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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2019-2020

2180453

Mary Alice Wilson

v.

State of Alabama

Appeal from Shelby Circuit Court
(CV-16-900459)

EDWARDS, Judge.

Mary Alice Wilson, a Colorado resident, appeals from a judgment entered by the Shelby Circuit Court ("the trial court") ordering the forfeiture of $19,410 ("the $19,410") to the State of Alabama pursuant to Ala. Code 1975, § 20-2-93.

Christopher Bruton, a resident of Shelby County, originally met Wilson on a cruise in 2013. They smoked marijuana together on the cruise, and, thereafter, Bruton began purchasing marijuana from Wilson in quantities of one-half pound or one pound per purchase; occasionally, Bruton also purchased alprazolam, i.e., Xanax, from Wilson.[1] To obtain the drugs, Bruton would contact Wilson by text message and request marijuana ("sometimes specify[ing] the amount and 'flavor' ('Gorilla Glue,' 'Bruce Banner,' 'Luke Skywalker,' etc.)") or Xanax. Wilson would respond by text message, and, within a few days, she would ship the drugs to Bruton and would provide him with a tracking number for the shipment. Wilson would also indicate the cost for the drugs, if she and Bruton had not already agreed to the specific cost. After Bruton received the shipment, he would make a deposit into a

[1]The evidence regarding the amount of Xanax at issue, which Wilson referred to by the slang term "bars" at one point, is not entirely clear. Bruton indicated in text messages to Wilson that he was very fond of Xanax and might take two doses per day, but he stated in a later text message to Wilson that "[o]ne a day is perfect." Bruton's last purchase of Xanax from Wilson was in January 2016, when he bought 40 pills for $20.

bank account Wilson had at Wells Fargo, as directed by Wilson. Bruton made the deposits at a Wells Fargo branch in Pelham.

Wilson's first shipment of marijuana to Bruton was in late August 2013. Thereafter, Bruton placed orders and received shipments of marijuana or Xanax from Wilson every two or three months, on average, until May 2016. On May 17, 2016, a Birmingham police officer obtained a search warrant for a package from Wilson that was intended for Bruton. The warrant was issued based on a positive indication from a narcotics-detection dog that had occurred while the package was being processed at a local Federal Express facility; the ensuing search revealed that the package contained 1.14 pounds of marijuana in a vacuum-sealed bag. The package was thereafter delivered to Bruton at his Shelby County address. Officers from the Shelby County Drug Enforcement Task Force ("the task force") were present when the package was delivered and confronted Bruton after he accepted delivery. Bruton thereafter agreed to cooperate with the task force's investigation of Wilson, including consenting to a review of information contained on Bruton's cellular telephone. We note that Bruton made no payment to Wilson for the May 2016

shipment of marijuana, although a text message from Wilson to Bruton on October 28, 2013, stated that she had "a policy" of charging only half the agreed upon price if she sent a package that "gets lost or taken."

Based on information obtained during the task force's investigation into Wilson and Bruton's relationship, on May 18, 2016, the task force seized $35,746.70 ("the $35,746.70") from four accounts at Wells Fargo that belonged to Wilson; the $35,746.70 was seized through a Shelby County branch of Wells Fargo. The four accounts are hereinafter identified by the last four digits of the respective Wells Fargo account numbers, namely 3990, 6995, 5935, and 6603. We note that all of Bruton's deposits were made into Wilson's Wells Fargo account number 6603 ("the 6603 account"), which, on May 18, 2016, had a balance of $27,709.23 ("the $27,709.23") and was part of the $35,746.70.

On June 10, 2016, the State filed a complaint in the trial court seeking forfeiture of the $35,746.70 pursuant to § 20-2-93. In addition to the $35,746.70, Wilson was named as a defendant. Wilson filed an answer to the State's complaint. Thereafter, she filed a motion for a summary judgment arguing

that the State's claims to the portions of the $35,746.70 seized from her Wells Fargo account numbers 3990, 6995, and 5935 were due to be denied because the State had no evidence indicating that the currency from those accounts was associated with any illegal drug transaction. Accordingly, Wilson contended, the currency seized from those three accounts was due to be returned to her.

