Rel: 02/12/2016

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2015-2016

2140649

Christopher Okafor

v.

State of Alabama

Appeal from Madison Circuit Court
(CV-13-900284)

PER CURIAM.

Christopher Okafor appeals from a summary judgment the Madison Circuit Court ("the trial court") entered condemning money that had been seized by law-enforcement officers during

the search of a residence. For the reasons discussed below, we reverse the trial court's judgment.

On February 8, 2013, the State of Alabama ("the State"), pursuant to § 20-2-93, Ala. Code 1975, filed a complaint in the trial court seeking to condemn $16,500 in currency ("the currency"). According to materials submitted in support of and in opposition to a motion for a summary judgment filed by the State, investigators of the Madison-Morgan County Strategic Counter Drug Team ("SCDT") and the Madison County District Attorney's Office seized the currency from a residence on February 7, 2013. Okafor was present at the residence when the currency was seized. On July 2, 2013, Okafor filed an answer in which he asserted that he was the lawful owner of the currency, that the currency was not subject to condemnation, and that SCDT investigators had obtained the currency during an unlawful search and seizure.

In support of its summary-judgment motion, the State attached the affidavit of Matt Thornbury, an investigator assigned to the SCDT. Thornbury testified as follows:

> "2. On February 7, 2013, I, along with two other investigators with the District Attorney's Office, went to [a residence] in Huntsville, Alabama, in an attempt to serve a subpoena for trial on Christopher

Okafor who was witness in a double homicide. Upon arriving at the residence, Investigator Nettles and this investigator approached the front door of the residence and made contact with the home owner, [Shanna] Hereford. Upon Hereford opening the front door to the residence, investigators detected a strong odor of marijuana coming from the residence. Upon contact with Hereford, Investigator Nettles advised Hereford that investigators were with the Madison County District Attorney's Office and needed to speak with Christopher Okafor. Hereford advised that Okafor was not at the residence and began to act nervous.

"3. At this same time, Investigator Turner, who was standing in the yard of the residence, observed Okafor look out the den window of the residence. At this time, investigators stepped into the residence to speak with Hereford and Okafor. Upon entrance to the residence, investigators continued to detect a very strong odor of marijuana in the residence. Investigators verbally announced for Okafor who came out of the downstairs den area of the residence. Okafor was patted down for officer safety and Investigator Turner explained to Okafor the reason for our visit. Investigator Turner and Investigator Nettles served the subpoena on Okafor at that time. While speaking with Okafor, Investigator Turner asked Okafor if there was marijuana in the residence and Okafor advised that there was in fact marijuana in the residence. Investigator Turner spoke with Hereford who also advised that there was marijuana in the residence.

"4. While at the residence, ... Hereford was presented with a voluntary consent to search form which she read and indicated she understood. Hereford subsequently signed permission to search the residence.

"5. At this time this investigator spoke with Okafor who advised that he did not live at the residence and therefore could not sign consent for

> the residence. Okafor did advise this investigator and Turner that the marijuana was located in the downstairs bedroom closet in a white plastic bag. Okafor advised investigators of this not after questioning but while explaining the consent to search form. Okafor got up while explaining the form and went to the downstairs bedroom closet and pointed out the marijuana to investigators.
>
> "6. At this time, Investigator Turner recovered a white plastic bag containing two clear plastic bags of marijuana, approximately 92.5 grams gross weight and a set of digital scales. Upon searching the downstairs bedroom closet, investigators took note of the all male clothing that was in the closet along with the 18 pairs of mens tennis shoes in the closet. Agents also located a hidden compartment in a can which contained packaging materials for controlled substances. Upon a further search of the downstairs bedroom, this investigator located $15,000 in U.S. Currency bundled in $5,000 stacks located in the top dresser drawer. Investigator Turner located $1,500 in U.S. Currency in the top nightstand drawer.
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> "7. Although ... Hereford signed a receipt for the U.S. ... Currency, both she and Okafor denied any knowledge or ownership of the U.S. Currency.
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> "8. A further search of the residence revealed a Beretta Model 21A handgun in the top of the closet in the downstairs bedroom. The firearm had 4 live rounds in the magazine. Also located beside the firearm was a box of 46 live .32 cal handgun rounds. At this time Investigator Turner spoke with Hereford about the weapon. Hereford advised that the weapon did not belong to her. Hereford advised that the only weapon that she owned was a 9mm Ruger handgun located in the upstairs bedroom."

In his response to the State's summary-judgment motion, Okafor contended that the SCDT investigators lacked probable

cause or consent to enter Shanna Hereford's residence, that the SCDT investigators failed to advise him of his rights pursuant to Miranda v. Arizona, 384 U.S. 436 (1966), and that consent for the search of the residence was not given knowingly, intelligently, and/or freely. Okafor attached to his response a document titled "Intake Sheet" that Thornbury purportedly completed.[1] The intake sheet provided a summary of the search of the residence:

> "[Investigators] went to [the] address to talk to [Okafor] about a murder case as a witness. The woman who answered the door said he wasn't present but [the investigators] saw [him] look out a window. [They] entered and smelled [marijuana] and they called out for him. He was asked about [marijuana] after the smell was apparent and he told them it was in the closet. [The investigators] found [two] large bags of [marijuana], a set of scales and a lot of men's clothing. They also found $16,500 .... Both occupants denied ownership of the money."

Okafor also submitted Shanna Hereford's affidavit, which contained the following testimony:

> "On or about February 7, 2013, four officers of the law arrived at the home where Chris Okafor and I were residing with our children. On that day when they knocked at the door and I went and stood in the doorway there was no aroma of marijuana or any illegal substance at or around the door. The wind

[1]Neither party moved to strike any materials filed in connection with the motion for a summary judgment.

was blowing outside at the time the police stood on my front steps, which is not an enclosed area.

"The police officers never possessed, or said they possessed a lawful search warrant for my home when they arrived. I never consented for the police officers to enter my home. I am a person of suitable age and discretion. I resided at the home, but the police officers never suggested or stated they wanted to leave a witness subpoena for Chris Okafor. Upon information and belief I now know under Rule 17.4(d)(2)[, Ala. R. Crim. P.,] the police officers could have lawfully served the witness subpoena for Chris Okafor by simply handing it to me, since by their own admission, in the affidavit of Officer Matthew Thornbury, someone allegedly saw Chris Okafor in the home and they believed him to reside there.

"Four officers of the law forced entry into my home. With loud voices, yelling, carrying weapons and using physical force they intimidated me and assaulted me by pushing me back into my home as they unlawfully entered, the police officers were aggressive and induced fear in me.

