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**TIMBER THIEVES PREY ON RURAL, TREE-RICH LAND
KY. 'TEST CASE' COULD ENCOURAGE MORE VICTIMS TO PROSECUTE
ILLEGAL LOGGING**

Author: Beth Musgrave, Herald-Leader Staff Writer
WHITESBURG -- They had been robbed.

Dean and Nina Cornett returned to Blackey in the fall of 2003 from their home in Alaska and found that more than 100 trees worth several thousand dollars had been stolen from property that had been in Dean Cornett's family for 75 years.

But unlike in other cases of theft, such as a stolen car, no one seemed to take the theft seriously. The county attorney said it was a civil issue -- get a lawyer and sue. But Letcher County Sheriff Danny Webb did take it seriously and pushed for prosecution. A criminal trial against the loggers accused of taking the Cornetts' trees is set for next month.

It is one of the rare criminal cases against a logger in Eastern Kentucky, and Webb calls it a test case: Can timber theft be successfully prosecuted?

Timber is big business in Kentucky, generating more than \$4.5 billion in revenue a year. But theft, especially when timber prices are up, is also booming. A 2003 Virginia Tech University study showed that landowners lose more than \$4 million to dodgy loggers in the poor but hardwood-rich Appalachian states. South Carolina forestry experts estimate that about \$10 million is lost in that state alone. Regional experts estimate the amount lost nationally is more than \$160 million. But because timber theft is rarely reported, those numbers are likely low.

Tree theft is a growing problem in large part because few rogue loggers are caught and even fewer are prosecuted. Without the threat of possible jail time or a big money judgment against them, timber thieves operate unchecked, police and experts say. A single hardwood tree can be worth up to \$1,000. That's too tempting for some loggers. Legitimate loggers split the proceeds from the sale of timber with a landowner. But if the logs are stolen, the logger pockets the profits.

The Cornetts have spent more than \$50,000 pursuing criminal and civil cases against the loggers. They may never get that money back or see a conviction. But it's still a good investment, they say.

"For many people here, the only real wealth they have is their land," said Nina Cornett.

"The mining companies own the mineral rights, and the only thing people own is what's on the surface -- the timber."

Does it pay to prosecute?

Timber theft is difficult to prosecute because of a variety of factors, say police, victims and experts. Many prosecutors are reluctant to pursue cases if there are questions about property boundaries. And in Eastern Kentucky, property boundaries are often suspect as many older deeds were written without surveys. Few have the money or the resources to hire a lawyer, pay thousands of dollars for a survey or hire an expert to place a value on the timber lost.

Buford Caudill, who lives in rural Letcher County, was alerted by his brother that loggers were working near his land several years ago.

"I had a logger friend of mine said it was between \$1,200 and \$1,800 of trees stolen. And that was on a bad day when the prices were down," Caudill said. He went to the county attorney with his case but was told that he should file a civil lawsuit. But Caudill, like so many others, decided it wasn't worth it.

"My lawyer don't work for free," Caudill said. "You've got to ask yourself: Do you want to put \$5,000 into a lawsuit when you may or may not get that money back from a logger?"

Sometimes the mountains themselves act as accomplices, hiding rogue logging from prying eyes.

Tom Collins, a retired teacher, was fortunate. Someone saw loggers on his wife's family land in a remote section of Breathitt County. Because the land is so far from a road or a house, it may have been years before it was discovered, Collins said. When confronted, the logger said he had been logging adjacent land and was told incorrectly where the property line was. The Collins family decided to sue; the trees logged were worth more than \$50,000, Collins said. After almost four years, the case is going to trial in September. Collins' wife died last year.

"I promised her we would see this through," Collins said.

Doris Adams, who lives outside Blackey, has had to chase rogue loggers from her land. Elderly and absentee landowners are the most common victims of timber theft, Adams and others said.

"I couldn't even tell you how many people I know who have had their trees stolen," said Adams, who has lived in Letcher County most of her life. Adams and others in Eastern Kentucky said the "wildcat logging" has been going on for decades. Adams' mother had more than 10 acres of trees cut from her Letcher County land without her consent more than 40 years ago. When timber prices go up, theft increases, Adams said.

Going after the thieves

Timber theft is a problem throughout the mid-Atlantic states. Some states have tried to tinker with laws to make it easier for people to get civil or criminal cases into court. Even with stiffer laws, landowners in most states have to persuade a sheriff or police officer to investigate.

"It's still very difficult to prosecute timber theft in Virginia," said Ed Stoots, a regional forester with the Virginia Department of Forestry. "It still falls on local sheriff's offices to investigate these cases. The first thing they're going to ask you is, 'What murder case or drug case do you want me to drop to look into this?'"

