No. 1200562

In the
SUPREME COURT of ALABAMA

YAMIL ALEXSANDER HARE & JOSE SOSA,

Appellants,

v.

SHERIFF HOSS MACK, STACY MCELROY, &
CITY OF GULF SHORES,

Appellees.

On Appeal from the Circuit Court
of Baldwin County, Alabama
Case No: CV-2021-900130

APPELLANTS' REPLY BRIEF TO SHERIFF HOSS MACK, STACY MCELROY, & THE CITY OF GULF SHORES

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SUMMARY OF THE ARGUMENT

Defendants and some courts interpret *Green* to mean that federal jurisdiction attaches by mere possession of property by *any* federal officer at *any* time. (City Br. 12; BCSO Br. 11). This interpretation ignores the specific facts of *Green*, where the court found state jurisdiction attached even though federal DEA officers already possessed the seizure when the claimants filed their state claim. *Green v. City of Montgomery*, 55 So. 3d 256, 258 (Ala. Civ. App. 2009); *See also Little v. Gaston*, 232 So. 3d 231, 235 (Ala. Civ. App. 2017) (clarifying *Green*).

Additionally, the specific words emphasized by Defendants (taken, detained, possession, control) to support their argued interpretation must be read in combination with the holding. *Green*, 55 So. 3d at 264; (BCSO Br. 10; City Br. 18). To interpret those words to mean control or possession by *any* federal officer at *any* time conflicts with the two events—both occurring *after* adoption—that the court set as possibilities for federal jurisdiction to attach.

Finally, the Baldwin County Sheriff's Office (BCSO) argues Plaintiffs required leave of the court to amend the complaint, adding

Sheriff Hoss Mack as a party. (BCSO Br. 27). Since Plaintiffs filed the amended complaint before any responsive pleading and more than 42 days before the first setting of the case for trial, Plaintiffs were not required to seek the permission of the court before amending the complaint. Ala. R. Civ. P. 7(a), 15(a).

Further, the court clerk listed Sheriff Hoss Mack as a party on February 2, 2021. (C. 2). Even if the court's permission was required, Sheriff Hoss Mack raises that issue for the first time on appeal, and it is therefore waived. *See, e.g.*, *Polytec, Inc. v. Utah Foam Prods., Inc.*, 439 So. 2d 683, 686 (Ala. 1983).

ARGUMENT

This case concerns one single issue: When does federal jurisdiction over an adopted forfeiture begin? If merely handing off the property to any federal officer invokes federal jurisdiction over a local seizure, Alabama's forfeiture laws will be circumvented at will, and innocent owners are will be denied the law's intended protections. Contrary to Defendants' claims, *Green* does not support this interpretation.

I. Defendants' interpretations of *Green* ignore the transfer of the property in that case to DEA agents on the same day as the seizure.

Plaintiffs agree with Defendants' statements that *Green* found two ways federal control could have attached in that case: (1) official adoption by the DEA, or (2) possession by United States Marshals. (City of Gulf Shores, et al. (City) Br. 16; BCSO Br. 17). But Defendants, and indeed some courts interpreting *Green*, take this holding a step further, finding it to mean that mere possession by *any* federal officer at *any* time secures federal jurisdiction. (City Br. 12; BCSO Br. 11). The facts of *Green* do not support this interpretation.

As in this case, local police officers in *Green* seized property and then sought federal adoption of the seizure. *Green*, So. 3d at 258. And,

as in this case, on the same day as the seizure, the property was transferred to federal DEA agents. *Id.* ("[T]he City transferred the seized currency to the federal Drug Enforcement Administration."); *Little*, 232 So. 3d at 235 (referencing *Green*: "[O]n the same day as the seizure, the City of Montgomery . . . transferred the seized currency to the DEA and requested that the DEA 'adopt' the seizure.").

Since the seized property was already in the *possession* of federal agents when the *Green* claimants filed their state court action, and the court found state jurisdiction attached, mere possession by federal agents did not trigger federal jurisdiction. The two events *Green* stated could attach federal jurisdiction centered on official adoption and possession by federal agents *after* official adoption. Thus, the *Green* court did not hold or even imply that mere possession by a federal officer conveys federal jurisdiction.

II. *Green's* statements using the word "control" and "possession" must be read in context to align with the holding.

Confusion surrounding *Green* centers on the following statements cited by Defendants: "The federal government controls the *res* when it is 'taken or detained' during a time when no other court has jurisdiction

over the *res*. As applied to this case, 'property taken' refers to the actual possession by United States Marshals." *Green*, 55 So. 3d at 264; (BCSO Br. 10; City Br. 18). Again, in context, this statement refers to possession *after* adoption, not mere possession by means of a handoff from one officer to another. If *Green's* statements concerning "detained" and "possession" are interpreted as intended—to apply to possession after adoption—the statements align with the holding and with federal cases finding that federal jurisdiction begins with federal adoption. Subsequent cases basing federal jurisdiction on select words from *Green* (taken, detained, possession, control) ignore both the context and holding of *Green* and clash with federal courts addressing their own jurisdiction. (*See* Appellants' Br. 19-20)[1].

