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WASHINGTON STATE
SUPREME COURT ^{bj}

SUPREME COURT NO. 93907-1

Division III Court of Appeals No. 332624

SUPREME COURT
STATE OF WASHINGTON

CITY OF SUNNYSIDE,

Respondent

v.

ANDREAS GONZALEZ

IN RE: \$5,940 U.S. CURRENCY AND 2001 SILVER BMW 325i,

Petitioner

RESPONDENT'S STATEMENT OF ADDITIONAL AUTHORITIES
RAP 10.8

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Respondent, City of Sunnyside, pursuant to RAP 10.8 submits this Statement of Additional Authorities. Two additional cases are appended hereto for the Court's reference relating to the issue of whether there was substantial evidence to support the Hearing Officer's conclusion that the property was subject to forfeiture.

These cases were referred to in oral argument and are as follows:

1. United States v. \$11,320.00, 880 F. Supp. 2d 1310 (N.D. Ga. 2012)
2. United States v. \$22,991.00, 227 F. Supp. 2d 1220 (S.D. Ala. 2002)

Respectfully submitted this 23 day of May, 2017



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dorsement's description of coverage. *See Care Flight Air*, 18 F.3d at 329 (no coverage under war risk endorsement where losses due to conversion were excluded under the main policy, and confiscation of the aircraft by Colombian government was subsequent to the conversion).

V. Conclusion

In sum, the Court finds that the loss is subject to the Aircraft policy's conversion exclusion, and that this exclusion applies to preclude both Luke Ready's and Legacy Bank's claims for payment. St. Paul is thus entitled to judgment as a matter of law.

The Court has carefully considered the motions, responses, replies, applicable law, and pertinent portions of the record. For the foregoing reasons, it is hereby

ORDERED AND ADJUDGED that

- 1) St. Paul's motion to strike [DE 137] portions of Legacy Bank's reply brief is **DENIED**;
- 2) Legacy Bank's motion for summary judgment [DE 88] is **DENIED**;
- 3) St. Paul's motion for summary judgment against Legacy Bank [DE 156] is **GRANTED**;
- 4) St. Paul's motion for summary judgment against Luke Ready [DE 165] is **GRANTED**; and
- 5) Luke Ready's motion for summary judgment [DE 178] is **DENIED**.

Final judgment will be entered by separate order.



UNITED STATES of America,
Plaintiff,

v.

\$11,320.00 IN UNITED STATES
CURRENCY, Defendant.

Civil Action No. 4:11-CV-0268-HLM.

United States District Court,
N.D. Georgia,
Rome Division.

April 26, 2012.

Background: In civil forfeiture action against \$11,320 in United States currency seized by police as drug proceeds following traffic stop of vehicle, government moved to strike claim and for judgment on the pleadings.

Holdings: After converting motion into one for summary judgment, the District Court, Harold L. Murphy, J., held that:

- (1) statements contained in government's statement of material facts in support of summary judgment would be deemed admitted following claimant's failure to respond;
- (2) claimant did not have Article III standing;
- (3) claimant did not have standing under Controlled Substances Act; and
- (4) currency was subject to civil forfeiture under Civil Asset Forfeiture Reform Act (CAFRA).

Motion granted.

1. Federal Civil Procedure ⇐2547.1

In civil forfeiture action against \$11,320 in United States currency seized by police as part of traffic stop, all state-

ments contained in government's statement of material facts in support of summary judgment would be deemed admitted following claimant's failure to respond. Controlled Substances Act, § 511(a)(6), 21 U.S.C.A. § 881(a)(6); Fed.Rules Civ.Proc. Rule 56, 28 U.S.C.A.; U.S.Dist.Ct.Rules N.D.Ga., Rule 56.1(B)(2).