"Only after they entered the home did they say they smelled marijuana. Chris Okafor showed them where unburnt marijuana was kept approximately fifty feet away, packaged in a box in the back of a closet. There was no smell of marijuana in the home. No Miranda warnings were given [to] us before questioning. The questions assumed we were guilty of a crime and their questions would likely induce a self-incriminating statement, as it actually did. I was told the police were not going to leave my home until they searched it. My written consent was not freely given to them inasmuch as I was threatened they would not leave my home unless it was searched. In fact I was told they could search my home regardless, only it would take longer. In fact before they submitted a document to me for my

> signature, they had already searched my home. Our freedom was constrained at the time of the unlawful search, and at the time they asked us questions.
>
> "The form given to me was never explained to me as a consent to search. The document was shown to me after Chris Okafor showed the police officers where the unburnt marijuana was located. The Police informed me I had to sign the document so they could remove the marijuana from my home. No one told me I had a right not to sign the document. I believe I was under duress from the time the police officers unlawfully entered my home until the time they left the premises."

Okafor filed a supplement to his response to the motion for a summary judgment on April 1, 2015, in which he argued that "the Alabama Forfeiture Laws require an evidentiary link between the property seized and unlawful conduct. No such link was provided by the [the State]."

After a hearing on the summary-judgment motion, the trial court entered a judgment on April 1, 2015, granting the State's motion, declaring that the currency was contraband, and ordering the currency forfeited to the State. See § 20-2-93(a)(4). On May 11, 2015, Okafor filed a completed docketing statement in the trial court. On May 14, 2015, Okafor filed a notice of appeal in the trial court.

As a threshold matter, we must determine whether Okafor filed a timely notice of appeal from the trial court's April

1, 2015, summary judgment. "The timely filing of the notice of appeal is a jurisdictional act." Thompson v. Keith, 365 So. 2d 971, 972 (Ala. 1978). "Lack of subject matter jurisdiction may not be waived by the parties and it is the duty of an appellate court to consider lack of subject matter jurisdiction ex mero motu." Ex parte Smith, 438 So. 2d 766, 768 (Ala. 1983) (citing City of Huntsville v. Miller, 271 Ala. 687, 127 So. 2d 606 (1958), and Payne v. Department of Indus. Relations, 423 So. 2d 231 (Ala. Civ. App. 1982)).

Rule 4(a)(1), Ala. R. App. P., provides, in pertinent part, that,

> "in all cases in which an appeal is permitted by law as of right to the supreme court or to a court of appeals, the notice of appeal required by Rule 3[, Ala. R. App. P.,] shall be filed with the clerk of the trial court within 42 days (6 weeks) of the date of the entry of the judgment or order appealed from, or within the time allowed by an extension pursuant to Rule 77(d), Alabama Rules of Civil Procedure."

Rule 3(c), Ala. R. App. P., provides the requirements for the form and contents of the notice of appeal. That rule reads as follows: "The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment, order or part thereof appealed from; and shall name the court to which the appeal is taken. Such designation of judgment or

order shall not, however, limit the scope of appellate review."

In the present case, Okafor filed his notice of appeal on May 14, 2014, or 43 days after the trial court entered the summary judgment. On May 11, 2015, however, Okafor filed in the trial court the docketing statement prescribed by Rule 3(e), Ala. R. App. P. Rule 3(e) provides:

> "Each notice of appeal to an appellate court, at the time it is filed with the trial court, shall be accompanied by the appropriate 'Docketing Statement' (Form 24, 25, or 26). If the notice of appeal is given orally in a criminal case, the docketing statement shall be filed within 7 days (1 week) after the oral notice of appeal is given. However, the appellant's failure to file the docketing statement with the notice of appeal shall not affect the validity of the notice of appeal. The appellant, or if the appellant is represented by counsel, then the appellant's attorney, shall complete and sign the docketing statement before it is filed with the court. If the notice of appeal is tendered to the clerk of the trial court without a properly completed docketing statement, the clerk shall accept the notice of appeal and shall inform the person filing it of the requirements of this rule, and the appellant, or, if the appellant is represented by counsel, then the appellant's attorney, shall promptly file a properly completed docketing statement. The clerk of the trial court, when serving the notice of appeal as specified in this rule, shall attach thereto a copy of the docketing statement, if available. If, on the date the notice of appeal is served, the docketing statement is not available, it shall be served on those persons on whom the notice of appeal was served as soon as it becomes available. For the

> failure to comply with the requirements of this rule, the appellate court in which the appeal is pending may make such orders as are just, including an order staying the proceedings until the docketing statement is filed or, after proper notice, an order dismissing the appeal; and, in lieu of any orders or, in addition to any orders, the court may treat the failure to comply with the requirements of this rule as contempt of court."

We must determine whether the filing made by Okafor on May 11, which was within the 42-day period to perfect an appeal, satisfied the requirements of Rule 3(c) in order for his appeal to this court to be considered timely.

"'Rule 3, Alabama Rules of Appellate Procedure, provides an uncomplicated means of effecting an appeal.'" Veteto v. Swanson Servs. Corp., 886 So. 2d 756, 762 (Ala. 2003) (quoting Threadgill v. Birmingham Bd. of Educ., 407 So. 2d 129, 132 (Ala. 1981)).

> "The test for dismissal for failure to comply seems to be whether the intention to appeal from a specific judgment may be reasonably inferred from the text of the notice. Jones v. Chaney & James Const. Co., 399 F.2d 84 (5th Cir. 1968); Donovan v. Esso Shipping Co., 259 F.2d 65 (3rd Cir. 1958)
>
> "....
>
> "While we might not be willing to go so far as to require the designation of each appellee in the notice of appeal, we do think that fairness requires that some indication appear that an appeal has been taken to reverse a judgment rendered in favor of a prevailing party. ...

> "This conclusion probably would not be warranted in a case involving a single appellee. A notice of appeal indicating that an appeal has been taken from a judgment favorable to the appellee should give him notice that review might be sought as to matter not specified in the notice of appeal. In fact, that is contemplated by [Rule] 3(c).
>
> "The spirit of the [Alabama Rules of Appellate Procedure] is recognized and restated to insure the just, speedy and inexpensive determination of every appellate proceeding on its merits. The only jurisdictional rule in the entire rules is the timely filing of the notice of appeal. Nothing in the rules is designed to catch the unwary on technicalities. Jones v. Chaney & James Const. Co., supra. A simple statement indicating what judgments the appellant appeals from is all that is required."

