UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v. **Case No. 6:21-cr-141-RBD-NWH**

EMMET BOWENS
a/k/a Emmitt Bowens

UNITED STATES' MEMORANDUM
OF LAW REGARDING FORFEITURE

The United States of America submits the following memorandum regarding the procedure governing the forfeiture sought in this case.[1]

MEMORANDUM OF LAW

The United States seeks an order of forfeiture against the defendant in the amount of at least $739,582.50, as well as the forfeiture of the following assets:

a. approximately $250,610.82 seized from Barclays Bank account number 1300066779467 held in the name of Emmet Bowens;

b. approximately $250,668.76 seized from Barclays Bank account number 130006698297 held in the name of Emmet Bowens; and

c. approximately $115,321.18 seized from Barclays Bank account number 130006698303 held in the name of Emmet Bowens.

The seized funds ("specific assets") represent property that: 1) constitutes or is

[1] This memorandum is being filed in conjunction with the United States' proposed special verdict form and forfeiture jury instructions.

derived from proceeds obtained, directly or indirectly, as a result of the offenses charged in Counts One and Two, and/or 2) is property involved in the money laundering offenses charged in Counts Four through Six of the Indictment.

In the event the defendant is convicted of Counts One and/or Two of the Indictment, this memorandum outlines why, pursuant to Federal Rule of Criminal Procedure 32.2(b)(5), the Court—and not the jury—should determine the amount of the order of forfeiture for the criminal proceeds obtained by the defendant.

In addition, this memorandum outlines the procedure governing the forfeiture of the funds seized from the three financial accounts described above, should the defendant request a jury determination on the forfeiture of those funds, pursuant to Federal Rule of Criminal Procedure 32.2(b)(5).

I. Background

In pertinent part, Counts One and Two charge the defendant with a wire fraud scheme, in violation of 18 U.S.C. § 1343. Counts Four through Six charge the defendant with money laundering, in violation of 18 U.S.C. § 1957. Doc. 1.

Should the defendant be convicted, the United States will seek the order of forfeiture in the amount of $739,582.50, which represents the amount of proceeds the defendant obtained from the wire fraud scheme. In addition, the United States will also seek the forfeiture of the funds held in the financial accounts identified on page one above as they are the proceeds the defendant obtained from his wire fraud

scheme and/or property involved in the charged money laundering offenses.[2]

II. Applicable Statutes

The Court's authority to order civil forfeiture of property for violations of 18 U.S.C. § 1343 is found in 18 U.S.C. § 981(a)(1)(C). Section 981(a)(1)(C) provides for the civil forfeiture of any property, real or personal, which constitutes or is derived from proceeds from any offense constituting "specified unlawful activity" as defined in 18 U.S.C. § 1956(c)(7). A "specified unlawful activity," as defined in 18 U.S.C. § 1956(c)(7), includes offenses listed in 18 U.S.C. § 1961(1). Specifically, 18 U.S.C. § 1961(1) includes violations of 18 U.S.C. § 1343. Pursuant to 28 U.S.C. § 2461(c), the government is authorized to forfeit this property criminally, and the procedures for the forfeiture and disposition of the property are governed by 21 U.S.C. § 853.

In sentencing a person convicted of money laundering, in violation of 18 U.S.C. § 1957, the Court's authority to forfeit property is found in 18 U.S.C. § 982(a)(1), which provides for the forfeiture of any property, real or personal, involved in such offense, and any property traceable to such property.

III. Forfeiture Proceeding for an Order of Forfeiture

When a defendant no longer has the actual dollars in criminal proceeds or property directly traceable to forfeitable proceeds in his possession, or the government cannot locate that property, the defendant's obligation to forfeit simply takes the form of an order of forfeiture in favor of the United States. *United States v.*

[2] *Once forfeited*, the direct assets will be credited against the defendant's order of forfeiture.

Padron, 527 F.3d 1156, 1161-62 (11th Cir. 2008). Federal Rule of Criminal Procedure 32.2(b)(1) provides that, where the government seeks an order of forfeiture, the Court must determine the amount of money that the defendant will be ordered to pay.

