

REL: August 2, 2019

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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2019

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Juan Manuel Martinez-Camacho

v.

State of Alabama

Appeal from Greene Circuit Court
(CV-17-900029)

EDWARDS, Judge.

Juan Manuel Martinez-Camacho ("Camacho") appeals from a judgment entered by the Greene Circuit Court ("the trial court") ordering the forfeiture of \$52,560 ("the \$52,560") to the State of Alabama pursuant to Ala. Code 1975, § 20-2-93.

Facts and Procedural History

On March 13, 2017, at approximately 4:00 a.m., Agent Robbie Autery, who is a member of the 17th Judicial Circuit Drug Task Force, stopped a four-door 2015 Toyota Tundra pickup truck ("the truck") for speeding on Interstate 59 South in Greene County. The truck had California license plates and was owned by Camacho, who is a United States citizen and a resident of Ukiah, California. Camacho was sitting in the front-passenger seat of the truck. The driver of the truck was Christian Aguilar-Hernandez ("Hernandez"), who is a Mexican citizen and speaks limited English. The record includes a recording made by Agent Autery's patrol-vehicle video camera, which also incorporates an audio recording through a device apparently worn by Agent Autery. Deputy Donald Gant was also in Agent Autery's patrol vehicle when he made the traffic stop, as was Agent Autery's drug-detection dog, Suza.

Agent Autery approached Camacho's truck on the passenger side. Agent Autery spoke to Camacho and to Hernandez, requested Hernandez's driver's license, and inquired about his driving history. Hernandez and Camacho indicated to Agent

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Autery that Hernandez had a previous ticket. Agent Autery informed Hernandez that, "as long as it had been awhile" since the previous ticket, Agent Autery would "just give [Hernandez] a warning." Agent Autery then requested that Hernandez accompany him to his patrol vehicle, where Agent Autery interviewed Hernandez after patting him down. Agent Autery knows limited Spanish, and Hernandez and Agent Autery communicated sometimes in English and sometimes in Spanish. Hernandez told Agent Autery that he and Camacho had been in Atlanta for approximately "four days" and that they were driving to Dallas.

After a few minutes of discussion with Hernandez, Agent Autery left his patrol vehicle and spoke to Camacho, who had remained in the truck. Agent Autery obtained Camacho's driver's license and interviewed him as to his and Hernandez's travel itinerary. Camacho told Agent Autery that he and Hernandez had been in Atlanta for a "few days" and were driving to Dallas. Agent Autery asked Camacho a series of questions regarding the presence of any weapons, drugs, money, or anything illegal in the truck. (A portion of each question was in Spanish.) Camacho replied "no" to each inquiry, and,

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when asked if there was anything illegal in the truck, he stated: "[N]othing illegal."

Agent Autery returned to his patrol vehicle and radioed for background checks on Hernandez, Camacho, and the truck. While Agent Autery was waiting for the response to the background-check request, he asked a few additional questions to Hernandez. After approximately 17 minutes, the person who conducted the background checks informed Autery that, among other things, Camacho had been arrested in 2010 in Nebraska for possession of a controlled substance with intent to deliver but that the prosecution of the case based on that arrest had been "declined."

Upon completion of the background-check discussion, Agent Autery returned Hernandez's license, issued him a written warning for speeding, and told him that Agent Autery was "through with the traffic stop." The traffic stop had taken approximately 30 minutes. Agent Autery then asked Hernandez about whether any weapons, drugs, or money were in the truck. Hernandez responded no to those inquiries. Agent Autery then stated that he was going to ask Camacho if he

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could search the truck, and he directed Hernandez to remain in the patrol vehicle.

Agent Autery again left his patrol vehicle, stating, presumably to Deputy Gant, "[Camacho's] been popped before," and proceeded to the truck to speak to Camacho. Agent Autery returned Camacho's license and then asked him for permission to search the truck. After a brief discussion with Agent Autery, during which Camacho stated he had had problems from the delays and officers' actions during previous searches of his vehicle, Camacho refused to consent to a search. Agent Autery then instructed Camacho to exit the truck, informed him he was going to "run his [dog]" around the truck, and patted Camacho down. During the pat down, Camacho disclosed that he had approximately \$1,500 in his pocket, and he showed the "wad" of money to Agent Autery.

Agent Autery returned to his patrol vehicle to retrieve Suza. Agent Autery walked Suza around Camacho's truck, and, according to Agent Autery, the dog "alerted" on the driver's side door area of the truck.¹ Agent Autery returned Suza to

¹Suza is not visible on the video during the alert; the view is obstructed by the truck and by Agent Autery.

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the patrol vehicle and explained to Camacho that the dog had "alerted" and that, according to Agent Autery, he had probable cause to search the truck.

Agent Autery proceeded to search the truck, beginning on the passenger side. After a few minutes, he proceeded to search the driver's side of the truck. While searching near the rear driver's side door, Agent Autery discovered a small, bound stack of cash that "fell out" from the rear, driver's side seat. He informed Camacho about the find, handed the stack of cash to Camacho, and inquired why he had not disclosed that he had the cash in the truck. Agent Autery then returned to the truck to continue his search using a camera he retrieved from his patrol vehicle. Agent Autery located additional small, bound stacks of cash within the rear driver's side seat. Agent Autery retrieved those stacks of cash with the assistance of Agent Ken Delaney, who had arrived at the scene.