Edmondson v. Blakey, 341 So. 2d 481, 483-84 (Ala. 1976).

In McLean v. State, 840 So. 2d 937 (Ala. CIM. App. 2002), a defendant in a criminal case filed as his written notice of appeal to the Court of Criminal Appeals a form titled "Notice of Appeal to the Alabama Court of Criminal Appeals by the Trial Court Clerk" within the period to perfect an appeal. 840 So. 2d at 939. In accepting the document as a sufficient notice of appeal pursuant to Rule 3(c), the Court of Criminal Appeals held:

> "This particular form was specifically designed for use by circuit court clerks to transmit notice to this Court that someone has filed an appeal; by signing the signature line provided on the form, the clerk of the circuit court certifies to this Court that all the information contained in the form is

> accurate. This certification is required because it is from the information contained on the form that this Court dockets every appeal. Use of this court form or any other court form in a manner or for a purpose other than that for which it was designed is inappropriate and cannot help but lead to confusion, as has happened in this case. Because the form used in this case was not designed for use by appellants or their attorneys, and to better ensure the accuracy of the information upon which all appeals are docketed, this Court strongly discourages the local practice by some circuit court clerks of requesting and/or allowing appellants or their attorneys to complete this form whenever an appeal is taken to this Court. We likewise strongly encourage appellants and their attorneys to use Sample Form 11 in the Appendix to the Alabama Rules of Appellate Procedure, or something similar thereto, when filing their written notices of appeal [to the Court of Criminal Appeals]. Although neither approved nor adopted by the Alabama Supreme Court, that sample form is an appropriate form for filing notices of appeal [to the Court of Criminal Appeals]; it satisfies the requirements of Rule 3(c), and it includes an area for the signature of the appellant's attorney. Moreover, use of this sample form will not result in confusion or complications in perfecting appeals that may result from the use of an inappropriate form.
>
> "Although we find that McLean's use of the form entitled 'Notice of Appeal to the Alabama Court of Criminal Appeals by the Trial Court Clark as his written notice of appeal was improper, we nevertheless conclude that it was sufficient to perfect his appeal. The form designated the party taking the appeal, the judgment appealed from, and the name of the court to which the appeal was being taken; we can reasonably infer McLean's intent to appeal from the text of the document; and the document was timely filed. Therefore, we find that this form was sufficient to perfect McLean's appeal."

840 So. 2d at 942 (footnote omitted).

In the instant case, before the time for appealing from the summary judgment had expired, Okafor had filed only the docketing statement required pursuant to Rule 3(e). Just as the appellant in McLean, Okafor used an improper form to declare his intent to appeal from the summary judgment. The language of Rule 3(e) specifically requires that the docketing statement "accompany]" a "notice of appeal," indicating that two documents are required to be filed. We question whether our supreme court, by adopting Rule 3(e), envisioned that the docketing statement could serve a dual purpose -- its intended purpose per Rule 3(e) and as a substitute for the notice of appeal.

Nonetheless, the docketing statement that Okafor filed contains all the information required by Rule 3(c), including the order appealed from, the party taking the appeal, and the name of the court to which the appeal is taken. This court can reasonably infer from the text of the docketing statement that Okafor intended to appeal the trial court's summary judgment; thus, liberally construing Rule 3(c), we conclude

that Okafor's filing of the docketing statement satisfied the requirements of that rule. See Edmundston v. Blakey, supra.

Just as the Court of Criminal Appeals encouraged in McLean, this court also strongly encourages appellants and attorneys to utilize the sample forms that appear in the Appendix to the Alabama Rules of Appellate Procedure when filing appeals to this court. Sample Form 1 in Appendix I, Ala. R. App. P., which is also designated Form ARAP-1, is the standard notice of appeal for appeals to our supreme court and to this court. Sample Form 25 in Appendix I, Ala. R. App. P., is the uniform docketing-statement form that an appellant can complete and file to satisfy the requirement of Rule 3(e) in appeals to this court. See also Rule 50, Ala. R. App. P. ("The forms contained in 'Appendix I. Forms; Examples,' are provided as general examples and should be modified to comport with the particular circumstances of each case; they have not been approved or adopted by the Alabama Supreme Court as officially approved forms."). Despite our conclusion under the facts of the present case, we strongly discourage

appellants and their attorneys from using the docketing statement as a notice of appeal.[2]

Having determined that this court has jurisdiction over Okafor's appeal, we next consider the merits of Okafor's appeal from the summary judgment condemning the currency pursuant to § 20-2-93.

> "'The standard of review applicable to a summary judgment is the same as the standard for granting the motion.' McClendon v. Mountain Top Indoor Flea Market, Inc., 601 So. 2d 957, 958 (Ala. 1992).
>
> > "'A summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Rule 56(c)(3), Ala. R. Civ. P. The burden is on the moving party to make a prima facie showing that there is no genuine issue of material fact and that it is entitled to a judgment as a matter of law. In determining whether the movant has carried that burden, the court is to view the evidence in a light most favorable to the nonmoving party and to draw all reasonable inferences in favor of that party. To defeat a properly supported summary judgment motion, the nonmoving party must present "substantial evidence" creating a genuine issue of material fact -- "evidence of such weight and quality that fair-minded

[2]We note that, as of the date of publication of this opinion, the Administrative Office of Courts has made the notice-of-appeal and the docketing-statement forms available for download in electronic portable-document format at the following web address: http://eforms.alacourt.gov.

> persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved." Ala. Code 1975, § 12-21-12; West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989).'
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> "Capital Alliance Ins. Co. v. Thorough-Clean, Inc., 639 So. 2d 1349, 1350 (Ala. 1994). Questions of law are reviewed de novo. Alabama Republican Party v. McGinley, 893 So. 2d 337, 342 (Ala. 2004)."

Chancellor v. White, 34 So. 3d 1270, 1273 (Ala. Civ. App. 2008).

Alabama's controlled-substances forfeiture statute provides, in pertinent part:

> "(a) The following are subject to forfeiture:
>
> "....
>
> "(4) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of any law of this state; all proceeds traceable to such an exchange; and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of any law of this state concerning controlled substances;
>
> "....
>
> "(9) All property of any type whatsoever constituting, or derived from, any proceeds obtained directly, or indirectly, from any violation of any law

> of this state concerning controlled substances;
>
> "....
>
> "(b) Property subject to forfeiture under this chapter may be seized by state, county or municipal law enforcement agencies upon process issued by any court having jurisdiction over the property. Seizure without process may be made if:
>
> "...."
>
> "(4) The state, county or municipal law enforcement agency has probable cause to believe that the property was used or is intended to be used in violation of this chapter."

