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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2016

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Ex parte State of Alabama

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CIVIL APPEALS

(In re: Christopher Okafor

v.

State of Alabama)

(Madison Circuit Court, CV-13-900284;
Court of Civil Appeals, 2140649)

STUART, Justice.

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This Court granted certiorari review to determine whether the Court of Civil Appeals erred in reversing the Madison Circuit Court's summary judgment for the State. We reverse and remand.

Facts and Procedural History

According to the materials submitted to the trial court, while serving a subpoena on Christopher Okafor at the residence of Shanna Hereford, law-enforcement officers noticed a strong smell of marijuana and entered the residence. When an officer asked Okafor if there was marijuana in the residence, Okafor responded that there was. When the law-enforcement officers requested that Okafor sign a consent form to permit a search the residence, Okafor informed the law-enforcement officers that he did not live at the residence and that he could not sign a consent form to search the residence. Okafor, however, led the law-enforcement officers to the marijuana, which was located in a white plastic bag in the closet of a downstairs bedroom. A subsequent search of the bedroom resulted in the seizure of not only the marijuana, but also \$16,500 in cash. Okafor denied any knowledge or ownership of the currency.

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On February 8, 2013, the State, pursuant to § 20-2-93, Ala. Code 1975, filed a complaint against Okafor seeking to condemn the \$16,500 seized from Hereford's residence. Okafor filed an answer in which he stated that he was the lawful owner of the currency, that the currency was not subject to condemnation, and that the law-enforcement officers had seized the currency during an unlawful search. The State moved for a summary judgment. In opposition to the State's summary-judgment motion, Okafor, among other arguments, contended that the law-enforcement officers did not have probable cause or consent to enter Hereford's residence and that any consent that they may have gotten for the search of the residence was not given knowingly, intelligently, and/or freely. In support of his contentions, Okafor submitted an affidavit from Hereford, in which she stated that she did not give the law-enforcement officers consent to enter or to search her house because, she said, her written consent to search her house was not freely given because the officers stated that they would not leave her house until it was searched.

After conducting a hearing on the State's summary-judgment motion, the trial court entered a summary judgment

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for the State, declaring that the currency was contraband and ordering the forfeiture of the currency to the State. Okafor appealed the trial court's judgment to the Court of Civil Appeals.

Before the Court of Civil Appeals, Okafor argued that the trial court erred in entering a summary judgment for the State because, he said, the search of Hereford's residence and the seizure of the currency violated the Fourth Amendment. The State responded, arguing that Okafor did not have standing to challenge the constitutionality of the search and seizure. The Court of Civil Appeals, in a per curiam opinion, reversed the summary judgment and remanded the case for further proceedings. Okafor v. State, [Ms. 2140649, February 12, 2016] ___ So. 3d ___ (Ala. Civ. App. 2016). The Court of Civil Appeals held that Okafor presented sufficient evidence to create genuine issues of material fact with regard to the legality of the search of Hereford's residence and the legality of the seizure of the currency. Specifically, the Court of Civil Appeals concluded that genuine issues of material fact existed with regard to "whether [Okafor] could have reasonably believed that he was in 'custody' at the time

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he was questioned about the presence of marijuana in the house and whether his Fifth Amendment right against self-incrimination was violated." ___ So. 3d at ___. The evidence the Court of Civil Appeals cited to support its conclusion that genuine issues of material fact existed was contained in an affidavit from Hereford, in which she alleged that four law-enforcement officers entered the house yelling, carrying weapons, and using physical force; that the entry was without a warrant; that the law-enforcement officers informed her that they were not going to leave until they searched the house; and that the officers constrained her freedom and that of Okafor when questioning them. Judge Donaldson disagreed with the majority's conclusion that genuine issues of material fact existed with regard to the legality of the search because, he concluded, although the evidence before the trial court demonstrated that Hereford had standing to challenge the legality of the search and seizure, Okafor did not present any evidence, much less substantial evidence, to establish that he had standing to challenge the search and seizure.