III. Because complaints may be amended before a responsive pleading and at least forty-two days before the first setting of the case for trial, Plaintiffs' amended complaint did not require leave of the court.

[1] Plaintiffs mistakenly cited the incorrect federal case for a quote on page 19 their initial brief. The quote and corrected cite are as follows: "After a federal agency adopts a state or local seizure, the property is deemed to have been seized by the federal government, and is thus subject to exclusive federal jurisdiction as of the date of seizure." *United States v. $178,858.00,* No. 2:06-CV-01651-RDP, 2013 U.S. Dist. LEXIS 143170, at *12 (N.D. Ala. 2013).

Plaintiffs did not require leave of the court to amend the complaint, adding Sheriff Hoss Mack as a party. Complaints may be freely amended before a responsive pleading. Ala. R. Civ. P. 15(a). A motion to dismiss is not a responsive pleading. *Ex parte Atlantis Dev. Co.*, 897 So. 2d 1022, 1025 (Ala. 2004) (quoting *Polytec, Inc.*, 439 So. 2d at 687 ("A motion to dismiss is not a responsive pleading within the meaning of [Rule 15]. Rule 7(a)")).

Plaintiffs filed their initial complaint on February 4, 2021. (C. 5). The BCSO filed a motion to dismiss and a response to a motion for default judgment on March 11, 2021. (C. 12). Plaintiffs filed their amended complaint on March 22, 2021. (C. 56). BCSO never filed an answer to the complaint or any other responsive pleading as defined by the rules. *See* Ala. R. Civ. P. Rule 7(a). Thus, leave of the court to amend the complaint was not required under Rule 15(a).

Defendant Sheriff Hoss Mack argues leave of the court was required to file the amended complaint under Rule 15(a) because the complaint was amended within 42 days of the setting of the case for trial. (BCSO Br. 2, 28). However, Plaintiffs filed their amended complaint on March 22, 2021, 156 days before the setting of the case for

trial on August 25, 2021. (C. 3). Thus, Plaintiffs were free to amend the parties in the original complaint without leave of the court.

IV. Even if permission of the court was required to amend the complaint, Defendant Sheriff Hoss Mack waived the objection to Plaintiffs amended complaint by failing to assert the issue below.

Defendant Sheriff Hoss Mack asserts for the first time on appeal that Plaintiffs failed to seek leave of the court to amend the complaint before adding Sheriff Mack as a defendant. (BCSO Br. 27). Although the BCSO filed a motion to dismiss, stating that an action cannot be maintained against it, the BCSO failed to object to Plaintiff's amended complaint adding Sheriff Hoss Mack as a party *on the grounds* that Plaintiffs failed to seek leave of the court to amend. Thus, the argument that Plaintiff needed leave of the court to amend the pleading is waived. *See, e.g.*, *Polytec, Inc.,* 439 So. 2d at 686.

In addition, amendments shall be freely allowed when justice so requires. Ala. R. Civ. P. 15(a). Defendants argued the amended complaint was never docketed. But the court clerk listed Sheriff Mack as a party on February 4, 2021. (C. 2). Sheriff Mack was in no way prejudiced by the amended complaint since he was on notice of the pending case from the beginning.

CONCLUSION

Confiscating a citizen's property, without clear evidence connecting the property to the proceeds of a crime, counters protected, constitutional rights. Laws protecting those rights serve to counterbalance the true purpose of such seizures—crime reduction—with the property rights of citizens. But laws can only secure these rights if they are *available* to the citizens they are designed to protect.

If this Court adopts the jurisdictional framework urged by Defendants, Alabama seizure laws will prove useless. Any local police officer can seize cash or property from a citizen, claim it is contraband, hand it off that same day to a designated federal law enforcement officer, and thus avoid altogether the state courts and the well-established process set forth in the Code of Alabama. Defendants' interpretation would empower every local officer cross-designated by the DEA to instantly convert a state seizure into a federal adoptive seizure, without the approval or even knowledge of the United States Department of Justice. Once the handoff to the designated officer takes place, the property is lost in a shadowland between state and federal jurisdiction until the federal government decides to adopt it, if indeed

that ever takes place. Thus, plaintiffs ask this Court to reverse the trial court's dismissal.

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the word limitation set forth in Ala. R. App. P. 28(j)(1). According to the word-count function of Microsoft Word, the brief contains 1,581 words from the Summary of the Argument through the Conclusion. I further certify that this brief complies with the font requirements set forth in Ala. R. App. P. 32(a)(7). The brief is prepared in the Century Schoolbook font using 14-point type. *See* Ala. R. App. P. 32(d).

/s/ Vallee V. Connor
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CERTFICATE OF SERVICE

I hereby certify that on this 30th July 2021, the foregoing was filed with the Alabama Supreme Court using the Court's electronic filing system, and has been served upon the following parties via electronic mail.

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