

IN THE CIRCUIT COURT OF JACKSON COUNTY, WEST VIRGINIA:

KENNAD L. SKEEN, II,
Prosecuting Attorney of
Jackson County, West Virginia,
on behalf of the Jackson County
Sheriff's Department,

Petitioner,

vs.

//

Civil Action Case No. 13-P-16
(Judge Thomas C. Evans, III)

THIRTY-TWO THOUSAND SIX HUNDRED
FORTY-ONE (\$32,641.00) DOLLARS
UNITED STATES CURRENCY, et al.,

Respondents.

JUDGMENT ORDER

On March 7, 2014 and March 14, 2014, came the Petitioner, Kennad L. Skeen, II, appearing in person, and on behalf of the Jackson County Sheriff's Department, and the Respondents, Hubert D. Messer and Sharon L. (White) Messer, by counsel, Timothy J. Lafon, for evidentiary hearing on the *Petition* in this matter.

The parties were each afforded an opportunity to put present evidence and make arguments via the submission of proposed findings of fact and conclusions of law. Following the taking of evidence, the Court did order both parties to submit *Proposed Orders* within sixty days of the hearing. Since said order, the Court has extended the timeframe for submitting said proposed order.

After careful consideration of the evidence and argument, the court makes the following Findings of Fact (found by a preponderance of the evidence) and Conclusions of Law:

FINDINGS OF FACT

1. This Court has jurisdiction over this action pursuant to the West Virginia Contraband Forfeiture Act, §§ 60A-7-701 through 707 of the West Virginia Code, as amended.

2. This Court has venue over this action because the owners of the property reside in Jackson County, West Virginia. The situs of the real and personal property that is the subject of this civil action is Jackson County, W. Va.

3. The Court finds that Hubert D. Messer and/or Sharon L. (White) Messer are the owners of all items alleged in the *Petition*.¹

4. The Court finds that Mr. and Mrs. Messer are narcotics traffickers. This finding is based, in part, upon the following evidence:²

a. Direct Transaction - - The Witness Corey Raines testified that Respondent Hubie Messer ("Mr. Messer") trafficked in various controlled substances. Raines testified that early in their relationship, Mr. Raines would steal diesel fuel from his place of employment. Mr. Raines would give Mr. Messer 50 gallon drums filled with diesel

¹ According to the West Virginia Department of Motor Vehicles, there is a lien upon the 2007 Dodge 3500 dually truck VIN#3D7MX49C87G730087. The lien is currently held by GE Money Bank. Further, Farm Credit of the Virginias, ACA, has a "Deed of Trust" related to the real property located at Rt. 1 Box 149-A, Gay, West Virginia. No other person or corporation holds a possessory or statutory lien against any of the real or seized property.

Although Mrs. Messer's father, Harold White, testified that he purchased a Ford 350 diesel truck, a horse trailer, and a tractor for Mr. and Mrs. Messer, he also testified that all three items were titled in his son-in-law and/or daughter's name(s), and that they were gifts, which he did not expect to be returned to him. There were no other co-owners, liens, or interested parties associated with the items alleged.

² The evidence outlined in Paragraph 4 sets forth the *prima facie* evidence of Mr. and Mrs. Messer's involvement in drug trafficking. Further details and information will be included in other paragraphs of the *Proposed Order*, as well.

fuel, and in exchange, Mr. Messer would give Raines either cash, or three to four pills per drum. Mr. Raines testified that the pills that Mr. Messer would give him in exchange for the fuel included: Roxicodones® (a name brand for oxycodone); Lortabs® (a name brand for a hydrocodone and acetaminophen mix); Percocet® (a name brand for acetaminophen and oxycodone); Vicodin® (a name brand for acetaminophen and hydrocodone); hydrocodone, and “whatever else” Mr. Messer had available at the time.³ Mr. Raines testified that Mr. Messer’s only lawful prescription for pain pills was for “Hydro-75s”⁴ (hydrocodone), which was confirmed by Detective R. H. Mellinger during the execution of the first search warrant at Mr. and Mrs. Messer’s home, conducted on February 28, 2013. According to Mr. Raines, while Mr. Messer primarily dealt in pills, he also “dealt a little” in cocaine and marijuana.

Carl Eugene “J.C.” Casto, Jr. testified that he would purchase oxycodone pills from Mr. Messer. On a few occasions, Mr. Casto said that he bought Percocets from Mr. Messer. Mr. Casto met Mr. Messer through a mutual friend, Chance Winnell⁵, who worked for Mr. Messer. Mr. Casto described, in detail, how he would purchase the pills: Mr. Casto and Mr. Winnell would go to Mr. Messer’s home; the three men would go to the garage to play pool; Mr. Casto would put cash on the edge of the pool table; Mr. Messer would take the cash; and in exchange, Mr. Messer would pull the pills from his pocket and place them on the table. Mr. Casto believed that on maybe one or two occasions the exchange of pills-for-cash

³ Roxicodone, Lortab, Percocet, and Vicodin are all opioid, narcotic controlled substances, and are commonly referred to as “pain pills.” Likewise, any prescription pill that is or contains hydrocodone and/or oxycodone are also opioid, narcotic controlled substances. Hereinafter, reference to “pills”, “pain pills”, “drugs”, and “controlled substances” will refer to these opioid, narcotic prescription pills, unless otherwise specified.

⁴ In referencing prescription pills, the number following the name of the pill references the dosage in milligrams. For instance, “Hydro-75” is a hydrocodone pill in the dose of 75 milligrams.

⁵ Phonetic spelling

occurred in Mr. Casto's father's garage, in a similar fashion. Mr. Casto also said that, on occasion, he would give cash to Mr. Winnell, and Mr. Winnell would get the pills from Mr. Messer, while Mr. Casto waited.

Mr. Casto stated that he always gave Mr. Messer cash in exchange for the pills. Mr. Casto further testified that he frequently and consistently bought pills from Mr. Messer for a two or three year period, beginning in 2006, each time culminating in Mr. Casto giving Mr. Messer thousands of dollars in exchange for the pills.

Doyle "D.J." Brown, Jr. testified that over a seven year span - off-and-on - he would obtain pills from Mr. Messer three or four times a week. Mr. Brown testified that, at first, he would get Oxycontin® (brand name for oxycodone) from Mr. Messer, but later on, Mr. Brown would get Roxicodone pills. Mr. Brown said he could have also purchased hydrocodone pills or Percocets, if he wanted, because Mr. Messer had them available for purchase "all the time." Mr. Brown estimates that he bought pills from Mr. Messer over a thousand times.

Likewise, Travis Thompson testified that he purchased pills off of Mr. Messer, including Percocet, hydrocodone, Oxycontin, and oxycodone, on a weekly, if not daily basis, over a period of a few years.

