

Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2016-2017

2150889

B.A. Little

v.

Erica Gaston

**Appeal from Montgomery Circuit Court
(CV-15-369)**

MOORE, Judge.

B.A. Little, a special agent with the Alabama Law Enforcement Agency, appeals from a summary judgment entered by the Montgomery Circuit Court ("the trial court") ordering

2150889

Little to return to Erica Gaston \$7,050 that Little had seized pursuant to a search warrant issued by the trial court. We affirm the judgment.

Background

On May 18, 2015, Little signed an affidavit before the trial court in support of an application for a search warrant. In that affidavit, Little attested that he had been employed for the preceding seven years as a special agent for the Alabama State Law Enforcement Agency and that he was currently assigned to the State Bureau of Investigation, serving as a duly deputized "Task Force Officer" for the federal Drug Enforcement Administration ("DEA"). Little averred that he had obtained various information giving him probable cause to believe, among other things, that certain illegal controlled substances were being stored and sold by a suspect identified as Jamie Williams out of a Montgomery residence owned by Gaston. Based on that affidavit, the trial court issued a search warrant providing:

"TO ANY SHERIFF, DEPUTY, AND/OR MUNICIPAL OFFICER OR DULY SWORN LAW ENFORCEMENT OFFICER OF THE STATE:

"THE ATTACHED AFFIDAVIT having been sworn to by Special Agent B.A. Little, before me this day, based upon facts stated therein, probable cause having

2150889

been found, in the name of the People of the State of Alabama, I command that you enter the [Gaston residence]

"... to search for, seize, tabulate and make return according to law the following property and things as set forth in attachment number 1 of this 'NO KNOCK' search warrant and make due return of this warrant and an inventory of all property seized thereunder before me within 10 days as required by law. The Court further finds probable cause to warrant the execution of this 'NO-KNOCK' search warrant at any time of the day or night based on the presence of firearms and drugs at the above described residence.

"ISSUED TO S.A. B. Little, UNDER MY HAND AT 2:20, O'CLOCK P.M., THIS 18th DAY OF MAY 2015."

(Bold typeface, underlining, and capitalization in original.)

Little, along with officers from various local, state, and federal law-enforcement agencies, executed the search warrant on May 20, 2015. In the search, Little discovered assorted United States currency in a plastic bag in Gaston's bedroom, which Gaston identified as the cash proceeds she received from the settlement of a civil lawsuit. Little also discovered additional assorted United States currency in a box in the back bedroom of Gaston's house. Little seized the funds and placed them in a self-sealing envelope furnished to him by the DEA. Little logged the items seized in the search

2150889

on a form issued by the former Alabama Department of Public Safety¹ entitled "Evidence/Property Receipt."

Little took the money to a local bank, which determined that the currency in the box totaled to \$7,050 and that the currency in the plastic bag totaled to \$3,300. Little subsequently replaced the money in the DEA envelope and transported the envelope to the DEA office in Montgomery. Later that day, Little filled out a "Seizure/FIRE form," described by Little as "a document used by the DEA for memorializing a seizure it makes[, which] is filled out any time a DEA agent seizes property of any sort," listing the \$7,050 seized from the Gaston home. The DEA later voluntarily returned the \$3,300 to Gaston.

On June 10, 2015, Gaston filed a complaint against Little requesting the return of the currency seized from her home, which she alleged totaled to \$21,000. Little moved the trial court to dismiss the action, arguing, among other things, that the trial court lacked in rem jurisdiction. On December 30, 2015, before the trial court issued a ruling on the motion to

¹The former Alabama Department of Public Safety is now a part of the Alabama State Law Enforcement Agency. See § 41-27-1, Ala. Code 1975.

2150889

dismiss, the United States of America filed a forfeiture action in the United States District Court for the Middle District of Alabama ("the federal court"). See United States v. \$7,050.00 In United States Currency (No. 2:15CV958, Aug. 10, 2016) (M.D. Ala. 2016) (not reported in F. Supp. 3d). On January 5, 2016, the federal court issued a seizure warrant for the currency at issue, which United States marshals executed on January 8, 2016.

