REL: January 21, 2022



# SUPREME COURT OF ALABAMA

## OCTOBER TERM, 2021-2022

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## 1200562

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**Yamil Alexsander Hare and Jose Sosa**

**v.**

**Sheriff Hoss Mack; Stacy McElroy, individually and in his official capacity; and City of Gulf Shores**

**Appeal from Baldwin Circuit Court**
**(CV-21-900130)**

MITCHELL, Justice.

This appeal presents questions of first impression for this Court concerning the interplay of state and federal jurisdiction over property

seized for forfeiture. Yamil Alexsander Hare and Jose Sosa filed a state-court action to recover personal property that a Gulf Shores police officer seized without a warrant under state law and then transferred to two Baldwin County Sheriff's Office ("BCSO") deputies, acting in their capacity as federally deputized agents of the Drug Enforcement Administration ("the DEA"). The circuit court ruled that it lacked in rem jurisdiction based on the Court of Civil Appeals' caselaw. We hold that, under 21 U.S.C. § 881(c), exclusive federal jurisdiction attached when the deputized DEA agents took possession of the property and no state court had prior in rem jurisdiction. Accordingly, we affirm.

Facts and Procedural History

As presented on appeal, the material facts are undisputed. On November 3, 2020, Hare was driving his black Ford F-150 pickup truck eastbound on I-10 in Baldwin County. Officer Stacy McElroy, a Gulf Shores policeman and a member of the BCSO Special Operations Unit, observed that Hare was speeding and that his paper registration tag was not clearly visible. Officer McElroy pulled Hare over for speeding and for

improper display of registration. See §§ 32-5A-171 and 32-6-51, Ala. Code 1975.

As he approached the vehicle, Officer McElroy smelled a strong marijuana odor. Hare admitted that he had about a gram of marijuana with him. Hare told Officer McElroy that he was going to Disney World, but he could not give plausible answers to follow-up questions about his travel plans. Officer McElroy also discovered that Hare's driver's license was invalid. Ultimately, Officer McElroy decided to search the truck, assisted by another officer who had arrived on the scene.

In the center console of the truck, Officer McElroy found a plastic bag with a small amount of marijuana, two rubber-banded bundles of United States currency, and two cell phones (in addition to the one Hare had on him at the time of the search). Officer McElroy also discovered 10 plastic-wrapped bundles of United States currency hidden in a speaker box under the rear seat on the passenger side. Officer McElroy seized the bundles of currency and the three phones (the "personal property"), arrested Hare for possession of marijuana, and arranged for the truck to be towed to the BCSO garage.

Later that day, Officer McElroy briefed Daniel Middleton and Andrew Harville, two BCSO deputies who also belong to the local DEA Task Force. As shown by a BCSO chain-of-custody form (among other evidence), Officer McElroy physically delivered the personal property to Deputies Middleton and Harville, who then placed it in a temporary evidence vault. It was the understanding of Officer McElroy and the BCSO that the DEA Task Force had "adopted" the case at that point. In a later affidavit, Deputy Harville attested that he and Deputy Middleton had received the personal property "in [their] capacities as Federal DEA Task Force Officers."

Two days later, on November 5, 2020, the currency (totaling $101,960) was taken from the evidence vault and deposited with a bank in Foley. On November 20, Deputy Harville obtained two cashier's checks for the currency, which were temporarily placed in another evidence vault at the DEA Mobile Resident Office and then mailed (that same day) to the United States Marshals Service.

On February 4, 2021, Hare and Sosa ("the Claimants") filed a "Motion for Return of Money and Personal Property" in the Baldwin

Circuit Court, naming as defendants: (1) Officer McElroy, individually and in his official capacity; (2) the City of Gulf Shores; (3) the BCSO; and (4) several fictitiously named defendants. This "motion" -- which, as all parties recognize, was in substance a complaint[1] -- alleged that the Claimants were the owners of the personal property, that there had been no judicial proceedings for its forfeiture, and that the Claimants were entitled to its return.

The defendants filed two motions to dismiss: one by "the Defendant identified ... as the 'Baldwin County Sheriff's Office,' "[2] the other by Officer

[1]Under Gill v. Burrell, 874 So. 2d 1072, 1074 (Ala. 2003), and Jones v. State, 937 So. 2d 59, 60-61 (Ala. 2006), this sort of proceeding is properly conceptualized as a civil action for the recovery of property based on the right of possession recognized in § 6-5-260, Ala. Code 1975.