These four (4) witnesses, called by the Prosecuting Attorney in support of the Petition, were all youthful. They sold these pain pills in the community to support a drug habit Hubie Messer encouraged.

b. Witnessed Transactions Involving Others - In addition to receiving controlled substances directly from Mr. Messer, these witnesses testified that they also witnessed Mr. Messer selling drugs to third parties. Mr. Thompson testified that he witnessed Mr. Messer giving Mr. Brown pills in exchange for cash. Likewise, Mr. Casto

witnessed Mr. Messer giving Mr. Winnell pills for cash. Mr. Brown testified that he witnessed hand-to-hand pill transactions between Mr. Messer and Mr. Raines, Mr. Thompson, and Brandon Dawson.

Mr. Raines testified that when he was at Mr. Messer's home he saw Mr. Messer give pills to others in exchange for cash and/or goods "all the time," and estimated that he saw Mr. Messer engage in such transactions with ten to twelve other individuals on over one hundred separate occasions. Mr. Raines did not know the names of all persons whom Mr. Messer gave pills, but did recognize several, including Mr. Brown, Mr. Thompson, Brandon Dawson, and Dana Casto. Mr. Raines witnessed Mr. Messer giving pills in exchange for guns, ATVs, chainsaws, tractors, and weed-eaters. Mr. Raines testified that Mr. Messer would trade pills for "anything of value," and that such trades for goods accounted for approximately twenty to thirty of the transactions that Mr. Raines personally witnessed.

c. Sold on Behalf of Mr. Messer - - Further, Mr. Raines and Mr. Brown testified that they sold pills on behalf of and for Hubie Messer, the Respondent. Mr. Raines stated that Mr. Messer would give him 60-100 pills at a time, and that Mr. Raines would sell the pills on behalf of Mr. Messer. After selling the pills, Mr. Raines would give Mr. Messer \$35.00 per pill sold, and that Mr. Messer would allow Mr. Raines to keep the remaining money made from selling the pills. Mr. Raines testified that he sold this volume of pills from Mr. Messer on approximately fifteen to twenty occasions.

Mr. Brown also testified that he sold pills for Mr. Messer. Mr. Brown stated that he got the pills from Mr. Messer to sale in order to support his own drug habit.

d. Regarding Mrs. Messer - Although the bulk of the evidence related to Hubie Messer's blatant selling of narcotic pills, there was also evidence proving Mrs.

Messer's involvement in her husband's drug activities. Mr. Raines testified that although he never got pills directly from Mrs. Messer, she would hand the pills to Mr. Messer, who would then hand them to Mr. Raines. Mr. Raines testified that on five or six occasions Mr. Messer asked Mrs. Messer to get the pills, that Mrs. Messer went into the house, that Mrs. Messer returned with a few pills, that Mrs. Messer handed the pills to Mr. Messer, that Mrs. Messer would then leave the area - which was usually the barn - and that after Mrs. Messer left, Mr. Messer would proceed with the drug deal. When Mr. Messer asked Mrs. Messer to get the pills, Mr. Messer would not have to tell her which pills to get, what the pills were for, or where the pills were located. Further, Mrs. Messer would bring the pills in a small metal container or a pill bottle.

Mr. Thompson also testified that Mr. Messer would ask Mrs. Messer to bring him pills, and that she would return with a glass jar full of pills. According to Mr. Thompson, Mrs. Messer would be close by when they were discussing pills, but never in the same room.

5. The Court finds that the real and personal property listed in the *Petition* - with few exceptions - has been obtained or retained by Mr. and Mrs. Messer through the course of narcotic trafficking, either directly or indirectly, and/or has been used by Mr. and Mrs. Messer to obtain and/or transport drugs for the purpose of illegal narcotic trafficking. Due to the number of items listed in the *Petition*, and due to the volume of evidence correlating to said items, this Court will segment the items and evidence into categories, addressing each, in turn:

U.S. CURRENCY

Items Listed in Forfeiture Petition:

1. \$32,641.00
2. \$2,345.00
3. \$356.00

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Findings Relating to U. S. Currency:

During the execution of the search warrant on February 28, 2013, Detective R. H. Mellinger located \$32,641.00 in cash. Detective Mellinger testified that half of the cash was in denominations of \$20.00 or less. Detective Mellinger said that the bills were stashed all over the property in bundles of cash, with approximately six to eight bundles found in the safe located in the master bedroom. Detective Mellinger also found bank paper bands in \$1,000.00 increments, although the bands were not wrapped around any bundles of cash.

On the execution of the second search warrant, on March 5, 2013, Dep. Mellinger seized approximately \$800.00 cash from Mr. Messer's person. Mr. Messer stated that he obtained that money from selling four or five guns.

Mr. Raines testified that Mr. Messer kept his cash in safes: one in the tack room of the barn, and one in the house. The safe in the tack room contained guns and pills, in addition to the cash. Mr. Raines testified that after selling pills, Mr. Messer would put cash in the house or in the safe in the barn. Over the years, Mr. Raines observed large sums of cash in the safe in the tack room, including seeing the cash stacked two-and-a-half feet high, and the entire width of the safe. Mr. Raines observed the bills, at that time, to be generally large denominations. Mr. Raines never saw Mr. Messer put the cash in the house, and was not sure the denominations of the cash kept in the home.

Mr. Brown testified that Mr. Messer kept cash in the safe in the tack room of the barn. Mr. Brown testified that Mr. Messer had a stack of cash, mostly in the denomination of \$100.00 bills. Mr. Brown testified that Mr. Messer also kept pill bottles, paperwork, and rifles, along with the cash. Although Mr. Brown denied seeing cash stacked two-and-a-half

feet high, he did say that it was very possible that such a volume of cash could fit in the safe, even if there were also multiple guns in the safe.

Mr. Raines testified that Mr. Messer and Mrs. Messer would each have approximately \$5,000.00 to \$6,000.00 cash on their persons at all times. Travis Thompson corroborated this account, stating that Mr. Messer always had a "big wad" of cash in his pocket. Mr. Thompson claimed that this "big wad" of cash included dollar bills in any denomination, including \$50.00 and \$100.00 bills. Mr. Brown testified that Mr. Messer routinely carried \$2,000.00 on his person.

Mr. Raines, Mr. Thompson, Mr. Brown, and Mr. Casto bought pills off of Mr. Messer. Mr. Brown testified that he paid \$800.00 to \$1,000.00 a week to the Defendant – culminating in approximately \$40,000.00 to \$50,000.00 a year, over a period of several years – in exchange for Mr. Messer giving him pain pills. Mr. Brown noted that when he gave Mr. Messer the cash, it either went into Mr. Messer's pocket or into the safe in the tack room. Mr. Casto testified that he bought approximately \$4,000.00 to \$6,000.00 worth of pills from Mr. Messer over a three year timespan.

The testimony presented also establishes, without contradiction, that Mr. and Mrs. Messer did not have any significant income which could account for the large volume of cash. According to Detective Mellinger, at the time of the search, Mr. Messer told him that the cash was for his farm, and was received from his insurance company to compensate him for damage to the farm that occurred during the derecho that hit the Jackson County area in June of 2012. Detective Mellinger confirmed that there was substantial damage to the Messer farm, and that the insurance company paid out \$30,000.00 – less than half of Mr. Messer's claim for damages. Despite the significant damage and the insurance

company giving him less than claimed, Mr. Messer was able to fix all the damage to the farm, while still having over \$32,000.00 in cash. Naturally, the insurance money was paid out to Mr. Messer by check, and not in small bills of cash.