The \$52,560 is the total cash retrieved from the truck and taken from Camacho's person. During the search of the truck, Agent Autery also seized three cellular telephones, two purportedly owned by Camacho and one purportedly owned by

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Hernandez. After completing his search, Agent Autery instructed Camacho to drive the truck and to follow him to a nearby highway exit, where they briefly stopped at a convenience store; Agent Delaney followed Camacho in his patrol vehicle. Thereafter, they proceeded to a police station, where Camacho and Hernandez were interrogated. No drugs, drug paraphernalia, or other contraband were recovered from the truck or from Hernandez's or Camacho's person, and no criminal charges were filed against Hernandez or Camacho. Camacho and Hernandez were released the next day, along with Camacho's truck.

On April 4, 2017, the State filed a "Petition for Condemnation" in the trial court. The State's petition sought forfeiture of the \$52,560, pursuant to Ala. Code 1975, § 20-2-93; the petition included no request for forfeiture of the three seized cellular telephones. Camacho filed an answer to the State's petition, and, on September 8, 2017, Camacho filed a motion for a summary judgment. After conducting a hearing on Camacho's motion for a summary judgment, the trial court entered an order denying the motion.

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On October 17, 2018, the trial court held an ore tenus proceeding on the State's forfeiture petition; Agent Autery and Camacho testified at the trial. At the conclusion of the evidence, Camacho made an oral motion for a judgment as a matter of law; Camacho argued that the \$52,560 had been seized during an illegal search and that the State had failed to present sufficient evidence to support a finding that the \$52,560 was proceeds from an illegal drug transaction. The trial court did not enter an order directly addressing Camacho's motion, and, on December 5, 2018, the trial court entered a judgment declaring that the \$52,560 at issue was forfeited to the State. Thus, Camacho's motion for a judgment as a matter of law was denied. The December 2018 judgment states:

"This cause came before the Court for hearing on the pleadings and evidence presented ore tenus on the 17th day of October 2018. Upon consideration of same, the Court hereby finds that the Petition for Condemnation filed by the [State] in this case is due to be GRANTED because the [State] established by the evidence a prima facie case for the forfeiture of the money pursuant to [§] 20-2-93 of the Code of Alabama 1975. The standard of that prima facie proof is reasonable satisfaction.

"[Camacho] failed to show that the money was not 'derived from ... proceeds obtained directly, or indirectly, from violation of any law of this state

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concerning controlled substances.' Further, the court finds that [Camacho] testified falsely and that his testimony was unbelievable. Therefore, because [Camacho] failed to testify truthfully to a material fact, the testimony of [Camacho] is disregarded altogether. Costs are taxed as paid."

Camacho appealed to the Alabama Supreme Court, which transferred the appeal to this court, pursuant to § 12-2-7(6), Ala. Code 1975.

Standard of Review

"On appellate review of a ruling from a forfeiture proceeding at which the evidence was presented ore tenus, the trial court's judgment is presumed to be correct unless the record shows it to be contrary to the great weight of the evidence." Ex parte McConathy, 911 So. 2d 677, 681 (Ala. 2005).

"Under § 20-2-93 the State must establish a prima facie case for the seizure, condemnation, and forfeiture of the property. The standard of proof is reasonable satisfaction. The statute is penal in nature and, as such, should be strictly construed." Holloway v. State ex rel. Whetstone, 772 So. 2d [475,] 476 [(Ala. Civ. App. 2000)] (quoting State v. Smith, 578 So. 2d 1374, 1376 (Ala. Civ. App. 1991))."

McConathy, 911 So. 2d at 681-82.

Analysis

We first note that we will not address three of Camacho's arguments on appeal -- that forfeiture of the \$52,560 is an excessive fine in violation of the Eighth Amendment to the United States Constitution;² that the trial court erred by allowing Agent Autery to testify at trial despite the State's failure to disclose him as a witness as required under the trial court's pretrial order; and that the trial court erred by failing to dismiss the State's petition as a sanction for the State's failure to return Camacho's cellular telephones as required by an order entered by the trial court -- because he fails to make an adequate argument in his appellate brief.³ See Rule 28(a)(10), Ala. R. Civ. P; Dykes v. Lane Trucking, Inc., 652 So. 2d 248, 251 (Ala. 1994) ("[I]t is not the

²In addition to Camacho's failure to make an adequate Eighth Amendment argument in his appellate brief, Camacho also failed to raise the Eighth Amendment issue in the trial court. See, e.g., Olympia Spa v. Johnson, 547 So. 2d 80, 86 (Ala. 1989) ("It is settled that constitutional issues must be raised before the trial court in order to be preserved for review upon appeal."); Gloor v. BancorpSouth Bank, 216 So. 3d 444, 447 (Ala. Civ. App. 2016) (noting that constitutional issues may be waived).

³The return of the cellular telephones was discussed at the trial. Camacho concedes that the telephones were returned after the trial.