Regarding the $27,709.23 seized from the 6603 account, the text messages retrieved from Bruton's cellular telephone reflect that, between August 2013 and March 2016, Bruton made 15 deposits for the purchase of marijuana or Xanax into that account; those deposits totaled $30,410. However, according to an affidavit filed by Wilson in support of her motion for a summary judgment, when the State seized the $27,709.23 from the 6603 account, most of the $27,709.23 was from deposits that were not related to any illegal drug transaction. Wilson argued that the State's evidence could link only $4,260 of the $27,709.23 to any specific illegal drug transaction -- the payments for transactions between her and Bruton in January 2016, February 2016, and March 2016 -- and she contended that the remaining $23,449.23 from the 6603 account should be

returned to her. Wilson argued, in the alternative, that the two-year statute of limitations in Ala. Code 1975, § 6-2-38(l) precluded the State from retaining any currency from the 6603 account that was attributable to an illegal drug transaction that had occurred more than two years before the State filed its forfeiture complaint; the currency deposited by Bruton into the 6603 account for transactions during the two years before the State filed its complaint totaled $19,410.

The State filed a response to Wilson's motion for a summary judgment, and, after a hearing on that motion, the trial court entered a summary judgment in favor of Wilson and against the State regarding the portions of the $35,746.70 seized from Wilson's Wells Fargo account numbers 3990, 6995, and 5935. Regarding the $27,709.23 seized from the 6603 account, however, the trial court concluded that a disputed issue of material fact precluded the entry of a summary judgment against the State.

In addition to the forfeiture action, the State filed criminal charges against Wilson for her attempted sale and delivery of marijuana to Bruton in May 2016. Apparently, no charges were filed against Bruton. On November 2, 2016,

Wilson pleaded guilty in the criminal proceeding to conspiring to distribute a controlled substance in violation of Ala. Code 1975, § 13A-12-204.

On November 19, 2018, the trial court held an ore tenus proceeding in the forfeiture action. The only witness who testified at the trial was Bruton. Wilson did not attend the trial, although her counsel was present. In addition to Bruton's testimony, the State and Wilson stipulated to the admission into evidence of all the exhibits offered as part of the summary-judgment proceeding (including the materials attached to a motion to reconsider that Wilson had filed), which included an affidavit from Wilson, a copy of her guilty plea from the criminal proceeding, documents from the task force's investigation, bank-account statements, and a printout of the text messages between Bruton and Wilson. At trial, the State argued that Bruton had deposited more than the $27,709.23 into the 6603 account for illegal drug purchases from Wilson and that the State was entitled to all of the $27,709.23.

On December 6, 2018, the trial court entered a judgment declaring that the $27,709.23 the State seized from the 6603

account was forfeited to the task force. See Ala. Code 1975, § 20-2-93(e)(2). In the December 2018 judgment, the trial court determined that the $27,709.23 was "proceeds knowingly commingled with proceeds used to facilitate violation of the criminal controlled substance laws for the State of Alabama and/or [was] proceeds knowingly commingled with proceeds that were the fruits of the illegal sale of controlled substances in the State of Alabama." The trial court further stated that it found no Alabama precedent specifically addressing the commingling issue, and it

> "adopt[ed] the United States Eleventh Circuit Court of Appeals' analysis in U.S. v. One Single Family Residence Located at 15603 85th Ave. North, Lake Park, Palm Beach County, Florida, 933 F.2d 976, 981-982 (11th Cir. 1991), in distinguishing individuals who are 'innocent owners' from those who are 'wrongdoers' who knowingly mix illicit proceeds with proceeds attributable to illegal drug transactions. Thereby, this Court finds that ... Wilson should not prevail in keeping any amount of the funds from ... [the] 6603 [account] because she is clearly a 'wrongdoer' who knowingly engaged in illegal drug activity and who knowingly directed ... Bruton to deposit funds for illegal drugs into ... [the] 6603 [account]."

We note that in United States v. One Single Family Residence Located at 15603 85th Avenue North, Lake Park, Palm Beach County, Florida, 933 F.2d 976, 978 (11th Cir. 1991), the

United States Court of Appeals for the Eleventh Circuit ("the Court of Appeals") held that Gary Spears, who had knowingly commingled his legitimate funds with the funds of his brother, Curtis Spears, who had no legitimate source of income and was a drug smuggler, was not an "innocent owner" and, thus, that his funds were subject to forfeiture under 21 U.S.C. § 881(a)(6). Gary and Curtis had commingled their funds to purchase real property, as tenants in common, and to construct a house on that property. In addressing Gary's appeal, the Court of Appeals stated that, "[a]s to a wrongdoer, any amount of the invested proceeds traceable to drug activities forfeits the entire property. We have never held that as to a wrongdoer only the funds traceable to illegal activities may be forfeited." 933 F.2d at 981. The Court of Appeals held that, "when a claimant to a forfeiture action has actual knowledge, at any time prior to the initiation of the forfeiture proceeding, that claimant's legitimate funds are commingled with drug proceeds, traceable in accord with the forfeiture statute, the legitimate funds are subject to forfeiture." Id. at 982.