2. Federal Civil Procedure ⇌2547.1

Prior to granting summary judgment to government, based on statements of material facts deemed admitted after claimant failed to respond in civil forfeiture action against \$11,320 in United States currency seized by police as part of traffic stop, court was required to review citations to the record provided by the government in the statement in order to determine whether a genuine dispute remained. Controlled Substances Act, § 511(a)(6), 21 U.S.C.A. § 881(a)(6); Fed. Rules Civ.Proc.Rule 56, 28 U.S.C.A.; U.S.Dist.Ct.Rules N.D.Ga., Rule 56.1(B)(2).

3. Forfeitures ⇌5

A claimant in a civil forfeiture action must establish both the requirements of Article III standing and statutory standing. U.S.C.A. Const. Art. 3, § 2, cl. 1.

4. Forfeitures ⇌5

An owner of property has Article III standing to contest his property's forfeiture. U.S.C.A. Const. Art. 3, § 2, cl. 1.

5. Forfeitures ⇌5

Ownership, for purposes of contesting property's forfeiture, may be established by proof of actual possession, control, title, and financial stake.

6. Controlled Substances ⇌180

There was no evidence that claimant had a colorable ownership or possessory

interest in \$11,320 in currency seized by police as drug proceeds following traffic stop of vehicle, as required to establish Article III standing to challenge the forfeiture. U.S.C.A. Const. Art. 3, § 2, cl. 1.

7. Forfeitures ⇌5

Claimant in civil forfeiture action bears burden of establishing standing. 18 U.S.C.A. § 983(a)(4).

8. Forfeitures ⇌5

District court has discretion to extend the time for claimant in civil forfeiture action to file an answer, but also may insist on strict compliance with supplemental rules governing forfeitures. 18 U.S.C.A. § 983(a)(4); Fed.Rules Civ.Proc.Rule 12, 28 U.S.C.A.; Supplemental Admiralty and Maritime Claims Rule G(5)(b), 28 U.S.C.A.

9. Controlled Substances ⇌180

Claimant's failure to file an answer or response filed under penalty of perjury, to government's motion for summary judgment in civil forfeiture action against \$11,320 in United States currency seized by police as drug proceeds following traffic stop of vehicle deprived her of statutory standing under Controlled Substances Act to pursue her claim to the currency. 18 U.S.C.A. § 983(a)(4); Fed.Rules Civ.Proc. Rule 12, 28 U.S.C.A.; Supplemental Admiralty and Maritime Claims Rule G(5)(b), 28 U.S.C.A.; Controlled Substances Act, § 511(a)(6), 21 U.S.C.A. § 881(a)(6).

10. Forfeitures ⇌5

In civil forfeiture action under Civil Asset Forfeiture Reform Act (CAFRA), government must prove by a preponderance of the evidence that defendant property is subject to forfeiture. 18 U.S.C.A. § 983(c)(1).

11. Forfeitures ⇌5

In civil forfeiture action under Civil Asset Forfeiture Reform Act (CAFRA),

government may use both circumstantial evidence and hearsay to satisfy its burden of proof that defendant property is subject to forfeiture. 18 U.S.C.A. § 983(c)(1).

12. Controlled Substances ⇌165

Currency seized by police following traffic stop of vehicle was subject to civil forfeiture under Civil Asset Forfeiture Reform Act (CAFRA), since it was proceeds of drug offenses or used or intended to be used to facilitate a drug offense; claimant provided no legitimate source for the \$11,320 in seized currency, currency had been packaged in bundles wrapped with rubber bands which was indicative of connection to drug activity, driver of vehicle containing the money had provided misstatements and conflicting answers to police about source and purpose of cash, and police dog had given a positive drug alert to the currency. 18 U.S.C.A. § 983(c)(1, 2).

13. Controlled Substances ⇌170

A large amount of currency, in and of itself, is insufficient to establish probable cause for forfeiture under Controlled Substances Act. Controlled Substances Act, § 511(a)(6), 21 U.S.C.A. § 881(a)(6).