The State petitioned this Court for certiorari review, arguing, among other grounds, that the Court of Civil Appeals

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erred in concluding that genuine issues of material fact existed with regard to the legality of the search and seizure because, it contended, Okafor did not have standing to challenge the legality of the search of the house where the currency was found. The State maintained in its petition that the decision of the Court of Civil Appeals that Okafor had standing to challenge the search of Hereford's house and the seizure of the currency found therein conflicted with Ex parte Collier, 413 So. 2d 403, 404 (Ala. 1982) (recognizing that a defendant must have an expectation of privacy or a proprietary interest in the property searched to challenge a search).

Standard of Review

"In reviewing a decision of the Court of Civil Appeals on a petition for a writ of certiorari, this Court 'accords no presumption of correctness to the legal conclusions of the intermediate appellate court. Therefore, we must apply de novo the standard of review that was applicable in the Court of Civil Appeals.' Ex parte Toyota Motor Corp., 684 So. 2d 132, 135 (Ala. 1996)."

Ex parte Exxon Mobil Corp., 926 So. 2d 303, 308 (Ala. 2005).

The standard of review for a summary judgment is as follows:

"We review the trial court's grant or denial of a summary-judgment motion de novo, and we use the same standard used by the trial court to determine whether the evidence presented to the trial court presents a genuine issue of material fact. Bockman

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v. WCH, L.L.C., 943 So. 2d 789 (Ala. 2006). Once the summary-judgment movant shows there is no genuine issue of material fact, the nonmovant must then present substantial evidence creating a genuine issue of material fact. Id. 'We review the evidence in a light most favorable to the nonmovant.' 943 So. 2d at 795. We review questions of law de novo. Davis v. Hanson Aggregates Southeast, Inc., 952 So. 2d 330 (Ala. 2006)."

Smith v. State Farm Mut. Auto. Ins. Co., 952 So. 2d 342, 346 (Ala. 2006).

Discussion

The State contends that the Court of Civil Appeals erred in holding that Okafor presented substantial evidence to satisfy his burden of proof in challenging the State's summary-judgment motion. Specifically, the State argues that the Court of Civil Appeals' holding, which allows Okafor to challenge the legality of the search of Hereford's residence and the seizure of the currency, is erroneous because, it says, Okafor does not have standing to challenge the search of Hereford's house.

In Ex parte Collier, *supra*, this Court held that a defendant must have an expectation of privacy or a proprietary interest in the property searched to have standing to challenge the search of the property.

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The Court of Criminal Appeals elaborated on a defendant's standing to challenge a search in Jones v. State, 946 So. 2d 903, 919-20 (Ala. Crim. App. 2006), stating:

"The appellant also argues that the trial court improperly admitted evidence law enforcement officers seized from the Jones and the Lazenby residences and from the Mercedes [automobile] pursuant to unlawful searches. Specifically, he contends that he had an expectation of privacy in the residences and the vehicle; that officers did not obtain warrants to search the residences and the vehicle; and that he did not consent to the searches. ...

". . . .

"We must first determine whether the appellant has standing to challenge the search and seizure with regard to the Jones residence

"An appellant wishing to establish standing to challenge the introduction of evidence obtained as a result of an alleged violation of the Fourth Amendment must demonstrate that he has a legitimate expectation of privacy in the area searched. Cochran v. State, 500 So. 2d 1161 (Ala. Cr. App. 1984), rev'd in part on other grounds, 500 So. 2d 1179 (Ala. 1985), on remand, 500 So. 2d 1188 (Ala. Cr. App. 1986), aff'd, 500 So. 2d 1064 (Ala. 1986), cert. denied, 481 U.S. 1033, 107 S.Ct. 1965, 95 L.Ed.2d 537 (1987) "A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed." Rakas v. Illinois, 439 U.S.

128, 134, 99 S.Ct. 421, 425, 58 L.Ed.2d 387 (1978). "For a search to violate the rights of a specific defendant, that defendant must have a legitimate expectation of privacy in the place searched, and the burden is squarely on the defendant asserting the violation to establish that such an expectation existed." Kaercher v. State, 554 So. 2d 1143, 1148 (Ala. Cr. App.), cert. denied, 554 So. 2d 1152 (Ala. 1989).'

"Harris v. State, 594 So. 2d 725, 727 (Ala. Crim. App. 1991).

