

Pennsylvania district court denies defendant's daughter's ancillary petition, holding that non-monetary consideration allegedly provided in exchange for promissory note did not confer status of bona fide purchaser for value. Linda Hallinan sought to prevent the government from forfeiting a \$2 million secured promissory note in her name. The government, in attempting to collect on two forfeiture money judgments against her father totaling \$64,390,829.90, identified the Note as a directly forfeitable interest of Mr. Hallinan's RICO enterprise. The note was purchased for nearly \$4 million during Hallinan's crimes, which spanned from 2007 to 2013. In December 2012, Hallinan assigned \$2 million of the note to Linda and Whetstone issued new notes to reflect the transaction. Linda claimed her interest in the Whetstone Note was superior to the government's interest and that she also was a bona fide purchaser for value of the because she received it from her father in exchange for her promise to reside in Eastern Pennsylvania and not leave the metropolitan area. Linda contended the government sought to forfeit the Note as a substitute asset, whereas the government claimed it is sought to directly forfeit the Note as an interest of the RICO enterprise. Under the relation-back doctrine as codified in 18 U.S.C. §1963(c), the government's interest in directly forfeitable property vests at the time of the offense conduct, and not when the individual is indicted in the case for substitute property. Here, Linda received the Note after the criminal conduct by Hallinan had occurred, but before Hallinan was indicted. Thus, Linda's interest could be superior only if the Note was a substitute asset. The government previously had asserted that the original note issued by Whetstone was purchased completely with RICO funds, so the court held the Note was directly forfeitable. Regarding her bonafide purchaser claim, the testimony by Linda and her friend about what Hallinan said was inadmissible hearsay unless permitted under a recognized exception. Linda's testimony could conceivably be admissible as evidence of an offer to enter into a contract, and her friend's testimony could fall under the excited utterance exception as Hallinan mentioned the existence of a "deal" in front of the friend while arguing with Linda. However, Linda's friend's testimony had no evidentiary value because the description of the agreement was too general and indefinite. At best, her testimony indicated Linda might have believed there was an agreement between her and her father – not that there was, in fact, an agreement, and a party's subjective belief is not probative of whether there was an agreement or the terms of the agreement. Under these circumstances, the court concluded Linda's belief that there was an agreement between her and her father for the transfer of the Note did not establish the existence of the alleged oral agreement or its terms, especially given that Hallinan has on prior occasions given his daughters high value gifts. Even if the oral agreement existed, the non-monetary consideration Linda allegedly provided in exchange for the Note did not entitle her to the status of bona fide purchaser for value in connection with a criminal forfeiture ancillary petition. Since Linda provided no commercially valuable consideration for the Note, even if there was an agreement, she was not a bona fide purchaser for value because the alleged agreement did not foster or encourage commerce. *United States v. Hallinan*, No. CR 16-130-01, 2021 WL 670066 (E.D. Pa., Feb. 22, 2021).

California district court denies motion to stay case because claimant failed to show that there was a pending criminal investigation. The government initiated this forfeiture action against \$208,420.00 in U.S. Currency. Claimant Smith contended the currency constituted lawful rent proceeds and moved for a mandatory stay pursuant to 18 U.S.C. §981(g)(2). In 2017, law enforcement officers had received information that three commercial properties Smith owned in San Bernardino, California, were being used for illegal indoor marijuana growing

operations. Officers executed a search warrant on the properties and discovered approximately 35,221 mature marijuana plants. Officers searched Smith's residence and found the defendant currency in the backyard inside an ammunition can. Smith claimed there was a related criminal investigation against her, and thus this civil forfeiture action burdened her Fifth Amendment right against self-incrimination. The court granted Smith's ex parte application to stay discovery pending resolution of this motion. The government asserted Smith failed to demonstrate that she was the subject of any criminal investigation. Pursuant to 18 U.S.C. §981(g)(4): "the terms 'related criminal case' and 'related criminal investigation' mean an actual prosecution or investigation in progress at the time at which the request for the stay ... is made." Smith submitted several documents to support her claim that she currently was the subject of a related criminal investigation, including 1) notices of violation from the City of San Bernardino; 2) copies of discovery requests and responses concerning an action in state court; 3) a search warrant from the San Bernardino Police; and 4) the docket from a closed criminal case. However, none of these documents demonstrated an actual investigation or case in progress when Smith moved to stay this civil forfeiture action. The government correctly noted that at best, Smith had shown that the San Bernardino Police Department conducted a criminal investigation of her between November 2017 and June 2019. Relevantly, the government represented that "there is no actual federal criminal drug investigation in progress" regarding Smith. Thus, there was no evidence that any agency – state or federal – was conducting a related criminal investigation or case involving Smith. This failure to demonstrate the existence of a related ongoing criminal investigation or case in progress when she filed her motion therefore defeated her claim that she was entitled to a mandatory stay. *United States v. \$208,420.00 In U.S. Currency*, No. 220CV01156ODWRAOX, 2021 WL 633857 (C.D. Cal., Feb. 18, 2021).