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function of [an appellate court] to do a party's legal research or to make and address legal arguments for a party based on undelineated general propositions not supported by sufficient authority or argument."). Also, we do not consider the merits of Camacho's argument that the trial court erred when it denied his motion for a summary judgment because an appellate court, as a general rule, will not review the denial of a motion for a summary judgment after a judgment is entered on the merits. See Superskate, Inc. v. Nolen ex rel. Miller, 641 So. 2d 231, 234 (Ala. 1994); see also Travelers Indem. Co. of Connecticut v. Miller, 86 So. 3d 338, 341 (Ala. 2011). Camacho does not invoke any exception to the general rule, and he makes no attempt to demonstrate why the general rule would not apply in this case.

Regarding Camacho's remaining two arguments on appeal, we agree with his argument that the State failed to present sufficient evidence to support a conclusion that the \$52,560 was "money[] ... furnished or intended to be furnished by any person in exchange for a controlled substance in violation of

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any law of this state" Ala. Code 1975, § 20-2-93(a)(4).⁴ Accordingly, we pretermitt discussion of Camacho's argument that the search and seizure at issue were based on an illegal extension of a traffic stop. See Rodriguez v. United States, 575 U.S. 348, ___, 135 S.Ct. 1609, 1615 (2015) ("An officer ... may conduct certain unrelated checks during an otherwise lawful traffic stop. But ..., he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual."); see also Hebert v. State, 180 So. 3d 919, 923 (Ala. Crim. App. 2014).

Before addressing the merits of Camacho's argument that the State failed to establish its prima facie case, we note that the trial court's determination regarding Camacho's lack of credibility is amply supported by his testimony at trial

⁴The quoted language is the only portion of Ala. Code 1975, § 20-2-93(a)(4), that the State relied upon in the present case. In answers to interrogatories posed by Camacho, the State denied that it was alleging that the \$52,560 was "proceeds traceable to such an exchange; [or] ... money[] ... used or intended to be used to facilitate any violation of any law of this state concerning controlled substances." § 20-2-93(a)(4). However, the State's interrogatory response qualified its denial regarding the latter provision, stating: "[E]xcept that [the State] would submit that [Camacho] would have been in violation of the Alabama Criminal Code whenever he transported the drugs through the State of Alabama in route to the City of Atlanta."

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and various misleading statements he made to Agent Autery that are reflected on the patrol-vehicle video, particularly based on disclosures made or facts discovered after the traffic stop had ended and Agent Autery had continued his detention of Camacho. Nevertheless, Camacho's lack of credibility is not positive evidence that the \$52,560 was "furnished or intended to be furnished by any person in exchange for a controlled substance in violation of any law of this state." § 20-2-93(a)(4). As to that question, this court stated in Wherry v. State ex rel. Brooks, 637 So. 2d 1353 (Ala. Civ. App. 1994), that, "[i]n the federal case of United States v. Four Parcels of Real Property, 941 F.2d 1428 (11th Cir. 1991), the Eleventh Circuit Court of Appeals"

"defined probable cause as a "reasonable ground for belief of guilt, supported by less than prima facie proof but more than mere suspicion" -- the same standard used to determine the legality of arrests, searches, and seizures in criminal law.' Id. at 1440 (emphasis added). Consequently, the federal government's burden of proof is greater than mere suspicion, but is less than prima facie proof. Id."

637 So. 2d at 1355. However, this court continued:

"Our state appellate courts, however, have consistently held that the State must establish by the evidence a prima facie case for the forfeiture of property under § 20-2-93 and that the standard of proof to establish a prima facie case is reasonable

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satisfaction. Agee v. State ex rel. Galanos, 627 So. 2d 960 (Ala. Civ. App. 1993); State ex rel. Valeska v. Keener, 606 So. 2d 150 (Ala. Civ. App. 1992), cert. denied, 606 So. 2d 150 (Ala. 1992); State v. Smith, 578 So. 2d 1374 (Ala. Civ. App. 1991); Hayden v. State ex rel. Galanos, 513 So. 2d 638 (Ala. Civ. App. 1987).

"... This burden [of proof] is greater than required in federal court."

637 So. 2d at 1355; see also, e.g., Harris v. State, 821 So. 2d 177, 185 (Ala. 2001).

Our precedents are clear regarding the State's burden of proof under § 20-2-93(a)(4), and the requirement that the State must establish a relationship between the money at issue and some "exchange for a controlled substance in violation of any law of this state." For example, in Williams v. State, 150 So. 3d 774, 779 (Ala. Civ. App. 2014), we concluded that the forfeiture judgment at issue in that case was against the great weight of the evidence, stating: "[A] review of the record indicates that there is no evidence connecting the \$762 seized from Williams to a specific drug transaction. The law-enforcement officials who testified in this case could not link the money to any transaction involving illegal drugs." Likewise, this court noted in Williams v. State, 46 So. 3d 3, 6 (Ala. Civ. App. 2010), that "the burden was not on Williams

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to prove where he obtained the money; the burden was on the State to prove that the money was used, or intended for use, in a transaction which would be a violation of the Alabama Controlled Substances Act."

