Tennessee district court holds hearsay is admissible in criminal forfeiture ancillary hearing, since such evidence is allowed for sentencing. The defendant disputed the forfeiture of property, arguing the government failed to prove the property was purchased with the proceeds of the crimes of conviction or used to commit the offense, and that the property did not qualify as substitute property because it was not "property of the defendant." The court first said hearsay was admissible in a criminal forfeiture proceeding since it is an element of the sentence imposed following conviction. The procedural rules governing criminal forfeiture proceedings expressly provide that the court may consider evidence already in the record, including any written plea agreement, and any additional evidence or information submitted by the parties and accepted by the court as relevant and reliable. The court found the agent's testimony about the purchase of the property, though hearsay, was both relevant and reliable, particularly insofar as it was coupled with documentary evidence, and ordered the property forfeited. *United States v. Bradley*, No. 3:15-CR-00037-2, 2017 WL 2691535 (M.D. Tenn. June 22, 2017).

D.C. Circuit reverses summary judgment and adopts Ninth Circuit's standard for establishing standing, which is "some evidence of ownership." The government claimed cash was subject to forfeiture because it was connected to drug trafficking. Claimants offered sworn testimony that the money was theirs and wholly unrelated to drugs. According to the government, that testimony was so implausible that they lacked Article III standing. The district court, deciding the issue on summary judgment, agreed. The court of appeals reversed. This case traces its roots back to 2014, when an Amtrak passenger mistakenly removed another person's backpack from a train at Washington's Union Station. Later that day, he opened the backpack to find a shopping bag containing $17,900 in cash. Commendably, he turned the backpack over to Amtrak police. In addition to the money, Amtrak police officers found inside the bag a student notebook and other personal effects. One of the papers contained the name Peter Rodriguez, as did the train manifest. A police narcotics dog alerted to the backpack, suggesting the presence of drug residue. Using a contact number from the manifest, a detective with the Metropolitan Police Department called Peter, who gave a detailed description of the contents of the backpack—except for the money. Twice asked whether there was money in the backpack, he said no. Angela Rodriguez, Peter's mother, contacted MPD, explaining, according to the government's verified complaint, that the cash belonged to her and her domestic partner, who lives with her in New York City. They said they had left the money in a bag in Peter's apartment, but neglected to tell him that it contained currency. When Peter later announced that he was coming to New York to visit his mother, she told him to bring the bag along. The Ninth Circuit has held that a claimant asserting an ownership interest in the defendant property must present "some evidence of ownership" to survive a motion for summary judgment. The appeals panel said that because the case concerned cash, it demonstrated how challenging it can be to document ownership of property seized by law enforcement. Indeed, the very qualities that make paper money useful for illicit activity—in particular, its untraceability—often make it difficult to prove that any cash is legitimate, no matter its source. This is especially true for those in our society who rely on cash to the exclusion of banking and other financial services. So especially when cash is at issue, requiring more than "some evidence" of ownership would be onerous, unfair, and unrealistic. A more demanding standard would also run up against the limited opportunity claimants often have to develop the record when the government moves to strike for lack of standing. In this case, for example, the record consisted, in essence, of nothing more than the government's verified complaint and the

couple's responses to the government's special interrogatories. Although the district court treated the government's motion to strike as one for summary judgment, it never held an evidentiary hearing, nor did the parties engage in the broad discovery typical in civil cases. Thus, asking for more than "some evidence" of ownership on such a record would risk unduly excluding those with a "colorable claim" on the property. The court said it was obvious a claimant who has shown some evidence of ownership risks injury within the meaning of Article III and thus may have his day in court. Regarding the summary judgment, the government argued the couple's account strained credulity, which the court said perfectly illustrated why credibility determinations and the weighing of evidence are left to juries rather than judges. Government counsel may well be able to convince judges that it is inconceivable someone would choose to keep sizeable cash savings, to travel with cash, or to pay for routine expenses using cash rather than a credit card, but a jury of laypeople with different and more diverse life experiences might view these very same choices with considerably less suspicion. Nothing in their account was physically impossible, and—far from conclusory—the couple has explained how they came to own the money in considerable detail.

Given all this, the court held the couple more than met its burden to establish constitutional standing at summary judgment, and had a right to contest whether the money was subject to forfeiture. *United States v. Seventeen Thousand Nine Hundred Dollars ($17,900.00) in United States Currency*, No. 16-5284, 2017 WL 2636457 (D.C. Cir. June 20, 2017).

U.S. Supreme Court holds that since criminal forfeiture is limited to property the defendant himself actually acquired as the result of the crime, defendant who did not personally benefit from the illegal sales cannot be held joint and severally liable. Terry Honeycutt managed sales and inventory for a Tennessee hardware store owned by his brother Tony. After they were indicted for federal drug crimes, the government sought judgments against each brother in the amount of $269,751.98. Tony pleaded guilty and agreed to forfeit $200,000. Terry went to trial and was convicted. Despite conceding that Terry had no controlling interest in the store and did not stand to benefit personally from the sales of the product, the government asked the District Court to hold him jointly and severally liable for the profits from the illegal sales and sought a judgment of $69,751.98, the outstanding conspiracy profits. The District Court declined to enter a forfeiture judgment against Terry, reasoning that he was a salaried employee who had not received any profits from the sales. The Sixth Circuit reversed, holding that the brothers, as co-conspirators, were jointly and severally liable for any conspiracy proceeds. The Supreme Court reversed again, holding that because forfeiture pursuant to 21 U.S.C. §853(a)(1) is limited to property the defendant himself actually acquired as the result of the crime, that provision did not permit forfeiture with regard to Terry, who had no ownership interest in his brother's store and did not personally benefit from the illegal sales. *Honeycutt v. United States*, 137 S. Ct. 1626, 1628–35 (2017).

