

**North Carolina district court grants summary judgment for government because separated wife did not have standing to claim marital property rights in any specific property of the husband in the absence of a court's equitable distribution in a divorce proceeding.** The government brought a civil forfeiture proceeding against \$240,100.00 in U.S. currency from a safe in the home of Anthony Henderson, and his wife filed a Verified Notice of Claim and Answer. Henderson pleaded guilty in Durham County Superior Court to possession with intent to distribute and was ordered to forfeit all seized property and contraband. Claimant testified that Henderson had paid the family's monthly mortgage, household expenses and child support to another woman and that her own expenses exceeded her income. Henderson testified he bought the safe but Claimant testified that she bought the safe and never used it or put any money into it. She also testified she never questioned Henderson about the safe or asked how much money was in it, was aware that Henderson paid for nice cars with cash but this did not cause her any concern and she did not ask him where the cash came from. Claimant was a probation/parole officer since 2004, supervised drug offenders and was familiar with the drug scene in Durham. The couple separated following his arrest however were not divorced, nor was there any agreement regarding the marital property division. Claimant had no evidence that the cash was not drug money. The government moved for summary judgment, claiming that Claimant did not have a legal interest in the money and thus did not have standing, *inter alia*. Claimant asserted she had a marital interest in the cash because, under North Carolina's equitable distribution statute, marital property consists of "all real and personal property acquired by either spouse or both spouses during the course of the marriage and before the date of the separation. The right to an equitable distribution is a statutory right, however, not a legal right to any specific piece of marital property and does not give one spouse an equitable title to or an interest in the separately-owned property of the other. Although in North Carolina this statutory right vests at the time of separation, it does not create a property right in marital property, nor does the separation create a lien on specific marital property in favor of the spouse. The state statute creates only a right to the equitable distribution of that property, whatever a court should determine that property is. In the absence of an equitable distribution, the ownership rights of either spouse or both spouses is unaffected, and nothing in the statute creates a new form of ownership. Consequently, the court granted the government summary judgment because Claimant lacked a legal ownership interest in the cash and thus lacked standing to contest its forfeiture. *United States v. \$240,100.00 in U.S. Currency*, No. 1:14CV942, 2017 WL 2303985 (M.D.N.C. May 25, 2017).

**Arizona district court grants motion to suppress seizure of travel trailer after warrantless entry because it had no engine or steering wheel and thus did not fall under automobile exception to search warrant requirement.** An undercover FBI special agent purchased methamphetamine from a person who obtained the drugs inside a travel trailer in the Sunny Acres RV Park in Las Cruces, N.M. Defendant was indicted for distribution of methamphetamine. FBI agents went to arrest Defendant and to seize Defendant's travel trailer and vehicles for forfeiture. The travel trailer was on the property in the same position as officers observed over a week earlier, still up on a block, with the awning, pull-out, and stairs extended. It was hooked up to utilities via an extension cord, a garden hose, and a flexible pipe attached to a sewage outlet. The trailer's door was locked. After knocking and announcing their presence, agents breached the door and entered the trailer. Defendant was not inside, but while looking for him, agents observed methamphetamine, firearms, and drug paraphernalia in the trailer. Agents