Wilson filed a postjudgment motion on January 3, 2019. On February 11, 2019, the trial court entered an order vacating the December 2018 judgment and granting Wilson relief regarding the return of $8,299.23 of the $27,709.23 at issue. The trial court concluded, however, that the $19,410 remaining ($27,709.23 - $8,299.23 = $19,410) was forfeited to the task force. After discussing two cases that Wilson had cited in support of her postjudgment motion, Blackwell v. State ex rel. Snyder, 266 So. 3d 76 (Ala. Civ. App. 2018), and Ex parte McConathy, 911 So. 2d 677 (Ala. 2005), the February 2019 order states, in pertinent part:

> "3. The only account that is at issue in this case is the 6603 account. While the Court finds that certain monies in the 6603 account were traceable to specific drug transactions, the court also finds that other monies in the account were not traceable to specific drug transactions .... Moreover, the State conceded that the monies in the 6603 account that were not linked to a drug transaction with ... Bruton[] were legitimately earned or deposited. What the court cannot determine is what money was withdrawn from account ... 6603 during the two (2) year time period at issue, the 'clean money' from the 'dirty money.'
>
> "4. The court, therefore, must account for which funds to return to [Wilson] and which funds to condemn. From the date of the seizure (May 2016), going back for a period of two (2) years, there were $19,410.00 in deposit[s] traceable to specific drug transactions. The court has not found a statute or

> case law addressing the statue of limitations that applies to this fact situation. The court, in accepting [Wilson's] argument that the statute of limitations should be two (2) years, finds that portion of the account linked to drug transactions within two (2) years of the seizure is the only portion that should be condemned to the State.
>
> "5. The amount of $19,410.00 from Wells Fargo [a]ccount number ... 6603, which the court finds is linked to various drug transactions in violation [of] ... § 20-2-93, is hereby forfeited and condemned. (See State's Exhibit 1 and [Wilson's] Exhibit 8). The remaining $8,299.23 from the said 6603 account shall be returned to ... Wilson."

State's exhibit 1 and Wilson's exhibit 8, referenced in the February 2019 order, are copies of the same document, namely page eight of an "Incident/Investigation Report" prepared by a task-force officer. The report includes a summary of the results of a forensic examination of Bruton's cellular telephone and states, in pertinent part, that, "according to the text messages, as well as information provided by Bruton, between August 2013 and May 2016, Bruton deposited in excess of $30,410 into ... [the 6603] account as payment for marijuana and Xanax." The report then contains entries beginning on August 22, 2013, and ending on May 18, 2016, for Bruton's various payments to Wilson for the purchase of marijuana or Xanax, all but three of which include specific

dollar entries for payment.[2] Based on the report entries, Bruton paid Wilson $19,410, through deposits into the 6603 account, for illegal drug transactions during the two years before the State filed the forfeiture complaint.

Wilson filed a timely notice of appeal to this court from the February 2019 order. The State did not file a cross-appeal; thus, the State has abandoned any claim to more than the $19,410 awarded to the State.

Section 20-2-93 states:

> "(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."

[2]The three exceptions are the entry for May 2016, which involved the confiscated marijuana that Burton did not pay Wilson for, an entry that states "Unknown Payment Amount," and an entry that states "Wilson used Bruton's Sky Miles" for payment.

"'"Under § 20-2-93 the State must establish a prima facie case for the seizure, condemnation, and forfeiture of ... property. The standard of proof is reasonable satisfaction. The statute is penal in nature and, as such, should be strictly construed."'" Ex parte McConathy, 911 So. 2d at 681 (quoting Holloway v. State ex rel. Whetstone, 772 So. 2d 475, 476 (Ala. Civ. App. 2000), quoting in turn State v. Smith, 578 So. 2d 1374, 1376 (Ala. Civ. App. 1991)); see also Wherry v. State ex rel. Brooks, 637 So. 2d 1353, 1355 (Ala. Civ. App. 1994) (stating that the "burden [of proof] is greater than required in federal court," i.e., greater than mere probable cause).

"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 at 681. "The ore tenus rule does not, however, extend to cloak a trial judge's conclusions of law or incorrect application of law to the facts with a presumption of correctness." $3,011 in United States Currency v. State, 845 So. 2d 810, 814 (Ala. Civ. App. 2002). We review such questions de novo. See, e.g., South

Alabama Brick Co. v. Carwie, 214 So. 3d 1169, 1175 (Ala. 2016).

