

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE No. 22-20290-CR-BLOOM/OTAZO-REYES

UNITES STATES OF AMERICA,

Plaintiff,

v.

ERIC DEAN SHEPPARD,

Defendant.

**DEFENDANT ERIC DEAN SHEPPARD'S MOTION TO BIFURCATE
FORFEITURE AND REQUEST FOR JURY TRIAL**

Defendant Eric Dean Sheppard moves the Court to bifurcate the trial of the forfeiture counts in the Superseding Indictment from the “merits”/ substantive charges at trial. Mr. Sheppard also formally requests a trial by jury on the forfeiture issues pursuant to Fed. R. Crim. P. 32.2(b)(5).

In support, Mr. Sheppard states:

The Superseding Indictment filed on August 24, 2023 alleges that Mr. Sheppard is subject to various forfeitures pursuant to 18 U.S.C. § 981(a)(1)(C). The Government claims that if, in the event there is a conviction in this case, that forfeiture would be sought “but is not limited to”: his home, which is real property located at 180 Bal Cross Drive, Bal Harbour, Florida 33154-1390 and approximately \$893,145 that the Government alleges as the total amount of the funds traceable to the alleged charged offenses as a result of the funds provided to Mr. Sheppard.

Mr. Sheppard requests, pursuant to Fed R. Crim. P. 32.2(b), that in the event of guilty verdicts, all forfeiture issues be submitted to the jury, but only separate from and after the “guilt phase” of the trial. Rule 32.2(b)(5) affords a defendant with the right to a trial by jury on the forfeiture issues. Fed. R. Crim. P. 32.2(b)(5). The jury will have to return a special verdict with

respect to the forfeiture issues. *Id.* The forfeiture issues are plainly distinct from the issues of guilt and the jury will have to be specifically instructed on the forfeiture issues.

In order to avoid jury confusion and unfairness to Mr. Sheppard, and to prevent the consideration of forfeiture evidence that is not admissible on the issue of guilt, Mr. Sheppard requests that trial proceedings be bifurcated. Bifurcation will also conserve judicial resources: if the jury returns not guilty verdicts, then the issue of forfeiture does not need to be reached and no evidence relating to the forfeiture need to be taken.

A defendant has both a privilege not to testify on the issue of guilt and a right to defend his property against the government's forfeiture efforts. Bifurcation of the guilt and forfeiture proceedings is necessary to effectuate both of these constitutional protections. *U.S. v. Sandini*, 816 F.2d 869, 873-74 (3d Cir. 1987). Without full bifurcation, a defendant who wishes to testify on the issue of forfeiture but does not on the issue of guilt "faces a Hobson's choice." *Id.* at 874. Other courts have found *Sandini's* analysis persuasive, at least where the defendant has made the trial court aware of his desire to testify on the forfeiture issues. *See U.S. v. Elgersma*, 971 F.2d 690, 697 (11th Cir. 1992) (*en banc*) (Kravitch, J., specially concurring) (recognition that burden of proof on forfeiture is preponderance of the evidence makes need for bifurcation even more manifest to avoid misleading jury into applying preponderance standard on issue of guilt); *U.S. v. Jenkins*, 904 F.2d 549 (10th Cir.), *cert. denied*, 498 U.S. 962 (1990); *U.S. v. Feldman*, 853 F.2d 648 (9th Cir.), *cert. denied*, 489 U.S. 1030 (1988).

CONCLUSION

WHEREFORE, Defendant Eric Dean Sheppard requests that this Court bifurcate the proceedings on forfeiture from those on the issue of guilt.

MEET AND CONFER CERTIFICATE

Undersigned counsel has conferred with the Government, who states that the Government does not object to the bifurcation of the asset forfeiture part of the trial but does object to excluding financial evidence showing the flow of the money obtained by the alleged fraud.

Dated: September 15, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 15, 2023 the foregoing document was filed via the Court's CM/ECF system to all counsel of record.

/s/ Jayne C. Weintraub

Jayne C. Weintraub