Further, Mr. and Mrs. Messer had monthly expenses of approximately \$1,800.00, including \$1,000.00 for the farm, \$500.00 for the 2007 Dodge dually truck, and for an ATV. The couple's monthly expenses virtually exhausted their monthly income. At the time of the search, Mr. Messer had not worked in ten years. During the search, Mr. Messer told Detective Mellinger that he was just a really good trader, although he could not account for the proceeds. Mr. Messer said that he traded lots of "stuff" with a lot of people.

Mr. Messer admitted on several occasions by boasting that "everything I've got is from dope." Mr. Messer also stated that he would not spend money "like crazy" because it would lead to him "getting caught."

Although Mr. Raines, Mr. Thompson, and Mr. Brown were unable to speculate on what Mr. Messer could receive cash-wise from trading, Granville Murphy did provide insight. Mr. Murphy is a Logan County resident who testified that he traded with Mr. Messer on a regular basis. Mr. Murphy testified that trading was a hobby, and not something that a person could live off of. Specifically, Mr. Murphy said that a "good year" in trading would earn the trader about \$1,000.00.

Perhaps just as telling is the testimony of Sharon White's father, Harold White. Mr. White testified that had given Mrs. Messer money on many occasions, and that Mr. and Mrs. Messer were unable to afford a tractor or trailer, as they did not have a lot of money.

Since the hearings in this forfeiture proceeding, Mr. Messer has pled guilty in federal court, to be discussed in depth, *infra*. Pursuant to the plea agreement executed in U.S.

District Court of the Southern District of West Virginia, Mr. Messer waived "any ownership interest he may have in approximately \$35,342 in U.S. currency seized from his residence on or about February 28, 2013." (See Exhibit One attached to the State's Proposed Order)

REAL PROPERTY

As Listed in Forfeiture Petition: All real property, including any residences/mobile homes/dwellings, located at Rt. 1 Box 149-A, Gay, West Virginia, listed in Map Book 32, being 54.09 acres, Beech Fork, Washington District, Jackson County, West Virginia, owned and/or possessed by Hubert Dwayne Messer and Sharon (White) Messer

Findings Relating to Real Property:

The evidence, as explored in the section "Cash," *supra*, indicates that Mr. and Mrs. Messer were clearly spending money exceeding what they obtained through legitimate means. This includes spending \$1,000.00 a month on paying for their farm, as cited in the *Petition* as real property. Not only was the payments on the house and farm beyond their ability, but were dependent upon the proceeds from their illegal drug trafficking scheme.

First, the working farm owned by Mr. and Mrs. Messer – as cited in the real property, listed above – was used as a front for the drug trade, and frequently acted as a means for Mr. Messer to obtain the pills he sold. Mr. Raines testified that on multiple occasions he went with Mr. Messer to Kentucky and Ohio, where Mr. Messer would obtain pills. According to Mr. Raines, they would go to Kentucky and Ohio under the pretense of purchasing horses. Most of the time they would go to a livestock farm in Lexington, Kentucky, and that Mr. Messer would purchase horses off a farm in that area. Mr. Messer would also purchase pills, along with the horses. Mr. Raines witnessed Mr. Messer putting the pills into his truck, and putting the horses in the trailer. On occasion, instead of putting the pills in the truck, Mr. Messer would put gloves on and insert the drugs into a horse's vagina, with the

assistance of Mr. Raines. On other occasions, Mr. Messer would bring the drugs back in the trailers themselves, with Mr. Messer using a compartment in the trailer to hide the pills.

Mr. Raines testified that he did not know Mr. Messer's source in Kentucky, nor did he personally see Mr. Messer obtain the pills from anybody. However, Mr. Raines did witness Mr. Messer with the drugs, while they were still in Kentucky or Ohio, and witnessed Mr. Messer placing the drugs in the truck, the trailer, or inside the horse. Mr. Raines stated that Mr. Messer did not always purchase drugs when they went to horse shows in other states, and that there were occasions when they returned to West Virginia with horses, but without drugs. Mr. Raines also testified that the pills would be kept in Ziploc bags, and that the pills were not consistent with Mr. Messer's valid prescription for hydrocodone.

Second, several of the laborers on the Messers' farm were paid for their services in pills, such that the illegal exchange of narcotic drugs was essential in the operation of the farm. Mr. Raines, Mr. Thompson, and Mr. Brown each testified that they worked for "years" on Mr. and Mrs. Messer's farm, and that during that time, Mr. Messer paid them in pills. Mr. Raines testified that Mr. Messer paid him exclusively in pills, while Mr. Thompson stated that sometimes Mr. Messer paid him in pills, and sometimes he paid him in cash.

The place where the illegal narcotics trafficking occurred -- that is, the sale or trade of pain pills -- was the identified real property.

VEHICLES & ATVs
excluding tractors and other heavy equipment

Items Listed in Forfeiture Petition:

1. 2007 Dodge 3500 dually truck, white in color, titled in the name of Hubert Dwayne Messer and Sharon Messer (VIN#3D7MX49C87G730087)
2. 2000 Ford F350 truck, white in color, titled in the name of Hubert Dwayne Messer and Sharon Messer (VIN#1FTSX31FXYES08944)

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100 N. 3RD ST.
MARIETTA, GA 30060

3. 2005 Chevrolet Aveo, burgundy in color (VIN#KL1TD52615B304781)
4. 1999 Mazda 3400 X-Cad truck, tan in color (VIN#4F4ZR17X7XTM08050)
5. ATV: Honda Foreman CS (#1HFTE317X84300571)
6. ATV: Yamaha Rhino (#5Y4AM20459A002092)

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Findings Relating to Vehicles and ATVs:

As discussed in the section entitled "Real Property," *supra*, Mr. Raines testified that Mr. Messer would go to Kentucky and Ohio to obtain drugs. During his testimony, Mr. Raines specifically stated that Mr. Messer would drive his "Dodge dually truck". The testimony of Corey Raines specifically identified the 2007 Dodge 3500 dually truck, as listed in Petitioner's Exhibit #1, as the truck used by Mr. Messer to go out of state to obtain pain pills. Furthermore, Mr. Casto testified that on a couple of occasions Mr. Messer went to Mr. Casto's father's garage in order to sell pills to J. C. Casto. Mr. Casto testified that on these occasions, Mr. Messer drove a dually truck to the garage.

Mr. Raines also testified, to some length, regarding the manner in which Mr. Messer obtained a burgundy Chevrolet Aveo car. Mr. Raines testified that on one occasion he went with Mr. Messer to an auction in St. Albans, West Virginia. At the auction, Mr. Messer indicated to Mr. Raines that he wanted to buy the burgundy Aveo. Mr. Messer did, in fact, win the Aveo at auction. After getting the car back to Mr. Messer's home, Mr. Messer pulled out a huge wad of Opana® pills (oxymorphone hydrochloride, a narcotic pain pill) from the vehicle. Mr. Raines further testified that on other occasions Mr. Messer bought a Ford Taurus car and a Ford diesel 250 truck at auction, and that Mr. Raines observed Mr. Messer getting pain pills from the vehicles following purchase. Mr. Raines testified that after buying each vehicle at auction, Mr. Messer would return from the auction with more pain pills.