§ 20-2-93, Ala. Code 1975.

On appeal, Okafor contends that, among other things, the law-enforcement officials involved in the seizure of the currency failed to apprise him of his rights pursuant to Miranda v. Arizona, 384 U.S. 436 (1966), before questioning him at the residence.

We first note the dissenting judges' position that Okafor did not properly present this issue for appellate review. Specifically, the dissent points out that, in his brief, Okafor did not identify any statements that he made "in violation of the Miranda requirements," that Okafor did not develop a legal argument as to whether he was subjected to a

custodial interrogation for purposes of Miranda, and that Okafor did not address whether certain evidence should have been excluded based on Miranda. ___ So. 3d at ___.

Admittedly, the legal arguments Okafor sets forth in his brief to this court are minimal at best. Nonetheless, he does include authority standing for the proposition that, in a custodial interrogation, he was to have been advised of his rights under Miranda. The authority he cites also defines what constitutes a custodial interrogation. Furthermore, in considering his brief, we are able to ascertain that Okafor is contending that, when law-enforcement officials questioned him about the presence of marijuana in the house without first advising him of his rights under Miranda, he was deprived of his protections under the Fifth Amendment of the United States Constitution and § 6 of the Alabama Constitution of 1901 against making an involuntary confession or some other inculpatory statement.

Even if we were to conclude, as the dissent does, that the brief fails to comply with Rule 28, Ala. R. App. P., it is well settled that, although

> "this court may choose to affirm a case on the basis of Rule 28 when an appellant's brief fails to comply

> with the rule, ... this court is by no means required to do so. See Kirksey v. Roberts, 613 So. 2d 352, 353 (Ala. 1993); Bishop v. Robinson, 516 So. 2d 723, 724 (Ala. Civ. App. 1987); and Thoman Eng'rs, Inc. v. McDonald, 57 Ala. App. 287, 289, 328 So. 2d 293, 295 (1976). The decision is a matter of discretion, and considerations other than compliance with the rule are integral to the exercise of that discretion. Among those other considerations are whether the argument 'has been raised in a manner which is fair to all concerned,' McDonald, 57 Ala. App. at 290, 328 So. 2d at 294; whether the appellee adequately responds to the issues raised by the appellant in brief despite the noncompliance, Bishop, 516 So. 2d at 724; whether the court is able to adequately discern the issues presented, Kirksey, 613 So. 2d at 353; and the emphasis placed by the Rules of Appellate Procedure on reaching the merits of our cases. McDonald, 57 Ala. App. at 289, 328 So. 2d at 295."

Dubose v. Dubose, 964 So. 2d 42, 46 n. 5 (Ala. Civ. App. 2007)(final emphasis added). In this case, not only are we able to ascertain the issue, but, in its brief, the State addressed whether Okafor was entitled to receive Miranda warnings under the circumstances of this case. Additionally, the issues Okafor attempts to raise in this appeal, no matter how awkwardly expressed, concern the essence of the protections guaranteed by both the United States and Alabama constitutions and whether those protections were observed in this case. In light of these considerations, we address this

issue on the merits despite the deficiencies of Okafor's brief.

"The Miranda rights are based upon the Fifth Amendment guarantee that '[n]o person ... shall be compelled in any criminal case to be a witness against himself.'" Ex parte Woods, 592 So. 2d 636, 637 (Ala. 1991). This court has held that,

> "[t]o obtain forfeiture, the state must establish a prima facie case by presenting evidence that creates a reasonable satisfaction that the property at issue is subject to forfeiture. Agee v. State ex. rel Galanos, 627 So. 2d 960, 962 (Ala. Civ. App. 1993). A forfeiture of property cannot be properly based on evidence obtained in violation of fundamental constitutional rights. Nicaud v. State, 401 So. 2d 43 (Ala. 1981). Thus, evidence obtained by an illegal search and seizure must be excluded in a forfeiture proceeding. $4,320.00 U.S. Currency v. State, 567 So. 2d 352 (Ala. Civ. App. 1990)."

Williams v. State, 674 So. 2d 591, 593 (Ala. Civ. App. 1995).

The State does not contest that caselaw holding that illegally obtained evidence cannot be used in criminal prosecutions also applies to civil-forfeiture proceedings. The Court of Criminal Appeals has explained the circumstances under which law-enforcement officials are required to give Miranda warnings.

> "'To decide if a suspect is in custody [for purposes of triggering a Miranda warning], the court, looking at the totality of the circumstances, must find that a reasonable person in the suspect's position would believe that he or she is not free to leave.' Seagroves v. State, 726 So. 2d 738, 742 (Ala. Crim. App. 1998)."

Woolf v. State, [Ms. CR-10-1082, May 2, 2014] ___ So. 3d ___, ___ (Ala. Crim. App. 2014).

> "'"In deciding whether the questioning of a suspect is 'custodial' the following factors should be considered:
>
> > "'"'whether the suspect was questioned in familiar or neutral surroundings, the number of law enforcement officers present at the scene, the degree of physical restraint of the suspect, the duration and character of the questioning, how the suspect got to the place of questioning, the language used to summon the suspect, the extent to which the suspect is confronted with evidence of guilt, and the degree of pressure applied to detain the suspect."'
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> "'[Landreth v. State,] 600 So. 2d [440] at 444 [(Ala. CIM. App. 1992)], quoting P.S. v. State, 565 So. 2d 1209, 1214 (Ala. Cr. App. 1990).'
>
> "Johnson v. State, 673 So. 2d 796[, 798] (Ala. Cr. App. 1995)."

State v. Jude, 686 So. 2d 528, 533 (Ala. CIM. App. 1996).

In opposing the State's motion for a summary judgment, Okafor submitted Hereford's affidavit, in which she stated that four law-enforcement officers entered the house "[w]ith loud voices, yelling, carrying weapons and using physical force ...." It is undisputed that the law-enforcement officers entered the house without a warrant. Hereford also stated that the law-enforcement officers told her they were not going to leave the residence until they searched it and that the officers had constrained her freedom and that of Okafor "at the time they asked us questions."

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 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. Williams, 674 So. 2d at 593.

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. In reaching this conclusion, this court does not express an opinion as to whether Okafor will ultimately prevail. Instead, our holding is to be read only as a determination that genuine issues of material fact exist so as to preclude the entry of a judgment in favor of the State at this point in the proceedings.