then seized the trailer for administrative forfeiture. Defendant filed a motion to suppress the seizure of the trailer. The inevitable discovery doctrine is an exception to the exclusionary rule. If the agents' seizure of the trailer for administrative forfeiture was lawful, then the agents were entitled to conduct an inventory search, which would have led to the inevitable discovery of the other evidence. Before an inventory search is permissible, however, the government must have legitimate custody of the property to be inventoried, either as a result of a lawful arrest or by some other method. Accordingly, the seizure was lawful only if there was probable cause to believe the trailer was subject to forfeiture, and an exception to the Fourth Amendment warrant requirement would apply. Although it said the delay between the initial methamphetamine purchase and the seizure of the trailer was troubling, the court held there was probable cause to believe the trailer was subject to forfeiture. The government relied on the "automobile exception" to the Fourth Amendment's warrant requirement, which has historically turned on the ready mobility of the vehicle, and on the presence of the vehicle in a setting that objectively indicates that the vehicle is being used for transportation. Under the exception, law enforcement officers may search an automobile without first obtaining a warrant if they have probable cause to believe the automobile contains evidence of a crime. The court found the automobile exception inapplicable under the facts of this case. The travel trailer was mobile in the sense that it could be towed by another vehicle, but it had no engine or steering wheel and was incapable of moving on its own. It was not readily mobile by the turn of an ignition key. The trailer was elevated on a block, its awning and pull-out were extended, it was connected not only to electrical utilities but also to water and sewage, it was located on private property, and it was situated in a way that objectively indicated it was being used as a residence. The agents also believed Defendant was using it as his residence. Accordingly, the agents' warrantless entry into the travel trailer and its subsequent warrantless seizure violated the Fourth Amendment. Because the seizure was unlawful, a subsequent inventory search would have been impermissible. Therefore, the fact that the evidence found inside the trailer would have been inevitably discovered during an inventory search did not render the evidence admissible and the motion to suppress was granted. *United States v. Maley*, No. R1400637001TUCFRZLAB, 2017 WL 1830483 (D. Ariz. May 8, 2017).

**Oregon district court denies motion to suppress seizure of currency from USPS package that was detained briefly and opened with consent, based on numerous suspicious facts.**

The government filed a forfeiture complaint against \$22,600.00 in U.S. Currency seized from a USPS parcel addressed to the claimant, alleging a dog alerted on the parcel detecting the odor of a controlled substance. A police officer went to the claimant's residence and noticed extremely large (+8 feet) marijuana plants growing in one of two large green houses on the neighbor's property. The officer obtained consent from the claimant to open the parcel, which contained some receipts, a plastic bag, and a paper bag holding the currency in four individually-marked stacks and a letter-size marked envelope. The claimant said his family wanted to invest in his coconut water business and the cash came from a group of doctors in Pennsylvania who also wanted to invest. He said the cash was not for the sale of marijuana and did not currently sell marijuana illegally, but would be growing for Oregon Medical Marijuana Program patients, and was soon to be growing for 18 patients. Claimant moved to suppress evidence. The court stated that an addressee on a mailed package has a possessory interest in its timely delivery, and a privacy interest in its contents, but does not have a Fourth Amendment possessory interest *until* the guaranteed delivery time has passed. Hence, the temporary diversion of a package that does

not affect its regularly scheduled delivery does not violate the Fourth Amendment. Because federal law was controlling, the court declined to adopt the Oregon courts' holding that the temporary removal of a package from the mail stream constitutes a seizure under the Oregon Constitution. Moreover, Fourth Amendment privacy interests are not implicated when only the external features of a package, like the address label are examined since there is no reasonable expectation that the outside of a package given to a mail-carrier will be kept private. Similarly, the Fourth Amendment is not implicated by the use of a dog sniff for contraband in a package. The court concluded that Claimant's Fourth Amendment rights were not implicated by the visual inspection of the package, its brief placement in a deployment line, and the use of a dog sniff, which all occurred prior to the express delivery date of the package. Further, probable cause existed to seize the package at that time, including the positive dog alert, suspicious exterior characteristics of the package, and the fact that the phone number associated with Claimant had a voicemail message permitting the caller to leave a message. The court rejected Claimant's assertion that the dog alert was of no consequence because it occurred on what turned out to be a currency-only package. Courts do not evaluate probable cause in hindsight, based on what a search does or does not turn up. The court also held that the seizure of the package after it was opened was supported by probable cause to believe there was a connection between the currency and illegal drug activities, because of the positive dog alert, the package's suspicious exterior characteristics, the presence of a large greenhouse on Claimant's property which appeared to have a heating and ventilation unit attached to it, Claimant's statement that he grows medical marijuana, the currency itself, and Claimant's explanation that the money was for an investment in a coconut water deal but was unable to explain why an investor would send cash rather than a check. It thus denied the motion to suppress. *United States v. \$22,600.00 U.S. Currency*, No. 1:15-CV-0194-MA, 2017 WL 2196740 (D. Or. May 18, 2017).