Mr. Raines testified that he witnessed Mr. Messer trade pills for ATVs, although he could not provide a specific description of an ATV in question. Mr. Brown testified that one

night he helped Mr. Messer change the "plastics" on an ATV that Mr. Messer had recently acquired. Mr. Brown did not know where Mr. Messer got the ATV in question.

Mrs. Messer's father, Mr. White, testified that in 2005 he gave Mrs. Messer money to buy a Ford 350 Diesel truck. Mr. White testified that the Messers could not afford the truck on their own, and that the truck was titled in Mrs. Messer's name. Mr. White stated that it was a gift, and that he does not claim any ownership to the truck.

TRAILERS & CONTENTS OF TRAILERS

Items Listed in Forfeiture Petition:

1. Aluminum stock fifth-wheel trailer with "Messer Stables" written on side (VIN#4LAAS242665036787), filled with numerous saddles, bridles, leads, and other equipment
2. Aluminum gooseneck stock trailer (VIN#4FGL4242XC044098)
3. White horse trailer (VIN unknown)
4. Gator 30-foot gooseneck utility trailer (VIN #4Z1GF302X7S003421)
5. 16-foot Gator dump trailer (VIN# 5LEBK182491007169)
6. 16-foot utility trailer (VIN unknown)

Findings Relating to TRAILERS & CONTENTS OF TRAILERS:

In 2006, Respondent Messer's father-in-law bought Mr. Messer an aluminum stock trailer with "Messer Stables" written on the side. Mr. White further stated that he had the trailer titled in the name of Mr. and Mrs. Messer, and although he paid for the trailer, it was a gift, which Mr. White did not expect to be returned to him.

Although the trailer might not have been obtained through illegal means, it was used by Mr. Messer to traffic narcotics into West Virginia. In addition to identifying the Dodge dually truck as the truck that Mr. Messer would use in transporting pain pills from Kentucky and Ohio into West Virginia, Corey Raines also identified the aluminum trailer with "Messer Stables" on the side as the trailer that Mr. Messer would use on such exploits. Mr. Raines

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was able to identify the aluminum stock fifth-wheel trailer, as listed in Petitioner's Exhibit #1, as the trailer used by Mr. Messer to obtain pain pills from out of state.

TRACTORS & HEAVY EQUIPMENT
including other vehicle-related items

Items Listed in Forfeiture Petition:

1. Mahindra 4WD Model 5530 tractor with loader (#SRSM1227 J7)
2. Massey Ferguson 245 tractor with box blade (VIN unknown)
3. Farm Pro Trak King Yellow Dozer (*serial number unknown*)
4. EX Go Brand Red Golf Cart (*serial number unknown*)
5. Lug Aluminum Wheels
6. Lug Aluminum Wheels
7. Lug Aluminum Wheels
8. Lug Aluminum Wheels
9. Lug Aluminum Wheels
10. Lug Aluminum Wheels
11. Lug Aluminum Wheels
12. Lug Aluminum Wheels
13. Used tire
14. Used tire
15. Used tire
16. Used tire

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Findings Relating to TRACTORS AND HEAVY EQUIPMENT:

Sufficient evidence was presented that Hubie Messer traded pain pills for tractors, and that Mr. Messer would trade for "anything of value." Specifically, Mr. Raines testified that he witnessed Mr. Messer get a tractor from Dana Casto, and in exchange, Mr. Messer gave Dana Casto cash and pills. Mr. Raines described the tractor as a Massey Ferguson 245, and said that it matched the description of the Massey Ferguson 245 seized by police in the execution of the second search warrant. Mr. Raines said that he was familiar with the tractor, and that he used that specific tractor to spread manure for Mr. Messer.

Mr. White, Respondent Messer's father-in-law, also testified that in 2008 he purchased a 55-30 tractor with a loader on the back. Mr. White stated that he delivered

that tractor directly to the Messers, and that he titled that tractor in the name of Mr. and Mrs. Messer. Again, Mr. White testified that this item was a gift, and that he relinquished all ownership rights to the tractor when he gave it to his son and daughter-in-law.

FIREARMS

Items Listed in Forfeiture Petition:

1. Remington Model 7600 .243 Caliber with Scope (SN 8531416)
2. Oregon Arms .22 Caliber Bolt Action (#40651)
3. Winchester Model 94 .30-30 Caliber (#1341815)
4. Remington Model 6 .22 Caliber Rifle (#461293)
5. Smith/Wesson M&P 1522 .22 Caliber (#DYZ24087)
6. Arms Company .22 Caliber Pistol (#046001)
7. Mossberg Model 500 12 Gauge, Camo (#7377219)
8. Mossberg Model 500 12 Gauge (#6156335)
9. Remington Model 870 .28 Gauge (#T420632J)
10. Winchester Model 12 Gauge (#1589951)
11. Winchester Model 1911 (#47981)
12. Savage Model 24 20 Gauge .22 (#A815782)
13. H&R 10 Gauge Camo Single-Shot (#AS234253)
14. Remington Model 700 .243 with Scope (#A6523475)
15. Mossberg 20 Gauge Model 500 (#D02152)
16. Marlin Model 60 .22 Rifle (#97412395)
17. Remington Model 870 20 Gauge (#T310682X)
18. Remington Model 700 .30-06 (#E6519454)
19. Remington 512-X .22 Caliber (*serial number unknown*)
20. Remington Sportsman 12 Gauge (#W152137M)
21. Winchester Model 37 20 Gauge (*serial number unknown*)
22. Winchester Model 37 12 Gauge (*serial number unknown*)
23. Winchester Model 37 .410 (*serial number unknown*)
24. Winchester Model 37 16 Gauge (*serial number unknown*)
25. Winchester Model 290 .22 Caliber (#B1604083)
26. Remington Model 514 .22 Caliber (*serial number unknown*)
27. Remington 760 .270 Caliber (#A7401327)
28. Unknown .22 Caliber Rifle Light Color, Wood (*serial number unknown*)
29. Remington Model 870 20 Gauge (#T508081X)
30. CVA Muzzleloader, Camo, with Scope (#61-13-015724-02)
31. NEF .25-06 Laminated Handi Rifle (#NP272191)
32. Remington Targetmaster .22 Rifle (*serial number unknown*)
33. Remington .30-06 7400 Auto (#8278913)
34. Savage 22 Rifle (#55887)
35. Savage 22 Rifle Syn Stock (#398456)
36. Remington 870 12 Gauge (#AB958529M)

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37. Winchester 1200 (#L560108)
38. Marlin 22 (#11515692)
39. Taurus 38 Special (#VA68760)
40. Ruger 380 LCP (#374-61585)
41. "Derringer" North American Arms 22 (#E137962)
42. "Derringer" 22 (#L023220)

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Findings Relating to Firearms:

Detective Mellinger testified that the basis for the first search warrant at the Messer residence - executed on February 28, 2013 - was to locate stolen firearms. The investigation was connected to a Roane County burglary in which guns were stolen, and the investigation indicated that Mr. Messer came into possession of the guns.