Wilson argues, as she did in the trial court, that "[l]egally and legitimately earned money commingled in a bank account with money tied to drug transactions does not subject the entire account to forfeiture." According to Wilson, "[w]ithout evidence that establishes a connection between the seized money and the drug transaction(s), the State fail[ed] to establish the basic prima facie case for civil forfeiture." Wilson also notes that § 20-2-93 is to be strictly construed and that our courts have repeatedly held that the State must present evidence tying seized currency to a specific drug transaction. See McConathy, 911 So. 2d at 681; Blackwell, 266 So. 3d at 80.

We first must clarify Wilson's misunderstanding of the February 2019 order. The trial court did not order the forfeiture of the 6603 account or all of the currency seized from the 6603 account, regardless of whether the currency was from an illegal transaction, although the latter would have been consistent with the principle discussed in One Single Family Residence Located at 15603 85th Avenue North, Lake

Park, Palm Beach County, Florida, which the trial court cited in the December 2018 judgment that was vacated by the February 2019 order granting Wilson's postjudgment motion and ordering the return of all but $19,410 of the $27,709.23, i.e., the total currency seized from the 6603 account. Instead, as the February 2019 order clearly states, the trial court determined that currency from Wilson and Bruton's illegal transactions and legitimate currency from Wilson had been commingled in the 6603 account. The February 2019 order continues: "What the court cannot determine is what money was withdrawn from account ... 6603 during the two (2) year time period at issue, the 'clean money' from the 'dirty money.'" However, the trial court noted that it could determine from the record that, in the two years before the State filed its complaint, Bruton had deposited the $19,410 into the 6603 account as payment for illegal drug transactions. Wilson does not dispute that finding. Instead, she assumes in her argument that the $19,410 the trial court awarded to the State necessarily includes the legitimate currency that she deposited into the 6603 account between November 2015 (not two years before the State filed its complaint) and the May 2016 seizure.

The predicament for the trial court regarding the issue it faced is reflected in the following colloquy from arguments made at trial. Wilson's counsel stated:

> "Back out all those legitimate transactions. And then when you ... do that, what you're left with is twenty is, I'm sorry, four thousand two hundred and sixty dollars of drug money, drug deposits, and twenty-three thousand four hundred forty-nine dollars and twenty-three cents of legitimate money that flowed through that account."

The trial court then noted Wilson's affidavit, which was admitted as part of the parties' stipulations, and stated:

> "I've read your client's affidavit. And while she says she transfers money occasionally into that account, she doesn't make any specific reference to any specific date or any specific amount. ... Nowhere in that affidavit does it state a date or an amount. It says approximately this much every so often. She doesn't tell me by way of any testimony from her what it's from.
>
> "....
>
> "... [H]ow does the Court determine what money in the bank is drug money and what money that's left in the bank is not drug money? Am I just to go on withdrawals? If she withdraws it, she's clear, and everything's good, I got it out of the bank quick enough?"

The colloquy continued:

> "THE COURT: You're ... telling me she was able to get the dirty money out of the bank before the State could seize it, and what's left there is clean money. Isn't that what you are telling me?

"[Wilson's counsel]: I mean --

"THE COURT: That's a yes or no.

"[Wilson's counsel]: Yes, sir.

"....

"[Wilson's counsel]: But then the question is, is what do we do with all of her legitimate money that was in the -- in the account?

"THE COURT: How do I know it's legitimate?

"[Wilson's counsel]: Well, because it -- the documents have been stipulated to. The State has not contested -- the State has agreed that there were legitimate funds ... in that account. And it's the State's burden of proof to prove that the ... money that they want to seize is tied to a specific drug transaction. And to simply say that -- that every deposit that is listed on -- there's no way from the evidence that's been presented, that's been stipulated to, that the court could conclude that all of the money ... would be all drug money.

"THE COURT: So it's the -- is the State stipulating that all that other -- all those other deposits were clean?

"[State's counsel]: Your Honor, the -- the State is basically --

"....

"THE COURT: -- [T]hat's a yes or no question too.