[2]The record reflects some confusion about the true identity of this defendant. A "sheriff's office" or "sheriff's department" is not a legal entity subject to suit. See King v. Colbert Cnty., 620 So. 2d 623, 626 (Ala. 1993); White v. Birchfield, 582 So. 2d 1085, 1087 (Ala. 1991). But the circuit court appears to have regarded Baldwin County Sheriff Huey "Hoss" Mack, rather than the BCSO, as a defendant from the beginning of the action. The Claimants also attempted to amend their complaint to clarify that Sheriff Mack, not the BCSO, was the relevant party, but the BCSO disputes the effectiveness of this amendment. Ultimately, because we affirm the judgment of dismissal for lack of jurisdiction (a judgment that does not bind the rights of any defendant), we find it unnecessary to resolve these issues. This opinion names Sheriff Mack in the caption

McElroy and Gulf Shores. They argued that, because federal agents had adopted the case and taken possession of the personal property on November 3, 2020, the circuit court lacked in rem jurisdiction under the Court of Civil Appeals' caselaw -- specifically, the leading case of Green v. City of Montgomery, 55 So. 3d 256 (Ala. Civ. App. 2009), and its progeny. In opposition, the Claimants argued in substance that the personal property was seized by Officer McElroy under state law and that its physical transfer to Deputies Middleton and Harville did not confer exclusive federal jurisdiction absent a "federal adoption" of the seizure "pursuant to legally mandated procedures," of which, the Claimants said, there was no evidence. In its reply, the BCSO repeated its argument that exclusive federal jurisdiction attached when Deputies Middleton and Harville "adopted the case and took actual, physical possession of the Personal Property on November 3, 2020." (Officer McElroy and Gulf Shores did not separately reply.)

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because that is how the appeal was docketed in this Court, and it refers to filings and arguments made by "the BCSO" because that is how the relevant lower-court filings and brief in this Court are styled.

On March 30, the circuit court concluded that it "lack[ed] in rem jurisdiction in this case" and granted the motions to dismiss. The Claimants timely moved to alter, amend, or vacate the judgment, again arguing that there was no evidence of a procedurally proper federal adoption of the seizure of the personal property. See Rule 59(e), Ala. R. Civ. P. In their responses, the defendants largely repeated their prior arguments for exclusive federal jurisdiction; they also submitted new documents, including the chain-of-custody form and Deputy Harville's affidavit, clarifying the circumstances of the November 3, 2020, handover of the personal property and its later disposition.[3] The circuit court denied the Rule 59(e) motion on May 8, 2021, and the Claimants timely appealed from the judgment.

## Standard of Review

This Court has never specifically articulated the standard of review for a dismissal for lack of in rem jurisdiction. But as the Court of Civil Appeals has recognized, such dismissals are analogous to other dismissals

[3]All the parties assume that all the factual materials submitted to the circuit court may properly be considered in this appeal, without any distinction based on when they entered the record below.

for lack of jurisdiction (subject-matter or personal). Little v. Gaston, 232 So. 3d 231, 234 (Ala. Civ. App. 2017); Gray v. City of Opelika, 216 So. 3d 431, 435 (Ala. Civ. App. 2015). Little and Gray thus state that the standard of review is de novo, and most of the parties in this case follow that description.[4]

It is more exact, however, to say that we review issues of law de novo and findings of fact for clear error. In stating the standard of review as de novo (pure and simple), the parties overlook that the jurisdictional determination in this case was based on facts presented in evidentiary materials outside the pleadings. Although "courts of appeal, when reviewing Rule 12(b)(1)[, Fed. R. Civ. P.,] dismissals by [trial] courts, for a lack of subject matter jurisdiction, exercise de novo review over legal conclusions," they "examine jurisdictional findings of fact ... only for clear error." 5B Charles Alan Wright & Arthur R. Miller, Federal Practice &

[4]The BCSO states the standard as abuse of discretion because it mistakenly believes the only object of review is the circuit court's denial of the Claimants' Rule 59(e) motion. Although the BCSO is correct that we review a ruling on a Rule 59(e) motion for excess of discretion, it overlooks the fact that the Claimants have appealed from the judgment, not just the order denying their postjudgment motion.

Procedure § 1350 (3d ed. 2004); see also id. n.79 (collecting federal cases).[5] As it happens, the distinction between de novo and clear-error review makes no difference in this case, where the facts are undisputed. Nevertheless, we note this nuance for the sake of clarity and to provide appropriate guidance for future cases.

