

West Memphis chief's changes spark new respect

CHRIS OSHER

ARKANSAS DEMOCRAT-GAZETTE

WEST MEMPHIS -- Just two and a half years ago, black residents here regularly complained that police dogs attacked them indiscriminately.

Police Department supervisors voided traffic tickets for family members. And police officers still struggled with a reputation tainted by a 1993 state police investigation faulting them for taking seized guns and other confiscated items home.

Today, people here have a renewed respect for the men who wear blue in this town of about 30,000 that is one of Arkansas' eastern gateways.

Much of the credit, community leaders say, belongs to Police Chief Robert Paudert, an outsider who took the helm of the beleaguered department in March 1999.

In tapping Paudert for the job, the city settled on a man with 25 years of experience across the Mississippi River in Memphis. His tenure with the Shelby County, Tenn., sheriff's office was marked by high-profile drug busts, sting operations on patrolmen and a healthy dose of political infighting. Listen to his supporters and you'd think Paudert is like Gary Cooper in *High Noon*: the kind of man who can't turn his back on injustice.

"There's always good, better and best," said Roberta Jackson, an influential voice in West Memphis' black community who served 24 years on the City Council before losing her seat this year. "So far, he's the best."

The most recent sign of a new atmosphere in West Memphis came a little over two weeks ago when Paudert announced he had placed on administrative leave his department's four-person traffic interdiction unit after a 1 1/2-year FBI investigation.

Paudert, the FBI or the U.S. attorney's office will not discuss the details of the ongoing investigation. Paudert said that from the day he arrived, he heard complaints about the interdiction unit, formed under a previous administration to nab drug traffickers traveling on the interstate that cuts through West Memphis.

Paudert said it's the third investigation he has asked the FBI to conduct on his department. Since his arrival, at least 10 officers have either been fired or resigned in connection with disciplinary action -- and that's not counting the four sidelined by the latest investigation, according to Paudert's count.

A budget crunch has kept the police force from growing under Paudert's watch. The department has 82 sworn officers, one less than when he arrived.

Despite budgetary woes, Paudert has pushed for change.

He's reassigned officers, put in place new policies and even toiled with his officers to transform an abandoned bank building into a new police headquarters. He also formed a street crimes unit, putting six police officers in plain clothes and into undercover cars in an attempt to squelch crime. The work seems to be paying off.

West Memphis Mayor William H. Johnson Sr. said he has had no complaints about the use of excessive force or the use of police dogs since Paudert arrived.

Statistics kept by the Police Department show that serious crimes are on the decline. Homicides dropped from nine in 1998, the year before Paudert arrived, to six last year. Assaults are down

from 624 in 1998 to 221 last year. Home burglaries dropped from 344 in 1998 to 284 last year.

COMING OUT OF THE SLOW LANE

The path that brought Paudert to West Memphis started with a meeting in January 1998, when the mayor and Paudert sat in an airport lounge in Fayetteville to talk about the job opening. Johnson had flown into Fayetteville with friends to attend a University of Arkansas Razorbacks basketball game. Paudert drove down from his home in Springfield, Mo., with his wife. According to both men, Johnson, just three months into his job as mayor, told Paudert he would have his hands full if he became chief.

Paudert responded that he wasn't the type to back down from a challenge but he wouldn't tolerate wrongdoing or political interference.

"When I left there, I felt for certain that he was the man I wanted for this job here," Johnson said. "I've never regretted a minute of it."

In taking the job in West Memphis, Paudert was returning to a life of action. For four years, he'd been adjusting to a slower pace, first as the police chief of Rogersville, Mo., a department with only six officers, and then as a supervisor at a federally funded crime information center. There was plenty of time to farm with his father-in-law, who lived in the area.

Paudert had been in the fast lane before.

At the sheriff's office in Shelby County, Paudert held choice posts as commander of the internal affairs unit and then as commander of the narcotics unit. He butted heads in 1990 with a chief deputy over the decision to return a confiscated Nissan Maxima to a campaign contributor of the sheriff. He retired when that deputy went on to become sheriff.

Paudert went on to become police chief in his hometown of Bartlett, Tenn., where he supervised a police force roughly the same size as West Memphis'. He once defied the school superintendent there, lobbying the presidents of local parent-teacher organizations when he disagreed with the superintendent's refusal to allow police dogs on school property.

But Paudert's high profile in Bartlett didn't sit well with the city council, especially when rumors began to surface that Paudert might run for mayor.

Paudert resigned, amid complaints from police officers and a federal U.S. Department of Labor investigation into the Bartlett Police Department.

"If you don't have the team effort you might as well go away," Paudert said of his earlier experiences. Evidently, the team effort thrives in West Memphis.

Political leaders there say they like what he's doing. He says he likes the support they've given him.

A DEVASTATING SHOOTING

It was 1:52 a.m. on April 23, 1999, a little over a month after his arrival in West Memphis, when Paudert learned what he faced as the new chief of police. Gunfire had peppered a home with bullets in a drive-by shooting.

The mother of 3-year-old Kabrea Woods found her facedown in her bed. One bullet had lodged behind the child's left ear. Others had torn into her side and one leg.

"To see the bedroom and the blood in the bed where the baby was shot in her own home and in her own bed, it was just devastating to me," Paudert said.

He visited the child in the hospital, bringing her a teddy bear the department had bought. The child would recover, and her assailants would be caught and convicted.

Paudert now credits the experience with forcing him to work even harder and with stirring the

community to action.

Again and again, he went to the churches in the black community, slowly winning over the support of ministers.

Back at his office, he thumbed through the personnel files of his commanders and narcotics officers, striving to learn whom he could trust.

"I didn't realize how intimidating it could be when you come into a place alone," Paudert said.

He brought in as his assistant chief Rick Jewell, a narcotics lieutenant he'd supervised at the Shelby County sheriff's office. Jewell, who had left the sheriff's office because he didn't like the way things were run there, agreed to take a \$2,000 pay cut to work under Paudert again.

The two trusted each other. They had once participated in an undercover surveillance that led them to a Tennessee county near the Kentucky border. There, approaching an airplane, they'd dived as bullets went whizzing past them. They netted nearly 1,250 pounds of marijuana in the operation. Now, they would have the city of West Memphis to tackle.

MAKING CHANGES

Paudert was shocked when he learned that the Police Department actually had a policy in place that allowed officers to void traffic citations with a supervisor's signature.

On one occasion soon after Paudert's arrival, a sergeant took command of an accident scene in which his daughter had been involved. In another instance, a sergeant voided a traffic ticket for a family member, causing the officer who had issued the ticket to complain to the chief.

Paudert ordered officers not to become involved when a family member is being charged or investigated. The Police Department doesn't void tickets anymore, leaving that decision up to prosecutors.

"We're tearing down some long-term traditions here," Paudert said. "And when you do that and you do that alone, you don't know how it will be taken. But I have had nothing but positive comments." The police chief said one long-term tradition that's gone by the wayside is the practice of allowing officers to keep confiscated material or items turned into the department's lost-and-found unit.

In one instance, an officer took home a power tool a woman reported finding and turned over to the Police Department. The officer resigned in lieu of termination, the chief said. In another instance, two officers confiscated cases of beer but never turned the beer over to the department. One officer retained his job when he eventually brought his case of beer back and turned it over as evidence. The other case of beer never showed up, and the other officer resigned.

Shortly after his arrival in West Memphis, the chief created an internal affairs unit to investigate allegations of wrongdoing in the department. This year, Paudert promoted to head of that unit Sgt. Lawrence Vaughn, a church pastor respected in the black community.

"He's honest," Vaughn said of the chief. "He's police, and he's going to do it right."

It's not just attitudes that Paudert is trying to adjust. Some changes involved physical labor.

Paudert and his officers toiled to help overhaul an empty bank building to replace the city's old police headquarters that was so cramped that evidence literally spilled out of desk drawers.

The Police Department now is computerized. There's a new evidence vault, replacing the haphazard system that existed before.

A Hispanic officer is teaching other officers Spanish at Paudert's urging. The chief thinks the training makes sense considering the growth in the population of Hispanics in the country.

'100 PERCENT'

Perhaps the best measure of change comes from 55-year-old Willie Ealy.

Shortly after Paudert arrived in West Memphis, Ealy marched up to the new police chief's office to tell him that after 30 years of living in West Memphis, he couldn't take it anymore and was getting out.

Drug dealers who had set up shop in a house in his neighborhood had been terrorizing the neighborhood for years, Ealy told the chief. The assailants fired semi-automatics at night, and on at least one occasion, bullets had hit Ealy's back bedroom.

"We were prisoners in our own home," Ealy recalled recently.

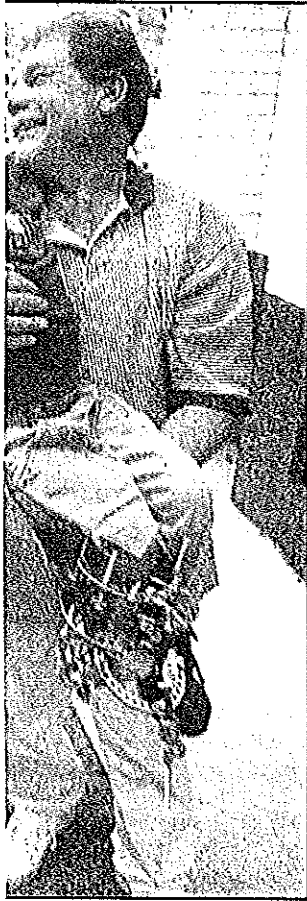
The chief researched drug laws and found a provision that said police could seize the house for being a drug haven. Paudert called the owner of the house and told her that if she didn't make some changes, police would undertake a seizure. She agreed to sell the house, and the situation improved.

Ealy now says he can sit on his porch and go to his mailbox after years of staying shuttered inside. He's even fixed the chain-link fence that drug dealers used to back their cars into with impunity.

"I can sit outside now," Ealy said. "We're 100 percent now."

This article was published on Sunday, August 5, 2001

these



The Arkansas sex offender registries weren't available under the state's Freedom of Information Act before and they won't be now, said Bill Kincaid, UA's associate general counsel.

"There is an express FOI exemption in this statute," Kincaid said.

"It's really up to the law en-

Alaska and Connecticut cases uncertain, the notification laws clearly require police to walk a fine line between protecting the public safety and respecting the constitutional rights of sex offenders, said Lt. Gary Crain, spokesman for the University of Arkansas Police.

"This law is not meant to See **LAWS**, Page 6B

First of 6 ex-cop trials starts this week in LR

1-12-03

BY LINDA SATTER
ARKANSAS DEMOCRAT-GAZETTE

The trial of two former officers of the West Memphis Police Department who are accused of stealing money and fabricating drug charges goes to federal court in Little Rock on Monday.

It will be the first of six public corruption trials scheduled throughout the year before four federal judges as a result of a grand jury investigation into questionable traffic stops and related activity in Crittenden County dating back to 1995.

Indictments first handed up in July accuse four former officers of the West Memphis Police Department and the Crittenden County sheriff's office of skimming cash from seizures of "drug money" allegedly found during traffic stops. The offi-

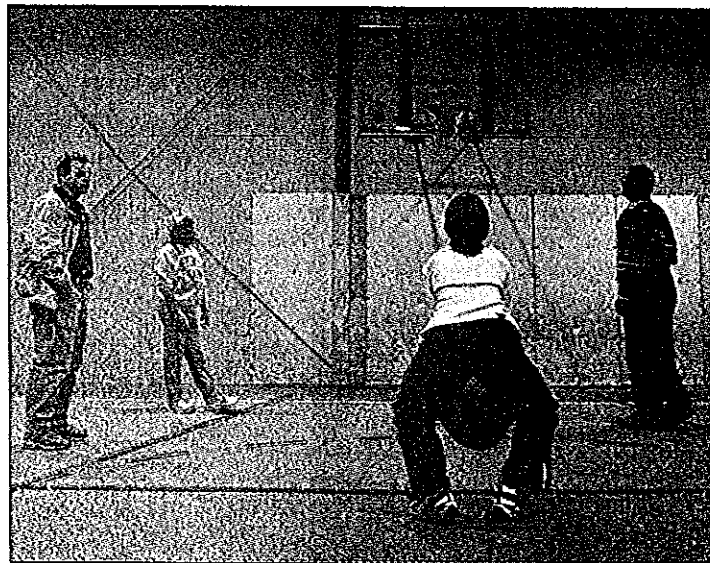
cers often worked together on a drug task force.

The stops occurred along intersecting interstates 40 and 55 in eastern Arkansas. The well-traveled, east-west and north-south arteries are known as major corridors for drug trafficking.

Related indictments accuse family members of helping officers conceal illegal activity.

In the trial beginning Monday, former West Memphis police officers Joseph Applegate, 32, and Edwin A. Bradley, age unavailable, are charged with conspiring to violate motorists' civil rights. They are accused of conducting illegal searches to see if motorists had cash, seizing cash that they sometimes pocketed themselves, making false arrests, filing false evi-

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Arkansas Democrat-Gazette/KAREN E. SEGRAVE

Elks free-throw contest Autumn Smith, 10, of North Little Rock prepares to shoot an underhand free throw at the Elks National Hoop Shoot Free-Throw contest Saturday afternoon at Hefflin YMCA in North Little Rock. Smith and four other children took part in the event, which was open to boys and girls, ages 8-13.

Students work at engineering stoutest bridge in UA contest

BY RACHEL WEBB
ARKANSAS DEMOCRAT-GAZETTE

FAYETTEVILLE — Johnny Ayala spent several hours working on his miniature balsa wood bridge.

It took the Rogers High School junior just a few seconds to break it in two Saturday, but he did it with eager anticipation.

Ayala was one of about 50 Arkansas and Oklahoma teenagers who participated in a contest Saturday at the University of Arkansas Engineering Research Center to see which students from the Up-

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Trials

• Continued from Page 1B

dence reports and keeping a supply of marijuana on hand to falsely establish through chemical tests that the motorists possessed an illegal substance.

"I wouldn't characterize it as the main case, just as one of the cases," U.S. Attorney Bud Cummins said of the first of the six cases to go to trial. "I don't know that there is a main case."