The trial court entered an order on February 24, 2016, denying Little's motion to dismiss, which the trial court later amended on February 29, 2016. Little filed a petition for a writ of mandamus with this court, requesting that this court order the trial court to dismiss Gaston's complaint due to that court's alleged lack of in rem jurisdiction; that petition was summarily denied on May 6, 2016. See Ex parte Little (No. 2150509, May 6, 2016), ___ So. 3d ___ (Ala. Civ. App. 2016) (table).

Both Little and Gaston filed summary-judgment motions in which they agreed that the amount in controversy was \$7,050. On June 28, 2016, the trial court entered a judgment granting the motion for a summary judgment filed by Gaston and denying

2150889

the motion for a summary judgment filed by Little. The judgment orders that Gaston is entitled to a return of the \$7,050 seized by Little. On July 28, 2016, Little filed a notice of appeal. Meanwhile, Gaston moved the federal court to dismiss the federal forfeiture action based on that court's lack of in rem jurisdiction; the federal court denied her motion on August 10, 2016. See United States v. \$7,050.00 In United States Currency, supra.

Discussion

In its final judgment, the trial court determined that, pursuant to Alabama state law, it had exclusive in rem jurisdiction over the \$7,050 seized by Little and that Gaston was entitled to a return of those funds because no state forfeiture proceedings had been promptly commenced as required by Ala. Code 1975, § 20-2-93(c). See State v. Chesson, 948 So. 2d 566 (Ala. Civ. App. 2006) (holding that failure to "promptly" commence state forfeiture proceedings requires return of items seized). On appeal, Little argues solely that the trial court erred in its jurisdictional analysis. The record reveals that the material facts on the question of in rem jurisdiction have never been in dispute; thus, we review

2150889

the determination of the trial court de novo. See Gray v. City of Opelika, [Ms. 2140658, Nov. 6, 2015] ___ So. 3d ___, ___ (Ala. Civ. App. 2016).

"In rem jurisdiction" refers to the "court's power to adjudicate the rights to a given piece of property, including the power to seize and hold it." Black's Law Dictionary 982 (10th ed. 2014). A court obtains in rem jurisdiction when it validly seizes property so that it is brought within the control of the court. Republic Nat'l Bank of Miami v. United States, 506 U.S. 80, 85 (1992). Judicial control of the res may be either actual or constructive. Id. at 87. "[T]hat court which first acquires [in rem] jurisdiction draws to itself the exclusive authority to control and dispose of the res." Ex parte Consolidated Graphite Corp., 221 Ala. 394, 397-98, 129 So. 262, 265 (1930).

Under Ala. Code 1975, § 20-2-93(b), property used to further the unlawful sale of controlled substances "may be seized by state, county or municipal law enforcement agencies upon process issued by any court having jurisdiction over the property." In this case, Little seized the currency in controversy based on a search warrant issued by the trial

2150889

court, which had jurisdiction over Gaston's house and its contents. The trial court derived its authority to issue that search warrant from Ala. Code 1975, §§ 15-5-2(2) and (3), which provides that a court with probable cause, see Ala. Code 1975, § 15-5-3 and § 15-5-5, may order a search and seizure when

"(2) [the property to be seized] was used as the means of committing a felony; or

"(3) [the property to be seized] is in the possession of any person with the intent to use it as a means of committing a public offense or in the possession of another to whom he may have delivered it for the purpose of concealing it or preventing its discovery."

Based on the contents of the affidavit signed by Little, the trial court could have issued the search warrant under either § 15-5-2(2) or § 15-5-2(3), or both.

Section 15-5-7, Ala. Code 1975, requires that a search warrant "be executed by any one of the officers to whom it is directed, but by no other person except in aid of such officer at his request, he being present and acting in its execution." Rule 3.10, Ala. R. Crim. P., provides that "[t]he search warrant shall be directed to and served by a law enforcement

2150889

officer, as defined by Rule 1.4(p) [, Ala. R. Crim. P.]." Rule 1.4(p) defines "law enforcement officer" as

"an officer, employee or agent of the State of Alabama or any political subdivision thereof who is required by law to:

"(i) Maintain public order;

"(ii) Make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses; and

"(iii) Investigate the commission or suspected commission of offenses."