"In reviewing the trial court's judgment, we are not limited to the reasoning that the trial court applied but can affirm its judgment for any legal, valid reason." Dupree v. PeoplesSouth Bank, 308 So. 3d 484, 489

[5]In addition to the federal courts, appellate courts in many other states have expressly recognized that findings of jurisdictional fact are reviewed for clear error. See, e.g., Gustafson v. Poitra, 937 N.W.2d 524, 526 (N.D. 2020); State v. One Love Ministries, 142 Haw. 197, 206, 416 P.3d 918, 927 (Ct. App. 2018); Buckles v. Continental Res., Inc., 388 Mont. 517, 520, 402 P.3d 1213, 1216 (2017); Boyer v. Smith, 42 N.E.3d 505, 509 (Ind. 2015); U.S. Bank, N.A. v. Ugrin, 150 Conn. App. 393, 401, 91 A.3d 924, 930 (2014); In re B.B.O., 277 P.3d 818, 820 (Colo. 2012); Rasmussen v. General Motors Corp., 335 Wis. 2d 1, 12, 803 N.W.2d 623, 628 (2011); Stevenson v. Swiggett, 8 A.3d 1200, 1203 (Del. 2010); Cerutti-O'Brien v. Cerutti-O'Brien, 77 Mass. App. Ct. 166, 169, 928 N.E.2d 1002, 1005 (2010); Ogawa v. Ogawa, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009); In re BZ, 264 Mich. App. 286, 295, 690 N.W.2d 505, 510 (2004); Tercero v. Roman Catholic Diocese of Norwich, Connecticut, 132 N.M. 312, 315, 48 P.3d 50, 53 (N.M. 2002); Lane v. Boston Sci. Corp., 198 W. Va. 447, 458, 481 S.E.2d 753, 764 (1996); Garrett v. Garrett, 220 Ga. App. 172, 175, 469 S.E.2d 330, 332 (1996); Lake v. Bonham, 148 Ariz. 599, 601, 716 P.2d 56, 58 (Ct. App. 1986).

(Ala. 2020).

Analysis

We divide our analysis into three parts. First, to properly frame the issues (which are both novel for this Court and involve numerous conceptual moving parts), we provide a high-level survey of the governing framework. Second, we discuss the Claimants' primary argument, which concerns what procedures are required to vest exclusive federal jurisdiction in adoptive-seizure cases. Finally, we address the parties' arguments concerning the Court of Civil Appeals' caselaw in this area.

A. Civil Asset Forfeiture and In Rem Jurisdiction

Both federal and Alabama law (and that of many other states) provide for civil forfeiture of property used in, intended for use in, or derived from certain crimes, including, as relevant here, controlled-substance offenses. See 21 U.S.C. § 881; former § 20-2-93, Ala. Code 1975;[6] see also 18 U.S.C. § 981; § 15-5-61, Ala. Code 1975. In Alabama,

[6]A significant revision of § 20-2-93 went into effect on January 1, 2022. See Act No. 2021-497, Ala. Acts 2021. This case presents no occasion for us to discuss any effects of that amendment.

seized property can be forfeited to the State only through a judicial condemnation proceeding. See former § 20-2-93(h) (incorporating §§ 28-4-286 through 28-4-290, Ala. Code 1975, by reference). Federal law differs slightly in authorizing the summary forfeiture without judicial process -- sometimes called "administrative" forfeiture -- of certain types of property in which no one claims an interest after seizure. See generally 18 U.S.C. § 883; 21 U.S.C. § 881(d) (incorporating 19 U.S.C. §1609); see also United States Department of Justice, Asset Forfeiture Policy Manual 68-69 (2021) ("Policy Manual") (outlining when administrative forfeiture is available).[7] Disputed forfeitures, however, must be adjudicated in court. See 18 U.S.C. § 883(a)(3)(A).

For a court to entertain a forfeiture proceeding, it must be able to exercise in rem jurisdiction over the property (or "res") concerned.[8] Our Court of Civil Appeals has held that in rem jurisdiction is also essential

[7]On the date this opinion was released, the Policy Manual was available at https://www.justice.gov/criminal-afmls/file/839521/download.

[8]The term "in rem jurisdiction" refers to the "power to adjudicate the rights to a given piece of property, including the power to seize and hold it." Black's Law Dictionary 1019 (11th ed. 2019).

to actions like this one, in which a claimant seeks the return of seized property.[9] Green, 55 So. 3d at 262-63. That brings us to the key question in this case: whether exclusive federal jurisdiction over the personal property existed and prevented the circuit court from exercising in rem jurisdiction.

It is useful, at the outset, to distinguish two possible bases for saying that the federal government has exclusive jurisdiction over particular property. The first is the long-established doctrine that the in rem jurisdiction of a court is exclusive by its nature. See Penn Gen. Cas. Co. v. Pennsylvania ex rel. Schnader, 294 U.S. 189, 195 (1935); Ex parte Consolidated Graphite Corp., 221 Ala. 394, 397-98, 129 So. 252, 265 (1930). When in rem proceedings are initiated in two different courts, "the jurisdiction of one court must of necessity yield to that of the other," and the rule is that the first court to acquire in rem jurisdiction holds it to the exclusion of any other. Penn Gen., 294 U.S. at 195. Thus, for example, a state court cannot entertain an action for the return of property over

[9]All the parties in this case agree with that holding, so we accept it as correct for purposes of deciding this appeal.

which a federal court already has in rem jurisdiction. But this principle applies in both directions: a federal court likewise cannot exercise jurisdiction over property that is already within the in rem jurisdiction of a state court. Id.