Cummins also said that the investigation that led to the series of indictments still is under way, but he would provide no details.

Jonesboro attorney Bill Bristow, who represents Applegate, said he would save his comments for opening statements.

"Both my client and I look forward to having a chance to present our side of the case to the jury and the judge," Bristow said.

Attorney Gerald Coleman of West Memphis, who represents Bradley, said his client simply "didn't do it" and "is looking forward to going to court."

The charges stem from an undercover operation in March and July of 2001 in which federal agents posed as motorists.

According to the indictment:

On March 21, Applegate stopped a vehicle driven by undercover FBI agents and searched it with Bradley. The West Memphis officers found \$45,000 cash, seized it, arrested the agents and then submitted a false evidence form, with marijuana they claimed to have found in the vehicle, to the state Crime Laboratory.

In July of that year, an undercover FBI agent also alerted the two officers to a car on a parking lot where a suspicious-looking bag had been left in the trunk.

After the agent left, the officers watched the car for about two hours and then opened the trunk.

The officers conducted a brief search, closed the trunk and got a drug-sniffing dog to walk around the car. Then they opened the trunk back up and seized \$43,000. Bradley, the indictment said, turned over only \$40,000 of the money to the department.

The case will be tried before U.S. District Judge George Howard Jr. and is expected to last at least two weeks.

In June, similar allegations

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— U.S. Attorney Bud Cummins, on the first of the six cases to go to trial

Chief U.S. District Judge Susan Webber Wright, is scheduled for Feb. 10.

In that case, Applegate and Pirani face charges of mail fraud in connection with the mailing of a false forfeiture form. Pirani and his brother, Steven Pirani, also face charges of money laundering and making false statements.

The case will be unusual: Wright has decided to have two separate juries in the same courtroom.

The judge made that decision in response to a defense attorney's request to sever Steven Pirani's case from that of his brother to prevent Steven Pirani from being tainted by testimony about the traffic stops.

Wright said Steven Pirani's jury can be removed from the court-

room during testimony focusing only on Louis Pirani and Applegate. She noted in an order that other courts across the country have seated two juries in the same courtroom to resolve evidentiary issues.

The other three cases stemming from the corruption investigation include:

■ A jury trial April 14 before Howard in which Applegate is charged with causing a business to fail to file an IRS form. The charge stems from Applegate's purchase of a motorcycle. Prosecutors say he structured the purchase to evade an IRS requirement to report a cash transaction of more than \$10,000.

■ A Jan. 27 jury trial before U.S. District Judge Bill Wilson Jr. in which Louis Pirani's wife, Angela Pirani, is charged with perjury. Prosecutors say she lied to grand jurors about a monetary transaction.

■ A jury trial Aug. 18 in Wright's court in which Barry Davis, his wife, Tonya Davis, and his father, Ronald Glen Davis, are accused of conspiring to thwart the federal corruption investigation by giving investigators false and misleading information.

Jury selection for the first of the six trials is scheduled to begin at 9:30 a.m. Monday after a brief pretrial conference.

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The case will be tried before U.S. District Judge George Howard Jr. and is expected to last at least two weeks.

In June, similar allegations related to traffic stops and cash seizures will be aired in a trial before U.S. District Judge James Moody against three former drug task force officers, including Applegate.

In that case, prosecutors hope to prove the charges through testimony of actual motorists.

In that case, Applegate, who also has been a Crittenden County sheriff's officer, and two other former deputies, Barry A. Davis and Louis F. Pirani, face charges of civil rights conspiracy and deprivation of rights. Federal prosecutors say the officers seized \$1,033,400 in cash from five motorists between February 1997 and January 2001 and pocketed \$335,693.

A third case, to be tried before

FBI kept tabs on 2 officers, agent testifies

Testimony opens 1st day of cops' corruption trial

BY LINDA SATTER
ARKANSAS DEMOCRAT-GAZETTE

A trial for two former West Memphis police officers opened Monday like a spy novel coming to life.

An FBI agent described how one of the officers rented a motel room from which he kept a car full of cash under surveillance as part of a plot to steal some of the money. The officer did not know that the FBI had rented a room next door to keep him under surveillance.

Federal prosecutors say the agents watched as Sgt. Edwin A. "Tony" Bradley opened the car's trunk, where he had been led to believe that a large amount of cash was stashed, and then closed it back up before a drug-detection dog arrived. The dog, brought by Bradley's fellow officer, Joseph Applegate, "alerted" on the car, indicating the presence of marijuana and giving the officers reason to seize the cash.

But the officers didn't know that the car had been rented by FBI agents who planted the cash in plastic-wrapped bundles of \$100 bills that were marked with a special ink visible only un-



Applegate

Bradley

der a black light.

FBI agent Carrie Land, the first government witness in a federal trial that is expected to last two weeks, said the \$40,000 that Bradley later turned over to his department was only part of the \$43,000 the FBI had planted in the trunk.

Both Bradley and Applegate, who were later fired from the department, are charged with conspiring to violate the civil rights of motorists they stopped and seized cash from on Interstate 40 in Crittenden County. The officers were part of a drug task force that focused on a stretch of the interstate known as a major drug-trafficking corridor.

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Officers

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"It's common knowledge that the drugs travel east and the money travels back west," Assistant U.S. Attorney Jana Harris said.

Prosecutors say the men conducted illegal searches to find large amounts of cash, planted marijuana to enable them to seize the cash as drug money and then pocketed some of it themselves.

Defense attorneys say the former officers merely were following the orders of their superiors. They also question whether the vehicles the FBI used may have been tainted by drug residue from people who earlier used the cars.

Harris told jurors that Bradley wrote in his July 2001 report on the \$40,000 seizure that he had found a green leafy substance in the trunk, near the cash, and conducted a field test indicating the substance was marijuana.

But a videotape the FBI agents made from their hotel room shows Bradley did not do a field test, Harris said.

Land testified that Applegate also noted in his written report that the money itself had tested positive for marijuana residue. Land said the FBI used the falsehoods in the officers' reports to obtain search warrants for their houses.

Harris told jurors that agents found one of the marked \$100 bills from the undercover operation in a lock box under Bradley's bed, and they found 11 of the marked bills in the pocket of his police

jacket. She said agents also found a bank deposit slip at Bradley's home, indicating a deposit had been made about 30 minutes before the search. At the bank, they found 13 more of the marked bills as part of Bradley's \$1,500 deposit.

Land also testified about an earlier sting operation conducted by undercover FBI agents in March 2001. She said two Hispanic agents drove a truck with a Texas license plate past Applegate with the tail light out, which prompted a traffic stop.

She said Applegate, Bradley and another officer conducted a search of the vehicle, with the agents' permission, and found \$45,000 in a hidden compartment. The officers seized the money, noting falsely in their reports that the money had marijuana residue, Land said.

Applegate's attorney, Bill Bristow of Jonesboro, presented Land's earlier testimony in front of a federal grand jury in which she said the truck had been used by the federal Drug Enforcement Administration. Bristow suggested that the DEA's earlier use of the truck could have explained the drug residue.

However, Land said the FBI had its own drug-sniffing dog inspect the truck before the West Memphis officers stopped it.

Attorney Gerald Coleman of West Memphis said his client, Bradley, who in 1999 was named the department's Officer of the Year, was an expert at detecting drugs in vehicles stopped along interstates 40 and 55. He hinted

that Bradley's problems stemmed from a personality clash with Bob Paudert, who took over as the department's new chief in 1999.

Land said the undercover operation was prompted by numerous complaints the FBI had received from people who said they were stopped on Interstate 40 by West Memphis officers and had cash seized, with reports on the seizures not reflecting the correct amount seized. She said business owners also had raised questions about the officers spending large amounts of money on police salaries.

Paudert has said he asked the FBI to investigate the officers after a series of articles in the *Arkansas Democrat-Gazette* detailed cash seizures from travelers who complained they had done nothing wrong and lost money that they said was earned legitimately.

The trial that continues today is the first of six public corruption trials this year involving drug task force officers.

Cash hidden in homes of ex-police, agents say

Evidence given against W. Memphis men

BY LINDA SATTER
ARKANSAS DEMOCRAT-GAZETTE

FBI agents testified Tuesday about finding cash hidden in the homes of two former West Memphis police officers on trial in federal court on public corruption charges.

The agents said they found \$2,500 in marked \$100 bills at Edwin A. "Tony" Bradley's Marion home and in a cash deposit he made at a local bank just before the surprise search. The marks, visible only under a black light, had been made by an FBI officer before the FBI placed the bills in a trunk of a Mazda that Bradley and fellow officer Joseph Applegate searched four days earlier, on July 12, 2001, not knowing they were under surveillance by the FBI.

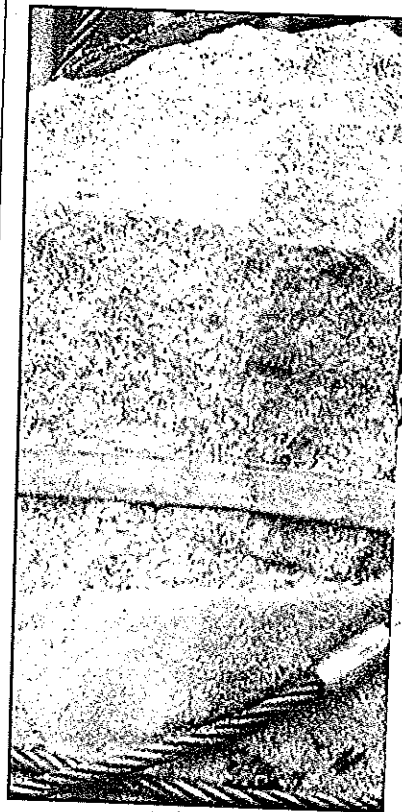
The agents also testified Monday that of \$25,337 they found in a gun safe in a simul-

taneous search of Applegate's home in Proctor, just outside West Memphis, no cash was marked as coming from the sting.

Prosecutors nonetheless wanted jurors to know about the cash in Applegate's home. Defense attorneys objected, saying any inference that Applegate stole the cash during traffic stops was unsubstantiated and unfair.

Bradley, 42, and Applegate, 32, are standing trial before a jury in U.S. District Judge George Howard's Little Rock courtroom on charges of conspiring to violate the civil rights of motorists they stopped on Interstate 40 as drug interdiction officers. Assistant U.S. Attorneys Dan Stripling and Jana Harris say the two officers skimmed money from cash seizures and sometimes planted marijuana residue

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Monumental task at hand
monument into position during construction at the Arkansas Museum of Arkansas History. Seven brick walkway and garden on the east side completed next month.

Officers

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to justify seizing money otherwise not connected to illegal activity.

Bradley also faces a second charge of mail fraud for reporting to his department the seizure of only \$40,000 of the \$43,000 the FBI says it planted in the car's trunk.

Prosecutors say the \$2,500 found at his home shows that he pocketed at least that much of the missing \$3,000.

FBI agent Mike Blakely testified that Applegate claimed the money found in his home came legitimately from a variety of sources, including back wages and vacation time from his previous job as a Crittenden County sheriff's deputy, the settlement of a lawsuit arising from a traffic accident, gambling winnings and the sale of guns inherited after his father died on Jan. 12, 2001. Blakely said the FBI found no receipts to verify Applegate's claims.



Applegate



Bradley

Another agent, Mike Patkus, testified that Applegate acknowledged before the search that contrary to reports he and Bradley wrote after they seized money from the car trunk, he found no marijuana residue in the trunk.

Previous testimony showed Bradley prepared a seizure report and Applegate prepared an evidence submission form for the state Crime Laboratory. Both reports indicated that the cash was seized because it was found close to marijuana and thus was considered "drug money."

James C. "Little Jimbo" Hale III, an attorney who handles all civil forfeitures for Crittenden

Tuesday marked the sixth day of testimony in the trial, which has focused on two FBI stings — the one involving the Mazda and an earlier one about 2:30 a.m. March 21, 2001.

County, testified that he relies on the officers' reports to decide if legal grounds exist to file a lawsuit to try to keep the money.

If a judge allows the county to keep any seized money, Hale said, 15 percent goes to the state to help support the state Crime Laboratory. Of the rest, 20 percent goes to the prosecutor's office "for law enforcement purposes" and 80 percent goes to the investigating agency.

Tuesday marked the sixth day of testimony in the trial, which has focused on two FBI stings — the one involving the Mazda and an earlier one about 2:30 a.m. March 21, 2001.

In the first operation, Applegate and Bradley searched a pickup stopped on I-40 and

driven by two undercover FBI agents. The officers seized \$45,000 in cash that FBI agents had tucked into a hidden compartment.

After Applegate and Bradley found a tracking device on the vehicle and became suspicious of the agents, the officers turned in to the department the entire \$45,000, but prosecutors say they falsely reported that it was found with marijuana residue.

Defense attorneys will begin presenting their case at 9:30 a.m. today; prosecutors rested late Tuesday afternoon. Attorneys Bill Bristow of Jonesboro and Robert Ford of Wynne for Applegate, and Gerald Coleman of West Memphis for Bradley haven't said if the defendants will testify.

Grand jury

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the same building at 501 W. Markham that houses the prosecuting attorney's office.

The jurors met for about 1½ hours before bringing their first meeting to a close.

Jegley asked Langston to impanel a grand jury in November after county officials revealed that

of ballots were misprinted.

Fixing misprinted ballots and other mistakes cost the county an additional \$138,690. The Quorum Court also allotted \$25,000 for grand jury expenses. Officials hope the panel will suggest ways to prevent the mix-ups, long lines and bad data that hit voters during the Nov. 5 election. It is the fifth grand jury impaneled in Pulaski County in the past two decades and the first since 1993.

The Election Commission and

the power to indict if it finds evidence of illegal activity.

Jurors are:

Jury Foreman Pamela M. Long-Vance, 31, Little Rock.

Janis Baldwin, 44, Little Rock.

Erica Singleton, 20, Little Rock.

Ron Hoofman, 51, Little Rock.

Slorine Casey, 56, Little Rock.

Milton Lloyd, 54, Little Rock.

Roger Frank Henley, 51, Roland.

George Allan Tribble, 65, Little Rock.

Danny Joe Nelson, 46, North

25, Little Rock.

