UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

v. Case No. 3:23-cr-68-TJC-MCR

DECONNA BURKE

UNITED STATES' UNOPPOSED MOTION FOR
PRELIMINARY ORDER OF FORFEITURE FOR PROCEEDS

The United States moves the Court, pursuant to 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c), and Fed. R. Crim. P. 32.2(b)(2) and (4), for a Preliminary Order of Forfeiture for Proceeds for $20,415, which represents the amount of proceeds defendant obtained as a result of the wire fraud as charged in Count One of the Indictment. In support of its motion, the United States submits the following memorandum of law.

MEMORANDUM OF LAW

I. Statement of Facts

A. Allegations Against the Defendant

1. The defendant was charged in an Indictment with wire fraud, in violation of 18 U.S.C. § 1343. Doc. 1.

2. The forfeiture allegations notified the defendant that, under 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), the United States intended to forfeit any property constituting, or derived from proceeds the defendant obtained, directly or

indirectly, as a result of such violation, including, but not limited to, an order of forfeiture in the amount of at least $20,415. *Id.* at 9.

B. Finding of Guilt and Admissions of Fact Relating to Forfeiture

3. On July 26, 2023, without the benefit of a plea agreement, the defendant pled guilty to Count One of the Indictment. Docs. 24 and 27. The Court accepted the defendant's plea, adjudicated him guilty, and set the defendant's sentencing for November 21, 2023. Doc. 28.

4. The Factual Basis of the United States' Notice of Maximum Penalties, Elements of Offense, Personalization of Elements and Factual Basis, (Doc. 26) states that defendant engaged in a scheme to defraud and to obtain money from the U.S. Small Business Administration ("SBA"), Paycheck Protection Program ("PPP"). Specifically, defendant, by means of false and fraudulent representation, obtained a PPP loan for $20,415 and used the money to purchase a motorcycle. *Id.* at 3.

8. On December 1, 2022, JSO Det. Bodine conducted a video recorded interviewed of Defendant at the Integrity Unit. *Id.* After voluntarily waiving his *Miranda* rights in writing, Defendant acknowledged that he submitted the PPP loan application via a computer. *Id.* at 6. As the interview progressed, Det. Bodine showed Defendant both the Form 1040 and the portion of the PPP loan application that listed a business income of "$98,000". *Id.* Det. Bodine asked Defendant again if he was paid any money for his purported non-profit and Defendant said "no." *Id.*

5. On September 28, 2023, the undersigned discussed this motion with defense counsel, who advised that the defense has no objection this motion.

II. Applicable Law

A. Forfeiture Authority

Forfeiture in this case is governed by 18 U.S.C. § 981(a)(1)(C), which provides for the civil forfeiture of any property, real or personal, that constitutes or is derived from proceeds traceable to a violation of any offenses constituting "specified unlawful activity" (as defined in section 1956(c)(7) of this title). A violation of 18 U.S.C. § 1343 is a "specified unlawful activity" under 18 U.S.C. § 1956(c)(7). *See* 18 U.S.C. § 981(a)(1)(C) and 18 U.S.C. § 1956(c)(7)(D). Pursuant to 28 U.S.C. § 2461(c), the United States is authorized to forfeit this property criminally utilizing the procedures set forth in 21 U.S.C. § 853.

B. Court's Determination of Forfeiture

Rule 32.2, Fed. R. Crim. P., governs the criminal forfeiture of property based on a defendant's conviction for the offense giving rise to the forfeiture. Rule 32.2(b)(1)(A) requires that as soon as practical after a verdict or finding of guilty on any count in an indictment or information for which criminal forfeiture is sought, the Court must determine what property is subject to forfeiture under the applicable statute. The Court's determination may be based on evidence already in the record, or any additional evidence submitted by the parties and accepted by the Court as relevant and reliable. Fed. R. Crim. P. 32.2(b)(1)(B).

Fed. R. Crim. P. 32.2(b)(1), provides that, when the government seeks to forfeit specific property, the Court must determine whether the government has established the requisite nexus between the property and the defendant's crime. As was established in the Notice of Maximum Penalties, Elements of Offense, Personalization of Elements and Factual Basis, the defendant obtained $20,415, which represents the amount of proceeds defendant obtained as a result of the wire fraud as charged in Count One of the Indictment.

III. Conclusion

For the reasons stated above, the United States requests that, pursuant to 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c), and Rule 32.2(b)(2) and (4), the Court enter a preliminary order of forfeiture for the proceeds. The United States further requests that the preliminary order of forfeiture become final as to the defendant at sentencing.

As required by Rule 32.2(b)(4)(B), the United States requests that the Court include the forfeiture when orally pronouncing the sentence and in the judgment. *See* Fed. R. Crim. P. 32.2(b)(4)(B) and *United States v. Kennedy*, 201 F.3d 1324, 1326 (11th Cir. 2000).

The United States further requests that the Court retain jurisdiction to address any third-party claim that may be asserted in these proceedings, and to enter any further order necessary for the forfeiture and disposition of such property.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2023, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to counsel of record.

s/Mai Tran
MAI TRAN
Assistant United States Attorney