"[State's counsel]: Well, I don't know -- I can't vouch whether they're clean or not. But it -- the State's argument is that it shouldn't matter, because the one --

> "....
>
> "THE COURT: I'm asking you, are you disputing that the other deposits made into that account, other than what ... Bruton made, are you saying those were all clean deposits? Or do you know?
>
> "[State's counsel]: Inasmuch as I can't dispute that they're clean, I would say they're clean, Judge."[3]

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[3]Wilson avers in her affidavit that, "[i]n addition to the transfers made from the 3990 account into the 6603 account, every 6 months the sum of $6,000.00 would be deposited into the 6603 account on behalf of Dorothy Heard, a dear friend of mine and for whom I am a caregiver." It is unclear from the record whether Dorothy Heard is the same person as "Dot," a resident of Hattiesburg, Mississippi, whose address was used to facilitate the first few illegal drug deliveries from Wilson to Bruton.

A review of the six months of account records for the 6603 account that were part of the stipulated documents admitted at trial reflects a substantial number of whole-number deposits that appear somewhat odd. Also, as noted above, a text message from Wilson to Bruton on October 28, 2013, stated that she had "a policy" of charging only half the agreed upon price if she sent a package that "gets lost or taken." That message continued: "Hope that works for you. Everyone else has to wait for me to receive $ before I ship to them." Also, Wilson stated in a text message on December 5, 2013, in which she and Bruton were discussing the price of a particular type of marijuana she had shipped and he evidently enjoyed: "May I ask what u get for it? 250 is my going price. ... Except for close friends. Never less than 200 an oz." Likewise, on February 19, 2016, Wilson stated in a text message to Bruton, which addressed potential problems with delivery:

> "Are you renting or buying your home? Renting is safer, but I send to a couple of people who are

As noted above, when it entered the February 2019 order, the trial court did not award the State the 6603 account or all of the currency seized from that account, and the trial court made no finding that the State would be entitled to currency related to legitimate deposits Wilson might have made. Instead, the trial court determined that the State was entitled to the $19,410 because that amount reflected the amount of currency placed into the 6603 account from Wilson's illegal transactions with Bruton.

In her appellate brief, Wilson cites several cases as supporting her argument, but none of those cases address the issue of how withdrawals by an account owner -- whether innocent or, like Wilson, guilty -- from an account containing commingled currency affects a claim for forfeiture or whether it would be error to award the State an amount equal to the

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> buying. I change your name slightly on outside of pkg. Also I can use fedex[.] ... I feel my packaging is good ... only one loss in about 10 years[.] ... One guy puts his neighbors address & watches for postman[.] ... [W]orked out so far."

We note that Wilson's purported marijuana sales may have violated Colorado law. However, that issue was not discussed at trial. See Colo. Const., art. 18, § 16; Colo. Rev. Stat., § 44-12-901.

deposits from illegal transactions from such an account. A discussion of Blackwell v. State ex rel. Snyder, 266 So. 3d 76 (Ala. Civ. App. 2018), illustrates the problem with Wilson's argument and with most of the authorities on which she relies. In Blackwell, Marcel A. Blackwell, a California resident, was arrested and pleaded guilty to second-degree possession of marijuana following a traffic stop in Cleburne County. The criminal charge was apparently based on the fact that the arresting officer found marijuana stems and debris in Blackwell's rental car; Blackwell had a California permit for the use of marijuana for medical purposes. During the traffic stop, the arresting officer seized $13,020 from a heat-sealed plastic bag beneath Blackwell's clothes and $305.30 from Blackwell's wallet, along with papers and invoices that were in Blackwell's rental car. The issue on appeal in Blackwell was whether "the State failed to prove a connection between the $13,020 and a 'specific violation' of Alabama's controlled-substances laws." Id. at 78. This court acknowledged that the judgment at issue had awarded Blackwell the $305.30 from his wallet. In reversing the $13,020 forfeiture award, this court noted:

"[T]he police officer admitted that the search undertaken by his service dog merely indicated the presence of drugs somewhere in the Nissan; that the amount of marijuana found in the Nissan did not meet the elements sufficient to charge the claimant with possession of marijuana with intent to sell; and that he had found no paraphernalia, baggies, or scales related to drug activities in the Nissan. The police officer further admitted that none of the receipts found in the Nissan bore the claimant's name ...; that none of the receipts could be connected to the claimant other than by his 'constructive possession' and that they could have been left behind in the Nissan by 'someone else who the car was rented by'; and that none of the receipts indicated any transactions in Alabama. Finally, the police officer admitted that he had been independently unable to find any information regarding any source, either legitimate or illegitimate, of the funds seized from the claimant.

"... [A]lthough some or all of the currency seized from the claimant might not be traceable to legitimate business enterprises engaged in by the claimant, there remains no evidence linking that money to a specific drug transaction, past or future, in violation of Alabama law, as]Ex parte] McConathy[, 911 So. 2d 677 (Ala. 2005),] would require.

