

CASE NUMBER: 1200562

IN THE SUPREME COURT OF ALABAMA

Yamil Aleksander Hare and Jose Sosa,

Appellants/Plaintiffs,

v.

Baldwin County Sheriff's Office, et al

Appellees/Defendants.

**APPEALED FROM THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
CV-2021-900130**

**BRIEF OF APPELLEE /DEFENDANT
BALDWIN COUNTY SHERIFF'S OFFICE**

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STATEMENT REGARDING ORAL ARGUMENT

Oral argument is not requested.

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STATEMENT OF JURISDICTION

The Court has jurisdiction over this appeal pursuant to *Ala. Code* § 12-2-7(1) (1975).

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STATEMENT OF THE CASE

On February 4, 2021, Appellants/Plaintiffs Yamil Alexsander Hare (“Hare”) and Jose Sosa (“Sosa”) filed a “Motion for Return of Money and Personal Property” in the Circuit Court of Baldwin County, Alabama against Officer Stacy McElroy (“Officer McElroy”), the City of Gulf Shores, and the Baldwin County Sheriff’s Office (“BCSO”). (C. 5-7) On March 11, 2021, the BCSO filed a Motion to Dismiss, Memorandum Brief, Affidavit of Chief Deputy Anthony Lowery, and a November 3, 2020, Offense Report in support of its request for dismissal based on the fact (1) the trial court lacked *in rem* jurisdiction over the property, and (2) BCSO was not a legal entity subject to suit. (C. 12-26) Officer McElroy and the City of Gulf Shores also filed a Motion to Dismiss. (C. 33-38) On March 19, 2021, the trial court entered an order setting the case for a bench trial on August 25, 2021. (C. 3)

On March 22, 2021, Hare and Sosa filed a “Memorandum in Opposition to Defendants’ Motion to Dismiss” (“Opposition”) with respect to the Motion to Dismiss filed by the BCSO. (C. 44-58) Attached as Exhibit B to the Opposition was a First Amended Complaint that sought to add Baldwin County Sheriff Huey “Hoss” Mack as a Defendant in the

case and remove Defendant BCSO. (C. 56-58) This pleading was not filed as an Amended Complaint and was not docketed by the clerk of court as an Amended Complaint. (C. 3) Hare and Sosa also failed to seek leave of court to file the Amended Complaint as required by Rule 15(a), Ala. R.Civ. P., which requires a party to seek leave of court to file an amended complaint if the amendment is filed after the first setting of the case for trial.

Hare and Sosa also filed a Motion to Strike the Affidavit of Chief Deputy Lowery which had been submitted by the BCSO. (C. 40-43) This motion was denied by the trial court. (C. 102) On March 29, 2021, the BCSO filed a Motion to Substitute a certified copy of the Offense Report dated November 3, 2020, which was granted by the trial court. (C. 68-78, 99)

On March 30, 2021, the trial court granted the pending Motions to Dismiss filed by the BCSO, Officer McElroy, and the City of Gulf Shores on the ground the trial court lacked *in rem* jurisdiction over the property. (C. 100-101) Hare and Sosa filed a Motion to Alter, Amend, or Vacate Judgment on April 23, 2021. (C. 103-113) The trial court denied the

motion on May 8, 2021. (C. 131) Hare and Sosa timely filed a Notice of Appeal on May 11, 2021. (C. 132)

STATEMENT OF THE ISSUE

The issue before this Court is whether the trial court abused its discretion when it denied the Motion to Alter, Amend, or Vacate filed by Hare and Sosa. This requires the Court to determine whether the trial court's order denying the Motion to Alter, Amend, or Vacate was based on manifest errors of law or fact when it determined that it lacked *in rem* jurisdiction over the property that is the subject of this appeal.