14. Controlled Substances ⇌165

A positive drug dog alert to currency is relevant to determining whether the currency is proceeds of an illegal drug transaction, and thus subject to forfeiture under Civil Asset Forfeiture Reform Act (CAFRA). 18 U.S.C.A. § 983(c)(1, 2).

Michael John Brown, U.S. Attorneys Office, Atlanta, GA, for Plaintiff.

ORDER

HAROLD L. MURPHY, District Judge.

This is a civil forfeiture action filed by the United States of America (the "Gov-

ernment"). The case is before the Court on the Government's Motion to Strike and Motion for Judgment on the Pleadings, which the Court has converted into a Motion for Summary Judgment [10].

I. Initial Matters

The Government filed a Statement of Material Facts ("GSMF") in support of its Motion for Summary Judgment, as required by Local Rule 56.1B(1). N.D. Ga. R. 56.1B(1) ("A movant for summary judgment shall include with the motion and brief a separate, concise, numbered statement of the material facts to which the movant contends there is no genuine issue to be tried. Each material fact must be numbered separately and supported by a citation to evidence proving such fact."). Claimant failed to respond to any of the individual statements contained in GSMF.

Local Rule 56.1B(2) states, in relevant part:

A respondent to a summary judgment motion shall include the following documents with the response brief:

a. A response to the movant's statement of undisputed facts.

(1) This response shall contain individually numbered, concise, nonargumentative responses corresponding to each of the movant's numbered undisputed material facts.

(2) This Court will deem each of the movant's facts as admitted unless the respondent: (i) directly refutes the movant's fact with concise responses supported by specific citations to evidence (including page or paragraph number); (ii) states a valid objection to the admissibility

of the movant's fact; or (iii) points out that the movant's fact is not material or otherwise has failed to comply with the provisions set out in LR 56.1B.(1).

(3) The court will deem the movant's citations supportive of its facts unless the respondent specifically informs the court to the contrary in the response.

(4) The response that a party has insufficient knowledge to admit or deny is not an acceptable response unless the party has complied with the provisions of Fed.R.Civ.P.56(f).

N.D. Ga. R. 56.1B(2). The United States Court of Appeals for the Eleventh Circuit has observed: "Local Rule 56.1 protects judicial resources by 'mak[ing] the parties organize the evidence rather than leaving the burden upon the district judge.'" *Reese v. Herbert*, 527 F.3d 1253, 1268 (11th Cir.2008) (quoting *Alsina-Ortiz v. Laboy*, 400 F.3d 77, 80 (1st Cir.2005)). Local Rule 56.1 "also streamlines the resolution of summary judgment motions by 'focus[ing] the district court's attention on what is, and what is not, genuinely controverted.'" *Id.* (quoting *Mariani-Colon v. Dep't of Homeland Sec.*, 511 F.3d 216, 219 (1st Cir.2007)).

[1] As previously noted, Claimant failed to respond to any of the statements contained in GSMF. The Court therefore deems all of the statements contained in GSMF admitted.

The Court next must determine the practical effect of deeming all of the statements contained in GSMF admitted. The Eleventh Circuit has observed:

The proper course in applying Local Rule 56.1 at the summary judgment

stage is for a district court to disregard or ignore evidence relied on by the respondent—but not cited in its response to the movant's statement of undisputed facts—that yields facts contrary to those listed in the movant's statement. That is, because the non-moving party has failed to comply with Local Rule 56.1—the only permissible way for it to establish a genuine issue of material fact at that stage—the court has before it the functional analog of an unopposed motion for summary judgment.

Reese, 527 F.3d at 1268. However, "after deeming the movant's statement of undisputed facts to be admitted pursuant to Local Rule 56.1, the district court must then review the movant's citations to the record to 'determine if there is, indeed, no genuine issue of material fact.'" *Id.* at 1269 (quoting *United States v. One Piece of Real Prop. Located at 5800 S.W. 74th Ave., Miami, Fla.*, 363 F.3d 1099, 1103 n. 6 (11th Cir.2004)).