"The State seeks, on appeal, to defend the forfeiture judgment by relying on Wherry v. State ex rel. Brooks, 637 So. 2d 1353 (Ala. Civ. App. 1994), for the proposition that its burden in a forfeiture action with respect to currency is solely to show some connection between that currency and a violation of Alabama's controlled-substance laws. We find Wherry distinguishable. In that case, evidence that specific prerecorded bills, which had previously been used by a police informant in making 'controlled buys' of cocaine from a forfeiture claimant and had been recovered from that claimant's

> residence in connection with his drug arrest, was held to have established a prima facie case in favor of forfeiture. Here, however, the currency seized from the claimant's person was not shown to have any connection to a specific drug transaction, but was merely shown to have been in proximity to marijuana residue in the claimant's constructive possession in the Nissan automobile. Similarly, we conclude that Johnson v. State, 667 So. 2d 105 (Ala. Civ. App. 1995), is distinguishable because the currency recovered from the claimant in this case was found on his person rather than, as was the case in Johnson, in a common container with drug residue and paraphernalia (667 So. 2d at 108). Finally, we conclude that Harris v. State, 821 So. 2d 177 (Ala. 2001), is distinguishable because the trial court in that case was presented testimony tending to show that a residence from which $165,501 had been seized was the site of a series of transactions, taking place over nine months, in which persons had come to the residence with bags of currency and had left with bags containing illegal drugs, none of which is present in this case.
>
> "Based upon the foregoing facts and authorities, we agree with the claimant that the State failed to make a prima facie showing that the currency recovered from him on April 11, 2016, was furnished in violation of Alabama law in exchange for a prohibited controlled substance, was traceable to an exchange prohibited by Alabama law, or was used or was intended to be used to facilitate a violation of Alabama controlled-substances laws."

Blackwell, 266 So. 3d 80-82; see also the following cases cited by Wilson: Ex parte McConathy, 911 So. 2d at 687-88 (reversing an $8,000 forfeiture judgment because no evidence tied the $8,000 to a specific drug transaction); Gatlin v.

State, 846 So. 2d 1090, 1093 (Ala. Civ. App. 2002) (reversing a $4,100 forfeiture judgment because "[t]he State presented no evidence indicating that Gatlin had participated in or that he was going to participate in a drug transaction"); and Thompson v. State, 715 So. 2d 224, 226 (Ala. Civ. App. 1997) (reversing a forfeiture judgment because no evidence supported the conclusion that the $8,694 seized from Maurice B. Thompson's vehicle was traceable to a drug transaction).

The issue in the cases cited by Wilson was whether the evidence would support a finding that an illegal drug transaction had occurred at all, a finding that was a necessary prerequisite to tying the currency at issue to the facilitation of an illegal drug transaction. In contrast, in the present case it is undisputed that illegal drug transactions occurred, and it also is undisputed that the proceeds from those illegal drug transactions were placed into the 6603 account from which the $19,410 was forfeited. We cannot ignore those distinctions. Because in Blackwell and in the other cases Wilson cites, the State had not established that the currency at issue was traceable to an illegal drug transaction, those cases cannot be read as addressing the

issue of how the commingling of currency from an illegal drug transaction with currency from a legitimate source affects a forfeiture claim.

Wilson also relies on State v. Blair, 435 So. 2d 124, 125 (Ala. Civ. App. 1983), in which this court affirmed a judgment ordering the return to James Blair of $4,160 that police "officers found [in] a small cosmetic suitcase under a bed which contained ... $150 in marked [drug-purchase] money commingled with the $4,160." Blair likewise is not particularly helpful to the issue at hand. First, the issue in Blair was whether the evidence supported the judgment against the State, not whether the State had satisfied its prima facie burden under § 20-2-93 such that the burden was on Blair to offer evidence in support of his claim to the $4,160; Blair apparently made no claim to the $150 that had been used for an illegal drug transaction. More importantly, however, although this court did note that "there [was] no evidence which directly link[ed] the $4,160 with the $150 used to buy the illegal drugs," id. at 126, we did not address the issue of what affect the withdrawal of currency from the suitcase after it was commingled might have had upon the forfeiture of