STATEMENT OF THE FACTS

On November 3, 2020, Officer McElroy, a policeman for the City of Gulf Shores, stopped Hare for speeding on Interstate 10 eastbound. (C. 20, ¶ 2; C. 76, ¶ 1) Officer McElroy was assigned to the BCSO Special Operations Unit at that time. (C. 20, ¶ 2; C. 76, ¶ 2) During the stop, Officer McElroy smelled a strong odor of marijuana emanating from the vehicle. (C. 76, ¶ 1; C. 77, ¶ 1) Officer McElroy found approximately one gram of marijuana in the vehicle. (C. 76, ¶ 1; C. 77, ¶ 4) Officer McElroy also found two individual rubber-banded bundles of U.S. currency in the console of the vehicle. (C. 77, ¶ 4) He also located two cellphones in the console of the vehicle. (Id.) Hare was in possession of a total of three cellular phones at the time of the stop. (Id.)

Hare advised Officer McElroy that he was on his way to Orlando, Florida. (C. 77, ¶ 1) Officer McElroy also found evidence in the vehicle that Hare had been to Florida a month earlier in October of 2020. (C. 77, ¶ 4) Officer McElroy also located ten additional individual plastic wrapped bundles of U.S. currency stored in a speaker box underneath the rear seat of the vehicle that ran from the left rear seat to the right rear seat area. (C. 77, ¶¶ 4-5) The method in which the money was rubber-

banded together, the multiple cellular phones, and the fact there was marijuana in the vehicle were all signs indicative of a drug dealer or smuggler. (C. 77, ¶ 4)

Officer McElroy completed an arrest report and deposition against Hare for Possession of Marijuana 2nd Degree. (C. 78) Federal Drug Enforcement Administration (“DEA”) Task Force Officers Daniel Middleton and Andrew Harville arrived on the scene. (Id.; C. 120, ¶ 2) These officers were employed by the BCSO; however, they were also serving as Federal DEA agents on a Federal DEA Task Force. (C. 120, ¶¶ 1-2; C. 78) The following items from Hare’s vehicle were seized and transferred to Officers Middleton and Harville in their capacities as Federal DEA Task Force Officers: Ten plastic wrapped bundles of U.S. currency and two rubber-banded bundles of U.S. currency (total monetary amount \$101,960.00); and three cellphones (hereafter collectively referred to as “Personal Property”). (C. 20, ¶ 2; C. 78; C 120, ¶ 2) The DEA Task Force Officers placed the Personal Property in an evidence vault that same day, November 3, 2020. (C. 120, ¶ 2) This is reflected in the written chain of custody form that shows the placement of the Personal Property in the “RDSO Evidence Locker” on November 3,

2020, by Federal DEA Task Force Officer Daniel Middleton. (C. 127) Thereafter, the currency was taken out of the evidence vault and deposited into First Bank in Foley, Alabama. (C. 120, ¶ 3) Two cashier's checks for the currency were received by Federal DEA Task Force Officer Andrew Harville and deposited into another evidence vault at the Federal DEA resident district satellite office ("RDSO") in Mobile, Alabama. (C. 120-121) This took place on November 20, 2020. (Id.) The cashier's checks were then mailed to the U.S. Marshals Service on November 20, 2020. (Id.)

Hare and Sosa filed a proceeding in the Circuit Court of Baldwin County, Alabama, on February 4, 2021, seeking the return of the Personal Property. (C. 5) The BCSO moved to dismiss the proceeding arguing, in part, that the trial court lack *in rem* jurisdiction, and that the federal court acquired exclusive *in rem* jurisdiction over the Personal Property when the Personal Property was placed in the possession of Federal DEA Task Force Officers Middleton and Harville on November 3, 2020. (C. 14) The BCSO's Motion to Dismiss was granted by the trial court. (C. 100) The trial court determined that it lacked *in rem* jurisdiction over the Personal Property. (C. 100) Hare and Sosa filed a

Motion to Alter, Amend, or Vacate this order. (C. 103) This motion was denied by the trial court. (C. 131) Hare and Sosa filed the present appeal with this Court. (C. 132)

STATEMENT OF THE STANDARD OF REVIEW

Whether to grant relief under Rule 59(e), Ala. R.Civ. P., is within the trial court's discretion. *Bradley v. Town of Argo*, 2 So. 3d 819, 823 (Ala. 2008).