The Eleventh Circuit held that "a party is *not* entitled to a jury finding regarding a money judgment." *United States v. Curbelo*, 726 F.3d 1260, 1278 (11th Cir. 2013) *cert. denied*, 134 S. Ct. 962, 187 L. Ed. 2d 822 (2014). Instead, "*the court* must determine the amount of money that the defendant will be ordered to pay." *Id.* (quoting Rule 32.2(b)(1)(A)); *see also* Rule 32.2(b)(1) ("If the government seeks a *personal money judgment*, *the court must determine the amount of money* that the defendant will be ordered to pay.") (emphasis added). The Eleventh Circuit's holding is consistent with that of other circuits. *See United States v. Phillips,* 704 F.3d 754, 769 (9th Cir. 2012) (holding there is no statutory right to have jury determine amount of money judgment); *United States v. Gregoire*, 638 F.3d 962, 972 (8th Cir. 2011) (same)*; United States v. Tedder*, 403 F.3d 836, 841 (7th Cir. 2005) (same).

Thus, because the United States seeks an order of forfeiture for the criminal proceeds obtained by the defendant, the defendant is not entitled to a jury determination on the order of forfeiture for the amount of proceeds in this case.

IV. Forfeiture Proceeding for Specific Assets

There is no constitutional right to a jury determination regarding forfeiture of property. *See United States v. Libretti,* 516 U.S. 29, 49 (1995) ("the nature of criminal forfeiture as an aspect of sentencing compels the conclusion that the right to a jury

verdict on forfeitability does not fall within the Sixth Amendment's constitutional protection"). The only right to a jury trial for forfeiture proceedings is created in Federal Rule of Criminal Procedure 32.2(b)(5). *See United States v. Gaskin*, No. 00-cr-6148, 2002 WL 459005, at *9 n.3 (W.D.N.Y. 2002) (notwithstanding *Libretti*, which appears to make trial by jury on the forfeiture issue inappropriate, Rule 32.2(b)(4) gives a defendant the right to have the jury determine the forfeiture if the case was tried before a jury), *aff'd*, 364 F.3d 438 (2d Cir. 2004).[3]

Federal Rule of Criminal Procedure 32.2 sets forth the procedures governing criminal forfeiture and codifies each party's right to a jury determination on forfeiture. In order to have a jury determination on property subject to forfeiture, ***prior to the jury's commencement of deliberations regarding guilt***, a party must request that the jury also make a forfeiture determination in the event that the jury delivers a guilty verdict. Therefore, the United States requests that the Court ask the defendant, ***prior to the commencement of jury deliberations***, if not sooner, whether he will seek a forfeiture jury determination on the funds seized from the three financial accounts identified on page one. *See* Rule 32.2(b)(5)(A). The United States will not request a jury determination.

At any party's timely request, the jury may be charged to make a determination as to whether the United States has established the requisite nexus

[3] When Rule 32.2 was amended in December 2009, section (b)(4) became (b)(5).

between the specific property it alleges is subject to forfeiture and the violation charged in the count of conviction. *See* Rule 32.2(b)(5). It is not necessary for the jury to determine the extent of the defendant's interest in the property, as that issue is decided in an ancillary proceeding, if necessary. It is the duty of the jury solely to determine whether the United States has established the requisite nexus between the property alleged to be subject to forfeiture and the offense for which the defendant was found guilty.

Because forfeiture is an aspect of sentencing, the United States need only prove the elements of forfeiture by a preponderance of the evidence. *See United States v. Dicter,* 198 F.3d 1284, 1289-90 (11th Cir. 1999) (elements of forfeiture under 21 U.S.C. § 853(a)(1) and (a)(2) must be proven under the preponderance standard); *United States v. Hasson*, 333. F.3d 1264, 1278 (11th Cir. 2003) (extending preponderance standard to forfeiture cases under 18 U.S.C. 982(a)(1)).