Robert Harold Swaim, 56, Little Rock.

Helen Agnes Craker, 35, Jacksonville.

Erik N. Green, 28, Little Rock.

Virginia Kathryn Lofendo, 59, Little Rock.

Elizabeth A. Copic, 23, Maumelle.

Daphne Leigh Treadway, 38, Little Rock.

Stacey Lashelle Thomas, 32, Little Rock.

1-15-03

Money bought freedom, 2 testify

Men say cop took
cash in I-40 stops

BY LINDA SATTER
ARKANSAS DEMOCRAT-GAZETTE

Two men testifying under immunity agreements gave jurors an inside look Tuesday at transactions that prosecutors say sometimes occur between law enforcement officers and drug-trade couriers on West Memphis' busy "interstate pipelines."

Referring to the flow of drugs and drug money, a Crittenden County sheriff's office investigator testified that "basically anything that goes east, west, north or south goes through Crittenden County."

At the city where interstates 40 and 55 intersect, bringing together two major cross-country drug trafficking routes, "traffic is heavy at all hours of the day and night," said sheriff's Deputy Mickey Thornton.

He kicked off the second day of testimony in the federal trial of two former West Memphis police officers, Joseph Applegate, 32, and Edwin A. "Tony" Bradley, 42, who are accused of conspiring to violate motorists' civil rights during traffic stops on I-40 through illegal searches and cash seizures.

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Officers

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The two are accused of planting drug residue to justify claiming cash as "drug money," pocketing some of the seized money and then turning in false reports about the amounts confiscated.

Their attorneys say sloppy procedures were in place at the West Memphis Police Department in 2001 when the officers were caught in an FBI sting. The attorneys have blamed those procedures for any inadvertent mixing of drug residue with otherwise clean cash, as well as for any missing money or faulty written reports.

After Thornton explained written reports of traffic stops and cash seizures that occurred on July 17, 2000, and Jan. 23, 2001, federal prosecutors presented testimony of two men who said that as a result of those stops, they were forced to surrender cash in exchange for going free.

The testimony of the two men has no bearing on the two charges Applegate and Bradley face in the ongoing trial and cannot be used to establish their guilt.

Prosecutors offered the testimony to establish a pattern of behavior regarding Applegate, who faces several other trials this year including one in which he is charged with conspiring with two former sheriff's deputies to violate motorists' civil rights by seizing more than \$1 million over a four-year period and pocketing more than \$335,000.

U.S. District Judge George Howard Jr. instructed the jury that the evidence did not apply to Bradley.

Fabian Ruiz, 23, of Tucson, Ariz., said a friend offered him money in early 2001 to drive from Tucson to Manchester, N.H., in his 1996 Chevrolet Impala, to "make a phone call, meet with some people, pick up something and drive it back."

The "something" turned out to be nearly \$800,000 in cash, which he said two men placed in his trunk in plastic-wrapped bundles after they met him late at night in the parking lot of his Manchester hotel.

Ruiz, accompanied by another friend who believed the two were merely on a vacation, said he knew for certain how much

was there because each bag was marked on the outside.

But he said the amount was not listed correctly on a confiscation report after he was stopped for speeding on I-40 in West Memphis, and Applegate and his police dog, Roby, were called to search the Impala for drugs.

Ruiz insisted that he had no drugs or drug residue in his car. He testified that he watched the dog and never saw it signal that it detected drugs, yet Applegate insisted that the dog smelled drugs and proceeded to conduct a

search.

Officers found the money. Later, they took a photograph that Thornton called a "trophy shot" of Applegate and the dog sitting beside the car displaying the bags of cash.

Shown the photograph, Ruiz said it did not depict all the bundles of cash that had been in the car. A report said officers had found only \$534,000.

He said he later agreed, through an attorney, to surrender the money in exchange for being allowed to keep his car and being set free without charges.

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Jurors next heard from George Garcia, 30, of Van Nuys, Calif., who admitted he was transporting \$96,000 in illegal drug proceeds back to California from Kentucky when Applegate stopped his Ford minivan for speeding about 11 p.m. July 17, 2000.

Like Ruiz, Garcia denied that he was speeding.

He said he had watched the money being counted before it was put in his van because "if something happened to it, I was going to be responsible for it. You don't mess with those people in L.A."

Garcia testified that he consented to a search and that Applegate found the nine vacuum-sealed packages of \$10,000 cash and one package of \$6,000 that had been stashed in various places in the van.

Garcia said he later agreed to forfeit the money in exchange for being set free without charges, but the forfeiture form listed only \$76,687 as being confiscated.

A report also said the cash was tainted by drug residue, which allows officers to seize it, but Garcia said several times that the van was thoroughly cleaned before

the money was put inside to ensure there was no odor of drug residue.

He acknowledged under cross-examination that he had delivered 10 kilograms of cocaine to Kentucky and then waited two weeks while the drug was sold before making his trip back to California with the cash. He also acknowledged making three previous deliveries back and forth.

Garcia said he was to be paid \$10,000 for the entire trip but received only \$5,000 because he was stopped and the profits were seized.

Ex-police hear sides wrap up their cases

Jury deliberating
civil rights verdict

BY LINDA SATTER
ARKANSAS DEMOCRAT-GAZETTE

Two former West Memphis police officers clearly conspired to trample motorists' constitutional rights when they falsely reported finding marijuana in vehicles to justify seizing cash, a prosecutor said Wednesday in closing arguments of the men's federal trial.

A defense attorney countered that the officers searched the cars — not knowing they were FBI undercover vehicles — only after a drug-sniffing dog signaled that it had detected the odor of drugs inside.

"There's a saying in drug interdiction circles: The nose knows," attorney Bill Bristow of Jonesboro said.

Reminding jurors of videotapes showing the dog jumping, or "hitting," at the back of the vehicles just before they were searched, Bristow borrowed a phrase from the televised murder trial of former football and movie star O.J. Simpson:

"If I were a TV lawyer, what would I say? If the dog hit, you must acquit."

Bristow's client, Joseph "Joey" Applegate, 32, now of Oklahoma, is charged along with former Sgt. E.A. "Tony" Bradley, 42, of Marion with conspiring to violate the civil rights of motorists they stopped on Interstate 40 in 2001 while working as drug interdiction officers.

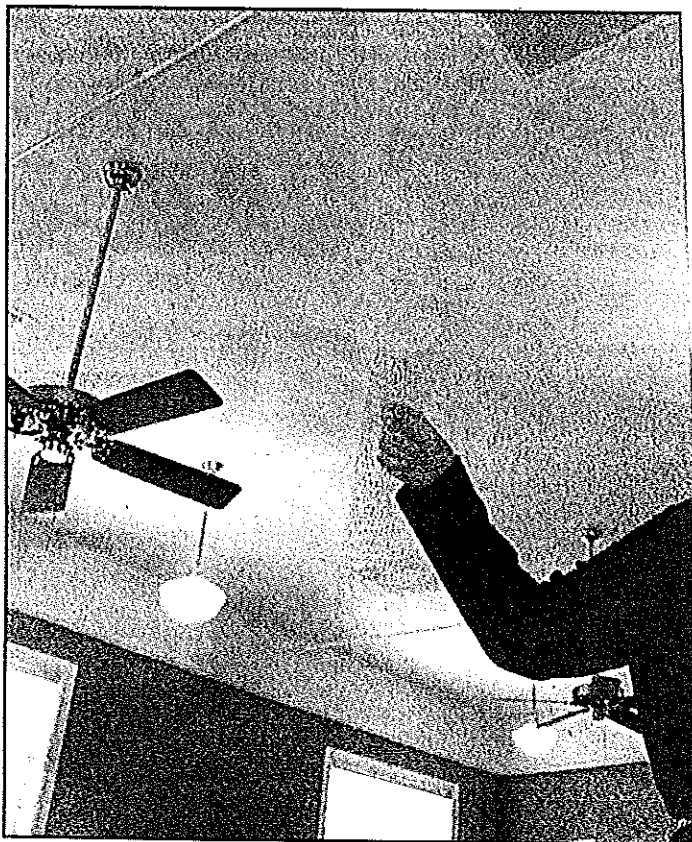
Bradley, represented by Gerald Coleman of West Memphis, also is accused of theft of government property. FBI agents testified that they found \$2,500 in marked \$100 bills during a surprise search of Bradley's home.

The agents said they had marked the bills before placing them in the trunk of a parked car that the officers searched.

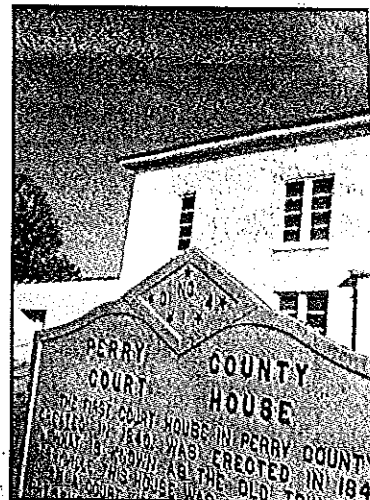
The government contends

Cleaned court

1-23-03



Perry County-Circuit Clerk Barbara Lovell (above) shows off the newly renovated ceiling in the courtroom of the historic Perry County Courthouse in Perryville. The two-story courthouse, built in 1888, was for decades a "maternity colony" for bats, and the attic became severely polluted with bat guano. Three years ago, citing health risks, the state Health Department ordered the county to clean up the problem. Progress has been made with the help of grants from the Arkansas Historic Preservation Program, but officials say more work needs to be done. And the bats keep trying to get back in.



Officers don't cotton

BY CATHY FRYE

ARKANSAS DEMOCRAT-GAZETTE

RISON — In the past two years, a burglar has broken into 14 homes — two of them twice — and made off each time with an unusual and disturbing haul: A pillowcase filled with women's underwear.

While some may snicker over the panty raids, authorities say the thefts are not a laughing matter and shouldn't be ignored.

"It's not funny to us," says Cleveland County Sheriff Joe Paul King, who believes that investigators may be getting close to making an arrest. "The women are spooked and feel like they've really been violated."

"He's not just stealing something of value — that's personal stuff."

Cpl. Karen Clark, an Arkansas State Police special agent

Trial

• Continued from Page 1B

there was no marijuana or marijuana residue in that car or in a pickup used in an undercover FBI sting.

Applegate and Bradley later signed reports that they found small amounts of marijuana and thus seized the money as proceeds of illegal activity.

The defense attorneys, who both rested their cases Wednesday morning without presenting any testimony, say the FBI agents simply didn't examine the vehicles they used thoroughly enough before the stings to ensure they were free of residue, which a chemist testified isn't always visible.

Assistant U.S. Attorney Dan Stripling, who gave closing arguments for the government, told jurors that Applegate's dog, Roby, could have been trained to "hit" on command or that the officers planted marijuana before having the dog inspect the vehicles.

"First of all, they call the dog's handler a handler for a reason," Stripling said. "The fact that the dog jumped a couple of times, I submit to you, doesn't prove anything."

Stripling also said that Bristow had misstated facts and was wrong to cast suspicion on the government over the disappearance of some photographs that Applegate took before he began a search of one vehicle.

"This is just one of those red herrings that Mr. Bristow is having you swim after," Stripling said.

In Coleman's closing argument, he didn't address the theft charge against Bradley, proof of which Stripling called "overwhelming," except to say, "This case is not about \$3,000 missing. It's about conspiracy."

Agents said they hid \$43,000 in the trunk of one undercover car, but Bradley turned in only \$40,000. Agents said \$2,500 of the missing money was found in Bradley's home.

Coleman and Bristow attacked the prosecution for presenting testimony from three admitted cocaine traffickers who had been stopped by Applegate. All said Applegate took more money from them than he reported.

Though U.S. District Judge George Howard Jr. didn't allow the testimony to apply directly to the charges at hand, prosecutors hoped it would help prove

Thefts

• Continued from Page 1B

same fashion, the sheriff said. The burglar has gotten in through unlocked doors and windows, or has managed to jimmy open the locks. In two cases, he broke windows, which is how the thief happened to leave behind a blood sample.

The victims have ranged in ages and appearance, King said, with nothing appearing to link them.

"We've got different ages, up to the early 40s. Some live by themselves, some are divorced, some have never been married. And two or three are married with families."

Typically, the women have come home to find their pillowcases gone and dresser drawers in disarray, the sheriff said.

"The drawers are usually open — you'd notice that [someone's] been there," he added. Usually, the thief sweeps the drawer clean, the sheriff said, loading all the panties and bras he finds into the pillowcase for an easy getaway.

He's believed to be a local



Arkansas Democrat-Gazette

who likely knows his victims and their habits to ensure that no one is home when he breaks in, investigators say.

All but one of the thefts occurred in the Woodlawn area. The most recent break-in, however, was in Rison. In that case, a woman came home from work one evening to find her door open, her dog out in the back yard, and her dresser ransacked.

Her lingerie and a pillowcase

were gone.

A \$1,000 reward was offered for arrest, the sheriff said.

In recent years, there have been widespread reports of similar incidents in the area, with a Chicago police officer providing information.

But again, the sheriff said, "We shouldn't be amused by the fact of a thief."

Clark said he had taken down a list of names of people she had seen in the area, but they're not sure who may be the suspect's.

"At this time, multiple suspects have been identified because they're not around, but they're not every one."

The investigation is to find out if the behavior is brazen.

"We just don't know."

Simple

show would be a good thing for the area if it showcases Yellville's strengths — family values, beautiful scenery, good schools and

as "an intimate history of ordinary life."

to the charges at hand, prosecutors hoped it would help prove that the officers had a pattern of being deceptive.

"You haven't seen Ozzie and Harriet get up here and testify," Coleman said. "What you have seen is drug dealers and people pretending to be drug dealers."

"It's almost like we're in Alice in Wonderland," Bristow said, referring to the drug dealers.

"These are drug couriers, and they're up here to testify against law enforcement officers who are attempting to stop the drug trade and the drug trafficking."

Noting that one dealer testified he had previously transferred 40 kilograms of cocaine, or about 88 pounds' worth, Bristow asked, "How do you think these guys feel about drug interdiction officers?"