We review the denial of a Rule 59(e) motion to alter or amend judgment for abuse of discretion. *Mays v. U.S. Postal Serv.*, 122 F.3d 43, 46 (11th Cir. 1997) (per curiam). "The only grounds for granting [a Rule 59(e)] motion are *newly-discovered [previously unavailable]* evidence or manifest errors of law or fact." *Kellogg v. Schreiber (In re Kellogg)*, 197 F.3d 1116, 1119 (11th Cir. 1999). Rule 59(e) may not be used to relitigate a claim or to present arguments or evidence that could have been raised prior to the entry of judgment. *Mincey v. Head*, 206 F.3d 1106, 1137 n. 69 (11th Cir. 2000).

Id.

On appeal, the court will affirm the trial court's order if it is correct for any reason supported by the record. *Ex parte Ryals*, 773 So. 2d 1011, 1013 (Ala. 2000); *Smith v. Equifax Servs., Inc.*, 537 So. 2d 463, 465 (Ala. 1988).

SUMMARY OF THE ARGUMENT

Under well-established Alabama law, *in rem* jurisdiction over property may be exercised by only one court at one time. The court that first acquires *in rem* jurisdiction exercises that jurisdiction to the exclusion of all other courts. *Ex parte City of Montgomery*, 275 So. 3d 1154, 1156 (Ala. Civ. App. 2018).

Alabama law recognizes a two-step process before state *in rem* jurisdiction attaches: Possession of the *res*, and the filing of an *in rem* action in state court. *Green v. City of Montgomery*, 55 So. 3d 256, 263 (Ala. Civ. App. 2009). Federal *in rem* jurisdiction, on the other hand, “begins at the moment the *res* is controlled by federal agents,” *id.*, “[s]o long as the state court has not exercised *in rem* jurisdiction...” *Id.* The federal government controls property “when that property is in the ‘actual possession’ of agents of the United States.” *Ruiz v. City of Montgomery*, 200 So. 3d 26, 30 (Ala. Civ. App. 2015), *quoting Green*, 55 So. 3d at 264.

The Personal Property that is the subject of this appeal was transferred to Federal DEA Task Force Officers on November 3, 2020. They stored the Personal Property in an evidence vault on behalf of the

Federal DEA RDSO in Mobile, Alabama. (C. 127) Under Alabama law, this possession by federal agents gave rise to exclusive *in rem* jurisdiction in the federal court as of November 3, 2020. *Green*, 55 So. 3d at 263-64.

Hare and Sosa filed their state court proceeding seeking return of the Personal Property approximately two months later on February 4, 2021. They argue that the state court acquired exclusive *in rem* jurisdiction when they filed their lawsuit on that date because the federal government, pursuant to the doctrine of “adoptive seizure,” had not yet officially adopted the state seizure of the Personal Property. Pursuant to *Green*, however, the federal court acquired *in rem* jurisdiction of the Personal Property by virtue of the possession of the Personal Property by federal agents on November 3, 2020. It was not necessary for federal officials to officially adopt the state forfeiture/seizure in order for the federal court to obtain *in rem* jurisdiction. Mere possession of the Personal Property by the federal agents was sufficient to give rise to the exclusive *in rem* jurisdiction in the federal court as of November 3, 2020. *Green*, 55 So. 3d at 263-64. Because the federal court acquired *in rem* jurisdiction before the state court, the trial court lacked *in rem* jurisdiction over the Personal Property, and properly dismissed the

proceeding filed by Hare and Sosa. For this same reason, the trial court did not abuse its discretion when it denied the Motion to Alter, Amend, or Vacate filed by Hare and Sosa. The trial court's judgment is due to be affirmed.

The trial court's judgment should also be affirmed because Hare and Sosa sued the BCSO which is not a legal entity capable of being sued. *King v. Colbert Cnty.*, 620 So. 2d 623, 626 (Ala. 1993) (sheriff's department is not a legal entity; therefore, one cannot maintain an action against it); *White v. Birchfield*, 582 So. 2d 1085, 1087 (Ala. 1991) (sheriff's department is not a legal entity subject to suit).