For the reason set forth above, we reverse the judgment and remand the cause to the trial court for further proceedings. We also pretermit discussion of the other grounds on which Okafor sought to have the judgment reversed.

REVERSED AND REMANDED.

Thompson, P.J., and Thomas and Moore, JJ., concur.

Donaldson, J.,concurs in part and dissents in part in the rationale and dissents from the judgment, with writing, which Pittman, J., joins.

DONALDSON, Judge, concurring in part and dissenting in part in the rationale and dissenting from the judgment.

I agree with the analysis and conclusion of the main opinion insofar as it holds that this court has subject-matter jurisdiction over Christopher Okafor's appeal. Because my review of the evidence leads me to conclude that Okafor failed to present substantial evidence to overcome the motion for a summary judgment filed by the State of Alabama ("the State"), I would affirm the judgment of the Madison Circuit Court ("the trial court"). Therefore, I respectfully dissent.

Okafor contends that investigators of the Madison-Morgan County Strategic Counter Drug Team ("SCDT") and the Madison County District Attorney's Office failed to inform him of his rights pursuant to Miranda v. Arizona, 384 U.S. 436 (1966). He also contends that the search of Shanna Hereford's residence was unreasonable, that the SCDT investigators lacked probable cause to search the residence, that the SCDT investigators were not provided consent to enter the home, that consent to search the home was not knowingly, intelligently, and/or freely given, and that the State failed to present any evidence in support of its summary-judgment

motion to establish that the $16,500 in cash discovered during the search ("the currency") was connected to an illegal transaction pursuant to § 20-2-93, Ala. Code 1975.

A. Application of Miranda v. Arizona

As a threshold matter, I note that Okafor's argument concerning the application of Miranda is not properly presented for this court's review on appeal pursuant to Rule 28(a)(10), Ala. R. App. P. It is well settled that "[t]his court will address only those issues properly presented and for which supporting authority has been cited." Asam v. Devereaux, 686 So. 2d 1222, 1224 (Ala. Civ. App. 1996). "Rule 28(a)(10) requires that arguments in briefs contain discussions of facts and relevant legal authorities that support the party's position. If they do not, the arguments are waived." White Sands Grp., L.L.C. v. PRS II, LLC, 998 So. 2d 1042, 1058 (Ala. 2008). In his brief to this court, Okafor cites Miranda and other cases holding that statements made by a person in custody in violation of the principle stated in Miranda cannot be used by the prosecution in criminal proceedings. Even assuming that a violation of the Miranda requirements could, in an appropriate case, bar the forfeiture

of an asset in a civil proceeding, see Williams v. State, 674 So. 2d 591, 593 (Ala. Civ. App. 1995), Okafor does not identify in his brief on appeal any statements that were made by him or any other person purportedly in violation of the Miranda requirements. Okafor cites various legal authorities relating to custodial interrogation; however, he fails to discuss any facts or present any legal argument regarding whether the person making a statement to the SCDT investigators was in custody when the statement was made, and he fails to present any facts or present any legal argument regarding the effect of a violation of the Miranda requirements on the legality of any search and/or on the connection between the currency and any illegal transactions. More specifically, Okafor never mentions or addresses in his brief the statement he made to Investigator Matt Thornbury denying that he lived in the residence or any statements or actions he took in pointing out the location of the marijuana in the house, and he does not address whether that evidence should have been excluded based on Miranda. Accordingly, I would conclude that Okafor has failed to present a sufficient argument to this court that Miranda was applicable to the

proceedings or that the judgment must be reversed based on the principles of that case.

Even assuming that Okafor has not waived this argument on appeal, I would conclude that Okafor failed to present substantial evidence to establish that he was in custody and entitled to the procedural safeguards under Miranda. In Miranda, 384 U.S. at 444, the United States Supreme Court held, in pertinent part:

> "[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."

See also Harris v. State, 376 So. 2d 773, 774 (Ala. Crim. App. 1979)("Miranda is limited to custodial interrogations only. Custodial interrogation is defined as 'questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.' Miranda, [384 U.S. at 774,] 86 S.Ct. at 1612.").

Our Court of Criminal Appeals has stated:

"Miranda warnings are not required unless the suspect has been arrested or is in custody.

> "'"Miranda warnings are not necessarily required to be given to everyone whom the police question. Oregon v. Mathiason, 429 U.S. 492 [493-95], 97 S. Ct. 711, 713, 50 L. Ed. 2d 714 (1977). Miranda is only applicable when an individual is subjected to custodial interrogation. Davis v. Allsbrooks, 778 F.2d 168, 170 (4th Cir. 1985); Primm v. State, 473 So. 2d 1149, 1158 (Ala. Crim. App.), cert. denied, 473 So. 2d 1149 (Ala. 1985). 'By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.' Miranda, supra, 384 U.S. at 444, 86 S. Ct. at 1612.
>
> "'"There is a distinction which must be made between general interrogation and custodial interrogation since Miranda is inapplicable when interrogation is merely investigative rather than accusative. Kelley v. State, 366 So. 2d 1145, 1148 (Ala. Crim. App. 1979); Primm, supra, at 1158; Johnston v. State, 455 So. 2d 152, 156 (Ala. Crim. App.) cert. denied, 455 So. 2d 152 (Ala. 1984). This distinction should be made on a case-by-case basis after examining all of the surrounding circumstances. United States v. Miller, 587 F. Supp. 1296, 1299 (W.D. Pa. 1984); Johnston, supra, at 156; Warrick v. State, 460 So. 2d 320, 323 (Ala. Crim. App. 1984); Hall v. State, 399 So. 2d 348, 351-52 (Ala. Crim. App. 1981); Kelley, supra at 1149.

> "'"The United States Supreme Court in California v. Beheler, 463 U.S. 1121, 103 S. Ct. 3517, 77 L. Ed. 2d 1275 (1983) articulated 'the standard by which "custody" is to be judged.' Davis, supra at 171. In its opinion, the Supreme Court stated that 'although the circumstances of each case must certainly influence a determination of whether a suspect is "in custody" for purposes of receiving Miranda protection, the ultimate inquiry is simply whether there is a "formal arrest or restraint on freedom of movement" of the degree associated with a formal arrest.' California v. Beheler, supra, 463 U.S. at 1125, 103 S. Ct. at 3519-20 (quoting Mathiason, supra, 429 U.S. at 495, 97 S. Ct. at 714). See also Primm, supra, at 1158.
>
> "'"A determination of 'custody' is not based on 'the subjective evaluation of the situation by the defendant or the police officers.' Davis, supra at 171. Where there has not been a formal arrest (as here), an objective test is used to determine whether the suspect's freedom of action has been restricted by the police in any significant manner. Davis, supra at 171; Miller, supra at 1299; Warrick, supra at 322; Hall, supra at 351. 'The only relevant inquiry is how a reasonable man in the suspect's position would have understood his position.' United States v. Jonas, 786 F.2d 1019, 1022 (11th Cir. 1986) (quoting Berkemer v. McCarty, 468 U.S. 420 [442-44], 104 S. Ct. 3138, 3152, 82 L. Ed. 2d 317 (1984))."'