The second possible basis for exclusive federal jurisdiction is 21 U.S.C. § 881(c), which provides: "Property taken or detained under this section [§ 881] shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, subject only to the orders and decrees of the court or the official having jurisdiction thereof." This statute largely subsumes the doctrine of Penn General for purposes of federal-forfeiture cases, but it also sweeps more broadly in that its scope is not limited to courts.[10] Under § 881(c), exclusive federal jurisdiction over seized property may exist and preclude any exercise of state-court in rem jurisdiction, even if no federal court has jurisdiction over the property,

[10]As the United States Court of Appeals for the Seventh Circuit has explained, "[a]n administrative forfeiture does not confer in rem jurisdiction on any court, because it bypasses the judicial system." United States v. Howell, 354 F.3d 693, 695 (7th Cir. 2004); accord United States v. Solomon, 533 F. App'x 77, 78 (3d Cir. 2013).

simply because the property has been "taken or detained under [§ 881]" and is in federal executive custody.

Here, the record gives no indication that any federal court has established in rem jurisdiction over the personal property. Thus, in this case, "exclusive federal jurisdiction" refers to exclusive jurisdiction based on § 881(c), not on the inherent exclusivity of judicial in rem jurisdiction.

B. Adoptive-Seizure Procedures

The federal and Alabama civil-forfeiture statutes specify the circumstances in which certain property may be seized with or without a warrant. See 21 U.S.C. § 881(b) (incorporating 18 U.S.C. § 981(b) by reference); former § 20-2-93(b), Ala. Code 1975. As one of those circumstances, federal law provides for seizure without a warrant if "the property was lawfully seized by a State or local law enforcement agency and transferred to a Federal agency." 18 U.S.C. § 981(b)(2)(C). The terms "adoption" and "adoptive seizure," though not used in the federal statutes, are widely understood to refer to seizures under this provision. See, e.g., Policy Manual at 45; United States v. Currency, in United States

$178,858, 569 F. App'x 649, 652 n.2 (11th Cir. 2014); City of Concord v. Robinson, 914 F. Supp. 2d 696, 703 (M.D.N.C. 2012).

The Claimants' main argument that exclusive federal jurisdiction never attached is that the record does not show completion of the procedures that, in the Claimants' view, are necessary for a federal "adoption" to take place. Federal statutory law does not explicitly impose any specific procedural requirements for adoptive seizures. As a matter of policy, however, the United States Department of Justice ("the DOJ") has developed a process for adoptive seizures by agencies under its jurisdiction, such as the DEA. First, the relevant state or local law-enforcement agency submits a request for adoption on a standard form issued by the DOJ. See Policy Manual at 49; United States Department of Justice, Request for Adoption of State or Local Seizure Form (July 2017).[11] This request is then reviewed by legal counsel for the relevant federal agency or, at the agency's discretion, by a federal prosecutor. See Policy Manual at 51 ("Only an attorney ... outside the chain-of-command

[11]On the date this opinion was released, this form was available at https://www.justice.gov/criminal-mlars/file/1046976/download.

of operational officials may approve a request for adoption."). Ordinarily, a federal agency is not to take custody of the property until after counsel approves the request for adoption. See id. ("Absent exceptional circumstances, the adopting federal agency must approve the request prior to the turnover of the property to federal custody."); see also Green, 55 So. 3d at 258 (generally summarizing this process).[12]

In this case, the record shows that Deputies Middleton and Harville took possession of the personal property in their federal capacity and that the state and local officers involved understood this turnover as an "adoption."[13] The record does not show, however, that the DOJ procedures

[12]The Claimants attached Chapter 3 of the Policy Manual and several related documents as an appendix to their initial brief in this Court. In an outstanding motion, Gulf Shores and Officer McElroy argue that the appendix is an unauthorized attempt to expand the record on appeal. All the included documents, however, are judicially noticeable as official publications of federal agencies. See, e.g., Ex parte McCurley, 390 So. 2d 25, 30 (Ala. 1980); Moon v. Hines, 205 Ala. 355, 357-58, 87 So. 603, 605 (Ala. 1921). Accordingly, the motion to strike the appendix is denied.

[13]At one point in their brief, the Claimants suggest that the "physical transfer" of the personal property to the deputies is factually in doubt because "[t]he first and last date on the [BCSO chain-of-custody] form is the date of the original stop and seizure" and, "[w]hile the DEA task force officer's name is on the form, no location or the date of the currency's transfer is recorded after its initial placement in the evidence vault."

of the Policy Manual were followed. In particular, there is no evidence that any state or local agency completed a request-for-adoption form or that a federal attorney approved any such request. In the Claimants' view, this evidentiary gap means that the record does not show that an "adoption" took place and, accordingly, does not show that exclusive federal jurisdiction over the personal property ever attached.