ARGUMENT

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING THE MOTION TO ALTER, AMEND, OR VACATE.

A. Hare and Sosa failed to demonstrate sufficient grounds under Rule 59(e).

Proceedings with respect to personal property seized by the federal government or state officials are *in rem* proceedings. *Ex parte City of Montgomery*, 275 So. 3d at 1156. “*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.” *Id.* Two courts cannot concurrently share *in rem* jurisdiction. *Id.* The first court to acquire *in rem* jurisdiction over certain property “does so to the exclusion of all other courts.” *Id.*

Alabama law recognizes a two-step process before state *in rem* jurisdiction attaches to property: Possession of the *res*, and the filing of an *in rem* action in state court. *Green*, 55 So. 3d at 263.. Federal *in rem* jurisdiction is different. It “begins at the moment the *res* is controlled by federal agents,” *id.*, “[s]o long as the state court has not exercised *in rem* jurisdiction...” *Id.* The federal government controls property “when that property is in the ‘actual possession’ of agents of the United States.” *Ruiz*, 200 So. 3d at 30, *quoting Green*, 55 So. 3d at 264.

In *Gray v. City of Opelika*, 216 So. 3d 431 (Ala. Civ. App. 2015), the court stated that when a party has moved to dismiss an action based on lack of *in rem* jurisdiction, the opposing party bears the burden of establishing the factual predicates of jurisdiction by a preponderance of the evidence. *Id.* at 434. And, where the defendant presents a prima facie showing of the court's lack of *in rem* jurisdiction, the plaintiff must "rely on more than the allegations in the complaint by substantiating the jurisdictional allegations with competent proof." *Id.*

The BCSO moved to dismiss the proceeding filed by Hare and Sosa arguing that the trial court lacked *in rem* jurisdiction over the Personal Property. (C. 14) The trial court granted this Motion to Dismiss. (C. 100) Thereafter, Hare and Sosa filed a Motion to Amend, Alter, or Vacate the trial court's judgment. (C. 103) The only grounds for granting a Rule 59(e) motion are newly discovered (previously unavailable) evidence or manifest errors of law or fact. *Bradley v. Town of Argo*, 2 So. 3d at 823. Hare and Sosa did not present the trial court with any new evidence or argument. (C. 103) They merely argued that the trial court should amend or vacate the judgment against them because there was no evidence in the record showing that federal adoption of the state seizure/forfeiture

took place before Hare and Sosa filed their lawsuit in state court. (C. 103-104, ¶ 1; C. 5) This same argument was made by Hare and Sosa in their response to the Motion to Dismiss filed by the BCSO. (C. 46-49) Consequently, Hare and Sosa did not present any new evidence or argument as required by Rule 59(e).

Hare and Sosa also did not demonstrate that the trial court's order was based on "manifest errors of law or fact." *Bradley v. Town of Argo*, 2 So. 3d at 823. This is so because the law in Alabama is clear – federal *in rem* jurisdiction attaches to property when that property is in the possession of federal officers; there is no requirement that there be a formal adoption of a state seizure/forfeiture in order for federal jurisdiction to attach to personal property. *Green*, 55 So. 3d at 264. In other words, as held in *Green*, federal *in rem* jurisdiction attaches either through (1) possession of the property by federal officials (at a time when no other court has jurisdiction over the *res*); or (2) as a result of a federal approval of a state's adoptive seizure request. *Id.*¹

¹ Alabama's forfeiture laws (*Ala. Code* § 20-2-93) allow state and local officials to "transfer seized property to another governmental entity" including a federal entity, "so long as the disposition of the property is in accordance with law." *Green*, 55 So. 3d at 261. Federal adoption of a state

In the case at bar, federal jurisdiction attached to the Personal Property on November 3, 2020, when Officers Middleton and Harville, in their capacities as Federal DEA Task Force Officers, took possession of the Personal Property and secured it in the evidence vault on behalf of the Federal DEA RDSO. This was over two months before Hare and Sosa filed their state court proceeding seeking the return of the Personal Property. The possession of the Personal Property by Federal DEA Task Force Officers on November 3, 2020, was sufficient to confer to the federal court exclusive *in rem* jurisdiction over the Personal Property.