Coleman also noted that the FBI later learned one of its undercover vehicles had been previously used by the Drug Enforcement Administration. "They say there are no drugs in this DEA dope-hauling machine," he said, scoffing.

In addressing the conspiracy charge, Stripling explained to jurors how the officers violated motorists' due-process rights.

"Can the government ever take your money? Sure. But there's a process that ought to be followed. Does the government have the right to search you or your house or your car? Sure ... [but] the right at issue here is the right not to have you or your car or your house searched without probable cause."

Bristow told jurors, "Imagine what you're saying with this verdict to other police officers working out there on the interstates trying to seize drug money."

Stripling responded, "I submit to you the message you are going to send is police corruption will be punished."

Jurors deliberated about 45 minutes Wednesday before Howard sent them home to resume deliberations at 9 a.m. today.

Earlier, after declining to present evidence, Bristow explained to reporters his and co-counsel Robert Ford's reason: "The government has the duty of presenting proof beyond a reasonable doubt. We maintain that the government did not meet the burden."

Simple

• Continued from Page 1B

life and the host family's routine, including handling farm chores. They also have to get jobs in the community.

"It's like taking two people and putting them in a new environment," said Frank, who wouldn't identify the two women or their families. "It's going to be fun and funny."

One published report said the Fox program would mirror *Green Acres*, the 1960s sitcom in which two New Yorkers try farm life in fictional Hooterville.

Fox announced plans for *The Simple Life* last summer, right after CBS said it would air a knockoff of *The Beverly Hillbillies*. The CBS show will feature a rural family transplanted into a Beverly Hills mansion.

Yellville Mayor Janelle Kirkwood said she's excited but cautious about the overtures from the TV producers.

Kirkwood said the television

show would be a good thing for the area if it showcases Yellville's strengths — family values, beautiful scenery, good schools and churches, and friendly people.

But the mayor said she won't stand for a depiction that mocks the area or portrays its people as hillbillies.

"They're not going to poke fun at us because I can nip this in the bud real fast," Kirkwood said.

Atzinger said he hears those concerns everywhere he goes.

"That's everyone's fear, the biggest thing I have to fight," he said. "That is not what the show's going to be about."

Bunim-Murray shows don't set up people for potential embarrassment or humiliation, like *Survivor* or *Joe Millionaire*, Atzinger said.

Bunim-Murray has produced several hit shows, including MTV's *The Real World* and *Road Rules*, ABC's *Making the Band*, and Fox's *Love Cruise: The Maiden Voyage*.

The company describes itself

Jails

• Continued from Page 1B

"There's always some faint hope we'll need to get some additional tax revenues in the state."

But he said legislators should immediately address what is currently owed because it's "debt, and we should get it out of the way."

The bill appropriating the \$7 million is expected to be presented in the Joint Budget Committee today, after which it could go to the House and Senate for consideration.

Weiss said paying the \$7 million is "only one step" in ending the problem of late payments to the counties.

He said the Legislature must also approve \$6 million to provide new prison beds. This will allow the state to more quickly shift the inmates from county jails to the prison.

Jim Harris, a spokesman for the governor, criticized Malone's plan.

"That approach doesn't address the real problem of funding, and it is unlikely it will go over with county officials," Harris said.

But Pruitt said Malone's plan is fine with her. She said she has confidence the Legislature eventually will address the entire debt for 2003.

"We can certainly live with

it," Pruitt said.

In December, Huckabee proposed that this year the Legislature approve a supplemental appropriation for the 2003 debt to counties. The original 2003 budget was approved during the 2001 legislative session. Money to pay the counties was one of many items subsequently slashed because of state revenue shortfalls.

Supplemental appropriations come from money set aside for capital improvements.

The General Improvement Fund is expected to have about \$97 million. But the more that is used for supplemental appro-

Jurors told of undercover FBI sting

\$45,000 seized from pickup in probe of complaints about police

BY LINDA SATTER
ARKANSAS DEMOCRAT-GAZETTE

West Memphis police confiscated \$45,000 they found in a pickup stopped in March 2001, then told the driver that if he tried to get it back, "they would get a warrant for our ass," the driver testified Wednesday.

The police officers didn't know that the driver actually was an undercover FBI agent. Osvaldo Alaniz, an agent stationed in San Antonio, is one of the government's star witnesses in a federal trial for the two

former West Memphis drug interdiction officers, Joseph "Joey" Applegate, 32, now of Grove, Okla., and Edwin A. "Tony" Bradley, 42, of Marion. Both are charged with conspiring to violate motorists' civil rights through illegal seizures of cash during traffic stops.

Alaniz said he was asked to play the role of a cash courier because of his Hispanic descent, which helped him fit the profile of the typical motorist stopped late at night by the drug interdiction officers on Interstate 40

on suspicion of drug trafficking.

To further fit the profile, the FBI provided Alaniz with a truck with out-of-state license plates — in this case, Texas — and a hidden compartment in the bed, which often catches the attention of officers looking for drugs or drug proceeds.

The FBI put \$45,000 in plastic-wrapped bundles in the truck after having a Little Rock police officer's drug-sniffing dog examine the vehicle to ensure it contained no odor of drugs or

See **STING**, Page 8B

Sting

• Continued from Page 1B
drug residue.

Then Alaniz and another Hispanic undercover agent were sent driving down the known "money lane" of the interstate — the westbound lane, where police say money generally flows back to the West Coast after drug deliveries — in the middle of the night. The agents wore body microphones and were armed with a phony story about their travel purpose. They also made sure the truck displayed a burned-out tail light they hoped would prompt police to pull them over.

Their purpose: to see if citizen complaints about improper seizures were correct, and to find out just what drug task force officers would do with the money if they found it and seized it. Stories in the *Arkansas Democrat-Gazette* dating back to 1999 prompted Police Chief Robert Paudert to request an FBI investigation.

Applegate and Bradley, along with other West Memphis officers and Crittenden County sheriff's deputies, were assigned to look for drugs and drug proceeds being carried across the country on the interstate.

Prosecutors say Applegate, Bradley and two other officers who face charges in a separate trial later this year conducted some illegal searches that allowed them to seize large amounts of cash, some of which they pocketed.

Prosecutors say the bulk of the seized money was turned in to the Crittenden County prosecutors' office, where civil forfeiture proceedings were routinely initiated so the county could claim any money that had been found in close proximity to illegal drugs or that contained drug residue. The forfeited money funded drug-fighting efforts, including the drug interdiction officers' salaries, with the arresting agency getting the lion's share of any seizure.

In response to a defense attorney's complaint Wednesday that police couldn't be responsible for what their superiors or prosecutors did to retain the

seized money, Assistant U.S. Attorney Dan Stripling said prosecutors and others in the chain of command merely relied on the officers' documentation about the seizures. Stripling said there was no evidence that any prosecutor's role in furthering any civil rights violations were intentional.

Alaniz testified that after Applegate pulled him over for the tail light violation and began questioning him, he provided answers designed to elicit suspicion and provoke a search, for which he granted permission. Applegate had his police dog, Roby, sniff the truck, and he said the dog indicated the presence of drugs. Soon, the officer found the hidden compartment in the truck bed and the cash and called in Bradley and another officer.

"We attempted to plead with the officers to let us go. We said they could keep the cash, because it wasn't ours," Alaniz testified. "They said that was not allowed, that we were facing money laundering charges."

As the officers counted the money on a table at the police station later, their supervisor, Lt. James Sudbury, arrived.

Alaniz said Sudbury soon received a telephone call, after which he ordered his officers to release the agents. The FBI had previously arranged with Paudert to ensure the undercover agents would be released if they got arrested.

Alaniz said Sudbury, who didn't know the men were FBI agents, first had them sign paperwork to begin forfeiture proceedings.

"Sudbury said they were going to send us some [more] papers, and if we answered them, they would get a warrant for our ass," Alaniz testified.

The FBI eventually got all the money back.

Sudbury has not been charged with a crime. However, he was fired in October 2001 along with Bradley and Applegate for discrepancies in the handling of seized cash and for falsification of drug evidence exposed through FBI stings, Paudert said at the time.

The trial resumes at 9:30 a.m. today before U.S. District Judge George Howard Jr.

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Tape shows burglar steal

2 ex-officers' defense sees sloppy FBI sting

Claim truck was drug-free questioned

BY LINDA SATTER
ARKANSAS DEMOCRAT-GAZETTE

A minuscule amount of marijuana got a lot of attention Thursday in a federal trial for two former West Memphis police officers.

Through cross-examination of government witnesses, defense attorneys questioned whether the marijuana was in a pickup before undercover FBI agents used it in a sting operation.

The FBI contends the truck was drug-free before the local officers stopped it in March 2001 and seized \$45,000 in cash they later submitted for chemical analysis along with marijuana the officers said they found with it.

Defense attorneys are trying to portray the FBI's undercover operation as sloppy by show-

ing that the amount of marijuana was so small that it likely was in the truck before the sting operation and went unnoticed by agents. They've pointed out that their clients were specially trained narcotics interdiction officers and thus more likely to notice the substance.

Prosecutors say the tiny amount of the illegal substance demonstrates how easy it would be for the officers to carry it around and secretly dust evidence with it.

The defense team has pointed out through questioning witnesses that the FBI agents didn't notice a tracking device the local officers found under the truck's hood. And the attorneys have made sure jurors won't forget that a videotape of the of-

See **STING**, Page 10B

Sting

• Continued from Page 1B

Officers searching the truck shows a drug-sniffing police dog "alerting" on the bed of the truck, indicating the odor of drugs.

An undercover FBI agent driving the truck admitted he was surprised by the dog's actions.

The former officers, Joseph Applegate, 32, and Sgt. Edwin A. "Tony" Bradley, 42, are accused of planting the marijuana to justify seizing the cash as proceeds of an illegal activity. They are charged with conspiring to violate motorists' civil rights through illegal searches and seizures on Interstate 40, a well-known route for cross-country drug couriers.

In other instances, prosecutors say, the two officers pocketed some of the seized money.

Defense attorneys hope to convince jurors that the officers believed the cash was related to the sale of illegal drugs and were justified in seizing it.

According to a state Crime Laboratory report introduced in court Thursday, the substance found in the pickup was one-tenth of a gram of marijuana.

Another government witness, a narcotics supervisor, agreed

with defense attorney Bill Bristow that 28.2 grams equals an ounce. Under Arkansas law, possession of an ounce or less is a misdemeanor.

Waving a small brown envelope containing the residue, Bristow asked, "To get that up to an ounce, wouldn't it take 280 times as much?"

The witness, Joel Johnson of the West Memphis Police Department, agreed.

Bristow also has pointed out that Applegate, his client, and Bradley both had access to large amounts of confiscated drugs in a police locker, suggesting that if the pair wanted to frame a motorist by planting drugs, they would use a larger amount.

The undercover FBI investigation was requested by the officers' new chief, Robert Paudert, in response to complaints that the officers regularly skimmed cash from large bundles of money they seized during late-night stops of suspected drug and cash couriers. A series of *Arkansas Democrat-Gazette* articles had raised questions about the seizures.

Undercover agent Osvaldo Alaniz of San Antonio, who was driving the truck stopped by Applegate, testified that to his surprise, Applegate and Bradley later showed him a radio transmitter they reported finding hid-

den on the truck.

The officers asked if Alaniz and his passenger were federal Drug Enforcement Administration agents.

The FBI says it didn't know the device was attached to the truck when agents borrowed it from another federal agency. The FBI later learned the truck had been previously used by the DEA.

The undercover agents told the local officers they were not federal agents. However, defense attorneys say the local officers suspected a setup and thus wouldn't have been likely to tamper with evidence.

But Alaniz said that despite the officers' initial concerns, their suspicions that they might have stumbled onto an undercover federal operation appeared to subside.

"Later on, they started stating these devices are also used by commercial operations and it may have been used by a business to just keep track of their vehicles," Alaniz testified. He and the other agent had told the

officers that they were driving the pickup from Chicago to San Antonio for a friend.

Applegate's report on the seizure, shown to jurors Thursday, said Alaniz and his partner were arrested on charges of criminal use of property and laundering criminal proceeds. However, the agents were released later that night without charges after Paudert called the officers' supervisor and said the truck was under surveillance as part of another investigation, Johnson testified.

The FBI eventually got the \$45,000 back.

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Jurors convict 1, clear 1 ex-officer

Public corruption charges stemmed from FBI sting probing drug searches

BY LINDA SATTER
ARKANSAS DEMOCRAT-GAZETTE

After a jury convicted one and cleared the other, two former West Memphis police officers who faced public corruption charges embraced Friday in a Little Rock federal courtroom.

Minutes later, the exonerated ex-officer, Joseph Applegate, 32, wiped a trickle of tears from his flushed face and told reporters, "It feels good that the truth will set you free."

Edwin Anthony Bradley, 42, a former sergeant who was convicted of theft of government property and conspiracy to violate civil rights, left the federal courts building without commenting.

Applegate was acquitted of conspiracy, the only charge he faced.



Bradley

Applegate

Both were accused of conducting illegal searches and cash seizures while working together as drug interdiction officers on Interstate 40 in Crittenden County, a major cross-country drug trafficking route. They were fired last year after the FBI conducted sting operations that led to the felony charges for which they were tried the past two weeks.

See **VERDICT**, Page 11A

*first
trial -
verdicts*

1-25-03

Verdict

• Continued from Page 1A

West Memphis Police Chief Bob Paudert requested the FBI investigation after a series of articles in the *Arkansas Democrat-Gazette* raised questions about officers' cash seizures.

Bradley faces up to 10 years in prison, but no sentencing date has been set.

Two former Crittenden County sheriff's deputies, Louis Pirani and Barry Davis, also face charges stemming from the FBI investigation, and Applegate faces other charges.

"All I can say is it's a sad day for law enforcement for any officer to be convicted of a crime," Paudert said Friday. "But we are sending a strong message to law enforcement, particularly in West Memphis, that corruption will no longer be condoned over here."

Paudert said he wasn't surprised by the split verdicts because "they had more compelling evidence against Bradley," in whose Marion home FBI agents found marked \$100 bills that they planted in the trunk of a car they enticed Bradley and Applegate to search in July 2001. The agents also found marked bills from the sting operation in money Bradley deposited in a bank.