Upon arrival at the residence, Hubie Messer met with Detective Mellinger, and took him to the large barn located on the premises. Detective Mellinger testified that Mr. Messer pointed to a ladder to the barn loft, and pointed to a specific area in the loft where the guns were hidden. Detective Mellinger followed Mr. Messer's direction and located the guns wrapped in a blanket, in the hay, in the loft. The weapons matched the description provided by Officer Cooper of the Spencer Police Department.

Upon location the guns, Detective Mellinger spoke with Mr. Messer about how he got them. Mr. Messer stated that he received them from Mr. Brown. Mr. Messer told Detective Mellinger that he believed the guns were likely stolen, but at that time he claimed that he did not know the guns were stolen until after he had bought them from Mr. Brown.

Detective Mellinger testified that during the execution of the search warrant that the police uncovered an abnormally large amount of guns. Detective Mellinger stated that he could not recall ever seeing so many guns during the execution of a search warrant, as he saw at the Messer home. In total, Detective Mellinger said that they located approximately fifty to fifty-five guns on the premises, with many being found in safes.

Mr. Messer told Detective Mellinger that he got the guns from pawn shops and people who would just come by his house and sell them. However, Detective Mellinger testified that some of the guns found matched Mr. Raines's description of guns that he witnessed being traded for pills, although Mr. Raines could not specify which guns were traded for pills. One gun matched the description of a gun confirmed to have been stolen from the home of a family member of Mr. Raines. Detective Mellinger testified that he spoke with multiple witnesses who witnessed Mr. Messer trading pills for guns, including Mr. Raines, Mr. Brown, Mr. Thompson, Mr. Dawson, and Nathan Boggess.

Approximately a week later, on March 5, 2013, Detective Mellinger executed a second search warrant at the Messer home. At that time, Detective Mellinger noted that some guns were missing since the execution of the first search warrant. Mr. Messer told Detective Mellinger that he sold the guns to a man with a pawn shop in Logan County. During the execution of the search warrant, the gentleman in question - Granville Murphy - arrived at the residence.

After seizing the weapons in the second search warrant, Detective Mellinger did on-line research to try to estimate the total value of the guns found at Mr. Messer's home. By looking at the website "Gun Trader Nationally" and by looking at various auction and gun broker sites on-line, Detective Mellinger was able to estimate the total value of the guns to be approximately \$15,000.00 for the entire lot of guns. This value does not include the guns missing from the first search warrant to the second.

According to Detective Mellinger, Mr. Messer also told him that Brandon Dawson bought "lots" of guns, which is where Mr. Messer got some of his guns. Detective Mellinger

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noted that this was interesting, as a trail camera belonging to Mr. Messer took photographs of Mr. Dawson smoking illegal drugs in Hubie Messer's barn.

Mr. Brown testified that at the end of February, 2013, he was charged with possessing stolen guns. Mr. Brown testified that he acquired five guns from Jonathan Drennen, because Mr. Drennen owed Mr. Brown money. Mr. Brown was aware that Mr. Drennen had stolen the guns. Mr. Brown testified that he called Mr. Messer and asked Mr. Messer if he wanted the guns. Prior to selling the guns to Mr. Messer, Mr. Brown said that he told Mr. Messer that the guns were "probably hot," and that Mr. Messer responded "that's fine." Mr. Brown then took the guns to Mr. Messer's barn. Mr. Messer commented that they were "nice" guns, and paid Mr. Brown using cash and pills from the safe in the tack room. Mr. Messer bought the five guns by giving Mr. Brown \$800.00 cash and 4 "Roxy-30s". Respondent Hubie Messer knew the firearms were stolen at the time of the transaction.

The February 2013 exchange was not the first time that Mr. Messer gave Mr. Brown pills in exchange for a gun. Mr. Brown testified that approximately three years ago he gave Mr. Messer a 243 Remington in exchange for pills.

On prior occasions, Mr. Brown witnessed a "few" trades for pills between Mr. Messer and third-parties. Mr. Brown testified that she saw Mr. Messer obtain guns in exchange for pills on three separate occasions, with one gun traded per exchange. Mr. Brown testified that Mr. Messer mostly kept guns in the safe in the tack room.

Mr. Raines testified that from time to time, Mr. Raines saw as many as twenty to thirty guns in the large safe in Mr. Messer's tack room. Mr. Raines also stated that Mr.

Messer would stash the guns in the hay, safes, in the corner of the barn, and anywhere else he could find a place for them.

Mr. Raines testified that he witnessed Mr. Messer trading pills in exchange for guns. Although Mr. Raines could not state the source of all the guns found on the property, Mr. Raines stated that he witnessed several trades of pills for guns. Mr. Raines said that sometimes it would be one gun at a time, but once Mr. Messer got six guns – including shotguns – in exchange for pills. Mr. Raines estimated that Mr. Messer acquired thirty to fifty guns by trading pills. After delivering drugs in exchange for firearms, Mr. Messer sold those guns for cash.

Mr. Murphy testified that he traded with Mr. Messer on four or five occasions, and in the process obtained five long guns from Mr. Messer, including one rifle. Mr. Murphy claims that he was not reimbursed for the guns, which include a 30-30, an 870 shotgun, a couple of pump shot shotguns and single barrel shotguns. Although Mr. Murphy traded with Mr. Messer for horses, guns, and pocket knives, he denies that pills were ever a part of the deals.

Critically, pursuant to a plea agreement executed in U.S. District Court, Mr. Messer waived “any ownership interest he may have in...approximately 46 firearms which were seized from his residence on or about February 28, 2013, March 4, 2013, and April 18, 2013..., and agrees not to challenge any lawful disposition or destruction of the firearms by law enforcement authorities.” (See Exhibit One attached to the State’s Proposed Order)

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FARM EQUIPMENT & LAWN CARE

Items Listed in Forfeiture Petition:

Generators

1. Coleman Powermate generator (#90020404)
2. General GP5500 generator (#6751763E)

Power Washers

1. Husqvarna pressure washer, Model 900 (#1019567760)
2. Biggs/Straton 580 pressure washer (#1019074333)

Lawn Mowers and Weedeaters

1. Toro 18HP mower (#220000352)
2. Troy Bilt 21-inch push mower (#1F021K31362)
3. MTD riding lawn mower with 42-inch deck (#1C165B7246)
4. Troy Bilt Edger (#10112DK1426)
5. Weedeater (#264145717)
6. Stihl Weedeater
7. Poulan Weedeater

Brush Hogs

1. 6-foot brush hog, red in color
2. 6-foot brush hog, yellow in color

Chainsaws

1. Stihl M5440 chainsaw (#FS45C)
2. Milwaukee chainsaw
3. Husqvarna chainsaw
4. Husqvarna chainsaw
5. Husqvarna chainsaw

Miscellaneous

1. Craftsman 6HP 32-gallon air compressor (#2002192911)
2. Passload nailers F3505
3. Passload nailers F3505
4. Dewalt Hammer Drill (#907524)
5. Horse Saddle
6. Horse Saddle
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12. Horse Saddle

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Findings Relating to :

The evidence establishes twenty to thirty instances of Mr. Messer trading pain pills in exchange for items, including chainsaws, generators and weed eaters and miscellaneous farm equipment, including a round-bale hay feeder.