""No one circumstance is talismanic to the Rakas inquiry. 'While property ownership is clearly a factor to be considered in determining whether an individual's Fourth Amendment rights have been violated, property rights are neither the beginning nor the end of ... [the] inquiry.' United States v. Salvucci, 448 U.S. 83, 92, 100 S.Ct. 2547, 2553, 65 L.Ed.2d 619, 628 (1980) (citation omitted). Other factors to be weighed include whether the defendant has a possessory interest in the thing seized or the place searched, whether he has the right to exclude others from that place, whether he has exhibited a subjective expectation that it would remain free from governmental invasion, whether he took normal precautions to maintain his privacy and whether he was legitimately on the premises. See, id.; Rawlings v.

Kentucky, 448 U.S. 98, 100 S.Ct. 2556, 2559, 65 L.Ed.2d 633 (1980); Rakas v. Illinois, 439 U.S. 128, 99 S.Ct. 421, 58 L.Ed.2d 387 (1978)."

"United States v. Haydel, 649 F.2d 1152, 1155 (5th Cir. 1981), cert. denied, 455 U.S. 1022, 102 S.Ct. 1721, 72 L.Ed.2d 140 (1982).

"'....

"'... Ownership or a possessory interest in property seized, while relevant in determining whether a defendant's Fourth Amendment rights have been violated, is not sufficient alone to warrant a finding that the defendant had a reasonable expectation of privacy in the place where the property was discovered. Rawlings v. Kentucky, 448 U.S. 98, 100 S.Ct. 2556, 65 L.Ed.2d 633 (1980); Ramires v. State, 492 So. 2d 615 (Ala. Cr. App. 1985).'

"Kaercher v. State, 554 So. 2d 1143, 1148-50 (Ala. Crim. App. 1989)."

(Emphasis added.)

In Kevin Sharp Enterprises, Inc. v. State ex rel. Tyson, 923 So. 2d 1117, 1120 (Ala Civ. App. 2005), the Court of Civil Appeals, quoting Draper v. State, 641 So. 2d 1283, 1285 (Ala. Civ. App. 1993), quoting in turn Williams v. State, 601 So. 2d 1062, 1070 (Ala. Crim. App. 1991), stated, with regard to a defendant's standing to challenge a search:

""When a motion to suppress evidence in a criminal case is based on the ground that the evidence was obtained in violation of the Fourth Amendment, one issue is whether the movant has standing to assert the claim and to seek the remedy of exclusion. The rights afforded protection by the Fourth Amendment are personal rights. To show that a party has standing to object to a search, the party must have a possessory interest in the premises searched. The "capacity to claim the protection of the [Fourth] Amendment depends not upon a property right in the invaded place but upon whether the area was one in which there was a reasonable expectation of freedom from governmental intrusion." 'A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed.'""

(Citations omitted; emphasis added.)

To reach its conclusion that genuine issues of material fact exist as to "whether Okafor could have reasonably believed that he was in 'custody' at the time he was questioned about the presence of marijuana in the house and whether his Fifth Amendment right against self-incrimination was violated," ___ So. 3d at ___, the Court of Civil Appeals had to determine initially that Okafor had standing to challenge the legality of the search of Hereford's residence or that a genuine issue of material fact existed as to whether Okafor had standing to challenge the legality of the search.

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Okafor, however, did not present substantial evidence that he had standing to challenge the legality of the search. There is no genuine issue of material fact as to whether Okafor had a legitimate expectation of privacy or a proprietary interest in Hereford's residence to establish standing to challenge the search. Okafor denied that he resided at the house, and the evidence he submitted to the trial court does not dispute that fact. Additionally, it is undisputed that Okafor led the officers to the bedroom where the currency was and that, at the time of the seizure of the currency, Okafor denied that the currency was his property. Okafor simply did not present any evidence, much less substantial evidence, indicating that he had a legitimate expectation of privacy or a proprietary interest in the residence. As Judge Donaldson stated in his dissent: "Okafor's conduct at the time of the search failed to exhibit a legitimate expectation of privacy in the residence; in fact, the evidence was undisputed that he expressly disclaimed such an interest." ___ So. 3d at ____.