"Smolder v. State, 671 So. 2d 757 (Ala. Cr. App. 1995) (quoting Hooks v. State, 534 So. 2d 329, 347-48 (Ala. Cr. App. 1987)).

"'In order to decide if a suspect is "in custody," the court, looking at the totality of the circumstances, must find that a reasonable person in the accused's position would believe that he or she is not free to leave. Landreth [v. State], 600 So. 2d [440,] 444 [(Ala. Cr. App. 1992)].

> "'"In deciding whether the questioning of a suspect is 'custodial' the following factors should be considered:
>
> > "'"'whether the suspect was questioned in familiar or neutral surroundings, the number of law enforcement officers present at the scene, the degree of physical restraint of the suspect, the duration and character of the questioning, how the suspect got to the place of questioning, the language used to summon the suspect, the extent to which the suspect is confronted with evidence of guilt, and the degree of pressure applied to detain the suspect."'

"'600 So. 2d at 444, quoting P.S. v. State, 565 So. 2d 1209, 1214 (Ala. Cr. App. 1990).'

"Johnson v. State, 673 So. 2d 796 [, 798] (Ala. Cr. App. 1995)."

State v. Jude, 686 So. 2d 528, 532-33 (Ala. Crim. App. 1996).

Examining the totality of the circumstances surrounding the search and seizure, as those circumstances are described by Thornbury and Hereford in their respective affidavits, I would conclude that Okafor failed to present substantial evidence indicating that a reasonable person in his position would believe that he or she was not free to leave. According to Thornbury's affidavit, the SCDT investigators' initial purpose for coming to the residence was to serve a trial subpoena on Okafor and not to arrest or question the occupants of the residence or to conduct a search of the residence for contraband. This testimony is undisputed. Furthermore, there is no evidence showing that the SCDT investigators physically restrained Okafor or placed him under formal arrest. The SCDT investigators questioned Okafor and Hereford within the residence, a location that Hereford states in her affidavit was her and Okafor's home. There is no indication regarding the length of the questioning, although the uncontested testimony shows that, upon being questioned regarding the presence of marijuana in the house, Okafor answered in the affirmative.

Hereford stated in her affidavit that four SCDT officers entered the residence "[w]ith loud voices, yelling, carrying weapons and using physical force they intimidated me and assaulted me by pushing me back into my home as they unlawfully entered" and that "the police officers were aggressive and induced fear in me." She stated that "I was told the police were not going to leave my home until they searched it. My written consent was not freely given to them inasmuch as I was threatened they would not leave my home unless it was searched." Perhaps Hereford's testimony constitutes substantial evidence to establish that, as to her circumstances, her freedom of action had been restricted. But Hereford is not the defendant in this forfeiture case.

Regarding Okafor, however, there is no evidence showing that he was threatened, assaulted, fearful, or intimidated. Instead, the undisputed evidence shows that Okafor was in another part of the residence, i.e., "the downstairs den area of the residence," when the SCDT investigators entered the residence and that, once they entered the residence, the SCDT investigators announced for Okafor. The only evidence offered regarding Okafor's circumstances was Hereford's testimony that

"[o]ur freedom was constrained at the time of the unlawful search, and at the time they asked us questions," but she fails to acknowledge precisely how Okafor's freedom had been constrained. Thus, I would not reverse the trial court's summary judgment based on Okafor's Miranda argument.

B. Standing To Contest the Legality of the Search

The State contends that Okafor lacks standing to challenge the warrantless search because he did not have a legitimate expectation of privacy in the residence. The State moved for a summary judgment on its claim seeking forfeiture of the currency and established a prima facie case. In his answer, Okafor had asserted as a defense that "[t]he currency, as well as other evidence, was obtained by an illegal search and seizure." The State presented testimony from Thornbury that Okafor denied having any possessory interest in the property that had been searched and in the currency that had been seized. The State did not have the burden of proving that Okafor did not have standing to assert a claim that the search violated his Fourth Amendment rights; the burden was on Okafor to prove that he has standing. "The proponent of a motion to suppress has the burden of establishing that his own Fourth

Amendment rights were violated by the challenged search or seizure. See Simmons v. United States, 390 U.S. 377, 389-90(1968); Jones v. United States, 362 U.S. 257, 261 (1960)." Rakas v. Illinois, 439 U.S. 128, 130 n.1 (1978). And it was not enough for Okafor to show that there were disputed facts concerning the manner in which the search of the premises was conducted or that the search may have been conducted in a manner contrary to law. Instead, he had to establish that his rights, not someone else's rights, were violated:

> "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. Alderman[v. United States] 394 U.S. [165] at 174 [1969]. And since the exclusionary rule is an attempt to effectuate the guarantees of the Fourth Amendment, United States v. Calandra, 414 U.S. 338, 347, it is proper to permit only defendants whose Fourth Amendment rights have been violated to benefit from the rule's protections."

Rakas v. Illinois, 439 U.S. at 134.

As the United States Supreme Court has held:

> "Since the decision in Katz v. United States, 389 U.S. 347 (1967), it has been the law that 'capacity to claim the protection of the Fourth Amendment depends ... upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place.' Rakas v. Illinois, 439 U.S. 128, 143

> (1978). A subjective expectation of privacy is legitimate if it is '"one that society is prepared to recognize as 'reasonable,'"' id., at 143-144, n. 12, quoting Katz, supra, at 361, (Harlan, J., concurring)."

Minnesota v. Olson, 495 U.S. 91, 95-96 (1990).

> "'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)."

Jones v. State, 946 So. 2d 903, 919-20 (Ala. Crim. App. 2006).