In the present case, Agent Autery testified that he had worked as a law-enforcement officer for approximately "15, 16" years and had been working "full-time criminal interdiction" since January 2009. Regarding the traffic stop at issue, Agent Autery described his initial suspicion about possible criminal activity as follows:

"Your Honor, during the initial approach of the vehicle when I introduced myself and was explaining the reason for the stop and asking for the driver's license from the driver, I noticed the passenger, which is ... Camacho, was answering the questions for ... [Hernandez]. And during my experience and training over the years, that's one of the things that we notice, that sometimes the lead guy in the load vehicle, whether it's a load of weapons, money, or narcotics, they try to control the conversation.

"So that's why I asked ... [Hernandez] back to my vehicle when I was taking enforcement actions. And then while I was taking enforcement actions with him, I noticed that back up ahead that ... Camacho was moving around in the truck, like looking around or whatever.

"So for safety reasons, I exited my vehicle, went up there and asked him for his identification and also where was he coming from, where was he going to. ... Camacho told me they'd been in Atlanta

for two days. [On cross-examination, Agent Autery admitted that this was incorrect, Camacho said 'a few days,' and Agent Autery repeated 'a few days' on the patrol-vehicle video.] ... [Hernandez] said four days. So I got conflicting stories.

"And also my initial approach when I was asking for the driver's license, I could see ... Camacho breathing heavily. So when I see that, then also he's trying to takes what it seems to me he's answering for [Hernandez]. It's like he's trying to take over and control the conversation.

"So once I started identifying that, then I started getting the suspicions that there was criminal activity at hand, and that's why I pursued it further, and that's why we're here today."

According to Camacho, he and Hernandez had driven a second truck (a Ford F-150 pickup) from Dallas to Atlanta, where Camacho purportedly sold the truck to another individual. The following colloquy with Agent Autery occurred regarding Camacho and Hernandez's purportedly driving two trucks from Dallas to Atlanta and Agent Autery's speculation from that purported itinerary and Suza's alert on the truck:

"Q. Based on your training and experience, is it uncommon for people who are smuggling drugs from Dallas to Atlanta to use multiple vehicles?

"A. No, it is not uncommon for that.

"Q. Can you explain that for the Court?

"A. Your Honor, during my years of experience in doing interdiction, criminal interdiction,

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through all different scenarios where more than one vehicle is used to smuggle contraband.

"One scenario that they have is what we call a decoy vehicle. That vehicle travels in front of what we call the load vehicle. The load vehicle is the vehicle that's containing all the contraband, whether it's narcotics, whether it's large sums of U.S. currency, whether it's weapons, whatever.

"But on certain occasions, they'll have a decoy vehicle where it rides and travels in front. They're hoping they draw the attention of law enforcement so they'll get stopped and then, therefore, the load vehicle goes by.

"Another instance of what happens in the smuggling world is there's two vehicles. One vehicle is your load vehicle. The second vehicle is just people riding in it to make sure the load of narcotics or whatever contraband they're hauling makes it from point A to point B.

"Q. And this story that Mr. Camacho was giving to you out there that night, Agent Autery, I'm correct, am I not, I mean, in his story he told you that they were going from Dallas -- well, back that up. I'm sorry.

"He told you he'd left California initially, but he left Dallas and had to go to Atlanta in order to get settlement for the sale of the truck?

"A. Correct.

". . . .

"Q. Is there any significance to you -- was there any significance to you out there that night when you're working this case of Dallas to Atlanta?

"A. Yes. Dallas is a good source city. What we mean by that, Your Honor, is a lot of the narcotics come up across the border. Some of your major distribution points from once it comes across in the United States, Dallas is one of them. This is also noted by the FBI. It's statistical facts.

"Then also from Dallas to Atlanta. Atlanta is your biggest distribution points for narcotics east of the Mississippi. It's larger than Miami. It's larger than New York City. It's the largest distribution hub east of the Mississippi. So therefore, that route from Dallas to Atlanta is a significant route for narcotics.

"Q. Based on your training and experience, was it important to you that you had a gentleman who had left the State of California but then according to his itinerary had to stop over in Dallas and then delivered something, he said a truck to Atlanta, Georgia?

"A. Correct.

"Q. Was it significant that he couldn't provide you with any details as to those transactions?

"A. Yes, Your Honor, the night of the stop, due to the details that ... Camacho give -- he gave me and also the lack of the details that he was able to give me out there on the roadside with no -- with a K-9 alert, with the narcotics, not knowing who it come from, who it's going to, the source routes and all that, at the time of the stop, I felt like criminal activity was at hand, and the U.S. currency that we located in ... Camacho's truck were proceeds of narcotics transactions.

"Q. Based on your training and experience, Agent Autery, do you believe that money was proceeds from a drug transaction?

"A. Yes.

"Q. And you heard -- I guess he told you and you've seen, you heard him admit today, I mean, a portion of that money he said was given to him in an orange, plastic bag in Atlanta, right?

"A. Yes, sir.

"Q. Is it your position with this Court that that was a drug transaction and those are drug proceeds from that?

"A. Correct.