In reaching its conclusion that the trial court erred in entering a summary judgment for the State, the Court of Civil Appeals relied on evidence indicating that four law-

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enforcement officers entered the house yelling, carrying weapons, and using physical force; that the entry was without a warrant; that the law-enforcement officers informed Hereford that they were not going to leave until they searched the house; and that, according to Hereford's statement, the officers constrained her freedom and that of Okafor when questioning them. Although ample evidence exists indicating that Hereford had an expectation of privacy and a proprietary interest in the residence and, consequently, that she may have standing to challenge the search, the record does not contain, and the Court of Civil Appeals did not cite any, much less substantial, evidence creating a genuine issue of fact as to whether Okafor had an expectation of privacy or a proprietary interest in the residence so as to establish his standing to challenge the search. Therefore, Okafor did not satisfy his evidentiary burden in opposition to the State's summary-judgment motion.

Conclusion

"Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted." Alderman v. United States, 394 U.S. 165, 174

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(1969). Because Okafor did not demonstrate that he had a legitimate expectation of privacy or a proprietary interest in Hereford's residence, he did not establish that he had standing to challenge the search of the residence and the seizure of the currency. The judgment of the Court of Civil Appeals is reversed, and this case is remanded to that court for the entry of an order consistent with this opinion.

REVERSED AND REMANDED.

Bolin, Parker, Main, and Wise, JJ., concur.

Murdock, Shaw, and Bryan, JJ., dissent.

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SHAW, Justice (dissenting).

I respectfully dissent.

In response to the State's motion for a summary judgment, Christopher Okafor argued, among other things, that (1) the search of Shanna Hereford's residence was an illegal warrantless search; (2) that he was questioned in violation of Miranda v. Arizona, 384 U.S. 436 (1966), and, thus, that the "evidence ... obtained as a result of the unlawful questioning ... should be inadmissible in this case"; and (3) that Hereford's consent to the search was not knowingly, intelligently, and freely given. Okafor raised these issues again on appeal to the Court of Civil Appeals.

If it is accepted that Okafor did not reside at Hereford's house,¹ issues (1) and (3) appear meritless as a matter of law: as noted in the main opinion, Okafor does not have "standing" to challenge the constitutional propriety of the search of Hereford's residence. Specifically, Okafor's rights were not violated by this search, and he cannot claim for himself a violation of Hereford's rights. Thus, whether

¹Hereford states in her affidavit that both she and Okafor were residing there.

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a question of fact exists as to the issue of the validity of the search is of no consequence.²

As to issue (2), it appears that Okafor argued that the seized currency was the fruit of the purportedly illegal questioning.³ If he was questioned while in custody without being informed of his rights, and thus in violation of Miranda, then Okafor's personal rights against self-incrimination were impacted. The Court of Civil Appeals held that there was a question of fact as to this issue, making summary judgment inappropriate:

"Based on the testimony presented in Hereford's affidavit, we conclude that Okafor presented sufficient evidence to create a genuine issue of material fact regarding whether he could have reasonably believed that he was in 'custody' at the time he was questioned about the presence of

²The State did not raise this "standing" issue in the trial court; I do not think it had to. It does not appear that, to meet the elements of the forfeiture statute, the State was required to prove as part of its burden that the currency was legally seized. The illegality of the seizure, in this context, is a defense that must be proven by Okafor. Because these arguments appear meritless as a matter of law, they did not rebut the State's prima facie case.

³Given Judge Donaldson's dissent to the Court of Civil Appeals' decision, I have serious concerns whether Okafor properly raised this issue on appeal in that court. However, the State does not challenge the court's holding that this issue was properly raised, and so whether this issue was properly raised is not before us.

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marijuana in the house and whether his Fifth Amendment right against self-incrimination was violated. If the trial court resolves that factual issue in Okafor's favor, then the condemnation and forfeiture of the currency cannot properly be based on the evidence seized during the warrantless search of the house.

"Because Okafor presented sufficient evidence to overcome the State's summary-judgment motion, the trial court erred in entering a summary judgment in favor of the State. Accordingly, that judgment is due to be reversed."

Okafor v. State, [Ms. 2140649, Feb. 12, 2016] ___ So. 3d ___, ___ (Ala. Civ. App. 2016) (citation omitted). I do not see the Court of Civil Appeals addressing the other two issues Okafor raised (nor was it required to, as those issues were pretermitted).