The crux of this argument, and its central flaw, is the Claimants' assumption that completion of the DOJ procedures described in the Policy Manual is a jurisdictional prerequisite. We can find no basis in federal law for that assumption, and the relevant federal statutes cut strongly against it. As noted above, 21 U.S.C. § 881(b) (through its incorporation of 18 U.S.C. § 981(b)(2)(C)) authorizes adoptive seizures of property "lawfully seized by a State or local law enforcement agency and transferred to a Federal agency." Under 21 U.S.C. § 878(a)(4), "[a]ny

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Claimants' brief at 22. The record, however, patently supports the physical transfer of the personal property from Officer McElroy to Deputies Middleton and Harville. That every date on the form is November 3, 2020, simply reflects the undisputed fact that Officer McElroy stopped Hare, seized the personal property, and transferred it to the deputies, who then placed it in the evidence vault, all on the same day.

officer or employee of the Drug Enforcement Administration or any State, tribal, or local law enforcement officer designated by the Attorney General may ... make seizures of property pursuant to the provisions of this subchapter [i.e., Title 21, chapter 13, subchapter I of the United States Code]," which includes § 881(b). Deputies Middleton and Harville thus had the express statutory authority to "make" an adoptive seizure "pursuant to" § 881(b). And under 21 U.S.C. § 881(c), exclusive federal jurisdiction attached once the personal property was "taken or detained under [§ 881]." Judging solely by federal statutory law, it appears clear that the federal government obtained exclusive jurisdiction over the personal property the moment Deputies Middleton and Harville took possession of it on behalf of the DEA.

The Claimants may be correct that the transfer of the personal property violated the DOJ procedures, but, even if it did, they have not shown that the result of such a procedural violation would be to prevent exclusive federal jurisdiction from attaching under § 881(c). Notably, the very first page of the Policy Manual bears this disclaimer: "The Policy Manual sets forth the policies of the Department of Justice. It does not,

however, create or confer any legal rights, privileges, or benefits that may be enforced in any way by private parties. See United States v. Caceres, 440 U.S. 741 (1979)." Policy Manual 1 (emphasis added).

The Policy Manual's reference to United States v. Caceres, 440 U.S. 741 (1979), is instructive. There, the United States Supreme Court considered whether audio evidence obtained by an informant wearing a wire should be excluded from a criminal proceeding because of violations of the IRS's regulations for approving one-party-consent wire recordings. See id. at 743. The Court held that the evidence should be admitted, despite the regulatory violations, because "the agency was not required by the Constitution or by statute to adopt any particular procedures or rules before engaging in consensual monitoring and recording," id. at 749-50, and because admitting the evidence would not violate any independent constitutional right, see id. at 750-53 (rejecting Fourth Amendment, equal-protection, and due-process theories).

Here, as in Caceres, no constitutional or statutory law required the completion of any particular procedures before Deputies Middleton and Harville could make an adoptive seizure of the personal property on behalf

of the DEA, thus immediately vesting exclusive federal jurisdiction under 21 U.S.C. § 881(c). To hold that the omission of the DOJ procedures thwarted the operation of § 881(c) would contravene the text of the relevant federal statutes, the lessons of Caceres, and the disclaimer in the Policy Manual itself. Accordingly, we conclude that exclusive federal jurisdiction attached when Deputies Middleton and Harville took possession of the personal property in their capacity as DEA agents, the moment at which the personal property was "taken or detained under [§ 881]" within the meaning of § 881(c).

This conclusion immediately disposes of a couple of the Claimants' ancillary arguments. First, the Claimants point to several unpublished federal district-court decisions stating that exclusive federal jurisdiction attaches after "adoption." The relevance of this argument, however, depends entirely on the Claimants' belief that a jurisdictionally effective "adoption" requires completion of the DOJ procedures. As already explained, that belief is mistaken.[14]

[14]It bears repeating that the terms "adoption" and "adoptive seizure" do not appear anywhere in the federal forfeiture statutes. As such, they are liable to be used in somewhat different senses that, depending on the

Second, the Claimants attempt to draw a contrast between Gray, 216 So. 3d at 434, 436, where the fact of federal adoption was proved by a federal declaration-of-forfeiture certificate, and this case, where the record shows only a "physical transfer" of the personal property. The significance of this contrast stands or falls with the Claimants' view that Deputies Middleton and Harville's taking possession of the personal property was not enough for exclusive federal jurisdiction to attach. Under § 881(c), it was.