"I think the evidence was overwhelming against Tony Bradley," Paudert said.

A six-man, six-woman jury deliberated about 45 minutes Wednesday evening after closing arguments, then spent half a day Thursday and Friday before settling on a verdict.

As the guilty verdicts were read aloud in Howard's courtroom, Bradley showed no emotion as he glanced across the dais table to Applegate. Then court official read the "not guilty" finding on the only charge Applegate faced. Applegate turned to his attorney, Bill Bristow of Jonesboro, and shook his head. Then Applegate removed his glasses and wiped his eyes.

Bradley's mother, who attended every day of the two-week trial with other family members, sobbed in a courthouse hallway. Then she left the building as relatives held her up. One wanted to comment. Bradley's attorney, Gerald

Most law enforcement officers are honest, hardworking persons who deserve the respect of the community. There are a few who do not."

Neither Applegate nor Bradley testified during the trial. Defense teams for both men rested without presenting a single witness. Bristow said later that attorneys didn't think prosecutors had proved their case.

Outside the courtroom, reporters asked Applegate how he felt about Bradley being con-

Bradley's mother, who attended every day of the two-week trial with other family members, sobbed in a courthouse hallway.

victed. But before Applegate could answer, Bristow cut him off, saying Applegate would answer questions pertaining only to his own case.

"We are obviously very pleased that the jury spent such a long time [deliberating], and we're grateful for their close consideration of the evidence," Bristow said. "We are gratified that the system worked."

Two jurors who spoke with reporters said they had reasonable doubt about Applegate's guilt.

"The reasonable doubt was a big deal," said one juror, who asked not to be named but said she lives in central Arkansas.

"It was the particular actions of each particular officer, and there was some difference there that we discerned," she said. She noted that in Applegate's case, "we didn't feel that they proved he was in a conspiracy."

Jury instructions specified that either officer could be found to be part of a conspiracy if he acted with the other officer or with "others known and unknown to the grand jury" that indicted the officers. The juror said the latter phrase helped secure Bradley's conviction.

Juror Carol Gilbreath of Morrilton said, "it was more obvious that Bradley was part of a conspiracy."

Both jurors said a key factor in finding Bradley guilty was the testimony about FBI agents finding \$100 in marked bills in

stance, all of which was over to the Police Department and \$43,000 in a second station, of which only \$ was turned in.

In both undercover stings, videotapes show Applegate's drug-sniffing dog by jumping on the vehicle, by apparent indication that were inside. Bristow argued that gave Applegate reason to think drug money which cannot always be was on the money.

The unidentified jurors were more inclined to think that Bradley planted the car than they were to think Applegate secretly prompted dog to signal the presence of drugs.

Applegate still faces charges of filing a false report, conspiring to violate civil rights while employed as a Crittenden County sheriff's deputy. He went to work for the Memphis Police Department.

Applegate also faces charges of mail fraud and money laundering in a case involving other people to be tried next month, but both charges were dropped this week at the attorneys' request. Cummins said why, but a court cited "the ends of justice."

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Arkansas Democrat-Gazette

the court official read the "not guilty" finding on the only charge Applegate faced. Applegate turned to his attorney, Bill Bristow of Jonesboro, and shook his hand. Then Applegate removed his glasses and wiped his eyes.

Bradley's mother, who attended every day of the two-week trial with other family members, sobbed in a courthouse hallway. Then she left the building as relatives held her up. None wanted to comment.

Bradley's attorney, Gerald Coleman of West Memphis, couldn't be reached for comment after the verdicts.

Assistant U.S. Attorneys Dan Stripling and Jana Harris, who prosecuted the case, didn't comment as a matter of office policy. But their boss, U.S. Attorney Bud Cummins, said in a written statement that "this case demonstrates how the legal system works. We presented the facts to the jury and the jury made a decision. We don't celebrate convictions and we don't mourn acquittals."

Cummins added, "Our job is to do our duty and seek justice.

Jury instructions specified that either officer could be found to be part of a conspiracy if he acted with the other officer or with "others known and unknown to the grand jury" that indicted the officers. The juror said the latter phrase helped secure Bradley's conviction.

Juror Carol Gilbreath of Morilton said, "it was more obvious that Bradley was part of a conspiracy."

Both jurors said a key factor in finding Bradley guilty was the testimony about FBI agents finding \$2,500 in marked bills in his home and a bank deposit.

"That does help prove it, when you get caught with your hand in the cookie jar," Gilbreath said.

Referring to videotapes that the FBI surreptitiously made of the two officers searching vehicles for cash, the other juror said, "it was hard to tell from the video what was going on."

The two officers were accused of falsely reporting that they found marijuana on the cash to justify seizing the money as drug proceeds. The officers found \$45,000 in one in-



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Verdict

• Continued from Page 1A

West Memphis Police Chief Bob Paudert requested the FBI investigation after a series of articles in the *Arkansas Democrat-Gazette* raised questions about officers' cash seizures.

Bradley faces up to 10 years in prison, but no sentencing date has been set.

Two former Crittenden County sheriff's deputies, Louis Pirani and Barry Davis, also face charges stemming from the FBI investigation, and Applegate faces other charges.

"All I can say is it's a sad day for law enforcement for any officer to be convicted of a crime," Paudert said Friday. "But we are sending a strong message to law enforcement, particularly in West Memphis, that corruption will no longer be condoned over here."

Paudert said he wasn't surprised by the split verdicts because "they had more compelling evidence against Bradley," in whose Marion home FBI agents found marked \$100 bills that they planted in the trunk of a car they enticed Bradley and Applegate to search in July 2001. The agents also found marked bills from the sting operation in money Bradley deposited in a bank.

"I think the evidence was overwhelming against Tony Bradley," Paudert said.

A six-man, six-woman jury deliberated about 45 minutes Wednesday evening after clos-

Most law enforcement officers are honest, hardworking persons who deserve the respect of the community. There are a few who do not."

Neither Applegate nor Bradley testified during the trial. Defense teams for both men rested without presenting a single witness. Bristow said later that attorneys didn't think prosecutors had proved their case.

Outside the courtroom, reporters asked Applegate how he felt about Bradley being con-

Bradley's mother, who attended every day of the two-week trial with other family members, sobbed in a courthouse hallway.

victed. But before Applegate could answer, Bristow cut him off, saying Applegate would answer questions pertaining only to his own case.

"We are obviously very pleased that the jury spent such a long time [deliberating], and we're grateful for their close consideration of the evidence," Bristow said. "We are gratified that the system worked."

Two jurors who spoke with reporters said they had reasonable doubt about Applegate's guilt.

"The reasonable doubt was a big deal," said one juror, who asked not to be named but said

stance, all of which was turned over to the Police Department, and \$43,000 in a second sting operation, of which only \$40,000 was turned in.

In both undercover operations, videotapes showed Applegate's drug-sniffing dog, Robby, jumping on the vehicles in an apparent indication that drugs were inside. Bristow argued that that gave Applegate reasonable cause to think drug residue, which cannot always be seen, was on the money.

The unidentified juror said jurors were more inclined to think that Bradley planted drugs when he opened the trunk of a car than they were to think that Applegate secretly prompted the dog to signal the presence of drugs.

Applegate still faces charges of filing a false report and conspiring to violate civil rights while employed as a Crittenden County sheriff's deputy before he went to work for the West Memphis Police Department.

Applegate also faced charges of mail fraud and money laundering in a case involving two other people to be tried next month, but both charges were dropped this week at prosecutors' request. Cummins didn't say why, but a court document cited "the ends of justice."

Seller testifies fired deputy paid for ski boat with cash

BY LINDA SATTER
ARKANSAS DEMOCRAT-GAZETTE

A Crittenden County sheriff's deputy paid for a ski boat in 1997 with \$26,500 "in cash money," the seller testified Tuesday in the trial of Louis Pirani, the deputy who was fired during an FBI investigation into police corruption.

Pirani, 38, is charged with lying about his finances to investigators to impede the corruption investigation, which eventually led to charges in a related case that he and other officers stole cash from motorists while working as drug interdiction officers.

Richard Bean of Edgmont told jurors he was shocked when Pirani handed him bundles of \$100 bills that were "wrapped with something in an orderly stack."

At the time, according to testimony in a Little Rock federal courtroom on Tuesday, Pirani's annual salary was \$20,000 to \$25,000.

In an interview conducted on Aug. 22, 2001, Pirani told the FBI and the IRS that he never owned a ski boat, IRS Supervisory Special Agent Scott Hogue testified.

Hogue said that during the interview, Pirani said he had once owned a 17-foot fishing boat, but "he said he didn't know anything about a ski boat."

Hogue said records showed that Pirani owned a 1997 20- to 25-foot Master Craft ski boat from May 16, 1997, until he sold it on May 3, 2000. Among the records were Pirani's tax assessment papers from 1999, signed by his wife since 1998, Angela. Her annual salary fluctuated between \$17,000 and \$20,000, prosecutors noted.

Bean, a boat salesman, testified that he was used to being paid with a cashier's check and was so worried about depositing the cash in bulk that he deposited it in increments over the next week.

Nathan Hall of Sherwood, where Bean lived, testified that he remembered the day his friend Bean showed him the cash he had just received from Pirani.

"The guy he'd sold the boat

cutors suspect the cash was from Louis Pirani's traffic-stop seizures.

Records show that after the down payment, the brothers incorporated a business, S & L Aircraft Sales & Leasing Inc. From that account, Louis Pirani, the corporation secretary, then wrote checks totaling \$93,000 for the \$755 monthly payments and maintenance costs on the airplane. The business' only activity was to buy the plane.

Although Louis Pirani claimed his brother owned the airplane, documents show the brothers jointly owned the plane, said assistant U.S. attorneys Karen Coleman and Dan Stripling.

They say that besides ownership and registration records, evidence of Louis Pirani's contributions was found during the execution of a federal search warrant at his home in 2001.

Jurors saw a handwritten document that Hogue said agents found in Louis Pirani's dresser drawer titled "Louis Amounts." The document lists seven amounts of money ranging from \$450 to \$3,000 with dates out to the side. Hogue, displaying banking records for S & L, showed how those dates corresponded with cash deposits of the same amounts into the account.

At the bottom of the list, someone wrote, "Louis \$93,000," representing the total of the seven deposits.

Defense attorney Jack Lassiter told jurors that the ownership and payment documents were public records or otherwise easily attainable, so it makes no sense to think his client was trying to be deceptive. He suggested that fatigue could have played a role in Louis Pirani's answers because he was interviewed after working all night.

In a related case, Louis Pirani is charged with violating motorists' civil rights by skimming cash during traffic stops. He is one of several former West Memphis or Crittenden County law enforcement officers who were indicted in an ongoing FBI investigation into police corruption. Three more trials remain.

Last week, a jury cleared Steven Pirani of making false statements to impede the investigation into the traffic stops. In January, a jury convicted one former police officer and acquitted another on related charges.

Closing arguments are expected today.

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Nathan Hall of Sherwood, where Bean lived, testified that he remembered the day his friend Bean showed him the cash he had just received from Pirani.

"The guy he'd sold the boat to paid him in \$100 bills. It made him kind of nervous," said Hall, who had skied behind the boat. "The bills were in bundles of \$1,000 or \$2,000, and had a rubber band around them, or something separating them."

Hall said that three years later he told a friend that Pirani was trying to sell the boat, and the friend bought it through Joe Whisenhunt Jr., owner of Master Craft Boats in Conway.

Whisenhunt also testified, identifying the boat in pictures and saying he often saw Pirani in the boat on Greers Ferry Lake. He read aloud the large writing on the back of the boat in the picture: Master Craft World Record Ski Boat.

Pirani, of Marion, is accused of lying to Hogue and an FBI agent about the boat and the September 1999 purchase of a 1980 single-engine Cessna airplane for \$88,000. He faces two charges of making a false statement.

Bank records show that Pirani wrote a check on his personal account for the \$10,815 down payment for the Cessna after his older brother, Steven Pirani, wrote him a check for the same amount. Just before that, Steven Pirani deposited \$5,520 from his construction business account and \$5,420 cash into his own checking account. Prose-

5-17-03

Dropped counts derail police corruption case

1 Crittenden County ex-cop still charged

BY LINDA SATTER
ARKANSAS DEMOCRAT-GAZETTE

One of the most prominent of seven related cases tied to police corruption in Crittenden County was gutted this week when federal prosecutors sought the dismissal of five of six charges.

The request, granted by U.S. District Judge James Moody, also dropped two of three defendants — all former law enforcement officers — from the case that is scheduled to be tried next month.

Defense attorneys all said they didn't know what prompted the dismissals, but they were not complaining.

In a telephone interview, U.S. Attorney Bud Cummins cited "a variety of reasons I don't want

to catalog."

"You try not to indict cases you don't intend to take to trial, but I think it would be foolish not to continue to evaluate cases after they've been indicted," Cummins said.

He explained that after a federal grand jury has handed up an indictment, but before the case goes to trial, "we make periodic evaluations on all these cases. When we got to the periodic evaluation of this one, we didn't think it should keep going."

Asked for more details, he said, "I'm not aware of any one thing. It wasn't one pivotal issue. ... Things appear differently as you get ready for a trial. Things happen that make you say we

See **CORRUPTION**, Page 7B

Corruption

shouldn't devote our resources to this."

An Oct. 15 indictment accused former Crittenden County sheriff's deputies Barry Davis, 34, of West Memphis and Louis A. Pirani, 38, of Marion, and former sheriff's deputy and West Memphis police officer Joseph W. Applegate, 32, now of Oklahoma, of conspiring to violate the civil rights of motorists.

The charges, all stemming from traffic stops they made while working as drug interdiction officers in Crittenden County, came after a series of stories in the *Arkansas Democrat-Gazette*.

The indictment accused them of stopping vehicles to search for cash and filing false police reports to justify taking cash, some of which they turned over to their drug unit and some of which they were accused of stealing. Altogether, prosecutors said the men seized more than \$1 million in cash from five motorists between February 1997 and January 2001, and of that amount, they pocketed \$335,693.

All those charges were dropped this week, however. The only remaining charge, possession of a stolen firearm, is faced

by Davis alone.