In *Green*, 55 So. 3d at 260, the issue for the court was at what time did federal jurisdiction attach to certain property confiscated by state officials and transferred to federal authorities. According to the court, “[s]o long as the state court has not exercised *in rem* jurisdiction, federal jurisdiction begins the moment the *res* is controlled by federal agents.” *Id.* at 263. (Emphasis added). “The federal government controls the *res* when it is ‘taken or detained’ during a time when no other court has jurisdiction over the *res*.” *Id.* at 264. In *Green*, the court held that federal

forfeiture has the same effect as if the seizure had originally been made by the United States. *Id.* at 260.

control of property takes place one of two ways: (1) when the federal agents accept an adoptive-seizure request from the state; or (2) when the federal agents take physical possession of the property. *Id.* at 263.

In this case, federal agents Middleton and Harville took possession of the Personal Property on November 3, 2020, when the property was turned over to them by Officer McElroy. This was before Hare and Sosa filed their state court proceeding on February 4, 2021. When federal control takes place before a state court *in rem* proceeding is filed, the federal court has exclusive *in rem* jurisdiction over the property. *Green*, 55 So. 3d at 264. According to the court in *Green*:

The Montgomery Circuit Court obtained jurisdiction through the claimants' *in rem* action only if federal jurisdiction was not obtained first. Determining when federal jurisdiction attached will resolve who first acquired *in rem* jurisdiction. Although Alabama law requires a two-step process of possession and then the filing of an *in rem* court action, federal forfeiture is administrative and the second step is not required to obtain federal jurisdiction. So long as the state court has not exercised *in rem* jurisdiction, federal jurisdiction begins the moment the *res* is controlled by federal agents. *See United States v. \$506,231 in United States Currency*, 125 F.3d 442 (7th Cir.1997).

Id. at 264.

Hare and Sosa claim that *Green* supports their position in this appeal – that physical possession by a federal agency is not enough for *in*

rem jurisdiction. (Appellants' Brief, p. 17) This is not correct, and misstates the holding in *Green*. In *Green*, police officers stopped the plaintiffs on Interstate 65. *Id.* at 258. They noted a strong odor of marijuana emanating from the vehicle. *Id.* They searched the vehicle, without a warrant, and found marijuana and cash totaling approximately \$32,000. *Id.* The plaintiff was charged with unlawful possession of marijuana in the second degree. *Id.* Three weeks later, the city began the adoptive seizure process whereby the property would be transferred to federal authorities who could then file a federal administrative forfeiture proceeding. *Id.* Before the case was adopted by the federal agents, and before the money was actually transferred to the federal agents, the plaintiffs filed a state court action seeking return of the funds. *Id.* In *Green*, possession of the property and completion of the federal adoption of the forfeiture did not take place before the state court *in rem* proceeding was filed. *Id.* at 264. Therefore, since the state court proceeding was filed first, the court held that the state court acquired *in rem* jurisdiction to the exclusion of the federal government. *Id.*

In this case, however, federal control over the Personal Property took place *before* the state court proceeding was filed. In *Green*, the court

held that federal control of property takes place one of two ways: (1) when the federal agents accept an adoptive-seizure request from the state; or (2) when the federal agents take physical possession of the property (so long as another court has not already acquired jurisdiction over the *res*). *Id.* at 263. When this federal control takes place before a state court *in rem* proceeding is filed, the federal court has sole *in rem* jurisdiction over the property. *Id.* at 264. That is exactly what occurred here with respect to the Personal Property at issue in this case. Federal officials took actual, physical possession of the Personal Property on November 3, 2020. In other words, federal control was exerted on November 3, 2020, and this was *before* Hare and Sosa filed the state court proceeding on February 4, 2021.