[2] Here, as previously discussed, the Court deems the statements contained in GSMF admitted. N.D. Ga. R. 56.1B(2). The Court, however, still must review the citations to the record provided by the Government in GSMF to determine whether a genuine dispute remains. *Reese*, 527 F.3d at 1269. The Court does so *infra* Part II.

II. Background

A. Factual Background

Keeping in mind that when deciding a motion for summary judgment, the Court must view the evidence and all factual inferences in the light most favorable to the party opposing the motion, the Court provides the following statement of facts. *See Optimum Techs., Inc. v. Henkel Con-*

sumer Adhesives, Inc., 496 F.3d 1231, 1241 (11th Cir.2007) (observing that, in connection with summary judgment, court must review all facts and inferences in light most favorable to non-moving party). This statement does not represent actual findings of fact. *In re Celotex Corp.*, 487 F.3d 1320, 1328 (11th Cir.2007). Instead, the Court has provided the statement simply to place the Court's legal analysis in the context of this particular case or controversy.

1. The Officers

Sergeant J. Nix ("Sergeant Nix") is a Sergeant and a K-9 handler with the Butts County, Georgia, Sheriff's Office (the "Butts County Sheriff's Office"). (GSMF ¶ 1; Decl. of J. Nix ¶ 1.) Sergeant Nix has been employed in law enforcement for approximately sixteen years, including approximately nine years with the Butts County Sheriff's Office and approximately five years as a K-9 handler. (GSMF ¶¶ 2-3; Nix Decl. ¶¶ 2-3.) Sergeant Nix also serves as part of a joint operation with the Tunnel Hill, Georgia, Police Department (the "Tunnel Hill Police Department"). (GSMF ¶ 5; Nix Decl. ¶ 5.)

Sergeant S. Reneau ("Sergeant Reneau") is a sergeant and K-9 handler with the Tunnel Hill Police Department. (GSMF ¶ 44; Decl. of S. Reneau ¶ 1.) Sergeant Reneau has been employed by the Tunnel Hill Police Department for approximately six years, and has served as a K-9 handler for approximately five years. (GSMF ¶ 45; Reneau Decl. ¶ 2.)

Deputy M. Broce ("Deputy Broce") is a Deputy and K-9 handler employed with the Butts County Sheriff's Office. (Decl. of M. Broce ¶ 1; GSMF ¶ 48.) Deputy Broce has been employed by the Butts County Sheriff's Office for approximately

eleven years, and has served as a K-9 handler for approximately five years. (GSMF ¶ 48; Broce Decl. ¶ 2.) Deputy Broce also serves as part of a joint operation with the Tunnel Hill Police Department. (Broce Decl. ¶ 3.)

Deputy Broce uses a drug detection dog named Kilo. (GSMF ¶ 49; Broce Decl. ¶ 4.) Kilo is certified each year by the National Narcotics Detector Dog Association for detection of marijuana, cocaine, methamphetamine, and heroin. (GSMF ¶ 49; Broce Decl. ¶ 5 & Ex. A.) At the time of the traffic stop, Kilo was certified as a drug detection canine. (GSMF ¶ 50; Broce Decl. ¶ 6.) Kilo is an aggressive alert dog, and indicates that he has detected a narcotic odor by scratching or pawing. (GSMF ¶ 51; Broce Decl. ¶ 7.)

2. The Traffic Stop

On May 4, 2011, Sergeant Nix was on routine patrol on Interstate 75 South with Deputy B. Knight of the Butts County Sheriff's Office. (GSMF ¶ 6; Nix Decl. ¶ 6.) At approximately 2:13 p.m., Sergeant Nix saw a maroon 2010 Chevrolet Equinox with Michigan tag BKY4481 slow to approximately fifty miles per hour in the middle lane. (GSMF ¶ 7; Nix Decl. ¶ 7.) Because of the Equinox's slow speed, traffic was forced to move around the Equinox in a "Y" pattern, causing vehicles to have to change lanes to pass the Equinox on both sides, and creating a dangerous traffic flow. (GSMF ¶ 8; Nix Decl. ¶ 8.) Sergeant Nix then observed the Equinox enter the right lane and then return to the middle lane. (GSMF ¶ 9; Nix Decl. ¶ 9.)

