

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

\$14,477.00 (Fourteen  
Thousand Four Hundred  
Seventy-Seven Dollars)  
*in United States Currency,*

Defendant.

No. 09-CV-3025-DEO

Memorandum and Opinion Order

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I. INTRODUCTION AND BACKGROUND

On April 13, 2009, the Government brought a forfeiture action *in rem* pursuant to 21 U.S.C. 881(a)(6) against \$14,477.00 in United States currency confiscated in a search of Enrique Aragon-Hernandez's, Claimant's, residence. Docket No. 1 and 4. On May 11, 2009, Mr. Hernandez filed a claim to the seized moneys pursuant to 18 U.S.C. § 981(g)(2).

On August 25, 2011, this Court held a bench trial in which both the Government and the Claimant presented evidence and arguments. Docket No. 62. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1355(a).

## II. LAW AND ANALYSIS

21 U.S.C. § 881(a)(6) provides, "[a]ll moneys . . . furnished or intended to be furnished by any person in exchange for a controlled substance . . . all proceeds traceable to such an exchange, and all moneys . . . used or intended to be used to facilitate" violations of the Controlled Substances Act are "subject to forfeiture to the United States . . . ." Under 18 U.S.C. § 983(c) the Government must prove, "by a preponderance of the evidence, that the property is subject to forfeiture." 18 U.S.C. § 983(c)(1). The preponderance standard simply requires the trier of fact to find that the existence of a fact is more likely than not. U.S. v. Dodge Caravan, 387 F.3d 758, 761 (8th Cir. 2004) (quoting Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Trust for S. Cal., 508 U.S. 602, 622 (1993)). Additionally,

if the Government's theory of forfeiture is that the property was used to commit or facilitate the commission of a criminal offense or was involved in the commission of a criminal offense, the Government shall establish that there was a substantial connection between the property and the offense.

18 U.S.C. § 983(c)(3).

In determining whether there is a substantial connection between the property subject to forfeiture and the offense, a court may consider circumstantial evidence. U.S. v. Dodge Caravan, 387 F.3d at 761 (citing U.S. v. \$84,615 in U.S. Currency, 379 F.3d 496, 501 (8th Cir. 2004)). The Eighth Circuit has "recognized that possession of a large amount of cash . . . is strong evidence that the cash is connected with drug activity." U.S. v. \$84,615 in U.S. Currency, 379 F.3d 496, 501-02 (8th Cir. 2004). The Eighth Circuit has also recognized that the possession of drugs at the time of the seizure of cash weighs in favor of a finding that the money was related to drug activity. U.S. v. \$39,873.00, 80 F.3d 317, 318 (8th Cir. 1996).

The Government initially seized \$15,877.00 while executing a search warrant on Claimant's residence. The \$15,877.00 amount consisted of \$300.00 found in Claimant's shirt pocket, \$1,400.00 found in a safe under the Claimant's bed, another \$12,400.00 found in a locked bank bag within the said safe, and \$1,777.00 found in two different dresser drawers. Of the \$15,877.00 seized, the \$1,400.00 found in the safe was Government money marked

for a controlled purchase of methamphetamine from Claimant through a confidential informant, and, as such, it was and remains the Government's property and is not subject to forfeiture. In addition, the Government has dropped its claim to the \$300 found in Claimant's shirt pocket. Thus, the questions presented are whether the Government has met its burden to show that the \$12,400.00 found in the locked bank bag and the \$1,777.00 found in the two dresser drawers were used or were intended to be used to purchase illegal drugs, were proceeds from the sale of illegal drugs, or were used or intended to be used to facilitate illegal drug transactions.

The Government relies on the related criminal investigation, prosecution, and subsequent conviction of the Claimant as circumstantial evidence to justify forfeiture. The Government has, both in Claimant's criminal proceedings and in these civil forfeiture proceedings, presented evidence that Claimant was involved in numerous drug transactions over at least a 12-month period. Docket No. 1-3, 3. Specifically, Special Agent Ryan Moore testified at the civil forfeiture trial that Claimant was moving around a 1/4

pound of methamphetamine a week for a year period; a 1/4 pound of methamphetamine sells for around \$2,500.00. Agent Moore surmised that, in accordance with the testimony presented at the criminal trial, Claimant saw upwards of \$100,000.00 in gross drug sale proceeds within a year period. Agent Moore also testified that the methamphetamine business is generally a cash business, and the proceeds from methamphetamine deals are rarely deposited in a bank.

As previously mentioned, prior to the Claimant's arrest, the police used a confidential informant to make a controlled purchase of methamphetamine from the Claimant with marked currency. Id. at 4. Based in part on the evidence derived from the controlled purchase, the Government obtained and executed a search warrant on Claimant's residence. Id. at 4-5. Among the items seized was the \$15,877.00, one and one-quarter ounce of methamphetamine, a currency counter, a .380 caliber semi-automatic Bersa handgun, and an electronic scale. Id. As previously mentioned, among the \$15,877.00 seized, \$1,400.00 was the marked, controlled buy money. This \$1,400.00 was found in a safe under Claimant's bed along

with \$12,400.00 in the locked bank bag and the Bersa handgun.

On July 23, 2007, a jury found Claimant guilty of conspiracy to distribute 500 grams or more of a methamphetamine mixture, actual distribution of more than 50 grams of methamphetamine mixture, and possession of a firearm in furtherance of a drug trafficking crime. 06-CR-3061, Docket No. 94.