"This court has applied the same principles regarding standing discussed in ... criminal case[s], in a civil-forfeiture case." Kevin Sharp Enters., Inc. v. State ex rel. Tyson, 923 So. 2d 1117, 1121 (Ala. Civ. App. 2005). See also Johnson v. State, 667 So. 2d 105 (Ala. Civ. App. 1995). In Kevin Sharp Enterprises, this court, in affirming a summary judgment, held that the party contesting the forfeiture had no legitimate expectation of privacy where it had a possessory interest in the property seized but had no possessory interest in the property when law enforcement had conducted the search pursuant to a warrant. In the present case, at first blush, the evidence presented in support of and in opposition to the motion for a summary judgment appears to be contested as it relates to Okafor's possessory interest in the residence. The

State presented Thornbury's testimony that Okafor, before the search, denied that he was a resident of the home that the SCDT investigators searched. Hereford, on the other hand, testified in her affidavit that she and Okafor lived in the residence with their children. Whether the trial court's summary judgment was proper, however, hinges on whether, by denying that he lived in the residence and by directing officers to the marijuana in the residence, Okafor waived any legitimate expectation of privacy he may have had in the residence or whether, regardless of his denial, Okafor continued to have a legitimate expectation of privacy in the residence.

There is a split among jurisdictions that have addressed this issue. Some appellate courts have held that a person who disavows a possessory interest in a residence is not necessarily precluded from challenging the legality of a subsequent search of that residence. See, e.g., United States v. Vega, 221 F.3d 789, 797 (5th Cir. 2000)("We do not agree that [the defendant's] fourth amendment rights evaporated simply because he failed to make incriminating admissions in response to police questioning."), abrogated on other grounds,

as recognized in United States v. Aguirre, 664 F.3d 606, 611 n. 13 (5th Cir. 2011); United States v. Brown, 64 F.3d 1083, 1085 (7th Cir. 1995)("The privacy interest in a dwelling is not so easily extinguished, ... and a misleading response to an officer's question is a far cry from a consent to search."); United States v. Issacs, 708 F.2d 1365, 1368 (9th Cir. 1983) ("[The defendant's] denial of ownership should not defeat his legitimate expectation of privacy in the space invaded and thus his right to contest the lawfulness of the search when the government at trial calls upon the jury to reject that denial."). See also Commonwealth v. Sandler, 368 Mass. 729, 335 N.E.2d 903 (1975); State v. Sodoyer, 156 N.H. 84, 87, 931 A.2d 548, 551 (2007). As discussed in detail below, however, I would conclude that a person may lose standing to challenge a search of a residence and seizure of property found withing the residence when that person, among other relevant factors, has disclaimed a possessory interest in the residence.

In Jones, supra, the defendant, who had been convicted of capital murder for killing his parents, contended that the trial court improperly admitted evidence that law-enforcement

officers had seized from his parents' residence during a warrantless search. In determining whether the defendant had a legitimate expectation of privacy in the residence in order to have the proper standing to make the contention, our Court of Criminal Appeals held:

> "Although the appellant testified that he used his parents' address as his address on various documents, that he had stayed in the ... residence at various times during the previous year, and that he had a room with his personal belongings in the ... residence, he also admitted that he had lived in Destin, Florida, for the three months before the murders; that his parents had told him to leave their residence on January 29, 2004; and that he did not think he had permission to return to his parents' residence after they told him to leave. In addition, the State presented testimony that the appellant's parents told law enforcement officers that they did not want the appellant at their residence and asked that they remove him from the premises. Finally, the appellant told [Officer] Davenport that he lived in a condominium in Destin, Florida. Based on the evidence presented, the trial court properly concluded that the appellant did not have a legitimate expectation of privacy in the ... residence and, thus, did not have standing to challenge the search and seizure with regard to that residence."

Jones, 946 So. 2d at 921.

In United States v. Sweeting, 933 F.2d 962, 964 (11th Cir. 1991), the defendants, before a search of the residence that revealed contraband and personal documents identifying

the defendants, told law-enforcement officers that they did not live in the residence. The Eleventh Circuit Court of Appeals held:

> "The Sweeting brothers each denied any relationship with the property when arriving at the residence. They maintained that they had always lived at their mother's residence ... and that the subject premises was rented by their mother as a residence for their grandmother. The fact that they had temporary access to the premises along with several other members of their family and had some personal effects there does not establish the requisite subjective expectation of privacy to assert standing when coupled with their explicit disclaimer of ownership or interest. United States v. McBean, 861 F.2d 1570, 1574 (11th Cir. 1988) (per curiam); United States v. McKennon, 814 F.2d 1539 (11th Cir. 1987); United States v. Hawkins, 681 F.2d 1343, 1345 (11th Cir.), cert. denied, 459 U.S. 994, 103 S.Ct. 354, 74 L.Ed. 2d 391 (1982). Under these circumstances, the position taken by the defendants to establish standing is not analogous to establishing status vis-a-vis the property as an overnight guest. See Minnesota v. Olson, 495 U.S. 91, 110 S.Ct. 1684, 109 L.Ed. 2d 85 (1990). They denied having any relationship to the premises except access."

Sweeting, 933 F.2d at 964 (footnote omitted).

The Tennessee Supreme Court has also addressed the effect that a disclaimer of ownership had on the expectation of privacy in a hotel room, stating as follows in State v. Ross, 49 S.W.3d 833 (Tenn. 2001):

"'[W]hen one disclaims interest in the premises or possessions searched or in the articles seized he cannot question the legality of the search and seizure....' Bowman v. State, 211 Tenn. 38, 41, 362 S.W.2d 255, 257 (1962). In fact, at least one of our previous decisions suggests that when a defendant disclaims an interest in the object of a police investigation at the time of the search, then this fact alone will deprive a defendant of any expectation of privacy, irrespective of considerations such as ownership or possession. See Miller v. State, 520 S.W.2d 729, 733-34 (Tenn. 1975).