In its certiorari petition, the State alleged two grounds: (1) that the protections of Miranda do not apply to civil proceedings and (2) that Okafor lacked standing to challenge the search of Hereford's residence. This Court denied certiorari review as to the first ground, but granted review as to the second. After further review, although it appears that the first ground in the certiorari petition attacked the rationale of the Court of Civil Appeals' decision, the second ground attacked an argument by Okafor--

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that the search violated the Fourth Amendment--that was not adopted in the decision we are called upon to review.

The controlling issue in this case is whether, in a civil-forfeiture matter, evidence seized as the fruit of a Miranda violation is admissible. That appears to be the only issue addressed by the Court of Civil Appeals; this Court denied certiorari review of the State's challenge to that issue. Whether the search was permissible under the Fourth Amendment and whether Okafor lacked standing to challenge the search do not seem relevant. Based on the above, I would quash the writ; therefore, I must respectfully dissent.

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BRYAN, Justice (dissenting).

As Justice Shaw aptly notes, this Court granted certiorari to review whether Christopher Okafor had Fourth Amendment "standing" to challenge the search conducted in the house.⁴ However, the Court of Civil Appeals did not base its judgment on the issue of Fourth Amendment standing; rather, that court, in reversing the trial court, concluded that there is a genuine issue of material fact regarding whether Okafor's Miranda rights had been violated. Because this Court granted certiorari review on a distinct issue -- standing -- upon which the appellate court did not base its judgment, it appears that standing is not relevant to our review. Thus, I do not believe that we may conclude, as the main opinion does, that Okafor lacked standing to challenge the search. Insofar as it may be argued that the issue of standing is relevant, I offer the following reasons why we should not reverse the appellate court's judgment.

First, I note that, unlike other contexts in which the term "standing" is sometimes used, Fourth Amendment "standing"

⁴For the sake of convenience, I will sometimes refer to the principle known as Fourth Amendment standing as simply "standing."

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to challenge a search is not a jurisdictional issue. In Rakas v. Illinois, 439 U.S. 128, 140 (1978), the United States Supreme Court explained that point: "[T]his Court's long history of insistence that Fourth Amendment rights are personal in nature has already answered many of these traditional standing inquiries, and we think that definition of those rights is more properly placed within the purview of substantive Fourth Amendment law than within that of standing." The Tenth Circuit Court of Appeals has succinctly explained the point:

"The district court and the parties refer to this principle[, i.e., that one may only claim the benefits of the exclusionary rule if his or her own Fourth Amendment rights have been violated,] as Fourth Amendment 'standing.' This principle is often called Fourth Amendment 'standing,' but that is a misnomer. See United States v. Smith, 531 F.3d 1261, 1266 n.2 (10th Cir. 2008). Mr. Jarvi unquestionably has 'standing' (in a jurisdictional sense) to challenge the legality of his detention and the search of his home; the question before us is a substantive one of whether his Fourth Amendment rights have been violated. See Rakas v. Illinois, 439 U.S. 128, 140, 99 S. Ct. 421, 58 L. Ed. 2d 387 (1978)."

United States v. Johnson, 584 F.3d 995, 999 n.2 (10th Cir. 2009). See also Minnesota v. Carter, 525 U.S. 83 (1998) (reaffirming the Supreme Court's approach in Rakas); and

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United States v. Dyer, 580 F.3d 386, 390 (6th Cir. 2009) (stating that "[s]tanding to challenge a search or seizure is a matter of substantive Fourth Amendment law" rather than a jurisdictional question).

Typically, the term "standing" implicates subject-matter jurisdiction, which is an issue that may be raised at any point in the proceeding. However, as explained above, Fourth Amendment standing is not that type of standing. Thus, whether this Court or the Court of Civil Appeals may consider Fourth Amendment standing in any given case depends on the procedural history of the case.⁵ Based on the procedural history here, I do not believe that we may decide this case in favor of the State based on the issue of standing.

⁵Because Fourth Amendment standing is not a jurisdictional issue, it may be waived. See, e.g., United States v. Washington, 380 F.3d 236, 240 n.3 (6th Cir. 2004) ("'Standing to challenge a search or seizure is a matter of substantive Fourth Amendment law rather than of Article III jurisdiction, meaning that the government can waive the standing defense by not asserting it.'" (quoting United States v. Huggins, 299 F.3d 1039, 1050 n.15 (9th Cir. 2002))); United States v. Dewitt, 946 F.2d 1497, 1499-1500 (10th Cir. 1991) ("[T]he issue of [F]ourth [A]mendment standing could be waived if the government has failed to raise it in a timely fashion during the litigation." (quotation marks omitted)).