At the civil forfeiture trial, Claimant presented evidence indicating he had received approximately \$93,988.00 in a civil settlement in 2000 in relation to the loss of a finger while working. Claimant's Exhibit A. In addition, Claimant received \$33,00.00 for his interest in a house pursuant to a divorce settlement in June of 2003. Claimant's Exhibits C and D.

Claimant's ex-wife, Dawn Rodriguez, testified about the work she did for Claimant as a bar keeper at Capricho's, a bar owned by Claimant. Specifically, Ms. Rodriguez testified that on Friday and Saturday night, Capricho's often hosted bands and collected a cover charge at the door. Her testimony established that the cover charge money collected prior to Claimant's arrest

equaled or exceeded the \$12,400.00 found in the locked bank bag. She also testified that the bank bag seized by police was the same bank bag she had witnessed Claimant purchase at Wal-Mart for the purpose of holding the money received for cover charges at Capricho's. She also testified that the Claimant would take the money from the cover charges home with him each weekend in the bank bag and place it in his bedroom.

### **III. CONCLUSION**

After careful consideration, this Court is persuaded that the Government has failed to meet its burden to show that the \$12,400.00 found in the safe and within the locked bank bag is subject to forfeiture. Notably, though the safe also contained the \$1,400.00 in marked currency, consisting of 14 \$100.00 bills, the Claimant ultimately did not mix the marked currency with the \$12,400.00 in the bank bag, consisting of 124 \$100.00 bills. This is evidence that the \$12,400.00 may well be related to activities other than drug dealing.

Unlike criminal forfeiture, which allows for the forfeiture of substitute property in some instances, civil forfeiture under 21 U.S.C. § 881(a)(6) requires, as

previously noted, that the money seized actually be proven to have a substantial connection to violations of the Controlled Substances Act by a preponderance of the evidence. See 18 U.S.C. § 982 (dealing with criminal forfeiture). Though the Government demonstrated that Claimant had probably earned far more than \$12,400.00 for his illegal activities, the Government's evidence simply was not specific enough, as contrasted with the Claimant's evidence, to show that the actual \$12,400.00 in question was, more likely than not, money related to Claimant's illegal activities.

In closing at the civil trial, the Government argued that, because Claimant did not testify, he somehow failed to show that the money was not subject to forfeiture. Of course, as previously noted, the burden of proof ultimately lies with the Government, not with the Claimant. Though there is a presumption that large sums of money found in conjunction with illegal drugs and drug dealing paraphernalia is drug money, the Claimant's evidence demonstrated he had received \$93,989.00 for a work related accident, \$33,000.00 from his divorce settlement, and, most persuasively, as much as or more



than \$12,400.00 from holding events at Capricho's. Furthermore, as previously mentioned, Ms. Rodriguez's testimony tied the bank bag in question directly to the door money taken at Capricho's and explained why the bank bag was found in Claimant's bedroom. Ultimately, this Court is persuaded that the \$12,400.00 found in the locked bank bag was more likely than not derived from cover charges collected at Capricho's and so is not subject to forfeiture.

Neither party presented any direct evidence in relation to the \$1,777.00 found in two of Claimant's dresser drawers. Again, though it is apparent the Claimant made significant sums of money from dealing methamphetamine, it is also clear that he received significant sums of money from other sources. In addition, this Court is convinced the amount of money at issue here is not enough to raise a presumption that it was related to Claimant's illegal activity under Eighth Circuit case law. See U.S. v. \$84,615.00 in U.S. Currency, 379 F.3d 496, 501-02 (8th Cir. 2004) (dealing with \$84,615.00); U.S. v. \$39,873.00, 80 F.3d 317, 318 (8th Cir. 1996) (dealing with \$39,873.00); and U.S. v.

\$150,660.00, 930 F.2d 1200, 1206 (8th Cir. 1992) (dealing with \$150,660.00). Finally, this money was not stored along with the gun, the drugs, or the marked buy money but was in Claimant's dresser drawers along with other personal objects unrelated to Claimant's criminal activity. Government's Exhibit 13. Thus, it is the finding of this Court that the Government failed to meet its burden of proof in relation to the \$1,777.00 found in the two dresser drawers.

In conclusion, since the Government has dropped its claim in relation to the \$300.00, and the Government failed to meet its burden of proof in relation to the \$1,777.00 and the \$12,400.00, the Government's request for forfeiture of the total \$14,477.00 amount is denied. The Government is hereby directed to return the \$14,477.00 to the Claimant as soon as is practicable.

IT IS SO ORDERED this 17th day of October, 2011.



Donald E. O'Brien, Senior Judge  
United States District Court  
Northern District of Iowa

**Ruth Trimble**

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**U.S. District Court**

**Northern District of Iowa**

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**Case Number:** 3:09-cv-03025-DEO

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**Memorandum and Opinion Order - In conclusion, since the Government has dropped its claim in relation to the \$300.00, and the Government failed to meet its burden of proof in relation to the \$1,777.00 and the \$12,400.00, the Government's request for forfeiture of the total \$14,477.00 amount is denied. The Government is hereby directed to return the \$14,477.00 to the Claimant as soon as is practicable. Signed by Senior Judge Donald E OBrien on 10/17/2011. (Proposed Judgment to DEO's chambers for approval) (src)**

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