. However, the record is unclear whether the deposit ticket the State seized was evidence that Spencer deposited drug money or money from Respondent's car wash. Furthermore, the State failed to show the withdrawals from the bank accounts were used to pay for items in cash as opposed to Respondent paying for these items directly from money gained from the sale of drugs.

We hold that the court of appeals correctly held that the State failed to meet its burden of proof. The record shows that Respondent did have a legitimate car detailing business that involved cash transactions. In addition, the bank records show that money in the accounts came from the car detailing business. As a result, the State failed to demonstrate how the money contained in the bank account came from illegal drug transactions.

Therefore, we affirm the court of appeals opinion holding that the State failed to establish probable cause that the money in the bank accounts contained proceeds traceable to illegal drug transactions. Further, we decline to use the rationale in *Thomas* because we believe the standard in *Thomas*

would lessen the burden on the State and is in direct contravention to the word traceable in the language of the statute. *See Ducworth*, 319 S.C. at 162, 459 S.E.2d at 899 (holding that the terms of a forfeiture statute must be strictly construed and as a result, the words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation).

CONCLUSION

Accordingly, based on the above cited authority, we affirm the court of appeals' decision.

**MOORE, WALLER, BURNETT, JJ., and Acting Justice D.
Garrison Hill, concur.**