Little Rock attorney Robert Newcomb, who represents Davis reiterated something that defense attorneys in the related corruption cases have said all along: The allegations relied in part on the testimony of drug dealers.

Attorney Bill Bristow of Jonesboro represented Applegate in an earlier trial with similar accusations — one involving some of the same witnesses as would have testified in the June trial — and the jury cleared Applegate.

"It would have been, for us, basically the same song, second verse," Bristow said.

The same jury that acquitted Applegate convicted former West Memphis police officer Edwin A. "Tony" Bradley, 42, of cor-

ruption and theft.

Pirani's attorney, Jack Lassiter, said, prosecutors "did not tell us why they were dismissing" the civil rights charges.

In a trial scheduled for August, Davis and his wife and father are charged with conspiring to give false and misleading information to impede the investigation. Applegate also still faces a trial on a single charge of causing a business to file a false IRS form in connection with a motorcycle he bought, and Louis Pirani's wife still faces a separate trial on perjury charges.

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calls and a couple of witnesses, investigators and family members have been able to place the 33-year-old owner of a dump truck business last at Foxy's Gentlemen's Club in Morgan.

"We just sense there is foul play. It's not like him to be gone that long," his uncle, Eddie Guerra, said in telephone interview from Texas.

whereabouts on May 22 and 23. Ronald "RJ" Jones of Malvern is one of them.

Martinez of Irving, Texas, flew to Little Rock on May 22 to discuss with Jones the possibility of opening a contracting business together Jones said. The two met through a mutual friend, Lis

See **MARTINEZ**, Page 6

Ex-deputy pleads guilty to mail fraud

BY LINDA SATTER
ARKANSAS DEMOCRAT-GAZETTE

A former Crittenden County sheriff's deputy pleaded guilty Friday to lying in 1999 to thwart a federal investigation into police corruption.

Barry Davis, 34, of West Memphis pleaded guilty to a single count of mail fraud regarding the purchase price of a travel trailer. In return, federal prosecutors dropped six other felony charges against Davis.

Davis was to be tried by a jury this week on three of the

See **DAVIS**, Page 12B



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Davis

• Continued from Page 1B
charges — one count of possessing a stolen firearm and two counts of making false statements. All stemmed from a search federal agents conducted on June 6, 2002, of Davis' home and police cruiser.

FBI agents were investigating allegations that Davis and other law officers had for years been illegally seizing cash from motorists in Crittenden County and pocketing some of it. The officers were part of a drug interdiction unit charged with stopping vehicles suspected of carrying drugs or drug proceeds.

The agents found a stolen Tec-9 handgun in Davis' house and a .22-caliber pistol in the cruiser. They said Davis gave false statements about where he acquired both guns.

The other three charges — conspiracy, attempting to influence a witness and making a false statement — were to be tried before another jury in October.

In that case, Davis was to face a jury with his wife, Tonya, 31, and his father, Ronald Glen Davis, 71, of Olive Branch, Miss., who each faced a single conspiracy charge.

The three were accused of lying about several of Barry Davis' financial transactions to impede the investigation into the cash seizures.

But after Davis pleaded guilty to the mail-fraud charge, his wife and father also entered pleas to reduced misdemeanor charges of making fraudulent statements. Prosecutors then dropped the conspiracy charges against the wife and father.

Tonya Davis visibly fought back tears as she listened to her husband plead guilty and then took her turn at the lectern to admit her own guilt.

None of the Davises made any statements other than offering a simple "Yes" or "Yes, sir," when U.S. District Judge James Moody asked them if they understood their pleas.

All three will be sentenced later this year. Barry Davis faces up to five years in prison and a fine of up to \$250,000, while his wife and father each face up to a year in prison and a fine of up to \$100,000. Federal sentencing guidelines usually call for much less than the maximum.

U.S. Attorney Bud Cummins, whose office continues to investigate police corruption allegations, later said in a news release

officers accountable. We owe it to the vast majority of fine law enforcement officers who, although overworked and underpaid, resist any temptation to abuse the public trust."

In court Friday, Davis admitted that he signed an affidavit in April 1999 at the state Department of Finance and Administration office in Marion. The affidavit said he paid \$7,000 in May 1997 for a 1992 Jayco 30-foot travel trailer for which he had actually paid \$9,000 cash. He was trying to sell the trailer in 1999 and needed a title but hadn't had the title transferred into his name.

His actions resulted in a mail-fraud charge because they caused the department to mail a title that contained false information about the purchase price.

Tonya Davis admitted lying to FBI and IRS agents on Feb. 20, 2002, in falsely reporting \$8,000 in gambling income on her and her husband's 2001 tax return.

Ronald Glen Davis admitted lying to federal agents to cover up his son's ownership of a 1959 Cessna airplane. The elder Davis admitted he falsely told the agents that \$31,000 of the plane's purchase price came from his railroad retirement funds and cash he kept stashed in his truck, when in fact the money came from Barry Davis.

The plane was owned and operated by Barry Davis but was registered to his father, who had only a student's pilot license, Assistant U.S. Attorney Jana Harris said.

The federal investigation into police corruption in Crittenden County was prompted in part by a series of articles in the *Arkansas Democrat-Gazette*.

So far, two convictions have resulted from the investigation. In January, a jury convicted former West Memphis Police Department Sgt. Tony Bradley of theft of government property and conspiracy to violate civil rights. The same jury acquitted another officer, Joseph Applegate. Bradley still awaits sentencing.

Last month a judge sentenced former Crittenden County sheriff's Deputy Louis Pirani to five months of prison and five months of home detention for lying to investigators in 2001 to hinder the corruption investigation.

Applegate is awaiting a Sept. 8 jury trial on a charge of causing a business to file a false IRS form in connection with a motorcycle he bought. Louis Pirani and his wife, Angela, still face a

charges — one count of possessing a stolen firearm and two counts of making false statements. All stemmed from a search federal agents conducted on June 6, 2002, of Davis' home and police cruiser.

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Applegate is awaiting a Sept. 8 jury trial on a charge of causing a business to file a false IRS form in connection with a motorcycle he bought. Louis Pirani and his wife, Angela, still face a jury trial on tax charges. Angela Pirani also faces perjury charges.

Cop cleared in January faces charges

Indictment: Drug money stolen

BY LINDA SATTER
ARKANSAS DEMOCRAT-GAZETTE

A former Crittenden County law enforcement officer acquitted in January of police corruption allegations faces three new related charges.

A federal grand jury in Little Rock has handed up a superseding indictment charging Joseph Applegate, 33, who now lives in Grove, Okla., with one count of theft from an interstate shipment and two counts of making a monetary transaction involving unlawful activity.

The indictment alleges that Applegate, a former drug interdiction officer for both the West Memphis Police Department and the Crittenden County sheriff's office, stole more than \$1,000 cash from a motorist he stopped on Interstate 40 on Jan. 23, 2001.

The indictment charges that the cash consisted of drug proceeds that the motorist was transporting from New Hamp-



Applegate

shire to Arizona.

Six days after the traffic stop, Applegate agreed to buy a Harley Davidson motorcycle for \$18,953 and pay an additional \$5,760 for accessories and labor from Bumpus Harley Davidson in Memphis, the indictment states. It alleges that over the next few weeks, Applegate used cash, checks and store credit to pay for the motorcycle partly with the stolen drug money.

The indictment further alleges that on Jan. 23, 2001, the same day he is accused of stealing drug proceeds from a motorist, he entered into an agreement to buy a 2000 Chevrolet extended cab pickup truck for \$24,032 from another dealership.

After a series of financial
See **CHARGES**, Page 7B

Charges

• Continued from Page 1B
transactions involving cash, checks, a trade-in and store credit, he completed the purchase on March 26, the indictment states. It says that the following month Applegate traded in the pickup for a half-ton Chevrolet truck he bought at yet another dealership for \$33,091.

Applegate received a \$19,556 credit for the trade-in and paid the remainder by applying a \$1,000 rebate, paying \$8,900 in cash and writing a check for \$3,635.

The indictment alleges that Applegate used money stolen during the traffic stop for both transactions.

An investigation into the traffic stops followed a series of articles in the *Arkansas Democrat-Gazette* about drug and cash seizures on Interstate 40 near West Memphis, a known east-west corridor for cross-country drug traffickers.

On Jan. 25, a federal jury cleared Applegate of a charge of conspiring to violate motorists' civil rights, a charge that stemmed from allegations that he and former West Memphis police Sgt. Edwin Anthony Bradley had stolen money from motorists while working together as drug interdiction officers.

The jury convicted Bradley of theft of government property and conspiring to violate civil rights. Bradley has yet to be sentenced.

Applegate still faced additional charges, but they were reduced in May at the request of prosecutors.

At the time, U.S. Attorney Bud Cummins explained the reductions by saying that his office periodically evaluates cases, even after indictments.

Asked about the latest charges against Applegate, Cummins said Friday that the attorneys in his office "just keep trying to streamline it, make it more focused," referring to the investigation and several related cases.

He noted that "it's a pretty complicated case."

Applegate's attorney, Bill Bristow of Jonesboro, said Friday that he had not yet had a chance to review the latest indictment in detail. But, he said, "Initially looking at this superseding indictment, there is enough similarity to the charge he was acquitted of in January that it made me raise some questions in my mind."

Bristow said he's not sure yet if the prohibition against "double jeopardy" would apply, but "it did strike me as though we are being charged with the same thing again. ... We'll look into it and find out what the underlying facts are."

In June, former Crittenden County sheriff's deputy Louis Pirani, 38, was sentenced to five months in prison and five months of home detention after he was convicted of lying to federal investigators to thwart the police corruption investigation.

A variety of charges in several different courts still await trial for others caught up in the investigation.

Former cop admits lying to get loan, tax evasion

He awaits sentencing on earlier conviction

BY LINDA SATTER
ARKANSAS DEMOCRAT-GAZETTE

Edwin Anthony "Tony" Bradley, a former West Memphis police officer who a federal jury convicted of police corruption charges in January, pleaded guilty Thursday to two new charges.

The 42-year-old former police sergeant from Marion admitted before U.S. District Judge George Howard Jr. that he did not report all his income on his 1999 federal income tax return and that he overstated his income when applying for a car loan from a federally insured bank in August 2000.

Bradley agreed to plead guilty to the charges before federal prosecutors presented them before a federal grand jury for possible indictment. That way, he is likely to get a lesser sentence than had he pleaded guilty after an indictment was issued or gone to trial and been convicted on the charges.

The charge of making a false statement on his 1999 tax return concerns undisclosed income from a construction business, and is punishable by up to a year in jail and a fine of up to \$100,000. The charge of making a false statement to Union Planters Bank is punishable by up to 30 years in prison and a fine of up to \$250,000. However, under federal sentencing

guidelines Bradley would likely face far less than the maximum sentences.

A sentencing date has not been set on either the two new charges or Bradley's Jan. 24 conviction on charges of theft of government property and conspiracy to violate civil rights, for which Bradley faces up to 10 years in prison.

Those convictions stemmed from allegations that he and other officers conducted illegal searches and cash seizures while working as drug interdiction officers on Interstate 40 in Crittenden County, a major cross-country drug trafficking route.

FBI agents testified that during a search of Bradley's home in 2001, they found marked \$100 bills that they had planted in a car they enticed Bradley to search as part of an undercover sting operation. The agents also said they found some of the marked bills in money Bradley had deposited in a bank.

West Memphis Police Chief Bob Paudert requested the federal corruption investigation after a series of *Arkansas Democrat-Gazette* articles raised questions about officers' cash seizures.

So far, Bradley is the only former officer to be convicted on charges directly related to the seizures, although former Crittenden County sheriff's deputy Louis Pirani was convicted by another jury of lying to investigators to thwart the corruption investigation.

Another former West Memphis officer, Joseph Applegate, was cleared by the same jury of corruption charges. However, he faces an Oct. 14 jury trial before Howard on charges that he stole \$1,000 from a motorist on Jan. 23, 2001, and conducted monetary transactions using proceeds of the theft.

Pirani and his wife, Angela, also still face tax charges, and Angela Pirani faces a single charge of perjury in the investigation.

Ex-jailer accused of kicking inmate to be free till trial At hearing, FBI agent tells of attack

BY LINDA SATTER

ARKANSAS DEMOCRAT-GAZETTE

An FBI agent testified Monday in a federal court hearing that when Crittenden County's chief jailer kicked a shackled inmate in the head, the force of the blow ripped open surgical staples that doctors had used just a short time earlier to treat a gaping head wound.

The agent, testifying at a detention hearing for the former jailer, Robert D. Bretherick, 58, revealed more details about the case than were disclosed upon Bretherick's arrest Friday.

The arrest followed an indictment, handed up Wednesday by a federal grand jury in Little Rock, charging the West Memphis man with violating the civil rights of inmate Stanley Beavers Jr. by kicking him.

It also charges Bretherick with two counts of witness tampering, accusing him of trying to thwart a grand jury investigation into the kicking allegations by intimidating two female jailers he supervised to prevent or influence their testimony.

In a hearing Monday that ended with Bretherick being allowed to remain free until his trial under certain conditions, FBI agent Lance Smythe said Beavers' trouble began early the morning of Sept. 10, 2001, when he fell off a bunk in his jail cell and "split his head open on the concrete floor."

Jailers called an ambulance and Beavers was taken to a local hospital where doctors closed his head wound with surgical staples, Smythe said. Then Beavers was returned to the jail in West Memphis where he was shackled to a grate on the floor of the holding cell "for his own protection."

Smythe testified that he didn't know why exactly Beavers needed to be shackled, but he acknowledged that the inmate had mental "issues" and that his mother considers him "slow."

When Bretherick arrived at work between 6 a.m. and 8 a.m., he was briefed on Beavers' situation, Smythe said. Then, according to witnesses, Bretherick walked up to the inmate shackled on the floor and "made a comment that he wasn't going to get out of jail by acting that way," Smythe said.

Witnesses told Smythe that Bretherick then kicked the chained man in the head, reopening the wound.

Smythe said he interviewed several jailers last June and learned that Bretherick had questioned them about what they told investigators about the situation and what they planned to say if called before a grand jury.