In this case, the trial court addressed the search warrant to "any sheriff, deputy, and/or municipal officer or duly sworn law enforcement officer of the state." The trial court specifically issued the search warrant to Little, having been informed that Little was, in fact, a special agent for the Alabama State Law Enforcement Agency assigned to the State Bureau of Investigation. We presume that the trial court followed the law by issuing the search warrant to Little in that capacity and not in his other capacity as a deputized federal DEA agent, which would have been beyond the trial court's authority. See generally Ex parte Slaton, 680 So. 2d 909, 924 (Ala. 1996) (holding that trial courts are "presumed to know the law and to follow it in making their decisions").

2150889

Although Little alleges in conclusory fashion that he executed the search warrant as a federal DEA agent, the foregoing authority belies that contention.

For the foregoing reasons, we determine that the currency was validly seized by the trial court. We now turn to the question whether the trial court controlled the property seized in accordance with its search warrant.

Generally speaking, "[w]hen the property is taken under a search warrant, it shall be delivered to the court issuing the warrant." Ala. Code 1975, § 15-5-14. However, when a search warrant is issued under §§ 15-5-2(2) and (3), "the officer effecting the warrant must retain the property in his possession, subject to the order of the court to which he is required to return the proceedings or of the court in which the offense is triable in respect to which the property was taken." § 15-5-14. In Republic National Bank of Miami v. United States, supra, the United States Supreme Court recognized that, even if a court does not have actual possession of the res, a court may nevertheless constructively control the res even "if its direction had been nothing more than to hold the property subject to the order of the court,

2150889

and to give notice.'" 506 U.S. at 88 (quoting Miller v. United States, 78 U.S. (11 Wall.) 268, 294-95 (1871)).

In the search warrant, the trial court did not expressly direct Little to retain possession of the currency, "subject to its further orders." The trial court ordered Little only to return the warrant "with an inventory of the property seized." Nevertheless, § 15-5-14 uses unambiguous terms, mandatory and imperative in nature, meaning that the statute is compulsory and must always be followed without discretion. See Ex parte Prudential Ins. Co. of Am., 721 So. 2d 1135, 1138 (Ala. 1998). Therefore, by operation of law, any search warrant issued pursuant to §§ 15-5-2(2) and (3) impliedly commands that the law-enforcement officer who seizes the property shall retain possession of the property subject to the further orders of the court issuing the search warrant. Accordingly, a court issuing a search warrant under §§ 15-5-2(2) and (3) assumes constructive control over the seized property, which it retains until it orders otherwise.

In this case, Little, as the state law-enforcement officer who executed the search warrant, was under an imperative duty to retain possession of the currency until

2150889

ordered otherwise by the trial court. Therefore, the trial court effectively controlled the currency from the time Little validly seized it in accordance with the terms of the search warrant. As such, the in rem jurisdiction of the trial court attached upon the moment of seizure. As the first court to obtain in rem jurisdiction, the trial court had the exclusive power to dispose of the res, and the federal government could not exercise any jurisdiction over the currency.² Therefore, we hold that the trial court ruled correctly when deciding that it had in rem jurisdiction over the \$7,050.

Our holding does not conflict with Green v. City of Montgomery, 55 So. 3d 256 (Ala. Civ. App. 2009). In Green, Montgomery police officers seized marijuana and \$32,353 in cash from three individuals ("the claimants") during a warrantless traffic stop. On the same day as the seizure, the City of Montgomery ("the City") transferred the seized currency to the DEA and requested that the DEA "adopt" the seizure pursuant to 21 U.S.C. § 881(e)(1)(A). 55 So. 3d at

²We note that we reached a similar conclusion in Alexander v. City of Birmingham, 99 So. 3d 1251 (Ala. Civ. App. 2012), which was later overruled by Payne v. City of Decatur, 141 So. 3d 500 (Ala. Civ. App. 2013), for reasons inapplicable to this case.

