

PATTERN JURY INSTRUCTIONS

FORFEITURE

21 USC § 853

In view of your verdict that the Defendant is guilty of the offense charged in Count(s) _____ of the Indictment, you must now decide whether the Defendant should forfeit any interest the Defendant may have in the property described in Count(s) _____ of the Indictment as a penalty for committing that offense.

"Forfeiture" means to be divested or deprived of the ownership of something as a penalty for the commission of a crime.

In order to be entitled to forfeiture, the Government must prove, by a preponderance of the evidence, that:

First: The property to be forfeited constitutes, or was derived from, the proceeds the Defendant obtained, directly or indirectly, as the result of the commission of the offense charged in Count _____ of the Indictment, or

Second: The property to be forfeited was used, or was intended to be used, in any manner or part, to commit or to facilitate the commission of, the offense charged in Count _____ of the Indictment.

Before you can find that the Defendant must forfeit any property under either of those standards, however, you must unanimously agree upon which of the two standards should be applied in forfeiting a particular asset.

A "preponderance of the evidence" simply means an amount of evidence which is enough to persuade you that a claim or contention is more likely true than not true.

OFFENSE INSTRUCTIONS

To "facilitate" the commission of an offense means to aid, promote, advance, or make easier, the commission of the act or acts constituting the offense. Property used to facilitate an offense can be in virtually any form, such as the use of an automobile to facilitate the transportation of illegal drugs. You must determine what property, if any, should be forfeited.

While deliberating, you may consider any evidence offered by the parties at any time during the trial. However, you must not reexamine your previous determination regarding the Defendant's guilt. All of the instructions previously given to you concerning your consideration of the evidence, the credibility of the witnesses, your duty to deliberate together, your duty to base your verdict solely on the evidence without prejudice, bias or sympathy, and the necessity of a unanimous verdict, will continue to apply during these deliberations.

[Explain Special Verdict Form]

You will take the verdict form to the jury room. When you have reached unanimous agreement on the forfeiture verdict, have your foreperson fill in, date and sign the verdict form, then return to the Courtroom.

Annotations and Comments

21 USC § 853(a) provides:

Any person convicted of a violation of this subchapter of subchapter II of this chapter [21 USC §§ 951 et seq.] punishable by imprisonment for more than one year shall forfeit to the United States, irrespective of any provision of State law—

(1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;

(2) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation; and

PATTERN JURY INSTRUCTIONS

(3) in the case of a person convicted of engaging in a continuing criminal enterprise [the defendant forfeits any interest in the enterprise itself]

The preponderance of the evidence standard applies. *United States v. Elgersma*, 971 F.2d 690, 697 (11th Cir.1992) (en banc).

There is a rebuttable presumption that the property of a convicted person is subject to forfeiture. 21 USC § 853(d).

An eighth Amendment ("excessive fines") challenge was rejected in *United States v. One Parcel Property*, 74 F.3d 1165 (11th Cir.1996), a civil forfeiture case.

The innocent owner defense under the due process and takings clauses was rejected in *Bennis v. Michigan*, ___ U.S. ___, 116 S.Ct. 994, 134 L.Ed.2d 68 (1996); see also *United States v. One Parcel (Etc.)*, 41 F.3d 1448 (11th Cir.1995) (innocent owner defense analyzed and under 21 USC § 881(a)).

For the imputation of an individual's knowledge and actions to a corporation in forfeiture cases, see *United States v. Route 2 (Etc.)*, 60 F.3d 1523 (11th Cir.1995).

OFFENSE INSTRUCTIONS

78

CONTROLLED SUBSTANCES

21 USC § 952(a)

Title 21, United States Code, Section 952(a), makes it a Federal crime or offense for anyone to knowingly import any controlled substance into the United States.

_____ is a controlled substance within the meaning of the law.

The Defendant can be found guilty of that offense only if all of the following facts are proved beyond a reasonable doubt:

First: That the Defendant imported _____ into the United States from a place outside thereof, as charged; and

Second: That the Defendant did so knowingly and willfully.

To "import" a substance means to bring or transport that substance into the United States from some place outside the United States.

Annotations and Comments

21 USC § 952(a) provides:

It shall be unlawful to import into ... the United States from any place outside thereof, any controlled substance....

Maximum Penalty: Varies depending upon nature of substance involved. See 21 USC § 960.

Belief that the Defendant is importing a controlled substance satisfies knowledge element even if Defendant believes the substance being imported is a different controlled substance. *United States v. Rodriguez-Suarez*, 856 F.2d 135, 140 (11th Cir.1988); *United States v. Restrepo-Granda*, 575 F.2d 524, 527-29 (5th Cir. 1978).

Importation is a continuing crime and is not complete until the controlled substance reaches its final destination. *United States v. Camargo-Vergara*, 57 F.3d 993 (11th Cir.1995).