One jailer, Anne Brown, said Bretherick vowed to "take care" of anyone who testified against him, and warned that he would know who said what, Smythe testified. He noted, "We have audiotape of that threat."

Smythe said another jailer, Linda Nicks, reported that Bretherick told her that whoever was saying things about him "had better have bullet-proof underwear because he was going to fill them full of lead."

Another female jailer who wasn't identified in the indictment said Bretherick questioned her after she testified before the grand jury, demanding to know who else had appeared before the panel, if she knew what anyone else had said and asking her "to keep a list of who was going to the grand jury," Smythe testified.

Smythe said he heard from other people, whom he didn't name, that Bretherick made general threats pertaining to anyone who talked to the FBI. The alleged threats included "I'll get even by balancing the books" and "I'm so god**** mad I could start shooting people. I just don't know where to start."

Adriana Vieco, an attorney with the U.S. Department of Justice, urged U.S. Magistrate Judge John Forster Jr. to keep Bretherick locked up until his trial, "because he is a serious danger to the community." She cited the violence he is accused of in the indictment and a misdemeanor battery conviction that she said also indicates his tendencies toward violence. She said that he has already threatened witnesses and, since they are his former employees, knows where they live.

Under her questioning, Smythe noted that Bretherick still had a deputy sheriff's badge upon his arrest Friday, despite the fact that he'd been fired months earlier.

Defense attorney Jerome Kearney, whom Forster appointed to represent Bretherick, presented testimony from his wife of 28 years and one of his daughters to show that Bretherick had family ties and wasn't likely to flee. The daughter acknowledged that her father was convicted of a misdemeanor charge

of third-degree battery for punching and kicking her ex-husband, but said her ex-husband threw the first blow and the conviction is being appealed.

Under questioning by Kearney, Smythe acknowledged he had heard that the inmate "dived" off the bunk, injuring himself, but didn't know any more about it. Smythe also said he didn't know why Beavers was kept segregated from other prisoners.

Smythe named several other people who had given the FBI information about Bretherick. He said the FBI first learned of the kicking situation "during an investigation at the jail of two other allegations."

Bretherick's jury trial is tentatively scheduled for March 15 before U.S. District Judge James M. Moody. Until then, Forster said he can remain free as long as he stays away from anyone who may testify against him.

Jail chief arrested in drug sale

THE ASSOCIATED PRESS

WEST MEMPHIS — The administrator of the Crittenden County jail has been accused of agreeing to provide just over 2 ounces of cocaine to an inmate.

Reginald Abram, 29, was arrested Monday as part of an undercover investigation by West Memphis police.

Abram was named jail administrator on June 5 after his predecessor, Robert Bretherick, was charged with witness tampering and deprivation of rights. Bretherick pleaded innocent.

West Memphis Assistant Police Chief Mike Allen said Abram agreed to a payment of \$1,000 to take the package of drugs into the

county jail. He was given \$900 in marked bills and the drugs. Allen said the cocaine was in a clear plastic bag, which Abram then wrapped in black tape.

Allen declined to say where the transaction took place.

Abram was booked into the St. Francis County jail. A dispatcher there said Tuesday that Abram had been released, but the dispatcher didn't know the amount of the bond.

Abram is charged with possession of a controlled substance with intent to sell or deliver, and bribery. Crittenden County Sheriff Dick Busby said Abram has been suspended with pay, pending a personnel hearing.

bers to keep Otis in prison.

Lori White, a juror in the case who testified at the Aug. 4 victim impact hearing with Smith's daughter, said she never would have agreed to a manslaughter conviction if she would have known Otis would be eligible for parole so soon. Letting Otis out after the time he spent in juvenile detention would be "a very dangerous precedent to set," White told board members.

Another member of the jury,

however, had a different view.

Rolfe Bryant, who was the jury foreman, testified at Tuesday's hearing that he believed Otis should have been released after the trial with credit for the time he already served. Evidence at the trial — though indicating Otis had knowledge of the crime — was still lacking, Bryant said.

"I did not believe he actually pulled the trigger," he said.

The board will announce a decision on Otis' parole Tuesday.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

AUG 23 1999

JAMES W. McCORMACK, CLERK
By: [Signature]
DEP. CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. LR-C-98-509

\$3,166,184.00 in United States Currency,

Defendant.

STATE OF ARKANSAS, BRENT DAVIS,
Prosecuting Attorney for the Second
Judicial District, ARKANSAS STATE
HIGHWAY & TRANSPORTATION
DEPARTMENT, and ARKANSAS
HIGHWAY POLICE, a Division of the
Arkansas State Highway & Transportation
Department,

Interveners,

ORDER

This is a forfeiture action filed by the United States against over three million dollars in cash seized by agents of the State of Arkansas. The case was assigned to Senior United States District Judge Elsjane T. Roy by random draw on July 27, 1998. By Order dated March 23, Judge Roy granted a motion of the State of Arkansas to dismiss the forfeiture action and entered judgment dismissing this action. *See* Order of March 23, 1999 [doc.#29]. Judge Roy concluded that the Arkansas Highway Police was acting contrary to Arkansas law when the *res* was transferred to the Drug Enforcement Agency without an order of authorization from the Crittenden County Circuit Court and that the federal court therefore was without jurisdiction over

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the *res*. See *id.* Judge Roy based her decision on the Arkansas Supreme Court's recent decision in the appeal of the Circuit Court orders involved in this matter and its interpretation of the applicable state forfeiture statute, Ark. Code Ann. § 5-64-505. See *id.* (discussing *In the Matter of \$3,166,199*, 987 S.W.2d 663 (Ark. 1999)).

On March 26, 1999, the Arkansas Highway Transportation Department and the Arkansas Highway Police (collectively, "AHP") filed a motion to reconsider or, alternatively, to stay the order and judgment [doc.#31].¹ Thereafter, the case was reassigned to this Court on June 18, 1999, due to Judge Roy's retirement [doc.#40]. By Order dated August 2, 1999, this Court denied AHP's motion to reconsider, concluding that AHP had not called into doubt Judge Roy's conclusion that the AHP was acting contrary to Arkansas law when the *res* was transferred to the Drug Enforcement Agency without an order of authorization from the Crittenden County Circuit Court and that the federal court therefore was without jurisdiction over the *res*. See Order of August 2, 1999 [doc.#41]. The Court further denied AHP's motion to stay. See *id.*

Now before the Court is a motion of the United States for an Order directing the return of \$3,166,184 in United States Currency [doc.#42]. The United States represents that in view of this Court's ruling, it is prepared to return the \$3,166,184, which is being held by the United States Marshal, but that it is not sure to whom the money should be returned. The United States requests an Order directing to whom the money should be returned.

¹ On April 5, 1999, the State of Arkansas responded in opposition to AHP's motion [doc.#32]. Thereafter, AHP filed a rebuttal in support of its original motion to reconsider or stay [doc.#33 - filed April 8, 1999], the State of Arkansas filed a supplemental response to AHP's motion to reconsider or stay [doc.#34 - filed May 5, 1999], AHP filed a supplemental memorandum in support of their motion to reconsider or stay [doc.#35 - filed May 7, 1999], AHP filed a second supplemental memorandum in support of their motion to reconsider or stay [doc.#36 - filed May 11, 1999], the State of Arkansas filed a second supplemental response to AHP's motion to reconsider or stay [doc.#37 - filed May 17, 1999], the State of Arkansas filed a supplemental response to AHP's motion to reconsider or to stay [doc.#38 - filed June 4, 1999], and AHP filed a reply to the State of Arkansas's supplemental response to its motion to reconsider or stay [doc.#39 - filed June 16, 1999].

The intervenors State of Arkansas and Brent Davis have responded to the motion of the United States by pointing out that although the AHP may have been the initial seizing agency, the U.S. Currency was forfeited by the Crittenden County Circuit Court's April 24, 1998 order forfeiting the U.S. Currency to the Crittenden County Prosecuting Attorney's Office pursuant to Ark. Code Ann. § 5-64-505. The intervenors argue that there has been no order from the Crittenden County Circuit Court or any other court awarding possession of the U.S. Currency to the AHP, that the monies have been forfeited by court order to the Crittenden County Prosecuting Attorney's office, which is the only state agency with any court ordered authority over the money, and that the money should be returned to the Crittenden County Prosecuting Attorney's Office pursuant to the April 24, 1998 court order.²

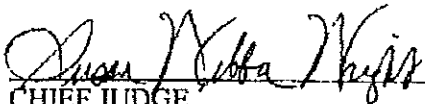
The AHP has filed a reply, arguing that the *res* is not within the registry of this Court, that this Court has determined that it lacks jurisdiction over the *res*, and that this Court therefore lacks jurisdiction to enter an Order affecting the *res*. Any turnover Order, argues AHP, must come from the Crittenden County Circuit Court -- the court purportedly having exclusive jurisdiction -- and that the request of the United States for a turnover Order should accordingly be denied. Alternatively, argues AHP, this Court should order the *res* returned to AHP, which was the entity in possession of the *res* when the *res* was seized by the United States.

As previously noted, this Court has concluded that AHP had not called into doubt Judge Roy's conclusion that the AHP was acting contrary to Arkansas law when the *res* was transferred

² The intervenors also argue that the State of Arkansas is entitled to all interest that has accrued on this money while it was being held by the U.S. Marshal during the pendency of this litigation. As correctly noted by the United States, however, the Court of Appeals for the Eighth Circuit has ruled that interest in cases such as this is not authorized and may not be awarded against the United States. See *United States v. \$7,990.00 in U.S. Currency*, 170 F.3d 843 (8th Cir. 1999), *petition for cert. filed* (Jul. 13, 1999) (No. 99-5489).

to the Drug Enforcement Agency without an order of authorization from the Crittenden County Circuit Court and that the federal court therefore was without jurisdiction over the *res*. See Order of August 2, 1999. Because this Court was and is without jurisdiction over the *res*, the motion of the United States for an Order directing return of the U.S. Currency at issue in this matter is denied. That is a matter for the Crittenden County Circuit Court to resolve.

IT IS SO ORDERED this 23rd day of August 1999.


CHIEF JUDGE
UNITED STATES DISTRICT COURT

THIS DOCUMENT ENTERED ON DOCKET SHEET IN
COMPLIANCE WITH RULE 58 AND/OR 79(a) FRCP
ON 8/24/99 BY VT

F I L E C O P Y

vjt

UNITED STATES DISTRICT COURT
Eastern District of Arkansas
U.S. Post Office & Court House
600 West Capitol, Suite 402
Little Rock, Arkansas 72201-3325

August 24, 1999

* * MAILING CERTIFICATE OF CLERK * *

Re: 4:98-cv-00509.

True and correct copies of the attached were mailed by the clerk to the following:

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cc: press, post

8/24/99

V. Turner

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT
FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

FEB 10 2000

JAMES W. McCORMACK, CLERK

* By: *[Signature]* DEP. CLERK

JAMES W. McCORMACK, CLERK
By: *[Signature]* DEP. CLERK

No. 99-3552EALR

United States of America,

Appellee,

\$3,166,184.00, in United States
Currency,

Appellee,

State of Arkansas; Brent Davis,
Prosecuting Attorney for the
Second Judicial District,

Appellees,

vs.

Arkansas State Highway &
Transportation Department; Arkansas
Highway Police, a Division of the
Arkansas State Highway &
Transportation Department,

Appellants.

JUDGMENT

Appellants' motion to dismiss the appeal is granted. The appeal is hereby dismissed in accordance with the Federal Rules of Appellate Procedure 42(b).

Appellee's motion to dismiss the appeal is dismissed as moot.

(5361-010199)

December 15, 1999

A true copy.

Attest:

Michael E. Gans

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

MANDATE ISSUED

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Arkansas Highway Police v. Crittenden County Prosecuting Attorney's Office;
Brent Davis, Prosecuting Attorney for the Second

Judicial District; and State of Arkansas, Nominal Plaintiff Below

98-957 ____ S.W.2d ____

Supreme Court of Arkansas

Opinion delivered March 18, 1999

1. Appeal & error -- standing -- general rule. -- The general rule regarding standing is that an appellate court cannot act upon an appeal taken by one not a party to the action below; under Arkansas rules, party status is generally obtained by initiating an action through filing a complaint or responding to a complaint by answer; it is also possible to become a party by intervention under Ark. R. Civ. P. 24 or by joinder under Ark. R. Civ. P. 19.

2. Appeal & error -- standing -- means by which nonparty may gain to pursue review of trial court's orders. -- The supreme court has recognized two circumstances in which a nonparty may gain standing to pursue appellate review of a trial court's orders: the first occurs when a nonparty seeks relief under Ark. R. Civ. P. 60(k), which provides that an independent action may be filed to relieve a person from judgment who was not actually served with process; the second circumstance is the unique set of facts where any appellant, though not a party, has a pecuniary interest affected by the court's disposition of the matter below; the court has long recognized an exception to the general rule for one pecuniarily affected by a judgment.

3. Appeal & error -- standing -- appellant had pecuniary interest & thus standing to bring appeal. -- Where the "seizing law enforcement agency," as that term was used in Ark. Code Ann. ? 5-64-505 (Repl. 1997), was appellant state highway police; where it was undisputed that appellant, for its role in the seizure, was entitled to some portion of the res pursuant to Ark. Code Ann. ? 5-64-505(k)(2)(iii); and where the amount would be affected by pending litigation in the supreme court and in federal court, the supreme court held that appellant had a pecuniary interest affected by the court's action and, therefore, standing to bring the appeal.

4. Criminal law -- forfeiture -- initial jurisdiction of res vested in circuit court of county where seized. -- The Arkansas forfeiture statute, Ark. Code Ann. ? 5-64-505, vests initial jurisdiction of the res in the circuit court of the county where it was seized; any subsequent transfer of the res requires a circuit court order.

5. Criminal law -- forfeiture -- finding that prosecutor's office was seizing law enforcement agency reversed -- circuit court's attempted exercise of jurisdiction over seized property affirmed. -- Arkansas Code Annotated section 5-64-505(d) vests authority for disposition of seized property in the circuit court; absent an order of the appropriate circuit court, transfer of seized property by the seizing law enforcement agency is invalid; although the supreme court reversed the trial court's finding that appellee prosecutor's office was the seizing law enforcement agency, it affirmed the court's attempted exercise of jurisdiction over the seized property pursuant to ? 5-64-505.