the $150 that was connected to an illegal drug transaction; and no issue was presented regarding how to distinguish between the $150, which was marked, and the $4,160 at issue. In other words, Blair also does not directly address the issues on which Wilson pins her hope for reversal, namely how a trial court should distinguish between currency in a commingled account or how the account owner's withdrawals from a commingled account affect the issue of forfeiture. Wilson also cites no authority holding that the State fails to establish a prima facie case of forfeiture as to the amount of the currency it can trace to illegal transactions merely because commingling has occurred, a position that essentially encourages money laundering as an affirmative defense to a forfeiture claim. Specifically, Wilson does not provide any legal authority (binding or persuasive) that addresses how the law addresses the division of commingled currency, particularly in the context of a bank account. Cf. Wherry, 637 So. 2d at 1356 (holding that the State had met its burden and that Wherry had the burden of showing the seized money was not subject to forfeiture and affirming forfeiture judgment regarding all seized money when "[t]he 'buy' money was

commingled with the money found in the bag containing $6,250").

Wilson then proceeds to her second issue, arguing that "[t]he trial court erred in failing to award Wilson the monies contained within the ... 6603 account that were not directly linked to any drug transaction." In her discussion of this issue, Wilson broaches a potential solution to the commingling-and-withdrawal problem: Wilson proposes using the bank records that she submitted for the period between November 2015 and the May 2016 seizure (not the two-year period during which Bruton deposited the $19,410) to "back out" all of her deposits from the 6603 account that were not deposits from Bruton. She continues:

> "Essentially, this is done by using the common accounting method of 'last in-first out.' During this same period of time, there were also $4,260.00 worth of alleged drug related deposits made. The $4,260.00 represents the sum of the final three instances where deposits were made into Wilson's account and appear to be drug related. ... [B]y 'backing out' the legitimate deposits to the point in time when they equal the amount that was seized [the $27,709.23], the connection between the 6603 account and any drug transactions that were made prior to November 19, 2015, is severed."

A discussion of the trial court's reaction to this position is reflected in the colloquy at trial quoted above.

Wilson supports her second argument with no citation to pertinent legal authority or to a factual basis for adopting the suggested accounting method, and her argument is based on convenient, unsubstantiated assumptions. Specifically, Wilson cites no authority for the proposition that the law requires or permits the use of a "last in-first out" method for resolving the commingling issue, i.e., she cites no law stating that withdrawals from a commingled account must be assumed to be withdrawals of the currency from the illegal transactions, rather than the legal transactions. Also Wilson cites no law for the proposition that it is the State's burden to establish, in addition to the fact that the "guilty money" was deposited into an account containing a fungible asset, that only the "guilty money" is what it has seized, particularly when the forfeited currency does not exceed the amount of the "guilty money" that was deposited. Although our courts do not appear to have been confronted with those issues, that does not mean there is no Alabama law addressing it. The answers to those questions of law either have been provided by the legislature or are part of the common law, even if it might be necessary to look to persuasive legal

authorities to articulate the answer. See, e.g., Ex parte Christopher, 145 So. 3d 60, 69 (Ala. 2013) ("Courts do not make law."); Cook v. Meyer Bros., 73 Ala. 580, 583 (1883) ("[T]he common law prevails, save so far as it is expressly or by necessary implication changed by the statute."). Wilson appeals to neither. She directs us to no answer from any source of law or from any legal authority -- whether binding or persuasive.

The possible answers to those issues, and to the questions discussed regarding Wilson's first issue, are not so straightforward as Wilson's preferred, but unsupported -- at least insofar as any citation in her brief is concerned -- answer. See United States v. Banco Cafetero Panama, 797 F.2d 1154, 1159 (2d Cir. 1986) (The seminal case addressing the various ways to approach the tracing of fungible property, such as cash, that is connected with an illegal transaction and that is deposited into a bank account, including the use of the "'[guilty money]-in, last-out' rule" or "'lowest intermediate balance' rule," the "pro rata share" or "'averaging' rule," and the "'[guilty money]-in, first-out' rule," any of which the government might use in a given case

under federal law.[4]); United States v. $448,342.85, 969 F.2d 474, 477 (7th Cir. 1992) (noting that the illegal proceeds at issue exceeded the sums on deposit at the time of seizure and concluding that the government was entitled to the entire balances in the accounts at issue); see also United States v. Carrell, 252 F.3d 1193, 1200 (11th Cir. 2001) (citing Banco Cafetero Panama with approval); United States v. All Funds & Other Prop. Contained in Account No. 031-217362, 661 F. Supp. 697, 702 (S.D.N.Y. 1986) ("[O]nce any money in an account is linked to drugs, the [purported owner] has the burden of proving that the money remaining in the account is not forfeitable."); cf. United States v. Baker, 227 F.3d 955, 970 (7th Cir. 2000) (quoting United States v. Turner, 107 F.3d 1120, 1135 (5th Cir. 1997), quoting in turn other cases) ("'Limiting the forfeiture of funds under these circumstances to the proceeds of the initial [illegal] activity would effectively undermine the purpose of the forfeiture