2150889

258. Approximately three weeks later, while the United States Department of the Treasury was reviewing the request, the claimants filed a state-court action seeking the return of the currency. The City filed a summary-judgment motion asserting that the state court no longer had jurisdiction over the seized currency. Subsequently, the federal government instituted forfeiture proceedings in federal court resulting in a judgment of forfeiture. The state court then entered a summary judgment against the claimants in the state-court action. On appeal, this court reversed the judgment. This court determined, among other things, that the police officers had properly seized the currency without process under Ala. Code 1975, § 20-2-93(b), and that the City could lawfully transfer the funds to the DEA under that statute. This court further held that "federal jurisdiction begins the moment the res is controlled by federal agents." 55 So. 3d at 263. Construing 21 U.S.C. § 881(c), this court concluded: "The federal government controls the res when it is 'taken or detained' during a time when no other court has jurisdiction over the res." 55 So. 3d at 264. Because the federal agencies had not assumed control over the currency before the

2150889

state-court action was commenced, at which time the federal government was merely considering the request of the City to adopt the seizure, this court determined that the state court had exclusive in rem jurisdiction.

In Green, we held that nothing in § 20-2-93(b) prohibited police officers from transferring possession of property to the federal government. However, in Green, the property had been seized without a warrant. Thus, we had no occasion to address the effect of § 15-5-14, which requires a state law-enforcement officer seizing property pursuant to a search warrant to retain its possession. Under that provision, Little could not have released the funds to the control of the DEA without an order from the trial court. Although Little actually transported the currency to the Montgomery DEA office, he did not thereby wrest control of the currency from the trial court under § 15-5-14 because, as we held in Green, federal agents cannot take control over property during a time when it is within the in rem jurisdiction of a state court.³

³When federal DEA agents participate in the execution of a state search warrant, the search becomes federal in nature. See United States v. Gilbert, 942 F.2d 1537 (11th Cir. 1991). However, Little has not argued with citation to any legal authority that the participation of other federal agents made the seizure a federal seizure that placed the currency under the control of federal agents. "Rule 28(a)(10) [, Ala. R. App. P.,] requires that arguments in briefs contain discussions of

2150889

In this case, the trial court acquired in rem jurisdiction immediately upon the seizure of the \$7,050; thus, the DEA could not have subsequently "taken or detained" the currency "during a time when no other court has jurisdiction over the res." Green, 55 So. 3d at 264. Moreover, even if Little could have validly transferred possession of the currency to the DEA, this court held in Green that mere possession by federal agents does not amount to control for the purposes of establishing federal in rem jurisdiction. This court also held in Green that, despite its long possession of the \$32,353, the federal government had not taken the proper steps to adopt the seizure so as to control the funds before the state-court action was filed. In this case, Little acknowledges that he never requested that the DEA adopt the seizure before Gaston filed the underlying action.

We acknowledge that, in Green, this court stated that "Alabama law requires a two-step process of possession and then the filing of an in rem court action." 55 So. 3d at 263. However, that statement does not apply to cases involving a seizure by search warrant in which the judicial process

facts and relevant legal authorities that support the party's position. If they do not, the arguments are waived." White Sands Grp., L.L.C. v. PRS II, LLC, 998 So. 2d 1042, 1058 (Ala. 2008).

2150889

precedes possession, a point we did not consider in Green. Accordingly, Green does not detract from our holding that a court acquires in rem jurisdiction at the moment property is validly seized pursuant to a search warrant issued by that court. Because we find Green distinguishable for that reason, as well as the other reasons set out above, we decline any invitation to overrule Green in this case as most cogently urged by the State of Alabama in its amicus brief.

Finally, we acknowledge the order of the federal court in United States v. \$7,050.00 In United States Currency, which held that in rem jurisdiction of the \$7,050 rests in that court. In his appellate brief to this court, Little sets out the reasoning of the federal court, but he does not argue that its decision has any preclusive effect. Compare City of Montgomery v. Vaughn, 138 So. 3d 996 (Ala. Civ. App. 2013) (holding that, where question of in rem jurisdiction had already been decided by federal court, doctrine of collateral estoppel prevented relitigation of that issue in state court). Thus, we consider that argument waived. See White Sands Grp., L.L.C. v. PRS II, LLC, 998 So. 2d 1042, 1058 (Ala. 2008). Furthermore, the federal court based its decision partly on the absence of caselaw from this court supporting Gaston's

2150889

argument that a state court acquires in rem jurisdiction when property is seized pursuant to a search warrant. This case expressly sustains that position and leads us to the same conclusion reached by the trial court, not the conclusion reached by the federal court.

For the foregoing reasons, the judgment of the trial court is affirmed.

AFFIRMED.

Thompson, P.J., and Pittman, Thomas, and Donaldson, JJ.,
concur.