Moreover, the post-*Libretti* changes to federal sentencing law do not impact forfeiture. *See United States v. Booker,* 543 U.S. 220, 258 (2005) (18 U.S.C. § 3554, the provision in the Sentencing Reform Act which requires the district court to enter an order of criminal forfeiture at sentencing, is "perfectly valid"). This is so because, as the United States Court of Appeals for the Second Circuit observed, *Booker* "prohibit[s] a judicial increase in punishment beyond a previously specified range; in criminal forfeiture, there is no previously specified range." *United States v. Fruchter*, 411 F.3d 377, 383 (2d Cir. 2005) (holding that the Supreme Court's decisions in

Blakely and *Booker* did not change the preponderance standard established in *Libretti*). The United States Court of Appeals for the Eleventh Circuit has held that the preponderance standard applies to forfeiture proceedings and that forfeiture proceedings are outside the *Apprendi* analysis. *United States v. Cabeza*, 258 F.3d 1256, 1257 (11th Cir. 2001) (per curiam) ("Because forfeiture is a punishment and not an element of the offense, it does not fall within the reach of *Apprendi*.").

Even where the jury right is invoked with regard to forfeiture of property, ultimately it is the Court that orders the forfeiture. Thus, if a defendant seeks a jury determination on the specific property to be forfeited, the jury would be required to answer questions that would allow the Court to enter the order of forfeiture. *See United States v. Amend*, 791 F.2d 1120, 1128 (4th Cir.), *cert. denied*, 479 U.S. 930 (1986) (appellate court affirms method by which jury determined forfeitability; jury answered questions whether property acquired through criminal enterprise but trial court entered order of forfeiture); *United States v. L'Hoste,* 609 F.2d 796, 813-14 (5th Cir.), *cert. denied*, 449 U.S. 833 (1980) (forfeiture order is mandatory once jury determines essential factual issues required for forfeiture).

Because the jury resolves the factual elements necessary for a forfeiture order to be entered but the Court enters the order, the jury should not be advised of the ramifications of its decision, just as a jury is not advised of the ramifications of a verdict of guilt or innocence. Here, the portion of the Indictment entitled "Forfeiture" merely provides the defendant with the required statutory notice that the United

States seeks to forfeit his property in accordance with the applicable statute. *See* Fed. R. Crim. P. 32.2(a), *Advisory Committee Notes*. For the reasons stated above, the portion of the Indictment entitled "Forfeiture" should not be read to the jury, and the term "forfeiture" should not be mentioned to the jury, until after the issue of innocence or guilt is decided. Hence, bifurcated proceedings are required. Fed. R. Crim. P. 32.2(b)(1).

Rule 32.2 further provides:

> If a party timely requests to have the jury determine forfeiture, the government must submit a proposed Special Verdict Form listing each property subject to forfeiture and asking the jury to determine whether the government has established the requisite nexus between the property and the offense committed by the defendant.

Fed. R. Crim. P. 32.2(b)(5)(B).

Should the defendant request a jury determination on the forfeiture of the specific assets, the United States asks that, in the second part of the jury's bifurcated deliberation, the Court issue its proposed jury instructions and special verdict form, which provide interrogatories that will require the jury to determine the essential factual issues necessary for the Court to enter a forfeiture order.

V. Conclusion

Should the defendant request a jury determination on the amount of the order of forfeiture for criminal proceeds, pursuant to Rule 32.2(b)(5), the United States asks that the Court deny the request, because there is no right to a jury determination of the amount of an order of forfeiture for proceeds.

Should the defendant timely request a jury determination on the forfeiture of the specific assets, pursuant to Rule 32.2(b)(5), the United States requests that the Court:

(1) instruct the jury on the issue of forfeiture only *after* the jury has returned a guilty verdict for the defendant on any or all of Counts One, Two and Four through Six of the Indictment;

(2) allow jury instructions regarding property subject to forfeiture and burden of proof;

(3) allow bifurcated argument on the forfeiture issue; and

(4) provide the jury with the special verdict form as proposed by the United States.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2025, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system that will send a notice of electronic filing to counsel of record.

s/Nicole M. Andrejko
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