Sergeant Nix activated his patrol car's emergency lights and conducted a traffic stop on the Equinox for impeding traffic flow and for failure to maintain lane. (GSMF ¶ 10; Nix Decl. ¶ 10.) The patrol

car's dashboard camera recorded the stop. (GSMF ¶ 11; Nix Decl. ¶ 11 & Ex. A.) Sergeant Nix conducted the traffic stop at mile marker 341 on Interstate 75 South, in Tunnel Hill, Georgia. (GSMF ¶ 12; Nix Decl. ¶ 12.)

After the Equinox pulled over, Sergeant Nix approached the Equinox and asked the driver for identification. (GSMF ¶ 13; Nix Decl. ¶ 13.) While Sergeant Nix waited for the driver to produce his driver's license, Sergeant Nix smelled an odor of raw marijuana coming from the Equinox. (GSMF ¶ 14; Nix Decl. ¶ 14.) The driver eventually handed Sergeant Nix a driver's license in the name of "Charles Gray, Jr.," as well as the Equinox's registration. (GSMF ¶ 15; Nix Decl. ¶ 15.)

Sergeant Nix asked the driver to step out of the Equinox and to come to the back of Sergeant Nix's car while Sergeant Nix wrote a warning citation for the traffic violations. (GSMF ¶ 19; Nix Decl. ¶ 19.) While Sergeant Nix was at the back of the Equinox, he asked the driver about the marijuana odor coming from the Equinox. (GSMF ¶ 20; Nix Decl. ¶ 20.) The driver responded that he had smoked marijuana earlier. (GSMF ¶ 21; Nix Decl. ¶ 21.)

Sergeant Nix asked the driver where he was going, and the driver replied that he was going to Bankhead Highway to visit some family. (GSMF ¶¶ 22-23; Nix Decl. ¶¶ 22-23.) While Sergeant Nix wrote out the warning citations, Deputy Knight asked the driver how he planned to get to Bankhead Highway. (GSMF ¶ 24; Nix Decl. ¶ 24.) The driver responded that he planned to take Interstate 75 South to Interstate 575 North to get to Bankhead Highway. (GSMF ¶ 25; Nix Decl. ¶ 25.) That route would not have led the driver near his alleged destination, Bankhead Highway. (GSMF ¶ 26; Nix Decl. ¶ 26.)

When Sergeant Nix questioned the driver further about his travel plans, the driver became verbally defensive. (GSMF ¶ 27; Nix Decl. ¶ 27.)

Sergeant Nix then asked the driver whose car he was driving. (GSMF ¶ 28; Nix Decl. ¶ 28.) The driver responded that he was driving his wife's vehicle. (GSMF ¶ 29; Nix Decl. ¶ 29.) After examining the vehicle's registration, Sergeant Nix noticed that the driver did not have the same last name as the vehicle's registered owner. (GSMF ¶ 30; Nix Decl. ¶ 30.) Sergeant Nix asked the driver why his last name differed from that of the Equinox's registered owner, and the driver stated that he was not really married to the vehicle's registered owner, and that they were simply "together." (GSMF ¶¶ 31-32; Nix Decl. ¶¶ 31-32.) Sergeant Nix asked the driver what the registered owner's last name was, and the driver stated that he was not sure. (GSMF ¶¶ 33-34; Nix Decl. ¶¶ 33-34.) Sergeant Nix returned the driver's license to the driver and completed the warning citations. (GSMF ¶ 35; Nix Decl. ¶ 35.)