"Although at least one commentator has maintained that mere disclaimer of ownership, unlike actual abandonment of ownership, should not defeat an expectation of privacy, see 5 Wayne R. LaFave, Search and Seizure § 11.3(a), at 128, 187 (3d ed. 1996) (specifically noting our decision in Miller), we continue to hold otherwise. In the vast majority of jurisdictions, courts have equated a denial or disclaimer of an interest in the object of a search with formal abandonment, because like abandonment, '[t]aken at face value, this denial makes it reasonable to conclude that the defendant claims no possessory interest' in the object of the search. See, e.g., United States v. Basinski, 226 F.3d 829, 837 (7th Cir. 2000). In fact, several federal circuits have held that a disclaimer or denial of ownership 'demonstrates sufficient intent of disassociation to prove abandonment,' United States v. Lewis, 921 F.2d 1294, 1302 (D.C. Cir. 1990), and because the concept of abandonment in Fourth Amendment jurisprudence is unlike that found in property law concepts, 'abandonment' here may be shown 'merely [by] an intent voluntarily to relinquish [a] privacy interest....' See United States v. Barlow, 17 F.3d 85, 87-88 (5th Cir. 1994). Accordingly, we reaffirm that a defendant's disclaimer of an interest in the object of a government investigation will result in a loss of

> the defendant's subjective expectation of privacy in that object, irrespective of other considerations such as actual ownership or possession.
>
> "Turning to the facts of this case, we conclude that the appellant's conduct failed to exhibit an 'actual (subjective) expectation of privacy' in the motel room. Katz[v. United States], 389 U.S. [347] at 361, 88 S.Ct. 507 [(1967)](Harlan, J., concurring). The trial court's findings, which are supported by the weight of the evidence, demonstrate the following facts: (1) the appellant produced the key to room 132 from his sock voluntarily and without being asked to do so by any of the officers; and (2) the appellant not only denied ownership of the key to room 132 when asked, but he actually asserted that the key belonged to someone else. By disclaiming ownership of the key, the appellant effectively gave 'the authorities the green light to proceed insofar as his own Fourth Amendment rights [were] concerned,' see People v. Allen, 17 Cal. App. 4th 1214, 21 Cal. Rptr. 2d 668, 671 (1993), and this disclaimer, combined with his assertion that the room actually belonged to someone else, is sufficient evidence that he abandoned his otherwise reasonable expectation of privacy in the room. Accordingly, we hold that the trial court correctly denied the appellant's motion to suppress the search of the motel room."

49 S.W.3d at841-43 (footnotes omitted).

In the instant case, the State supported its summary-judgment motion with Thornbury's testimony that Okafor denied living at the residence and that Okafor directed officers to the location of the marijuana in the residence. In opposition to the motion, Okafor presented Hereford's testimony that she

and Okafor lived at the residence with their children. Okafor did not, however, dispute Thornbury's testimony that Okafor told the SCDT officers, before the search, that he did not live at the residence. Okafor never disputed Thornbury's testimony that he directed the SCDT investigators to the location of the marijuana within the residence. The evidence before the trial court at the time of the entry of the summary judgment shows that 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. See Ross, supra. Additionally, Okafor failed to show that he exhibited a subjective expectation that the residence would remain free from governmental invasion; to the contrary, as noted above, the uncontested testimony shows that Okafor cooperated with the SCDT investigators and directed them to the location of the marijuana that was in the residence. Furthermore, Okafor presented no evidence to show that he had the right to exclude others from the residence and that he had taken normal precautions to maintain his privacy. I would hold that, based on the totality of circumstances, Okafor cannot now question

the legality of the search and seizure. Ross, 49 S.W.3d at, quoting Bowman v. State, 211 Tenn. 38, 41, 362 S.W.2d 255, 257 (1962). Therefore, I conclude that Okafor failed to meet his burden of demonstrating that he has standing to challenge the legality of the search of Hereford's residence.

C. Connection to an Illegal Transaction

Okafor contends that the State failed to present any evidence in support of its summary-judgment motion to establish that the currency was connected to an illegal transaction.

In Gatlin v. State, 846 So. 2d 1090 (Ala. Civ. App. 2002), this court held:

> "To establish a prima facie case under § 20-2-93(4), Ala. Code 1975, the State was required to prove
>
> > "'"that the money seized was: (1) furnished or intended to be furnished by [Gatlin] in exchange for a controlled substance; (2) traceable to such a transaction; or (3) used or intended to be used to facilitate a violation of any law of this state concerning controlled substances."'
>
> "Thompson v. State, 715 So. 2d 224, 226 (Ala. Civ. App. 1997) (quoting Wherry v. State ex rel. Brooks, 637 So. 2d 890, 892 (Ala. Civ. App. 1994)).
>
> "The mere proximity of the drugs to the cash in Gatlin's vehicle did not satisfy the State's burden of proof. See Thompson v. State, supra. Our

> forfeiture cases have found the following circumstances to be indicative of contemplated or completed drug transactions: a large quantity of drugs, see, e.g., Shepherd v. State, 664 So. 2d 238 (Ala. Civ. App. 1995) (21 pounds of marihuana); drugs packaged for sale, see, e.g., Pointer v. State, 668 So. 2d 41 (Ala. Civ. App. 1995); drug paraphernalia or accouterments indicating sale, such as 'baggies' or scales, see, e.g., Johnson v. State, 667 So. 2d 105, 108 (Ala. Civ. App. 1995). ...
>
> "Our forfeiture cases have also remarked on the inherent incredibility of a defendant's explanation for having in his or her possession a large quantity of cash. See, e.g., Harris v. State, 821 So. 2d 177 (Ala. 2001) (finding inherently incredible a defendant's story that the source of $120,000 in cash was a $90,000 payment the defendant received upon her husband's death 17 years earlier, an amount that the defendant said had increased to $120,000 despite the fact that the defendant admitted that she kept the money at home in shoe boxes and lent some to friends, but charged no interest). See also Vaughn v. State, 655 So. 2d 1039, 1041 (Ala. Civ. App. 1995) (noting that the defendant, who was found with a large amount of cash, was unemployed and had 'no visible means of support')."

846 So. 2d at 1092-93.

In the present case, Thornbury's affidavit showed that SCDT investigators' search of the residence uncovered $15,000 in United States currency bundled in $5,000 stacks, $1,500 in another part of the home, numerous handguns, 92.5 grams of marijuana, a set of digital scales, and packaging materials for controlled substances located within a hidden compartment.

Even viewing the evidence in a light most favorable to Okafor and drawing all reasonable inferences in his favor, I would conclude that the State made a prima facie showing that no genuine issue of material fact existed regarding the connection of the currency to prohibited activity as defined by § 20-2-93(4). Thus, I would hold that the burden shifted to Okafor to produce substantial evidence that a genuine issue of material fact existed.

Hereford's affidavit fails to rebut any of the circumstances present in this case that are indicative of a contemplated or completed drug transaction. Instead, Hereford's testimony focuses solely on the issue whether she gave consent to the SCDT investigators to search her residence. Okafor offered no explanation for the large quantity of cash in response to the motion for a summary judgment filed by the State. Therefore, I would hold that Okafor failed to meet his burden to defeat the State's properly supported motion for a summary judgment.

Pittman, J., concurs.