"Q. The entire amount?

"A. Correct.

"Q. What basis do you have for that?

"A. Past experiences from cases that I made from dealing with narcotics to dealing with seasoned U.S. currency. When I say it's almost like a pattern, it's common denominators over the years of experience that you see from the stories that you get on the side of the road, from their demeanor, from their travel itinerary, things like that. It all comes together and tells me with my training and experience that there's illegal activity going on.

"Q. Was there any explanation ever provided by Mr. Camacho as to why your K-9 would have alerted on his truck if either the money hadn't come from a drug transaction or he had all drugs in his truck?

"A. It could be several things. With the K-9 alert, the dog is only telling me that she smells the odor of narcotics. Once we searched the truck there's no narcotics in there, but here's currency in there.

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"A[] lot of times, Your Honor, when there's a load delivered to a location, the same hands that take the narcotics out are the same hands that put the money or the currency back in there. So that's why she's alerting to the odor of narcotics."

On redirect examination, an additional colloquy occurred regarding the sale of the second truck and the purported connection of the \$52,560 to a sale of narcotics:

"Q. And did [Camacho] tell you that Alejandro [a third party] went with him to Atlanta from Dallas?

"A. Correct.

"Q. And you were asked about whether or not ... Hernandez's statement was consistent ... [with] Camacho's. Was [Hernandez's] statement consistent with ... Camacho's as far as who went to Atlanta?

"A. No.

"Q. Didn't ... Hernandez say that Alejandro went to Atlanta from Dallas with he and Mr. Camacho?

"A. Correct. He stated -- he gave the statement saying that he rode with ... Camacho while he, [Hernandez,] drove the F-150 to Atlanta. They followed behind him.

"Q. Was ... Hernandez ever able to explain or did he know why this person that bought the truck in Dallas had to go to Atlanta to come up with the money?

"A. No.

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"Q. But he did say, did he not, that he saw ... Alejandro bring a yellow, plastic bag full of money to ... Camacho?

"A. Correct. In the hotel room.

"Q. Is that the drug transaction that you say this money came?

"A. Correct.

"Q. Did the bundles have any significance to you at all?

"A. The way they're wrapped and rubber banded up is consistent of all the currency that I've seized over the years of drug transactions.

". . . .

"Q. ... Have you made other seizures, have you dealt with other people in the drug smuggling world that do bundle their money, rubber band it like this money was?

"A. Yes, sir."

Based on the materials included in the record, neither Camacho nor Hernandez admitted that the \$52,560 had any connection to a drug transaction, and, as noted above, no drugs, drug paraphernalia, or other contraband were recovered from the truck or from Hernandez's or Camacho's person. On cross-examination the following colloquy occurred between Camacho's counsel and Agent Autery:

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"Q. Let me ask you this: How did you determine that this was drug proceeds and not just some other illegal funds? What was it that made you say this is drug money?

"A. Well, if it was other illegal funds, my dog shouldn't have alerted to the odor of narcotics on the vehicle.

". . . .

"Q. During your search of the car, Agent Autery, did you find any large amounts of drugs?

"A. No.

"Q. Did you find any small amounts of drugs?

"A. No.

"Q. Did you find any drugs packaged for sale?

"A. No.

"Q. Did you find any drug paraphernalia?

"A. No.

"Q. Did you find anything even as much as a roach?

"A. No.

"Q. Any compartments to that vehicle?

"A. No.

"Q. What kind of drugs did the dog hit on?

"A. Can you rephrase that, please?

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"Q. Yes, sir. Which narcotic was on this money?

"A. I can't answer that. My dog don't talk.

"Q. Was there any analysis done of the money to see about that?

"A. Not that I'm aware of.

"Q. Not that you're aware. Okay.

"Q. What type of drugs did ... Camacho sell or deliver in Atlanta?

"A. I don't know.

"Q. How many? How much? What quantity of drugs did he deliver in Atlanta?

"A. Don't know."

During the trial, a dispute arose between Camacho's counsel and the State's counsel about whether the State was alleging that the presence of narcotics on the \$52,560 was what caused Suza to alert during the search of Camacho's truck. See Muhammed v. Drug Enf't Agency, Asset Forfeiture Unit, 92 F.3d 648, 653 (8th Cir. 1996) ("[I]t is well-established that an extremely high percentage of all cash in circulation in America today is contaminated with drug-residue. ... The fact of contamination, alone, is virtually meaningless and gives no hint of when or how the

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cash became so contaminated."); see also United States v. \$5,000 in United States Currency, 40 F.3d 846, 849-50 (6th Cir. 1994) (to same effect) ("On the facts of this case, the government has failed to carry its burden [of establishing probable cause]. The government relies on the following pieces of evidence to demonstrate the requisite connection between the currency seized from Walker and Harris and narcotics activity: Walker matched, to some degree, the drug courier description provided by the anonymous caller; Walker carried \$5,000 on his person; Harris transported \$9,750 in his luggage; Walker and Harris traveled to New York for a single day; the currency was found in bundles, wrapped with rubber bands; Maggie, the narcotics detection dog, alerted to the money; Walker lied about the purpose of his trip (when contacted by officers in October 1992, Harry Caldwell at Epic Records confirmed that he knew Walker, but stated that he had not seen Walker on May 7, 1992); and Harris pleaded guilty in an Ohio court on March 13, 1986 to one count of trafficking in drugs and one count of permitting drug abuse." Id. at 848-49.). The State thereafter made the following argument to the trial court:

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"Suza hit on the truck. The alert was on ... Camacho's truck.