Oklahoma district court denies interlocutory sale where although petitioner missed two mortgage payments, house's value had not decreased. Keith Gray and his wife, Defendant Deborah Gray, purchased a home together in Oklahoma City in March 2013. At that time, Mr. Gray was allegedly unaware that his wife and son had been perpetrating healthcare fraud upon the federal government since October 2011. According to Gray, he remained oblivious to these crimes until 2016, when a federal grand jury indicted his wife and their son, also seeking

forfeiture of any property constituting or derived from proceeds of the offenses. Guilty pleas from both soon followed, and the wife agreed to forfeit all her right, title, and interest in assets, which included three bank accounts and the Gray marital residence, all of which she admitted were proceeds or instrumentalities of her crimes. Gray petitioned for a hearing to adjudicate his interests in the residence, and the court recognized he had a potential claim as a bonafide purchaser for value, and granted an ancillary hearing on his petition. In the meantime, the government moved for an interlocutory sale of the property before the ancillary hearing pursuant to Federal Rule of Criminal Procedure 32.2(b)(7), which must be "in accordance with Supplemental Rule G(7) of the Federal Rules of Civil Procedure. That Rule permits—but does not mandate—the government to sell the property under certain conditions, i.e., when it is perishable or at risk of deterioration, decay, or injury by being detained in custody pending the action; or the expense of keeping the property is excessive or is disproportionate to its fair market value; or the property is subject to a mortgage or to taxes on which the owner is in default; or the court finds other good cause. The government argued the residence was decreasing in value because Gray missed two mortgage payments, and an interlocutory sale thus was necessary to preserve the house's value. The court was unpersuaded, since the house's value had rested at $744,087 since 2014 and its current listing price was $780,000. Further, the government's request that the court order Gray to make mortgage payments seemed impractical given his apparent inability to pay his mortgage due to his wife's loss of employment. *United States v. Gray*, No. CR 16-123-R, 2017 WL 2544136 (W.D. Okla. June 12, 2017).

Ninth Circuit affirms grant of motion to suppress where officer, after fruitless initial traffic stop, asked second officer to initiate another stop with drug dog. A police officer stopped Gorman on Interstate-80 outside Wells, Nevada for a minor traffic infraction. The officer came to think that Gorman might be carrying drug money, so he unsuccessfully attempted to summon a drug-sniffing dog and then prolonged Gorman's roadside detention, which lasted nearly half an hour, as he conducted a non-routine records check. Unable to muster a justification for searching the vehicle, he questioned Gorman further and finally released him without a citation. Undeterred, the officer developed the bright idea of contacting the sheriff's office in Elko, a city further along Gorman's route, to request that one of their officers stop Gorman a second time. The first officer conveyed his suspicions that Gorman was carrying drug money, described Gorman's vehicle and direction of travel, and reported that his traffic stop had provided no basis for a search. "You're going to need a dog," he said. A second officer, who had a dog with him, then made a special trip to the highway to intercept Gorman's vehicle, saw Gorman and eventually believed he had found a traffic reason to pull him over. Following the second stop, the second officer performed a series of redundant record checks and conducted a dog sniff, which signaled the odor of drugs or drug-tainted currency. On the basis of the dog's alert, the second officer obtained a search warrant, searched the vehicle, and found $167,070 in cash in various interior compartments. No criminal charges were ever brought, but the government pursued civil forfeiture, which Gorman contested by arguing that the coordinated stops violated the Fourth Amendment. He prevailed, and the district court ordered that his money be returned and also awarded him attorneys' fees. The court found that nothing the first officer discovered in his initial questioning of Gorman provided independent reasonable suspicion for further unrelated investigations or provided probable cause for a search warrant. Detaining Gorman longer than it took to complete the stop's mission thus unquestionably violated the Constitution. Although the

first roadside detention violated the Fourth Amendment, the currency that Gorman sought to suppress was discovered pursuant to the second stop. The court concluded that the illegality of the first detention "tainted" the evidence obtained during the second stop. The first detention unquestionably served as the impetus for the chain of events leading to the discovery of the currency. The close connection between the constitutional violation (the first detention) and the seizure of the currency was apparent. Since there was a direct connection between the Fourth Amendment violation and its fruits, any evidence obtained from the sniff and search was inadmissible under the "fruit of the poisonous tree" doctrine. Also, there was no evidence whatsoever to suggest that the currency would have been discovered in the absence of the unconstitutional conduct involved. Ordinarily, stops for separate traffic infractions are unrelated, and any extensions of those stops for investigation are unrelated as well. Here, the officers' impermissible gamesmanship was precisely what the Constitution proscribed.. Therefore, the court held the district court properly granted the motion to suppress. *United States v. Gorman*, No. 15-16600, 2017 WL 2508624 (9th Cir. June 12, 2017).