SAFES, HUNTING EQUIPMENT & MISCELLANEOUS ITEMS

Items Listed in Forfeiture Petition:

1. Century safe, black in color
2. Cannon gun safe, black in color
3. Crossbow Tornado (*no serial number*)
4. Mathews Compound Bow, Camo
5. Alpine Micro Compound Bow, Camo
6. Green Ammo Can Filled with Ammo
7. Bucket Filled with Ammo
8. Wildgame Trail Camera
9. Wildgame Innovations Trail Camera
10. Moultrie Trail Camera
11. Camo Tent/Groundmax
12. River's Edge Tree Stand
13. Wolfe System 24X power tanning bed (#SPIH89501)

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Findings Relating to SAFES, HUNTING EQUIPMENT AND MISCELLANEOUS ITEMS:

The Respondents kept the pain pills that Mr. Messer illegally sold and traded in a safe kept in the tack room of their barn. Mr. Messer also kept cash in a safe in the master bedroom of the Messer home.

There was no testimony at the hearing relating specifically to crossbows, ammunition, trail cameras, tents, tree stands, or a tanning bed.

5. The Court finds that Corey Raines, Doyle "D.J." Brown, Jr., Travis Thompson, and Carl Eugene "C.J." Casto, Jr. are credible witnesses. Such findings are based upon the following:

a. Corey Raines – Mr. Raines testified that he considered Mr. Messer to be a friend, and associated with Mr. Messer over a three to four year period. Mr. Raines worked as a farm hand for Mr. Messer, bought pills off of Mr. Messer, and sold pills on behalf of Mr. Messer.

Both Detective Mellinger and Mr. Raines testified that in the past Mr. Raines had been the subject of police investigations. Detective Mellinger testified that in exchange for Mr. Raines's cooperation, Detective Mellinger agreed not to bring state drug charges against Mr. Raines, and it was Detective Mellinger's understanding that the federal authorities have offered similar considerations.

Mr. Raines testified that he has worked with Detective Mellinger for approximately one year, and while he recorded other drug transactions, he did not record any between himself and Mr. Messer. Mr. Raines testified that he was a drug dealer, but that Mr. Messer supplied the drugs that he sold.

It is of further note that Detective Mellinger testified that Mr. Raines was able to provide incredible detail during his de-briefing to police, in advance of the execution of the search warrants. Detective Mellinger was extremely impressed by Mr. Raines's level of description, and during the later search warrants, was able to confirm much of what Mr. Raines had said.

b. Doyle "D.J." Brown, Jr. – Mr. Brown testified that he, too, worked as a farm hand for Mr. Messer, off and on, from 2006 to 2013. Mr. Brown testified that he met Mr. Messer through Mr. Brown's aunt and uncle, and that Mr. Brown would clean stalls on Mr. Messer's farm. Mr. Brown testified that he bought pills off of Mr. Messer and sold pills on behalf of Mr. Messer.

Mr. Brown testified that he was a drug addict. Mr. Brown said that he started using drugs when he was a senior in high school, and his addiction got worse when he was twenty-one or twenty-two years old. Mr. Brown testified that he did not start using pills until 2008, and that the first pills he used came from Mr. Messer.

Like Mr. Raines, Detective Mellinger and Mr. Brown both testified that Mr. Brown was a drug dealer. Mr. Brown testified that he "guessed" that he was a "big-time" dealer, but that his only supplier for the drugs he sold was Mr. Messer. Mr. Brown claimed that he sold to support his personal drug habit. Both Detective Mellinger and Mr. Brown freely admitted that Mr. Brown receiving a plea deal in exchange for his cooperation. Mr. Brown was looking at a felony for possession of stolen guns, but the charge was reduced to a misdemeanor.

c. Travis Thompson – Mr. Thompson testified that he met Mr. Messer in 2008 through Ben Anderson, a mutual friend. Mr. Thompson stated that he became more involved with Mr. Messer a couple years later, in 2009-2011, when they reconnected with the help of Mr. Brown. Not long after meeting Mr. Messer for the second time, Mr. Thompson started working for Mr. Messer. Mr. Thompson stated that he would go to Mr. Messer's home one or two times a week, and started cleaning out the barn and brush hogging on the property.

There came a point when Mr. Thompson began going to Mr. Messer's home almost every day, and as he did, Mr. Thompson's addiction got worse. Mr. Thompson testified that his addiction began with Percocet and hydrocodone, but eventually got into using Oxycontin and oxycodone. Mr. Thompson testified that he would have to go to Mr. Messer's to get drugs, or else he would become "dope sick." Mr. Thompson said that it had been a few years since he has interacted with Mr. Messer.

Detective Mellinger testified that Mr. Thompson sold drugs, and Mr. Thompson admitted that, like Mr. Casto, he sold cocaine – not pills – in order to support his personal drug addiction. At the time that Detective Mellinger approached Mr. Thompson in connection with the Messer investigation, Mr. Thompson had already plead guilty to a felony, and was getting ready to start drug court. According to Mr. Thompson, Detective Mellinger was not involved in Mr. Thompson's underlying felony, and Detective Mellinger confirmed that Mr. Thompson was not offered a plea, immunity, or made any other promise in exchange for his cooperation. Mr. Thompson testified that he was already in trouble with the law, and did not want to get in more trouble by lying about Mr. Messer, so he decided to be honest.

d. Carl Eugene "J.C." Casto, Jr. – Mr. Casto testified that he regularly bought "Oxy-40's" and "Oxy-80's" off of Mr. Messer for a two to three year period, ending in 2006. Mr. Casto stated that while he sold cocaine to support his pill habit, he did not get the cocaine from Mr. Messer.

Mr. Casto also admitted that he was a drug addict. Mr. Casto stated that he began using drugs when he was approximately seventeen or eighteen years old, and was a senior in high school. Over the years, Mr. Casto's addiction increased to snorting Roxy-80's and Oxycontin-40's.

Detective Mellinger testified that Mr. Casto was known as a former "small time" drug dealer. Detective Mellinger believed Mr. Casto to be reformed, and did not offer Mr. Casto any deals nor make any promises. Mr. Casto confirmed that at the time that Detective Mellinger approached him, that he did not have any pending criminal charges. Mr. Casto testified that Detective Mellinger came to Mr. Casto's home, and Mr. Casto willingly invited

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him in. Mr. Casto did not ask for any protection, immunity, or favors, and Detective Mellinger never gave him any.

6. The Court finds that all personal property enumerated in the *Petition* were seized on February 28, 2013, March 5, 2013, or April 18, 2013. The real property has not yet been seized.