"Now, as I've stated, even though they don't want to bring this up, where the dog alerted on the odor of narcotics also is found this money that cannot be explained at all other than with all these incredulous stories and lies and inconsistencies that I know you've heard enough of.

"But there is nothing in there that says that the money is what the K-9 alert was on. The dog alerts to the odor of narcotics. It could be the same area of his truck where the money was, and perhaps it soaked up that from the drugs he hauled to Atlanta. But it's on the odor of narcotics.

"Never have we said that this dog alerted on the money which makes everything that they just said about a dog alert and money and all the statistics about money completely irrelevant. It was on the truck, and nothing has ever been said to this Court to the contrary."

But see Agent Autery's testimony, supra ("A[] lot of times, Your Honor, when there's a load delivered to a location, the same hands that take the narcotics out are the same hands that put the money or the currency back in there. So that's why she's alerting to the odor of narcotics.").

A review of our precedents reflects that, under circumstances analogous to the facts in the present case, our courts have concluded that the State failed to establish a prima facie case. For example, in Ex parte McConathy,

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"McConathy presented undisputed evidence as to the source of the seized currency," something admittedly lacking in the present case, "and the officers were unable to trace the currency to "any specific drug transaction or any transaction [in] violation of the Alabama controlled substances law." Holloway[v. State ex rel. Whetstone], 772 So. 2d [475] at 477 [(Ala. Civ. App. 2000)]." 911 So. 2d at 687-88. The supreme court stated:

"The fact that McConathy had \$8,000 on December 18, 2002, and according to Officer Boyd he led the officers to believe that he was going to continue to purchase controlled substances is insufficient to establish a prima facie case under § 20-2-93, Ala. Code 1975. As the court noted in Gatlin [v. State], 846 So. 2d 1090 (Ala. Civ. App. 2002)], '[a]lthough the evidence presented by the State might lead one to suspect that Gatlin was involved in illegal drug activity, mere suspicion is insufficient to support a judgment of forfeiture.' 846 So. 2d at 1093. As was the case in Gatlin, there is no concrete evidence tying the \$8,000 to a specific drug transaction, past or future. To say that McConathy would use this \$8,000 to purchase controlled substances at a future date is simply speculation, and speculation will not support a judgment of forfeiture.

"Because, after reviewing the record in this case, we conclude that the judgment in this case is against the great weight of the evidence, the judgment of the Court of Civil Appeals is reversed and the case remanded for that court to reverse the trial court's judgment of forfeiture and remand the

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cause to the circuit court for the entry of a judgment consistent with this opinion."

911 So. 2d at 688 (second emphasis added); see also Williams v. State, 150 So. 3d at 779; Williams v. State, 46 So. 3d at 6.

Likewise, in Bolden v. State, 127 So. 3d 1195, 1200-01 (Ala. Civ. App. 2012), this court stated:

"The State sought the forfeiture of the \$8,265 under § 20-2-93(a)(4)

"Excluding the evidence found in Bolden's cell phone -- evidence that Officer Kendrick testified indicates the occurrence of drug transactions shortly before Bolden's arrest -- there is not sufficient evidence to support a forfeiture of Bolden's money under § 20-2-93(a)(4). The remainder of the evidence submitted at trial simply reflects the evidence contained in the affidavit, evidence that did not even establish probable cause of drug activity. Evidence indicating that Bolden has sold drugs at some indefinite time in the past coupled with the discovery of \$8,265 in his vehicle is insufficient to establish that the \$8,265 was due to be forfeited. Thus, the judgment forfeiting the money is due to be reversed."

(Footnote omitted.) See also Williams v. State, 46 So. 3d at 6.

The State attempts to sidestep Camacho's argument, focusing on Camacho's failure to prove how he obtained the the \$52,560 legally. However, the purported owner of property

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that is the subject of a forfeiture claim has no obligation to prove that the property at issue "was not 'derived from ... any proceeds obtained directly, or indirectly, from any violation of any law of this state concerning controlled substances" until the State has met its burden of establishing a prima facie case regarding the property at issue. Agee v. State ex rel. Galanos, 627 So. 2d 960, 962 (Ala. Civ. App. 1993). The trial court in Agee determined, in part:

"'1. John Lee.... [b]etween 1989 and late 1991, ... imported approximately seventeen kilograms of cocaine into Mobile County from Houston, Texas. During this time frame, Mr. Lee derived all of his substantial income from the sale of cocaine. John Lee had no visible means of support other than the sale of drugs.

"'2. During this period, John Lee purchased several vehicles, some of which are the subjects of this forfeiture action. John Lee made it a practice to place these vehicles in the name of some other individual as a means of concealing his interest in the property and protecting them from forfeiture.