Seventh Circuit holds that the defendant failed to explain how the district court's failure to enter a preliminary order of forfeiture would have impacted the outcome of the proceeding. As part of Defendant's sentence, the district court ordered forfeiture of a small arsenal of revolvers, pistols, handguns, and rifles found at a stash house, and \$9,795 found with the weapons, consistent with the superseding indictment, which provided for the forfeiture of all property derived from the proceeds of the crime. Defendant argued on appeal that the district court violated Federal Rule of Criminal Procedure 32.2, which sets forth the procedural requirements of criminal forfeiture, by failing to enter a preliminary order of forfeiture and by failing to require the jury to find a nexus between the cash and his crimes. Defendant did not contest the forfeiture of the weapons, but only the cash. Rule 32.2 sets forth several important procedural requirements for forfeiture in a criminal proceeding. As relevant to this appeal, subsection (b)(2) provides that "[i]f the court finds that property is subject to forfeiture, it must promptly enter a preliminary order of forfeiture." This preliminary forfeiture order authorizes the Attorney General to seize the specific property subject to forfeiture. The purpose of this preliminary order is to give the defendant notice of the property subject to forfeiture and to provide the court with an opportunity to revise or modify the forfeiture order. Here, the district court did not enter a preliminary forfeiture order and therefore violated this subsection of the Rule. In cases tried to a jury, the court must determine before the jury begins deliberating whether either party requests that the jury be retained to determine the forfeitability of specific property if it returns a guilty verdict. Here, the district court also did not ask whether either party wanted the jury to decide the forfeiture issue. Accordingly, the district court violated this subsection as well. Nevertheless, because Defendant did not raise either of these errors before

the district court, they are subject to plain error review. On this review, a court will vacate the court's forfeiture order only if the court's errors affected Defendant's substantial rights. Defendant failed to explain how the district court's failure to enter a preliminary order of forfeiture would have impacted the outcome of the proceeding. She also did not argue that she lacked notice of the property subject to forfeiture. Because the indictment put her on notice of the property the government sought to forfeit, the outcome of the proceeding was not impacted by the district court's error. Regarding the district court's failure to put the forfeiture question to the jury, to prevail Defendant must show that no reasonable juror would not have found the required nexus between the cash and her crimes. Here, no reasonable juror could have failed to find a nexus between the cash seized from the stash house and Defendant's drug trafficking activities. The roughly \$10,000 in cash was discovered in a known stash house, along with a veritable arsenal of weapons, drugs, and other items related to the drug trade. Defendant's argument that the money was derived from her lawful employment as a restaurant manager and painter is unavailing given the location and context in which this significant amount of cash was discovered. Accordingly, on plain error review, neither of the district court's Rule 32.2 errors affected Defendant's substantial rights and the forfeiture order was affirmed. *United States v. Guzman-Cordova*, No. 19-2526, 2021 WL 527702 (7th Cir., Feb. 12, 2021).

Nevada district court denies government's motion to strike answer because claimant's failure to file timely claim did not prejudice the government, which was well aware he had been a claimant and previously granted him two extensions. The government filed a complaint for forfeiture of \$357,965.00 in cash based on allegations that the funds represented proceeds of illegal drug trafficking. The parties stipulated that Hulsey received the Complaint and Notice of this forfeiture action, and to extend the time for him to file a verified claim. The docket reflected that no verified claim was filed by the agreed deadline. However, Hulsey filed an Answer to the Complaint admitting the \$357,965.00 was seized from his vehicle and that it was his legally owned and obtained property. The Answer also included a signed notarized "Verification." The government nevertheless moved to strike Hulsey's Answer. Hulsey argued the failure to file the verified claim was due to an "oversight," and that the Answer sufficed as a verified claim because it contained all of the statutorily required information and was signed by Hulsey. Hulsey subsequently filed a notice of verified claim on the docket. Without waiting for the court to rule on the first pending motion, the government filed a motion to strike this notice, arguing that it was untimely. Hulsey failed to file any opposition to the government's motion due to a miscommunication between Hulsey's counsel and his Nevada-based counsel (each thought the other was filing the responsive brief). Realizing this error, Hulsey moved the Court for permission to file a belated opposition to the Government's motion to strike his notice of claim. Here, Hulsey admitted that the defendant U.S. currency was seized from his vehicle, and belonged to and was "his legally obtained property that he obtained through legal employment throughout his lifetime." The court therefore found that Hulsey had constitutional standing. The government argues that Hulsey lacked statutory standing because he failed to file his verified claim by the deadline. Hulsey argued that once he became aware of this error, he filed his verified claim just 13 days after the deadline. He argued his Answer could be treated as a verified claim because it included all of the statutorily required information, and it was signed by him under penalty of perjury. The Court agreed. Further, while courts have held that strict compliance with the statutory procedures of Rule G is required, the advisory committee notes to Rule G(8)(c)(i)(A) provide that a court should strike a claim or answer only "if satisfied that an

opportunity should not be afforded to cure the defects.” And the Ninth Circuit agreed that strict compliance “does not mean that any deficiency in a claim form requires dismissal of a claim.” Rather, it is in the discretion of the district court to determine whether to overlook the failure to conform to the requirements of a forfeiture claim. Hulsey's failure to file his verified claim before his answer, through procedurally incorrect, did not prejudice the government, which was well aware Hulsey had been a claimant to this forfeiture action and previously granted him two extensions. The government failed to show how it would be prejudiced by permitting Hulsey another 13-day extension to file his claim. Nor was Hulsey's error a strategic attempt to gain an advantage over the government. Contrarily, Hulsey's error did not gain him any advantage as his failure could have been fatal to his claim. Finally, the court found that justice required such a short extension so the case could be resolved on the merits. *United States v. \$357,965.00 in United States Currency*, No. 320CV00568LRHWGC, 2021 WL 495852 (D. Nev., Feb. 10, 2021).