Sergeant Nix then asked the driver if there were illegal narcotics inside the Equinox, and the driver replied no. (GSMF ¶¶ 36-37; Nix Decl. ¶¶ 36-37.) Sergeant Nix also asked the driver if there were large amounts of currency inside the Equinox, and the driver hesitated before asking, "What?" (GSMF ¶¶ 38-39; Nix Decl. ¶¶ 38-39.) Sergeant Nix repeated his question, and the driver responded that he had a couple of thousand dollars in the Equinox. (GSMF ¶¶ 40-41; Nix Decl. ¶¶ 40-41.) Sergeant Nix asked the driver how much currency was in the Equinox, and the driver stated that he did not know. (GSMF ¶ 42; Nix Decl. ¶ 42.)

3. The Search

Sergeant Nix then requested a K-9 unit to assist with a free air sniff of the Equi-

nox. (GSMF ¶ 43; Nix Decl. ¶ 43; Reneau Decl. ¶ 3; Broce Decl. ¶ 8.) Sergeant Reneau and Deputy Broce responded to the scene to assist with the traffic stop. (GSMF ¶¶ 46-47; Reneau Decl. ¶¶ 4, 6; Broce Decl. ¶ 9.) Deputy Broce arrived at the scene less than five minutes after receiving the request for a K-9 unit. (GSMF ¶ 47; Broce Decl. ¶ 10; Nix Decl. ¶ 44.)

After Deputy Broce arrived at the scene, he removed Kilo from his patrol car and had Kilo perform a free air sniff of the Equinox. (GSMF ¶ 52; Broce Decl. ¶ 12; Nix Decl. ¶ 45.) Kilo gave positive alerts for the odor of narcotics. (GSMF ¶ 53; Broce Decl. ¶ 13; Nix Decl. ¶ 46.)

Sergeant Nix informed the driver of the Equinox that, based on the results of the free air sniff, the officers were going to search the Equinox. (GSMF ¶ 54; Nix Decl. ¶ 47.) The driver stated that he had some currency in his bag, but that the money was not his. (GSMF ¶ 55; Nix Decl. ¶ 48.) Although Sergeant Nix asked the driver to whom the money belonged, the driver did not respond. (GSMF ¶ 56; Nix Decl. ¶ 49.)

The officers then searched the Equinox. (GSMF ¶ 57; Nix Decl. ¶ 50; Broce Decl. ¶ 14; Reneau Decl. ¶ 8.) During the search, Sergeant Nix discovered a clothing bag inside the rear cargo area of the Equinox. (GSMF ¶ 58; Nix Decl. ¶ 51.) Sergeant Nix found a plastic bag containing a large amount of United States currency (the "Defendant Currency") inside the clothing bag. (GSMF ¶ 59; Nix Decl. ¶ 52.) The Defendant Currency was separated into twelve bundles, each wrapped by a single black rubber band. (GSMF ¶ 60; Nix Decl. ¶ 53; Reneau Decl. ¶ 9.) The officers later counted the Defendant Currency and found that it totaled \$11,320.

(GSMF ¶ 61; Nix Decl. ¶ 54; Brace Decl. ¶ 15; Reneau Decl. ¶ 9.) Eleven of the bundles each contained \$1,000, while the twelfth bundle contained \$320.00. (GSMF ¶ 62; Nix Decl. ¶ 55.)

Based on Sergeant Nix's observations and law enforcement experience, bundling money in large, even amounts is consistent with money involved in the drug trade. (GSMF ¶ 63; Nix Decl. ¶ 56.) When Sergeant Nix handled the Defendant Currency, he noticed that it had an odor of raw marijuana. (GSMF ¶ 64; Nix Decl. ¶ 57.)