Stoots and others say South Carolina, which uses forestry officers to investigate timber theft, is the model. In the early 1990s, South Carolina Commission of Forestry law enforcement officers began investigating timber theft and timber fraud. The officers were successful in pushing for criminal indictments on several cases that were well publicized. Each time a news report about a timber conviction appeared, the phones at the forestry commission would start ringing, said Ken Cabe, a spokesman for the South Carolina agency.

"We'd sometimes get 30 calls after a story aired," Cabe said. Many people were embarrassed that someone had stolen so much property from right under their noses, Cabe said. "The phone calls would start out like this 'I don't know if I should even mention this but ...'"

The crackdown worked. At one time, forestry agents were investigating more than 250 cases of timber theft or fraud a year. That number is down to less than 200, Cabe said.

Kentucky has made attempts to rein in timber theft. In 1994, the legislature passed a timber trespass law. If a logger does not notify adjacent landowners that he is cutting trees adjacent to their property and then crosses boundary lines, a landowner can sue for three times the damages.

Bob Bauer, president of the Kentucky Forest Industries Association, said he has heard of many cases where loggers have made honest mistakes. Property lines are often undefined ridge lines in Eastern Kentucky, making boundaries difficult to see.

Bauer said it's a small number of the 30,000 Kentucky forestry workers who give the industry a bad name. Legitimate loggers want to see bad loggers stopped more than anyone, Bauer said.

"I don't know if there's a legislative solution," Bauer said. "Until someone prosecutes them, they're going to continue to do it."

A trail of timber cuttings

Jarrod Breeding, the man accused of cutting the Cornetts' trees, has strenuously denied he did anything wrong. He has filed a counter-claim against the Cornetts, saying that the couple's accusations have caused him to lose business.

This is not the first time that Breeding has been accused of stealing trees.

In 2000, Jeanette Adams said Breeding, who was contracted to cut trees on adjacent land, cut through a fence to get to her trees. Breeding, in court documents, said the illegal logging took place before he started the job. Adams and Breeding eventually settled for an undisclosed amount. Adams declined to comment on the case. Gene Smallwood, a lawyer who represents Breeding, said there was no proof that it was Breeding who had cut her timber, and the settlement was not an admission of guilt.

In 2002, Sonny Frazier, a banker, also sued Breeding alleging that he and his crew had illegally harvested timber from the Frazier family's land. After more than three years, that case was settled for an undisclosed amount.

Breeding was logging on land near the Cornetts' property in Letcher County in September 2003 when a neighbor saw the logging operation and notified the Cornetts. They found a mess. A timber expert said more than 109 trees had been cut, but there could have been more. Sheriff Webb presented evidence to a grand jury, and Breeding and two other members of his crew were indicted. The Cornetts have also sued Breeding and others

connected to the case.

The civil lawsuit and criminal case have been contentious, with allegations of harassment and wrong-doing on both sides. The trial has been delayed five different times by Breeding's lawyers. A trial is set for April 16. Smallwood has said that his client is not guilty of any criminal wrongdoing.

But the Cornetts will likely stay involved with timber theft issues in the years to come. They started a non-profit organization several years ago and are now dedicating those resources to help people prosecute timber theft.

"For us, it's not just the cost of the tree," Nina Cornett said. Many Eastern Kentucky mountains are now bald -- victims of logging and strip mining. The Cornetts want to turn their land into a conservation area and donate it to Berea College.

"We lost a 42-inch red oak that was here since this country was formed," Nina Cornett said. "We don't want the money, we want the tree."

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Tips for landowners

- * Establish and clearly mark boundary lines to your property.
- * Form a cooperative watch with neighbors to regularly check hard-to-reach areas.
- * If you don't live on the land, visit or ask someone to check the property regularly.

SOURCE: THE SOUTH CAROLINA FORESTRY COMMISSION

Timber facts

- * There are 11.9 million acres of forestland in Kentucky; about 47 percent of Kentucky land is forested.
- * Kentucky ranks third in the country in hardwood production.
- * More than \$4.5 billion of revenue is generated annually from the wood industry.
- * The top three species of lumber produced in Kentucky are white oak, yellow poplar and red oak.

SOURCE: KENTUCKY DIVISION OF FORESTRY

Theft facts

- * The amount of money landowners lose each year to timber theft is difficult to gauge because it is thought to be one of the most under-reported and underprosecuted crimes in

the country.

* A Virginia Tech University study in 2003 estimated that in Appalachian mountain states, more than \$4 million in timber is stolen each year.

* Nationally, it is estimated that more than \$160 million in timber is stolen.

* In South Carolina, one of the few states where timber theft is investigated by the state forestry commission, it is estimated that timber theft costs landowners \$10 million a year.

* Common victims of timber theft include absentee, elderly and poor landowners, South Carolina forestry law enforcement investigators have found.

Caption:

by MARK CORNELISON , STAFF - Dean and Nina Cornett had more than 100 trees worth thousands of dollars stolen from their Blackey property. The Cornetts have started a non-profit organization to help victims prosecute timber thieves.

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