[4]Congress enacted 18 U.S.C. § 984, in part, to close a loophole that Congress noticed after the decision in Banco Cafetero Panama; that loophole allowed money launderers to zero-out the account at issue in order to avoid forfeiture. United States v. Contents in Account No. 059-644190-69, 253 F. Supp. 2d 789, 792-93 (D. Vt. 2003).

statute.'"); United States v. Navarro-Ordas, 770 F.2d 959, 970 (11th Cir. 1985) ("To limit the forfeiture to profits actually traced to assets Rodriguez held at the time the forfeiture order issued would simply provide an incentive for racketeers to engage in complicated financial transactions to hide their spoils."); and One Single Family Residence Located at 15603 85th Ave. N., Lake Park, Palm Beach Cty., Fla., supra.

Also, we note that, at issue in Banco Cafetero Panama was the construction and application of 21 U.S.C. § 881(a)(6). Section 881(a)(6) is substantially similar to § 20-2-93(a)(4), on which the State's forfeiture action was based. The similarity is not surprising because the latter was based on the former.[5] Neither provision, however, specifically

[5]Congress enacted § 881 as part of the Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. No. 91-513 (Title II, § 511), 84 Stat. 1276 (1970). Initially, § 881 included no specific currency-forfeiture provision. Thereafter, the Alabama Legislature passed the predecessor to § 20-2-93 as part of the "Uniform Alabama Controlled Substances Act ... to standardize all laws in this state to be in conformity with the new Federal Comprehensive Drug Abuse Prevention and Control Act of 1970." Title to Act No. 1407, Ala. Acts 1971; see Ala. Code 1940 (Recomp. 1958), Tit. 22, § 258(57). Subparagraph (a)(6) was added to § 881 in 1978 and originally stated that the following items could be subject to forfeiture:

"All moneys, negotiable instruments, securities, or

addresses the issue of commingling, and, regarding the application of § 881(a)(6), in the absence of further legislation, the federal courts were left to locate the law's answer to commingling issues by drawing from common-law principles articulated in trust law or analogized from securities law. See Banco Cafetero Panama, supra. But see $448,342.85, 969 F.2d at 477 ("The law of trusts supplies an elaborate set of tracing rules, see Restatement (2d) of Trusts § 202 (1959); Restatement of Restitution § 212 (1937), but rules designed to adjust accounts between (apparently) honest persons are not suited to frauds in which funds have been

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> other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this title, 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 this title ...."

Pub. L. No. 95-638, 92 Stat. 3777 (1978). The Alabama Legislature added a currency-forfeiture provision to § 20-2-93 in 1981, although it was much more limited than the 1978 amendment to § 881 quoted above. See Act No. 81-413, Ala. Acts 1981. In 1988, the legislature liberalized the currency-forfeiture provision in § 20-2-93, using language that tracked the corresponding federal law. See Act No. 88-651, Ala. Acts 1988.

shuffled at least in part for the purpose of disguising their source.").

We need not discuss Wilson's arguments further, however, or attempt to answer the questions discussed above. As noted, Wilson has failed to provide any legal authority that addresses the issues that must be resolved in order for her to prevail on appeal or to develop an argument from those authorities, namely regarding how the commingling of currency from an illegal transaction with other currency in a bank account affects the State's burden of proof and the division of the commingled account in a forfeiture action. See Rule 28(a)(10), Ala. R. App. P. Thus, the judgment is due to be affirmed regarding forfeiture of the $19,410 to the task force. See Butler v. Town of Argo, 871 So. 2d 1, 20 (Ala. 2003) ("'[I]t is not the function of this 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.' Dykes v. Lane Trucking, Inc., 652 So. 2d 248, 251 (Ala. 1994)."); see also, e.g., White Sands Grp., L.L.C. v. PRS II, LLC, 998 So. 2d 1042, 1058 (Ala. 2008) ("Rule 28(a)(10)[, Ala. R. App. P.,]

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."). Therefore, for the reasons discussed above, the trial court's judgment is affirmed.

AFFIRMED.

Moore and Hanson, JJ., concur.

Thompson, P.J., and Donaldson, J., concur in the result, without writings.