Sergeant Reneau asked the driver where the Defendant Currency came from, and the driver replied that his "old lady" had taken \$14,000 from the bank and given it to him. (GSMF ¶¶ 65-66; Reneau Decl. ¶¶ 10-11.) A few minutes later, Sergeant Reneau asked the driver how much money his wife had taken out of the bank and given to him, and the driver replied that his wife had given him \$5,000. (GSMF ¶¶ 67-68; Reneau Decl. ¶¶ 12-13.) Sergeant Reneau asked the driver about the inconsistent amounts, and the driver stated that Sergeant Reneau was confusing him. (GSMF ¶¶ 69-70; Reneau Decl. ¶¶ 14-15.)

Sergeant Reneau then asked the driver what he was doing with that amount of currency, and the driver replied that he was going to help out some of his "peeps." (GSMF ¶¶ 71-72; Reneau Decl. ¶¶ 15-16.) Sergeant Reneau asked the driver who his "peeps" were and where they lived, and the driver stated that he did not want to answer any more questions. (GSMF ¶¶ 73-74; Reneau Decl. ¶¶ 18-19.)

Later, Sergeant Nix asked the driver why he had so much money, and the driver stated that he was delivering the money

for a friend. (GSMF ¶¶ 75–76; Nix Decl. ¶¶ 58–59.) The driver refused to give Sergeant Nix any information about the “friend.” (GSMF ¶ 77; Nix Decl. ¶ 60.) Sergeant Nix asked the driver why he was delivering the money for his friend, and the driver responded, “You guys know the game.” (GSMF ¶¶ 78–79; Nix Decl. ¶¶ 61–62.) Based on that response, Sergeant Nix believed that the driver was referring to the drug trade. (GSMF ¶ 80; Nix Decl. ¶ 63.) The driver further stated that he was “‘through delivering for this guy.’” (GSMF ¶ 81; Nix Decl. ¶ 64.) The driver refused to answer any more questions. (GSMF ¶ 82; Nix Decl. ¶ 65.)

Sergeant Reneau told the driver that the Defendant Currency would be seized, and seized the Defendant Currency as drug proceeds. (GSMF ¶ 83; Reneau Decl. ¶ 20.) The driver signed the property receipt as “Charles Gray Jr.,” and the officers gave him a property receipt. (GSMF ¶ 84; Reneau Decl. ¶ 21 & Ex. B; Gov’t Ex. E.) The driver left the scene in the Equinox. (GSMF ¶ 85; Reneau Decl. ¶ 22; Nix Decl. ¶ 66.)

Sergeant Reneau took custody of the Defendant Currency. (Nix Decl. ¶ 66; Broce Decl. ¶ 16.) Sergeant Reneau transported the Defendant Currency to the Tunnel Hill Police Department. (GSMF ¶ 86; Reneau Decl. ¶ 23; Broce Decl. ¶ 17.)

4. Free Air Sniff of the Defendant Currency

After the officers arrived at the Tunnel Hill Police Department, Sergeant Reneau and Deputy Broce conducted a free air sniff of the Defendant Currency. (GSMF

¶ 87; Reneau Decl. ¶ 24; Broce Decl. ¶ 18.) Sergeant Reneau and Deputy Broce used three bags to conduct the free air sniff. (GSMF ¶ 88; Reneau Decl. ¶ 25; Broce Decl. ¶ 19.)

Sergeant Reneau placed the Defendant Currency in one bag, and placed items of a similar size and weight in the remaining two bags. (GSMF ¶ 89; Reneau Decl. ¶ 26; Broce Decl. ¶ 20.) Sergeant Reneau then placed the three bags in a line. (GSMF ¶ 89; Reneau Decl. ¶ 26; Broce Decl. ¶ 21.) While handling the Defendant Currency, Sergeant Reneau noticed that it had an odor of raw marijuana. (Reneau Decl. ¶ 27.) Deputy Broce did not know which bag contained the Defendant Currency. (Broce Decl. ¶ 22.)