Appeal from Crittenden Circuit Court; David Burnett, Judge; affirmed as modified.

Robert L. Wilson, Chief Counsel; and Lawrence W. Jackson, William L. Wharton, and Calvin R. Gibson, Staff Attorneys, for appellant.

Mark Pryor, Att'y Gen., by: Kelly K. Hill, Deputy Att'y Gen., for appellees.

Lavenski R. Smith, Justice.

This is an appeal from the Circuit Court of Crittenden County and involves the seizure and forfeiture of over \$3.1 million found in the course of a random search of a tractor-trailer truck on an Arkansas highway. The litigation is a dispute between state and local authorities over the proper jurisdiction for forfeiture proceedings. The case requires a first-impression interpretation of Ark. Code Ann. ? 5-64-505 (Repl. 1997). We affirm in part and reverse in part.

At approximately 8 p.m. on March 7, 1998, Roberto V. Zamarripa, a truck driver, stopped at the Lehi Weigh Station on Interstate 40 in Crittenden County for a routine check by the Arkansas Highway Police ("AHP"). Upon entering the cab and sleeper section of the truck, Officer J.R. Smith ("Smith"), the searching officer, discovered alcohol, multiple log books with entry violations, and several suitcases. When Officer Smith opened the suitcases, he discovered the currency, later determined to be in the amount of \$3,166,199. AHP immediately notified its headquarters, which contacted Ray Davis ("Davis"), the liaison officer for the Little Rock office of the Drug Enforcement Agency ("DEA"). Davis "adopted" the seizure pursuant to federal forfeiture law sometime between 8:30 p.m. to 10 p.m. and agreed with the AHP that the DEA would process the money.

At approximately 10:20 p.m. to 10:30 p.m., Deputy Prosecuting Attorney James C. Hale, Jr. ("Hale Jr.") arrived on the scene with his son, James C. Hale, III ("Hale III") (collectively referred to as "the Hales"), who handles the contract with Crittenden County to pursue state forfeiture actions. The Hales arranged for the funds to be kept in a Marion bank overnight. The Hales directed AHP on proper preservation and chain-of-custody concerns regarding the seized contraband. After giving these directions, the Hales left the scene and AHP transported the money and deposited it in the Marion bank that night. The following day, a Sunday, bank employees counted the money under the supervision of AHP. AHP also conducted "shake tests" on the money to determine if drugs were present on the money.

The procedural facts are somewhat complicated. On Monday, March 9, 1998, Hale Jr. filed a notice of seizure of forfeiture against Zamarripa, the truck driver, for an "uncontested" forfeiture proceeding in Crittenden County Circuit Court. At approximately the same time, AHP retrieved the money from the bank in Marion and transported it to Little Rock to place in AHP's vault. A dispute exists regarding whether Hale Jr. authorized the transportation and deposit of the funds in Little Rock. AHP contends that Hale Jr. authorized this action in anticipation of the DEA taking over the seizure action. The Hales contend that no such permission was given.

Sometime between March 10, 1998, and March 16, 1998, the DEA took physical custody of the money, completing its paperwork confirming the initiation of DEA proceedings by March 16, 1998. During that time, Hale Jr. filed a second notice of seizure of forfeiture against the owner of the tractor-trailer rig, Omar Saenz, on March 11, 1998.

On March 18, 1998, the Crittenden County Circuit Court entered an ex parte order based on a motion filed by the Hales. At that time, no civil or criminal drug forfeiture case was pending in federal or state court, save for the notices of seizure of forfeiture filed against Zamarripa and Saenz in the Crittenden County Circuit Court. The ex parte order directed AHP to deposit the money in a bank to be wired to the Crittenden County Prosecuting Attorney's drug-asset account. The order also stated that the currency had been seized by AHP at the weigh station on March 8, 1998.

AHP filed a motion to vacate the order on March 20, 1998, contending that it was without notice, service, written motion, or verified pleading or affidavit as required by Ark. R. Civ. P. 65. The Hales, on behalf of the State of Arkansas, filed their complaint for forfeiture as a civil in rem action against the money, along with a notice of pending forfeiture on that same day. AHP and the United States were not joined as parties, nor did either intervene as parties to the civil in rem action. Thereafter, on March 20 and March 24, 1998, the circuit court entered agreed orders of forfeiture against Zamarripa and Saenz of which AHP had no knowledge.

AHP next filed on March 27, 1998, a motion to dismiss based on lack of jurisdiction, lack of service, lack of necessary parties, and pendency of another action or, in the alternative, an amended motion to vacate the March 18, 1998, ex parte order as that order relates to AHP. The circuit court denied AHP's motion to dismiss on May 8, 1998, finding that it had jurisdiction over the property and that AHP became a party when it filed motions and presented evidence. The circuit court ruled, however, that AHP had no standing to challenge the order and that, despite its previous statement in the March 18, 1998, ex parte order, the Crittenden County Prosecuting Attorney, and not the AHP, was the "seizing law enforcement agent" that first seized the money. The circuit court also found that AHP no longer held the money and, therefore, could not comply with the court's March 18, 1998, ex parte order directing AHP to turn over the money to the Crittenden County Prosecuting Attorney. The circuit court failed to rule on AHP's motion to vacate. On May 18, 1998, AHP responded to the May 8, 1998, ruling with a motion to reconsider its motion to dismiss and motion to vacate which it claimed it filed pursuant to ARK. R. CIV.PR. 12, and asked for specific findings of fact and conclusions of law. AHP also filed its first notice of appeal from the previous orders issued by the circuit court.

On June 24, 1998, AHP filed a second notice of appeal including an appeal from the previous orders and from the denial of its motion to reconsider. The circuit court did not rule on the reconsideration request. Apparently in response, the circuit court entered a judgment on July 16, 1998, finding that AHP was not a party as previously stated in its May 8, 1998, and that AHP did not have standing to object to the circuit court proceedings. The circuit court did not rule on AHP's motions, but made findings of fact and conclusions of law regarding the proceedings in this matter. AHP filed a third notice of appeal on July 22, 1998, again appealing from the previous orders entered by the circuit court.

The United States filed a complaint of judicial forfeiture in the United States District Court for the Eastern District of Arkansas on July 27, 1998, in response to a submission of claim of ownership to the money filed by the Crittenden County Deputy Prosecutor on June 2, 1998. The complaint of judicial forfeiture is now pending as United States v. \$3,166,199, No. 98 CV-509.

In addition to its appeal from the orders of the circuit court, AHP also filed a petition for writ of certiorari or, alternatively, for prohibition and/or mandamus to the Crittenden County Circuit Court and a request for temporary relief on August 5, 1998. These petitions were denied without prejudice by this Court on September 10, 1998. Shortly thereafter on September 23, 1998, the Arkansas Attorney General's office filed a motion to dismiss the appeal filed by AHP, arguing that AHP was not a party below and, therefore, has no standing to appeal.

Standing

The threshold issue for this appeal is Arkansas Highway Police's standing to object to the trial court's actions on appeal in that they were not a party to the proceedings below. The general rule regarding standing is that an appellate court cannot act upon an appeal taken by one not a party to the action below. In the Matter of Allen, 304 Ark. 222, 800 S.W.2d 715 (1990); Arkansas Dep't of Human Svcs v. Bailey, 318 Ark. 374, 855 S.W.2d 677 (1994); Quattlebaum and CBM, Inc. v. Gray, 252 Ark. 610, 480 S.W.2d 339 (1972). Under our rules party status is generally obtained by initiating an action through filing a complaint or responding to a complaint by answer. It is also possible to become a party by intervention under Rule 24 or by joinder under Rule 19. In the instant case, none of these events is in evidence and therefore, ordinarily, AHP would not have standing to bring this appeal. However, we have recognized two other circumstances in which a nonparty may gain standing to pursue appellate review of a trial court's orders. The first occurs when a nonparty seeks relief under Rule 60(k), which provides that an independent action may be filed to relieve a person from judgment who was not actually served with process. Arkansas Dep't of Human Services v. Bailey, 318 Ark. 374, 855 S.W.2d 677 (1994). AHP has not sought such relief so it is inapplicable. The other circumstance is the unique set of facts where any appellant, though not a party, has a pecuniary interest affected by the court's disposition of the matter below. In Allen, supra, this court noted that it has long recognized an exception to the general rule for one pecuniarily affected by a judgment. Arkansas State Hwy. Comm'n v. Perrin, 240 Ark. 302, 399 S.W.2d 287 (1996).

We disagree with the trial court's determination that the "seizing law enforcement agency" was the Crittenden County Prosecuting Attorney's Office. Clearly, the AHP was the seizing law enforcement agency as that term is used in Ark. Code Ann. ? 5-64-505 (Repl. 1997). Though not specifically defined in the statute, it is apparent from the context that police rather than prosecutors are contemplated by the term. It is undisputed that AHP, for its role in the seizure, is entitled to some portion of the res pursuant to Ark. Code Ann. ? 5-64-505(k)(2)(iii). The amount will be impacted by pending litigation in this court and in federal court. We hold, therefore, that AHP has a pecuniary interest affected by the court's action and therefore has standing to bring this appeal.

Statutory Construction

On the merits, the crucial issue before this court is the interpretation of our forfeiture statute, ? 5-64-505. AHP'S first and most critical point on appeal concerns whether AHP's seizure of the res on the night of March 7, 1998, and subsequent DEA adoption resulted in a federal seizure or state seizure. AHP contends it resulted in a federal seizure, relying upon the Eighth Circuit federal cases of Madewell v. Downs, 68 F.3d 1030 (8th Cir. 1995) and U.S. v. \$12,390.00, 956 F.2d 801 (8th Cir. 1992). The appellee, on the other hand, contends that due to the "turnover" nature of our statute, a state seizure

occurred and that the money remains under the jurisdiction of the circuit court. Appellees cite Seventh and Fifth Circuit cases for authority that the nature of the state statute is determinative. We agree with appellees and hold that our statute vests initial jurisdiction of the res in the circuit court of the county where seized. Any subsequent transfer of the res requires a circuit court order.

In *Madewell*, the Missouri State Highway Police seized \$9,400 in cash incident to an arrest for drug-related charges. The defendant sought return of the currency in state court but before the state court ruled Missouri State Highway Police's seizure was adopted by the DEA. The Missouri State Highway Police delivered the money in the form of two cashier's checks to the DEA without any order from the court. The claimant sued in federal district court seeking return of the money, but the court held adversely to him finding that a valid federal adoption occurred. Upon review, the Eighth Circuit held the adoption effective and that it had the same effect as if the federal agency had originally seized the property on the date the local authority seized it. *Id.* at 1039. The court determined that the Missouri law in effect at the time of the seizure did not require a court order before the property could be turned over to federal authority. The court did note that Missouri subsequently enacted a "turnover" statute with specific language vesting jurisdiction of the seized property in state court.

AHP also strongly relies on \$12,390.00, which held that a voluntary transfer from state authorities to federal authorities before institution of state court proceedings allowed the federal agency to have control of the property for purposes of forfeiture. In \$12,390.00, a federal agent adopted the seizure immediately with consent of the state authorities. *Id.* State court proceedings were filed by the claimant but subsequent to initiation of federal administrative forfeiture proceedings. This case, like *Madewell*, was decided in Missouri prior to enactment of a "turnover" statute.

Appellee responds to the above cases by citing Fifth and Seventh Circuit federal cases that it contends are more apposite to the instant facts because of relevant Arkansas law. The State cites *United States v. One 1979 Chevrolet C-20 Van*, 924 F.2d 120 (7th Cir. 1991). In that case, local authorities in Illinois seized a van incident to an investigation of suspected drunk driving. An inventory search of the van had revealed a significant quantity of marijuana under the driver's seat. Subsequently, the local authorities requested the Federal Bureau of Investigation to "adopt" the seizure which they did by initiating administrative forfeiture proceedings. Pursuant to applicable state law, the State of Illinois filed a complaint in state court for forfeiture of the van. Approximately one month later, the FBI filed a forfeiture action in federal district court. An Illinois federal district court upheld the adopted seizure by federal authorities but the Seventh Circuit Court of Appeals reversed. It stated, "A local police department may not take seized property and just pass it on as it pleases to the FBI in flagrant disregard of state laws mandating judicial authority for such turnovers." *Id.* at 122. The court followed its own precedent and invalidated the federal adoption where a state statute put control of the res in state court and state court proceedings had commenced prior to federal court proceedings. The court stated, "If the federal authorities wanted the van, they were bound to seek a turnover order from the circuit court of the county in which the van was seized." *Id.*, at 123. *United States v. \$79,123.49 in U.S. Cash and Currency*, 830 F.2d 94 (7th Cir. 1987). The Fifth Circuit has also recognized that under a state "turnover" statute, it is the seizure by a state agency and not the institution of a formal proceeding which exclusively vests jurisdiction in the state court. See *Scarabin v. Drug Enforcement Administration*, 966 F.2d 989 (5th Cir. 1992).

Interestingly, the Illinois statute in One 1979 Chevrolet C-20 Van is almost identical to Arkansas' forfeiture provision found at Ark. Code Ann. ? 5-64-505.1 Our statute provides in pertinent part:

(d) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the director or seizing law enforcement agency subject only to the orders and decrees of the circuit court having jurisdiction over the property seized.

(Emphasis added.)

This statute vests authority for disposition of seized property in the circuit court. We find the holdings and rationale of the Seventh and Fifth Circuits persuasive. Although not binding on this Court, those decisions offer compelling reasoning for our holding that absent an order of the appropriate circuit court, transfer of seized property by the seizing law enforcement agency is invalid. While we disagree with and reverse the trial court's finding that the Crittenden County Prosecutor's Office was the seizing law enforcement agency, we affirm the court's attempted exercise of jurisdiction over the seized property pursuant to ? 5-64-505. Appellant raises many issues on appeal but these issues are essentially resolved by our interpretation of ? 5-64-505 to be a "turnover" statute. Accordingly, we affirm the trial court in part and reverse it in part.

Affirmed as modified.