Hare and Sosa also rely upon *Little v. Gaston*, 232 So. 3d 231 (Ala. Civ. App. 2017). They argue that *Little v. Gaston* supports their argument that mere possession by federal agents does not amount to control for the purpose of establishing federal jurisdiction. (Appellants' Brief, p. 17) This is not the holding of *Little v. Gaston*. In that case, the state trial court issued a search warrant regarding a house and its contents to a state law enforcement officer. *Id.* at 234. Property was seized by that officer

pursuant to the state court search warrant. *Id.* The court held that pursuant to *Ala. Code* § 15-5-2 (1975) (which authorizes courts to issue search warrants), once the officer seized the property pursuant to the search warrant, the *in rem* jurisdiction of the state court attached. *Id.* at 236. This was because the property was seized pursuant to a search warrant issued by the state court. *Id.*

The court in *Little v. Gaston* cautioned that its holding did not conflict with *Green* because *Green* concerned the warrantless seizure of property during a traffic stop. That fact distinguishes *Green* from *Little v. Gaston*. *Little v. Gaston* has no application in this case. *Green* controls here because the seizure of the Personal Property in this case was during a traffic stop and was not pursuant to a search warrant issued by a state court.

B. The BCSO submitted sufficient evidence of “Possession” by Federal Officers.

Hare and Sosa also rely on *Gray v. City of Opelika*, 216 So. 3d at 435. They claim that the BCSO’s evidence of possession by federal agents falls short of the type of proof that is required to show federal jurisdiction. (Appellants’ Brief, p. 21) This is also not correct. In *Gray*, the issue was whether there was sufficient evidence of federal adoption of a forfeiture

proceeding. The court held that the defendant produced sufficient evidence to show federal *in rem* jurisdiction when defendant submitted a declaration of forfeiture certificate. *Id.* at 436.

Gray did not address what type of evidence must be produced to show possession by federal officials. In other words, *Gray* does not proscribe the particular type of evidence required to show federal possession of property. *Gray* merely discussed the evidence necessary to establish federal *in rem* jurisdiction through a federal forfeiture procedure. Establishing federal *in rem* jurisdiction by possession of the *res* was not an issue in *Gray*. *Gray* is therefore inapposite and does not require reversal of the trial court's orders in this case.

Additionally, the trial court's orders are based on more than sufficient evidence demonstrating possession of the Personal Property by federal officers on November 3, 2020. This evidence consists of a certified copy of a November 3, 2020, Offense Report (C. 75); and the affidavits of Chief Deputy Anthony Lowery, Officer Andrew Harville, and Officer McElroy. (C. 20, 37, 120) This evidence establishes unequivocally that the federal officers took possession of the Personal Property on November 3, 2020. The trial court's orders are therefore due to be affirmed.

C. Alabama cases since *Green* are Clear and Consistent with *Green*.

Hare and Sosa also claim that since *Green* was decided, there have been inconsistent interpretations of *Green* that have caused confusion as to its meaning. (Appellants' Brief, p. 18) This is also not correct. *Ex parte City of Montgomery*, 275 So. 3d at 1156 is not confusing nor inconsistent with *Green*. In that case, the court held, citing *Green*, that the filing of a federal forfeiture proceeding is not required to vest federal jurisdiction in the federal court. *Id.* The court also reiterated the well-settled rule that federal court jurisdiction attaches "at the moment of possession" of the *res* by federal officials. *Id.* at 1157. The issue before the court was whether the officers seizing the property were acting in their capacities as state officials, or whether they were acting as agents of the federal government. *Id.* There was insufficient information before the court to decide that issue, and thus the court denied a petition for writ of mandamus that had been filed by one of the parties in the case. *Id.*

Here, however, there is documented, written evidence and testimony, to wit, that Officers Middleton and Harville took possession of the Personal Property on November 3, 2020, in their capacities as Federal DEA Task Force Officers. (C. 120, ¶ 2) Consequently, *Ex parte City of*

Montgomery should not alter the result reached by the trial court below; nor is it confusing or contrary to *Green*.