C. Parties' Arguments Based on the Court of Civil Appeals' Caselaw

In the absence of applicable precedents from this Court, the parties rely extensively on the Court of Civil Appeals' jurisprudence in this area. The defendants argue (and the circuit court agreed) that the Court of Civil

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precise meaning applied, may not be relevant to the issue of exclusive federal jurisdiction. If we follow the Claimants in using the word "adoption" to refer to completion of the DOJ procedures, then we must agree with them that the record in this case does not show an "adoption"; but that fact has no bearing on whether exclusive federal jurisdiction ever attached. On the other hand, if we take as a given that in adoptive-seizure cases the "adoption" is whatever event triggers federal jurisdiction, then we must say that Deputies Middleton and Harville "adopted" the seizure when they took possession of the personal property, and the omission of the DOJ procedures is immaterial to that fact. Either way, the result is the same.

Appeals' caselaw clearly rules out in rem jurisdiction in this case. On the other hand, the Claimants characterize the caselaw as conflicting and argue that the leading case of Green, at least, supports them, even if later cases -- which the Claimants suggest misread or overread Green -- do not.

The defendants are right about the bottom line, and the circuit court properly applied the Court of Civil Appeals' caselaw. That said, the Claimants' arguments bring to light some genuine tensions in Green and its progeny. To show why those tensions do not support reversal of the circuit court's judgment, we review the relevant cases in some detail.

Green arose from a traffic stop in which the Montgomery police seized marijuana and currency. 55 So. 3d at 258. Three weeks after the stop, the City of Montgomery ("the city") submitted a request to federal authorities to adopt the seizure. Id. Shortly thereafter, while the city's request was still pending, the Green claimants filed a state-court action seeking the release and return of the seized currency. Id. The DEA then approved the city's request that it adopt the seizure, and United States Marshals took possession of the currency. Id. After that, the claimants' action was removed to federal court, only to be remanded back to state

court. Id. at 258-59. The claimants filed a motion to dismiss their own case, which was granted, but then persuaded the state court to "reinstate" the action. Id. at 259. Meanwhile, between the dismissal and the reinstatement, the DEA deposited the seized currency in the federal Asset Forfeiture Fund. Id. Ultimately, the state court ruled that it lacked in rem jurisdiction. Id.

In reviewing that judgment, the Court of Civil Appeals discussed background principles underlying adoptive seizures and in rem jurisdiction at some length, see id. at 259-60, and reached several holdings, each of which should be distinctly examined to understand what precisely Green held. First, the court rejected the claimants' argument that former § 20-2-93(b) did not permit property seized under state law to be transferred to federal authorities. 55 So. 3d at 260-62. Second (as already mentioned), the court held that the claimants' action for return of the seized property was an in rem or quasi in rem action, from which it followed that no state court could hear the action if exclusive federal jurisdiction over the res had already attached. Id. at 262-63.

Third, Green held that the simple filing of a request-for-adoption form by a state or local law-enforcement agency does not vest exclusive federal jurisdiction. Id. at 263. On its way to this holding, the court offered its first seemingly comprehensive articulation of when exclusive jurisdiction over seized property vests in Alabama courts and federal authorities, respectively:

> "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."

Id. (emphasis added). This passage -- and the last sentence in particular -- is significant because some of the Court of Civil Appeals' later decisions appear to have treated it as Green's most fundamental instruction on when exclusive federal jurisdiction attaches. See Ex parte City of Montgomery, 275 So. 3d 1154, 1157 (Ala. Civ. App. 2018) ("City of

Montgomery"); Ruiz v. City of Montgomery, 200 So. 3d 26, 29-30 (Ala. Civ. App. 2015). As we will see, however, that reading is not the full picture.

Green's fourth holding was that in rem jurisdiction vested in the state court when the claimants filed their action because, at that time, the DEA had not yet approved the city's request for adoption and the United States Marshals Service had not yet taken possession of the currency. 55 So. 3d at 263-64. On its way to this holding, the court for the first time discussed "the applicable federal statute," 21 U.S.C. § 881(c), and its directive that " '[p]roperty taken or detained under this section [§ 881] shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, subject only to the orders and decrees of the court or the official having jurisdiction thereof ....' " 55 So. 3d at 264 (emphasis omitted). Echoing the statutory language, the court stated: "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.

This language must be read as qualifying Green's earlier statement that "federal jurisdiction begins the moment the res is controlled by federal agents," id. at 263, by defining "control[]" in terms of when

property is "taken or detained" within the meaning of § 881(c). In other words, Green held that exclusive federal jurisdiction begins when property is taken or detained under § 881(c), provided that no state court already has in rem jurisdiction. Applying that framework, the court stated that, "[a]s applied to this case, 'property taken' refers to the actual possession by United States Marshals." Id. at 264. It also considered the possibility that " 'detained' refers to federal approval of the City's adoptive-seizure request" but concluded that it did not need to "determine precisely which of the two [events] would trigger federal control," because both happened after the state-court action was filed. Id.