7. The Court finds that the cash listed in the *Petition* are the proceeds of funds in return for the sale of controlled substances, in violation of Chapter 60A of the West Virginia Code, as amended.

8. The Court finds that although cash, pills, and firearms – all connected to the distribution of illegal narcotics – were found in the house, there is not a substantial enough nexus between the house and the drug deals to allow for forfeiture of the home.

9. The Court finds that, with the exception of the dwelling house on the property, the remainder of the real property listed in the *Petition* was used to facilitate the transportation, sale receipt, possession, or concealment of controlled substance(s), in violation of Chapter 60A of the Code of West Virginia. The Court finds that the farm served as a “front” for Mr. Messer’s drug trade, and facilitated in interstate pill trafficking. The Court finds that Mr. Messer used the pretense of buying horses in Kentucky and Ohio in order to traffic controlled substances into this State. The Court further finds the same real property to be proceeds traceable to the exchange of funds in return for the sale of controlled substances, in violation of Chapter 60A of the Code of West Virginia, in that Mr. Messer paid farm hands in pain pills, such that the operation of the farm was, at least partially, dependent upon Mr. Messer illegally disturbing drugs to his laborers. Ultimately,

the Court finds that Mr. Messer's illegal drug trade was thoroughly integrated into the running of the Messer farm.

10. The Court finds that the 2007 Dodge 3500 dually truck and the aluminum stock fifth-wheel trailer with "Messer Stables" written on the side, as included in the *Petition*, were used by Mr. Messer to transport narcotics from Kentucky and Ohio into the State of West Virginia, in violation of Chapter 60A of the West Virginia Code. Furthermore, the Court finds that the items located within the trailer, including saddles, bridles, and leads, facilitated Mr. Messer in obtaining drugs for sell, as said items were a part of Mr. Messer's "front" for legitimizing his travels out of state to obtain the pain pills.

11. The Court finds that the 2005 Chevrolet Aveo, as included in the *Petition*, was used by Mr. Messer to obtain controlled substances, in that Mr. Messer obtained the vehicle at an auction as a means to obtain pain pills, in violation of Chapter 60A of the West Virginia Code.

12. The Court finds that the 2000 Ford F350 truck and the Mahindra 4WD model 5530 tractor with the loader, as included in the *Petition*, were gifts from Mrs. Messer's father, and there was no direct testimony connecting this vehicle to Mr. and Mrs. Messer's illegal drug dealing.

13. The Court finds that Mr. Messer used pain pills as a form of currency. If Mr. Messer wanted an item - whether it be a tractor, an ATV, or a weedeater - Mr. Messer would purchase it using pills. If Mr. Messer needed laborers on his farm, he would pay them using pills. Mr. Messer has prided himself as a "trader" and the testimony of Mr. Raines, Mr. Brown, Mr. Thompson, and Mr. Murphy confirm that Mr. Messer did, in fact, trade. However, while some such "trading" was likely legitimate, the primary component of Mr. Messer's

success was trading in drugs. As Mr. Murphy testified, a “good year” in trading will earn the trader around a \$1,000.00 – certainly not enough to explain how a couple who has recorded monthly expenses nearly dead-equal to their lawful monthly income could afford multiple vehicles, ATVs, half-a-dozen expensive horse trailers, a dozer, a golf cart, over three dozen guns, and multiple generators, power washers, lawn mowers, weed eaters, brush hogs, chainsaws, and so on.

14. The Court finds that although Mr. Messer did not exclusively sell pills in exchange for cash – to be discussed in depth, *infra* – such an exchange was commonplace. The Court finds that Mr. Messer’s explanation that the \$32,641.00 in cash was from the insurance company is neither reasonable nor believable.

15. The Court finds that Mr. and Mrs. Messer did not have enough legitimate income to explain their personal property; however, there is more than enough evidence to demonstrate that Mr. and Mrs. Messer had plenty of illegitimate income – in the form of selling pain pills – to purchase the items in their possession. As Detective Mellinger testified, it appeared that Mr. Messer was “stock piling” items, having multiples of almost everything he owned. Mr. Raines testified that Mr. Messer used to brag that “everything I’ve got is from dope”. This Court finds that – with few exceptions – everything that Mr. Messer has is, in fact, thanks to selling and trading drugs. The numerous and duplicative high price tag items in the Messers’ possession are inconsistent with the Messers’ income, and are inconsistent with trading.

16. The Court finds that, with the exception of the items discussed in Paragraph nos. 12, 13, and 14 of these “Findings of Fact”, all other personal property in the

possession of Mr. and Mrs. Messer at the time of the seizure was either obtained either directly in exchange for drugs, or was purchased with money made in the selling of drugs.

CONCLUSIONS OF LAW

1. The Court finds that all real and personal property enumerated in the *Petition* are subject to forfeiture, pursuant to § 60A-7-703 of the West Virginia Contraband Forfeiture Act.

2. The Court finds that the Petitioner/State has the “burden of proving by a preponderance of the evidence that the seized property is subject to forfeiture.” W.Va. Code, § 60A-7-705(e). According to the West Virginia Supreme Court, in forfeiture cases it is the Petitioner’s burden to “demonstrate by a preponderance of the evidence that there is a substantial connection between the property seized and the illegal drug transaction. This finding is in addition to the initial finding of probable cause that an illegal act under the drug law has occurred.” Syl. Pt. 4, *State v. Forty Three Thousand Dollars and No Cents in Cashier’s Checks*, 214 W.Va. 650, 591 S.E.2d 208 (2003).

3. In *Dean v. State*, the West Virginia Supreme Court held that a forfeiture action brought pursuant to the West Virginia Contraband Forfeiture Act is punitive in nature, and “therefore, subject to the Excessive Fines Clause of article III, section 5 of the West Virginia Constitution and the Eighth Amendment to the United States Constitution.” Syl. Pt. 6, *Dean v. State*, 230 W.Va. 40, 736 S.E.2d 40 (2012). The Court went on to hold as follows:

A forfeiture of real property under West Virginia Code §60A-7-703(a)(8) (2010) violates the Excessive Fines Clause...and the Eighth Amendment...if the amount of the forfeiture is grossly disproportionate to the gravity of a defendant’s offense. Factors to be considered in assessing whether the amount of the forfeiture is grossly disproportionate to the gravity of an

offense, include: (1) the amount of the forfeiture and its relationship to the authorized penalty; (2) the nature and extent of the criminal activity; (3) the relationship between the crime charged and other crimes; and (4) the harm caused by the charged crime.

Syl. Pt. 7, *Dean v. State*.

In this matter, the Petitioner seeks all real property located at Rt. 1 Box 149-A, Gay West Virginia - in effect the Messer home and 54.09 acre farm. The testimony proves that Mr. Messer's drug dealing was so prolific that it seeped into every corner of his property: the house was used to store the pills that Mr. Messer sold/traded, and to store cash and guns, obtained in exchange for the illegally delivered pills; the large barn was likewise used to store the pills he sold and the cash and guns he obtained - it was also the location of countless buys; and the farm itself was used a front for the drug trade, a pretense used to travel interstate to obtain pills to sell.