"'3. On the 19th of September 1991, John Lee went to Dean's Auto Sales in Mobile, AL ... for the purpose of purchasing an inexpensive vehicle, costing between \$500 and \$1,000. On arriving at Dean's, however, John Lee saw and sought to buy the Jaguar at issue in this case, placing a \$1,000 deposit on it.

"'4. Later that day, John Lee called his associate, Lafrance Pettway, and told him to get together some money so that he, John Lee, could buy the Jaguar.

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Lafrance Pettway was John Lee's assistant, and aided him in the importation and sale of cocaine.

"'5. Lafrance Pettway got together \$3,000 to \$4,000 in drug money and gave it to John Lee. This was money which Lafrance Pettway had obtained from others who were selling cocaine on his behalf. Pettway had provided them with cocaine which he, in turn, had obtained from John Lee.

"'6. John Lee used this money to obtain a cashier's check with the help of his brother-in-law, John Agee. This check was used to purchase the Jaguar.'"

627 So. 2d at 961 (emphasis added).

On appeal from the judgment declaring the forfeiture of the Jaguar to the Mobile County Sheriff's Department, this court stated in Agee that "the record clearly reflects sufficient testimony and evidence to support the findings of the trial court" and that the evidence set out in the trial court's judgment "clearly established a prima facie case for the forfeiture of the vehicle pursuant to § 20-2-93(a)(9)."

627 So. 2d at 962. We then stated:

"Once the State met this burden, the burden shifted to Agee to show that the vehicle was not subject to forfeiture, i.e., that it was not 'derived from ... any proceeds obtained directly, or indirectly, from any violation of any law of this state concerning controlled substances.'

"Agee testified that he had saved the money with which the vehicle was purchased over a period of five to ten years and that he had kept the money, in

cash, at home. The trial court found that Agee had testified falsely and that his testimony was unbelievable. Other evidence reflects that it would have been improbable for Agee to save that amount of money given his annual gross income, which averaged around \$10,000. Where there is conflicting ore tenus testimony, it is the duty of the trial court to resolve the conflict and to render a judgment accordingly. Lockhart v. State ex rel. Freeman, 590 So. 2d 315 (Ala. Civ. App. 1991). Also, when a witness does not testify truthfully to a material fact, the trial court may disregard that witness's testimony altogether. James v. James, 532 So. 2d 1031 (Ala. Civ. App. 1988). We find that Agee failed to rebut the prima facie case established by the State."

627 So. 2d at 962-963.

Likewise, the State cites Wherry, 637 So. 2d 1353, a case in which

"the State presented evidence from police officer Edward Smith, who obtained and executed a search warrant on Wherry's Huntsville residence. The search led to Wherry's arrest for possession of cocaine and to the seizure of the contested currency. Smith, an investigator for the City of Huntsville Police Department, testified that he obtained the search warrant based on 'controlled buys,' in which Smith had arranged for a confidential informant to purchase crack cocaine from Wherry at his residence. Smith testified that on several occasions he gave the informant money, a total of \$400, to make 'controlled buys' of controlled substances from Wherry. Smith had previously recorded the serial numbers of the bills. The informant was searched before entering Wherry's residence and again when he departed Wherry's residence. The informant entered Wherry's residence

with only the 'buy' money and departed with only crack cocaine.

"Smith obtained the search warrant for Wherry's residence on May 20, 1991, and he executed the warrant on May 23, 1991. Smith testified that during the search of Wherry's residence Wherry led him to crack cocaine in his bedroom in a dresser drawer; however, Smith said Wherry denied that there was any money in his residence. Smith testified that, during his search of Wherry's residence, he found \$30 in a 'Crown Royal' bag; \$120 in a dresser drawer; \$175 in a nightstand; \$1300 in a sock in a dresser drawer; a Beretta .22 caliber long rifle; a 9 millimeter Smith & Wesson handgun; a set of digital scales and a garbage bag containing \$6,250 under the bed; \$615 in a Central Bank bag under the bed; \$400 in a jacket pocket in the hall closet; \$160 in a purse in the bedroom; \$10 from a First National Bank bag in the living room; another .22 caliber gun; \$768 on Wherry's person; and a file box of personal papers in the rear bedroom. The 'buy' money was commingled with the money found in the bag containing \$6,250. A total of \$9,828 was seized during the search."

637 So. 2d at 1355-56 (emphasis added). This court affirmed the forfeiture judgment in Wherry, stating:

"We find that the record reflects sufficient testimony and evidence to clearly establish a prima facie case for the forfeiture of the money and to reasonably satisfy the trial court that the money was 'used or intended to be used to facilitate any violation of any law of this state concerning controlled substances.' § 20-2-93(a)(4). Once the State met this burden, the burden shifted to Wherry to show that the money was not subject to forfeiture."

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637 So. 2d at 1356; see also \$10,000 United States Currency in Possession of Bruce v. State, 598 So. 2d 979 (Ala. Civ. App. 1992) (case cited by the State in which a drug dealer fled with \$10,000 that he had attempted to pay to an undercover police officer as a bribe to dispose of pending drug charges).