Finally, the court held that the procedural twists and turns of the case had not caused exclusive federal jurisdiction to attach -- neither during the period when the case was temporarily removed to federal court nor during the period when it was temporarily dismissed from the state court -- even though federal authorities possessed the res all throughout both "windows." Id. at 264-65. Green's explanation of this holding rests, at bottom, on two propositions: (1) that exclusive federal jurisdiction vests only at the point in time when property is "taken or detained" under

§ 881(c) and (2) that § 881(c)'s language refers only to the "initial[]" federal seizure of the property. Id. at 264-65. Thus, under this part of Green, "[f]ederal jurisdiction ... attach[es] only if federal agents t[ake] or detain[] the res" -- and that means initially -- "at a time when no other court ha[s] jurisdiction." Id. at 264; see also id. at 265 ("Federal in rem jurisdiction begins when the res is taken or detained and no other court has previously and properly exercised jurisdiction.").

This appeal does not require us to decide whether Green was correct in its consideration of that case's unusual procedural history or in its holding that "taken or detained" refers only to initial federal takings or detentions. For present purposes, we need only observe that this last holding of Green leaves no room for doubt that Green's jurisdictional analysis -- like ours in this case -- was squarely founded on § 881(c).

We have developed this point at such length because it is crucial to understanding not only Green's consistency with our holding in this case, but also the tensions in the Court of Civil Appeals' later decisions applying Green. The two precedents that most support the defendants here are Ruiz and City of Montgomery. In Ruiz (another case arising from a

warrantless seizure of currency during a traffic stop), the claimant filed a state-court action after the Montgomery police had transferred the res to the United States Marshals but before the federal government began administrative forfeiture proceedings. 200 So. 3d at 28. The Court of Civil Appeals held that exclusive federal jurisdiction had already attached under Green, which it read to have held "that the federal government controls property," and thus obtains exclusive jurisdiction, "when that property is in the 'actual possession' of agents of the United States." Id. at 30 (quoting Green, 55 So. 3d at 264).

Similarly, in City of Montgomery, the Court of Civil Appeals applied Green in considering the city's petition for a writ of mandamus ordering the trial court to dismiss the claimant's state-court action for lack of in rem jurisdiction. 275 So. 3d at 1156-57. The court denied the petition because the underlying facts were unclear: although it was certain that the DEA had taken possession of the res (a vehicle), there was "a dispute regarding when the DEA took possession." Id. at 1157. The court reasoned that, under Green, jurisdiction turned on which entity -- the Montgomery Police Department on the one hand or "the DEA or some

other federal agency" on the other -- had "possession" of the vehicle at the time the claimant filed her action in the circuit court. Id.

Notably, neither Ruiz nor City of Montgomery cited § 881(c) or referred to its "taken or detained" language. Instead, as referenced earlier, both Ruiz and City of Montgomery focused on Green's statement that "federal jurisdiction begins the moment the res is controlled by federal agents" (absent prior state-court jurisdiction), 55 So. 3d at 263, and they took "control" as synonymous with "possession" or "actual possession." See City of Montgomery, 275 So. 3d at 1157; Ruiz, 200 So. 3d at 30. This compressed version of Green's analytical framework made a certain sense in Ruiz and City of Montgomery themselves; in each of those cases, given their facts, there would have been no difference between when federal agents "possessed" the res and when the res was "taken or detained." That said, it is preferable for courts not to lose sight of § 881(c) in cases where exclusive federal jurisdiction ultimately depends on that statute.

The Claimants, however, suggest that Ruiz and City of Montgomery conflict with Green on a deeper level. They argue that Green endorsed

their view that "formal adoption" -- meaning completion of the DOJ procedures -- is a jurisdictional prerequisite and that Ruiz and City of Montgomery misinterpreted Green to the extent that they held "possession" without formal adoption to be sufficient.

To support this reading of Green, the Claimants rely less on Green itself than on the Court of Civil Appeals' characterization of Green in Little. In that case, a state law-enforcement officer, who was also a federally deputized DEA Task Force Officer, obtained a warrant from a state court to search the home of a suspected drug dealer. 232 So. 3d at 232. During the search, the officer discovered and seized several thousand dollars in cash, which he deposited with the DEA office in Montgomery. Id. at 233. The claimant sued in state court and obtained a judgment against the officer (Little) for the return of the property. Id.