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The record on appeal does not indicate that the State, in moving for a summary judgment, argued that Okafor lacked Fourth Amendment standing. As the main opinion notes, Okafor had the burden of proving at trial that he had standing. However, because standing here is not an issue of subject-matter jurisdiction, the State had the burden of production in moving for a summary judgment. As this Court has explained:

"If the burden of proof at trial is on the nonmovant, [i.e., Okafor], the movant[, i.e., the State,] may satisfy the Rule 56[, Ala. R. Civ. P.,] burden of production either by submitting affirmative evidence that negates an essential element in the nonmovant's claim or, assuming discovery has been completed, by demonstrating to the trial court that the nonmovant's evidence is insufficient to establish an essential element of the nonmovant's claim"

Ex parte Gen. Motors Corp., 769 So. 2d 903, 909 (Ala. 1999) (quoting Berner v. Caldwell, 543 So. 2d 686, 691 (Ala. 1989) (Houston, J., concurring specially) (emphasis omitted)). Here, the State evidently never asserted lack of standing as a ground for summary judgment, never marshaled evidence in support of such an assertion, and never demonstrated that Okafor's evidence of standing was insufficient. The text of the summary-judgment motion contained in the record reads, in its entirety:

"COMES NOW the [State] and respectfully moves this Court to enter, pursuant to Rule 56 of the Alabama Rules of Civil Procedure, a summary judgment in [the State's] favor for the forfeiture of the property described in the complaint and for grounds of this motion says that there are no genuine issues of material fact and that the [State] is entitled to a judgment as a matter of law.

"This is an asset forfeiture case concerning certain property seized from Christopher Okafor. The motion is based upon the pleadings and the attached affidavit of Inv. Matt Thornbury."

Regarding the issue of Okafor's alleged lack of standing, the State failed to satisfy its burden of production in moving for a summary judgment. That is, the State failed to shift the summary-judgment burden of production to Okafor on that particular issue. See Denmark v. Mercantile Stores Co., 844 So. 2d 1189, 1193 (Ala. 2002) ("'[t]he burden to present evidence that will establish a genuine issue of material fact does not shift to the nonmovant unless the movant [first] satisfies its burden.'") (quoting O'Barr v. Oberlander, 679 So. 2d 261, 263 (Ala. Civ. App. 1996)). This is a crucial point given that the State now argues that the trial court's judgment is correct based on a lack of standing.

In reversing the judgment of the Court of Civil Appeals, which reversed the trial court's summary judgment, the main

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opinion is essentially affirming the trial court's summary judgment entered in favor of the State. Typically, an appellate court may affirm a trial court's judgment on any ground; however, an appellate court may not do so where due-process considerations required certain notice at the trial level, and that is the case here. Liberty Nat. Life Ins. v. University of Ala. Health Servs. Found., P.C., 881 So. 2d 1013, 1020 (Ala. 2003). An appellate court may not affirm a summary judgment where a summary-judgment movant has failed to shift the burden of production to the nonmovant. Id. Therefore, we cannot affirm (indirectly) the trial court's summary judgment in favor of the State on the ground that Okafor lacked Fourth Amendment standing. Because the record does not indicate that the State shifted the burden of production in the summary-judgment proceedings, the Court of Civil Appeals correctly disregarded (implicitly) the State's somewhat muted argument on appeal that the summary judgment should be affirmed for a lack of standing. I do not believe we may reverse the Court of Civil Appeals' judgment on the basis of standing.

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Further, even assuming, for the sake of argument, that the merits of the standing issue are properly before us, there is a genuine issue of material fact regarding whether Okafor had standing, i.e., a legitimate expectation of privacy in the house. Although Okafor denied that he lived in the house when the search occurred, Shanna Hereford testified by deposition that at the time of the search Okafor actually resided with her and their children in the house. Further, the fact that Okafor knew that marijuana was hidden packaged in a box in the back of a closet suggests a possessory interest in the house that may imply a legitimate expectation of privacy.

Based on the foregoing, I respectfully dissent.