The same is true with respect to *Ruiz*, 200 So. 3d at 30. In fact, *Ruiz* is very similar to the case at hand. In *Ruiz*, city policemen seized U.S. currency in a traffic stop. *Id.* at 27. The currency was then used to purchase a cashier's check that was delivered to the custody of U.S. Marshals on March 20, 2014. *Id.* Ten days later (and before the federal government commenced federal forfeiture proceedings in federal court), the claimant filed a complaint in state court against the city seeking the return of the currency. *Id.* at 28. The court determined that federal *in rem* jurisdiction attached to the property when it was placed in the custody of the federal officials on March 20, 2014. *Id.* at 30. This decision was based on *Green* and its clear holding that actual possession of the *res* by federal officials gives rise to federal jurisdiction – so long as a state *in rem* action has not already been filed. *Id.*

The claimant in *Ruiz* argued that the two-step process for obtaining state *in rem* jurisdiction (possession of *res* and the filing of an *in rem* action in state court) was mere dictum set forth in *Green*, and that state *in rem* jurisdiction actually attached by mere possession of the property

by state officials. The court disagreed and upheld the decision in *Green*, i.e., that to obtain state *in rem* jurisdiction, the *res* must be in possession of a state officer, AND a state court *in rem* action must be filed. *Id.* at 30. The court also confirmed that *Green* is still the law in Alabama, and that actual possession of the property by federal officials conferred federal *in rem* jurisdiction. According to the court:

Contrary to Grant’s arguments, the description of the “two-step process’ by which the state court acquires jurisdiction in cases such as these was not dictum in the *Green* decision... If, as Grant claims ..., state court jurisdiction attached upon the seizure of the currency, the *Green* decision would have required less analysis.

Instead, the court there had to engage in an in-depth examination of relevant events to determine when jurisdiction attached at either the state or federal level. The filing of an action in state court ... was the critical moment at which state court jurisdiction attached and precluded any exercise of federal jurisdiction over the defendant currency.

* * * * *

Lest there be any confusion, we reiterate that current Alabama law, under *Green*, requires a two-step process for state *in rem* jurisdiction to attach: Possession of the seized property and the filing of an *in rem* action. In this case, because no *in rem* action was filed in the trial court until after federal *in rem* jurisdiction had attached, the trial court did not have *in rem* jurisdiction over the currency, and, as a result, it did not have jurisdiction to enter the summary judgment.

* * * * *

Green makes clear that federal jurisdiction attaches if federal agents control the *res* before a state court exercises jurisdiction over that *res*. *Green*, 55 So. 3d at 265. Because federal agents controlled the currency in this case before the trial court obtained jurisdiction over it, the trial court's summary judgment was entered in the absence of *in rem* jurisdiction and, thus, was void.

Id. at 30.

Therefore, contrary to the assertion by Hare and Sosa that there have been confusing cases since *Green*, the opposite is in fact true. The clear, well-settled law in Alabama is that possession of the *res* by federal officers vests *in rem* jurisdiction over that property in the federal court. That is exactly what took place in the case now before this Court. The trial court's judgment is due to be affirmed.

D. Federal cases do not support the argument that federal adoption of a forfeiture is the only way to establish *in rem* federal jurisdiction.

Hare and Sosa also rely on several federal cases to support their argument that adoption of a forfeiture by the federal government (as opposed to possession by a federal agent) is the only thing that “triggers federal jurisdiction.” (Appellants' Brief, p. 19) This argument is contrary to *Green*, which is the law in Alabama. Therefore, for this reason alone, this argument fails.