On Little's appeal, the Court of Civil Appeals effectively limited Green to warrantless seizures. Id. at 235. Relying on § 15-5-14, Ala. Code 1975, which provides that property "taken under a search warrant ... shall be delivered to the court issuing the warrant," the court reasoned that any warrant issued by an Alabama court to a state law-enforcement officer

"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." 232 So. 3d at 235. Thus, the state court had obtained "constructive control" of the property by the seizure itself, and its exclusive in rem jurisdiction had "attached upon the moment of seizure." Id.

The Little court primarily distinguished Green on the straightforward ground that Green had dealt with a warrantless seizure and thus presented "no occasion to address the effect of § 15-5-14." Id. at 236. But the court went on to add these remarks:

> "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 [seized currency], 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 [the claimant] filed the underlying action."

Id. at 237. These statements require careful consideration.

The Claimants rely on the first sentence to show that possession is insufficient for federal jurisdiction under Green and (by extension) that the possession-focused analysis of Ruiz and City of Montgomery departed from Green. But the sentence is accurate as a description of Green only in a certain limited sense, and, taken in that sense, it is fully compatible with the other two cases. As we have seen, Green stands for the proposition that "control for the purposes of establishing federal in rem jurisdiction" exists only if federal agents initially "take[] or detain[]" the res under § 881(c) at a time when no state court has in rem jurisdiction -- which entails that "mere possession by federal agents does not amount to control" if (as in Green) the possession is only the continuing result of an initial taking or detention that occurred when a state court did have jurisdiction. See Green, 55 So. 3d at 264-65. Ruiz and City of Montgomery do not contradict that reasoning; they simply address different fact patterns in which possession did amount to "control" as Green uses that term. See id. at 264 ("The federal government controls the res when it is 'taken or detained' during a time when no other court has jurisdiction over the res.").

The second sentence in the above quotation, however, is more problematic. It appears to presume that the federal government's "long possession" of the res in Green began "before the state-court action was filed," consistent with Little's statement elsewhere (in its summary of Green's facts) that the currency in Green was transferred to the DEA "[o]n the same day" it was seized by the Montgomery police. 232 So. 3d at 236 (citing Green, 55 So. 3d at 258). Based on that description of Green's facts, the Claimants argue that Green necessarily "rejected physical transfer to a federal agency or possession by one as triggering federal jurisdiction," even if that transfer occurs before any state-court action is filed. Claimants' brief at 17. The problem with this argument is that nothing in the Green opinion supports Little's assertion of a same-day transfer. On the contrary, the Green opinion indicates that federal agents first took possession of the res weeks after the claimants filed their state-court action and more than a month after the original seizure by Montgomery police. See 55 So. 3d at 258, 264.

Finally, to address the last sentence in the above quotation from Little, the fact that the officer "never requested that the DEA adopt the

seizure" should have been immaterial in light of Green's holding that an adoption request has no jurisdictional significance. See id. at 263. To be sure, Green states at one point "that federal agents do not consider themselves to be in control of the res before they agree to accept a state or local government's request for an adoptive seizure." Id. In context, however, that statement was merely part of Green's reasoning for its holding that an adoptive-seizure request does not vest federal jurisdiction. See id. To put matters more precisely, Green stands for the proposition that the filing of an adoptive-seizure request is not sufficient for exclusive federal jurisdiction to attach. Green did not consider whether the filing or approval of such a request is necessary for exclusive federal jurisdiction to attach. Thus, our holding in this case that the federal government acquired exclusive jurisdiction of the personal property when it was transferred to Deputies Middleton and Harville in their federal capacity does not conflict with Green.

To sum up, although the Claimants' arguments expose some minor tensions in Green and its progeny, those tensions ultimately provide no reason to question the circuit court's judgment. We agree with Green's

holding that, under § 881(c), exclusive federal jurisdiction begins when property is "taken or detained."[15] We also agree with the reasoning of Ruiz and City of Montgomery in light of their facts, despite those decisions' inattention to § 881(c). As for Little, this case does not require us to assess its core holding about warrant-backed seizures. But we are compelled to say that some of Little's statements about Green (which were not necessary to distinguish the case) appear to have been ill-advised and should not be relied on as guides to Green's meaning in the future.

## Conclusion

On the record before us, Deputies Middleton and Harville "t[ook] or detained" the personal property "under [21 U.S.C. § 881]" when Officer McElroy transferred it to them in their federal capacity as DEA agents. 21 U.S.C. § 881(c). Under § 881(c), the personal property was in the exclusive jurisdiction of the federal government from that moment. Thus, the circuit court rightly held that it could not exercise in rem jurisdiction over the personal property.

[15]We express no approval or disapproval of Green's other holdings, which are beyond the issues presented in this appeal.

MOTION TO STRIKE DENIED; AFFIRMED.

Parker, C.J., and Bolin, Wise, and Stewart, JJ., concur.

Mendheim, J., concurs in the result.

Sellers, J., dissents.

Shaw, J., recuses himself.