Finally, the State cites Harris v. State, 821 So. 2d 177 (Ala. 2001), in which there was overwhelming evidence indicating that the money at issue had been used in conjunction with an ongoing cocaine-distribution ring in Tuscaloosa County. Although certain facts in Harris resemble some of the facts in the present case (money in bundles, lack of an accepted explanation for the money at issue, etc.), the supreme court, quoting the judgment in that case, stated:

"'Christopher Witherspoon testified that he had received cocaine "on consignment" from Gregory Binion on several occasions between February and October 1999. He had also observed, while at Gregory Binion's residence at 3116 38th Avenue, several individuals visiting Gregory Binion, namely Aundra Hill, a/k/a "Fat Man," Tyrone Billups, Willie Brown, a/k/a "Little J," Alexious Holliday, a/k/a, "A-Dell," and Jonathan Elliott, a/k/a "J-Rock." During their visits, he observed them taking illegal drugs out of the residence in Wal-Mart shopping bags, and bringing large amounts of cash into the residence in clear plastic bags. This money would be taken into the spare bedroom of the residence, which is the bedroom in which \$120,000.00 of the currency was seized from a floor safe, according to

the testimony of Robert Skelton and Agent Clint Davis of WANS [West Alabama Narcotics Squad]. The last occasion on which Witherspoon saw currency enter the residence was in October 1999, just two months before the seizure in this case, when it was brought in by Tyrone Billups in a gallon-sized Ziploc [plastic] bag.

"'....

"'The Court further finds that Gregory Binion was the actual owner of all the currency seized. There is overwhelming circumstantial evidence in this case that Gregory Binion was involved in a high-profit business of narcotics sales. He was never known to have been employed during the five years during which he was under investigation by WANS, which included regular surveillance by narcotics agents. In spite of his lack of employment, he owned an expensive luxury vehicle, to which he was able to make very expensive improvements. He also had the ability to pay cash for expensive jewelry and a year's membership to an expensive gym in advance, as noted by receipts found on his dresser. Further, \$21,000.00 cash was previously seized from him after he had made arrangements to purchase a kilogram of cocaine. In Agee [v. State ex rel. Galanos, 627 So. 2d 960 (Ala. Civ. App. 1993)], one factor considered by that Court before condemning the subject property was the improbability of the claimant's saving the amount of money used to purchase it, given his income.'"

821 So. 2d at 179-83 (emphasis added). On appeal, "Georgia Harris, Gregory Binion, and Calvin Binion argue[d] that the State failed to present sufficient evidence that the currency or the vehicle seized was used in violation of the Alabama Uniform Controlled Substances." Id. at 185. After discussing

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the pertinent standard of review, the supreme court stated: "We conclude that the judgment of the trial court is supported by competent evidence, set forth in painstaking detail in its order, insofar as the forfeiture of the currency is concerned. The trial court's findings with regard to the currency are not palpably wrong." Id. Importantly, however, the supreme court further stated:

"However, we conclude that, insofar as the forfeiture of the automobile is concerned, the judgment of the trial court is so unsupported by the evidence as to be plainly and palpably erroneous. Therefore, to the extent that the trial court's judgment ordered the forfeiture of the 1991 Lexus automobile, the judgment is reversed.

"The State produced evidence sufficient to support the trial court's finding that Gregory Binion is the actual owner of the automobile. In fact, Calvin Binion and Gregory Binion do not challenge that finding in their briefs filed with this Court. However, proof of ownership alone does not support the forfeiture of the vehicle. While the State argues that the automobile was used repeatedly in Gregory Binion's drug transactions, the State can point to no evidence tending to support that conclusion. There were no drugs in the automobile when it was seized. There was no evidence indicating that any drug transaction had taken place immediately before the seizure. There was no evidence indicating that the automobile had been used to transport a controlled substance. Finally, there was no evidence indicating that the automobile had been purchased with the proceeds from any violation of any law of this State concerning controlled substances."

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821 So. 2d at 185 (emphasis added).

Based on the precedents described above, we are not persuaded by the State's argument based on Agee, Wherry, \$10,000, and Harris, all of which are distinguishable in pertinent respects regarding the relationship between the property and purported drug transactions at issue. The facts in the present case reflect that a drug-detection dog alerted to an unknown narcotic of unknown legality and of unknown quantity, at an unknown specific location (truck or money), in a vehicle where a few stacks of possibly illegally acquired, bound cash were hidden. The only suggested drug transaction purportedly occurred in Georgia, and that was based on pure speculation that required reliance upon, in part, a witness (Camacho) that the trial court correctly found not credible. We find our precedents sufficiently clear that, under such circumstances, the State failed to present the evidence necessary to support a finding that the \$52,560 was "furnished or intended to be furnished by any person in exchange for a controlled substance in violation of any law of this state." § 20-2-93(a) (4).

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Conclusion

Based on the foregoing, the December 2018 judgment is against the great weight of the evidence, and that judgment is hereby reversed and the cause remanded for the entry of a judgment consistent with this opinion.

REVERSED AND REMANDED.

Thompson, P.J., and Moore, Donaldson, and Hanson, JJ.,
concur.