Moreover, the cases upon which Hare and Sosa rely do not support this broad assertion. *See, e.g., U.S. v. \$6,676 in U.S. Currency*, Docket no. 1:08-cv-26-WKW at * 8-9 (M.D. Ala. March 11, 2014) (relying on *Green*, court stated that “both federal approval of the adoptive seizure and federal possession of the *res* (the two ways to establish federal jurisdiction) preceded any potential action in state court,” and therefore, jurisdiction was vested in the federal court; and noting that if the state *in rem* proceeding had been filed first, then the state court would have had *in rem* jurisdiction; result consistent with *Green*); *U.S. v. \$19,855 in U.S. Currency*, Docket no. 2:12-cv-146-WKW (M.D. Ala. Nov. 19, 2012) (same facts; consistent with *Green*); *U.S. v. \$6,207 in U.S. Currency*, Docket no. 2:08-cv-999-MEE (M.D. Ala. July 20, 2009) (under doctrine of adoptive forfeiture, the date of the federal officer’s possession of property relates back to the date the currency was initially seized by city police; “it is as if federal authorities originally executed the seizure.” As a result, jurisdiction vested in federal court at the time of initial seizure by city police under the doctrine of adoptive forfeiture, and state court never had *in rem* jurisdiction over the currency; case is not inconsistent with *Green*, just merely addressed a different issue not present in this appeal); and

U.S. v. \$894,800 in U.S. Currency, Docket no. 2:10-cv-02601-AKK at * 3 (N.D. Ala. June 10, 2011) (U.S. adopted the seizure before claimant filed state court action and court held this was sufficient to confer jurisdiction in the federal court; consistent with *Green*).

E. The Trial Court’s judgment should be affirmed because the BCSO is not a legal entity capable of being sued.

The appellate court may affirm a trial court’s order if the order is correct for any reason supported by the record. *Ex parte Ryals*, 773 So. 2d at 1013; *Smith v. Equifax Servs., Inc.*, 537 So. 2d at 465. In the present case, the trial court’s order dismissing the claims against the BCSO should also be affirmed because a sheriff’s department is not a legal entity capable of being sued. *King v. Colbert Cnty.*, 620 So. 2d at 626 (sheriff’s department is not a legal entity; therefore, one cannot maintain an action against it); *White v. Birchfield*, 582 So. 2d at 1087 (sheriff’s department is not a legal entity subject to suit).

As previously noted, Hare and Sosa attempted to cure this defect by adding Sheriff Huey “Hoss” Mack as a Defendant. (C. 56) In fact, Hare and Sosa attempted to file an Amended Complaint naming Sheriff Mack as a Defendant and omitting the BCSO as a Defendant. (C.56) This Amended Complaint was filed as an exhibit to Hare and Sosa’s brief in

opposition to the BCSO's Motion to Dismiss. (C. 56) This Amended Complaint was not docketed by the clerk of court. (C. 3) Moreover, this Amended Complaint is of no effect because Hare and Sosa did obtain leave from the trial court to file this amendment as required by Rule 15(a), Ala. R.Civ. P. *Image Marketing, Inc. v. Florence Television, LLC*, 884 So. 2d 822, 826 (Ala. 2003) (failure to seek leave to file the amended complaint rendered the amendment a nullity).

Consequently, Sheriff Mack was never made a Defendant before the trial court, and the BCSO remained as a defendant in the case. For the reasons set forth above, the trial court's orders, dismissing the claims against the BCSO, and denying the Motion to Alter, Amend, or Vacate, were correct and should be affirmed.

CONCLUSION

Based on the foregoing, the BCSO respectfully requests that this Honorable Court affirm the trial court's order dismissing the underlying case against it, and the order denying the Motion to Alter, Amend, or Vacate.

Respectfully submitted this the 21st day of July 2021.

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CERTIFICATE OF COMPLIANCE

The undersigned attorney certifies that this Brief complies with Rules 28(j)(1) and 32(a)(7) and (d), Ala. R.App. P., in that it has been prepared in a proportionally spaced typeface (14-point Century Schoolbook) using Microsoft Word and does not exceed 14,000 words. This Brief, beginning with the Statement of the Case through the Conclusion, contains 6,341 words.

Respectfully submitted, this 21st day of July 2021.

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CERTIFICATE OF SERVICE

I certify that on this 21st day of July 2021, I electronically filed the foregoing Appellee's Brief with the Supreme Court of Alabama, and further certify that on this same date I served the foregoing via electronic mail upon counsel for all other parties addressed as follows:

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