In Jackson County, West Virginia, Mr. Messer was charged a sole count of "Possession of Stolen Property, in excess of \$1,000.00," a felony punishable by imprisonment in the penitentiary for not less than one nor more than ten years, or, in the discretion of the court, confinement in jail not more than one year and a fine of not more than \$2,500.00. This charge was brought in connection with the five stolen guns provided to Mr. Messer by Mr. Brown.

Neither an indictment nor additional charges were sought in state court due to an indictment in U.S. District Court for the Southern District of West Virginia for three felony counts. Mr. Messer has since pled to: Count One of the Indictment, which alleges that Mr. Messer "knowingly and intentionally" distributing oxycodone, a Schedule II controlled substance, in violation of 21 U.S.C. § 841; and Count Three of the Indictment, which alleges

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that Mr. Messer “knowingly received, possessed, concealed, stored, and disposed of” five specified firearms, in violation of 18 U.S.C. §§ 922(j) and 924(a)(2). (See Exhibits #1, 2, and 3 attached to State’s Proposed Order).

Count One includes a penalty of imprisonment for a period up to twenty years, and a fine of \$1,000,000.00, or twice the gross pecuniary gain or twice the gross pecuniary loss resulting from Mr. Messer’s conduct, **whichever is greater**. Count Three includes a penalty of imprisonment for a period up to ten years, and a fine of \$250,000.00, or twice the gross pecuniary gain or twice the gross pecuniary loss resulting from Mr. Messer’s conduct, **whichever is greater**. The pled-to charges also require a term of supervised release of at least three years, and an order of restitution. By means of his plea in federal court, Mr. Messer is facing imprisonment for a period of up to thirty years, and a fine of **at least** \$1,250,000.00.

Furthermore, not only is there a fair correlation between the forfeiture of the real property and the authorized penalty of the convicted crimes, but there is also a strong relationship between the crime charged and other crimes, including the thousands of times that Mr. Messer sold and traded in controlled substances. The Petitioner has satisfied both the first and third prongs of the test outlined in *Dean*.

The testimony at hearing further illustrated that the “nature and extent of the criminal activity” of the Messers was pervasive. Mr. Messer sold and traded pills on a regular and extensive basis. Yet, he was not satisfied with merely being a direct dealer – Mr. Messer also gave pills to Mr. Raines and Mr. Brown so that they could deal drugs on his behalf. If substance abuse is a cancer to a community, then Mr. Messer did all within his power to assure that the malignant disease was spread far and wide.

The young men who testified each told stories of how they began dabbling in drugs as teenagers, and how their addictions grew stronger and deeper through their associations with Mr. Messer. In the same testimony that established the extent of the criminal activity – a breadth that spans years and includes thousands and thousands of dollars – it was also established the harm caused by the crimes – a harm that touched countless young, impressionable lives. While none of the civilians who testified came to Mr. Messer as neophytes in the realm of drugs, Mr. Messer amplified their addictions and their criminal behavior. By the testimony given at the trial, it appears that the harm to the four individual men who testified is but a sample of the lives that Mr. Messer's selfish and greedy acts have affected, as the young men in question spoke of the many others they witnessed Mr. Messer give drugs to.

As indicated in Paragraph 10 of the "Findings of Fact" section, *supra*, it does not appear as though the dwelling house in question has a significant enough of a connection to the drug deals to allow for forfeiture. As the case law states, keeping drugs in a house, or conducting a drug deal in a house (which has not been established, at any length) is not sufficient to show that the house is essential to the deal. Further, as the Messers did have an income which could conceivably make the house payment, there is not enough evidence to show that the house is the result of proceeds of drug transactions.

On the other hand, the remainder of the real property – specifically the 54.09 acres and the barn there situate – is substantially and satisfactorily connected to the drug trade, as discussed in more detail, *supra*. Moreover, the Court finds that this property is in accordance with the State Supreme Court's ruling in *Dean*, such that the forfeiture thereof is not grossly disproportionate to the gravity of Mr. Messer's offense.

It should be further noted that Mrs. Messer's involvement in her husband's drug activity - her knowledge and assistance - is likewise sufficient to permit for the taking of her interest in the farm.

Despite not being formally charged, Mrs. Messer's hands are as soiled as Lady MacBeth's. She would fetch the pills for Mr. Messer to distribute, without needing to be told where the pills were or which he pills he intended. The pills she would retrieve were kept in metal containers and glass jars, and contained pills of various shapes, sizes, and colors. Standard criminal jury instructions in Jackson County regularly define circumstantial evidence as

testimony of a witness who saw, heard or otherwise observed some separate circumstantial fact, which from the usual connection of things and from the relation of cause and effect leads to a reasonable inference and conclusion that the fact to be proved exists. Circumstantial evidence is of no less value than direct evidence....

The circumstantial evidence against Mrs. Messer is damning. There is no believable argument that Mrs. Messer would get these pills thinking that they were for her husband's use - there is no believable argument that Mrs. Messer would get these pills without knowledge that the purpose of the pills was anything other than illegal. Mrs. Messer benefitted from the cash obtained through her husband's illegal endeavors, and through the farm that was ran on the pill trade. More importantly, Mrs. Messer **assisted** her husband. While her assistance may have been simple, it screamed volumes as to her knowledge and involvement. Mrs. Messer was more than complacent - she was an accomplice.

Therefore, after careful consideration and after weighing the facts, and the law, the Court finds that the real property listed in the *Petition* - with the exception of the dwelling house and the property on which it immediately sits - shall be forfeited to the State.

4. The Court finds that, as a matter of law, the seized U.S. currency and the personal property – with some exceptions – are subject to forfeiture.

Based on the foregoing, the Court does hereby **ORDER** as follows:

1. All United State currency listed in the *Petition* is forthwith **FORFEITED** to the State;

2. The real property listed in the *Petition* – with the exception of the dwelling house – is **FORFEITED** to the State, subject to the rights of the lienholder, Farm Credit of the Virginias, ACA,

3. The 2000 Ford F350 truck and the Mahindra 4WD model 5530 tractor with the loader is to be **RETURNED** to Mr. and Mrs. Messer within thirty days of the entry of this *Order*;

4. The remainder of the personal property is forthwith **FORFEITED** to the State;

5. The implementation of this order, as it pertains to the real estate, shall be the subject of the further order of this court, either by agreement between the Petitioner and the lienholder or pursuant to a hearing to be scheduled by the Prosecuting Attorney.

6. The Clerk of this Court shall forward copies of this *Order* to: (1) Kennad L. Skeen, II, Prosecuting Attorney, Counsel for the Petitioner; (2) Timothy J. LaFon, Counsel for the Respondents; and (3) Steven R. Bratke, Counsel for Claimant Farm Credit of the Virginias, ACA, at McNeer, Highland, McMunn, and Varner, L.C., P.O. Box 1507, Parkersburg, WV 26102-1507.

All of which is ORDERED, accordingly.

ENTER: August 6, 2014



Thomas C. Evans, III, Circuit Judge

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