Deputy Broce had Kilo perform a free air sniff of the bags. (GSMF ¶ 90; Reneau Decl. ¶ 28.) Deputy Broce walked Kilo around each of the bags. (Broce Decl. ¶ 23.) Kilo gave a positive alert for the odor of narcotics only on the third bag, which contained the Defendant Currency. (*Id.*; Reneau Decl. ¶ 29; GSMF ¶ 91.)

5. Other Interactions With the Driver

Throughout Sergeant Nix’s interactions with the Equinox’s driver, Sergeant Nix called the driver “Charles,” and the driver responded to that name and did not indicate that it was not his name. (GSMF ¶ 16; Nix Decl. ¶ 16.) In approximately December 2011, Sergeant Nix learned that Charles Gray, Jr. had died on or about October 20, 2010, more than six months prior to the traffic stop. (GSMF ¶ 17; Nix Decl. ¶ 17; Reneau Decl. ¶ 30.)¹ The Equinox was registered to Claimant.

1. A Social Security Death Record indicates that Charles Gray, Jr. died on October 20, 2010. (Gov’t Ex. C.) A certified death certifi-

cate for Mr. Gray also states that Mr. Gray died on October 20, 2010. (Gov’t Ex. H.)

(GSMF ¶ 18; Nix Decl. ¶ 18.)²

6. Administrative Proceedings

The Federal Bureau of Investigation ("FBI") adopted the seizure of the Defendant Currency. (GSMF ¶ 92; Gov't Ex. A-1.) On July 20, 2011, Claimant filed an administrative claim to the Defendant Currency, which the FBI initially rejected as deficient because Claimant failed to make the claim under oath, subject to penalty of perjury. (GSMF ¶ 96; Gov't Ex. A-4.) On July 21, 2011, the FBI sent a letter to Claimant informing her that her submission was deficient, and noting:

Any factual recitation or documentation in a petition must be supported by a sworn affidavit of the person alleging an interest in the property. An unsworn declaration must be signed and contain the statement, "I declare under penalty of perjury that the foregoing is true and correct."

(Gov't Ex. A-4 at 2; GSMF ¶ 97.)

Claimant submitted another claim for the Defendant Currency to the FBI. (GSMF ¶ 93; Gov't Ex. A-2.) Under the section titled "INTEREST EXPLANATION," Claimant wrote: "Shopping & TRAVEL money personal use, bills etc." (Gov't Ex. A-2 at 1 (capitalization in original).) The claim contained the statement, "I attest and declare under penalty of perjury that the information provided in support of my claim is true and correct, to the best of my knowledge and belief." (*Id.* at 2; GSMF ¶ 98.)

The FBI then requested that the Government commence a judicial forfeiture ac-

2. Counsel for the Government also submitted a declaration in support of the Government's Motion. (Gov't Ex. 4.) Because the Court does not generally permit counsel to serve both as attorneys and as witnesses in the

tion relating to the Defendant Currency. (GSMF ¶ 94; Gov't Ex. A-1.)

B. Procedural Background

On November 1, 2011, the Government filed this lawsuit. (Docket Entry No. 1.) The Government alleged that the Defendant Currency was subject to forfeiture under 21 U.S.C. § 881(a)(6) because it was furnished, or intended to be furnished, in exchange for a controlled substance, because it constitutes proceeds traceable to such an exchange, or because it was used, or intended to be used, to facilitate the sale or exchange of a controlled substance. (Compl. ¶ 66.)

On November 10, 2011, the Government issued a Notice of Filing Complaint for Forfeiture to Claimant. (Docket Entry No. 4.) That Notice stated, in relevant part:

To avoid forfeiture of the property, any person claiming an interest in the Defendant property must file a verified Claim in the manner set forth in Rule G(5) of the Supplemental Rules for Admiralty or Maritime and Asset Forfeiture Claims on or before the deadline specifically stated below, which is at least 35 days after the date this notice was sent. *See* Rule G(5)(a). In addition, any person who files such a Claim shall file an Answer to the Complaint, or a motion under Rule 12 of the Federal Rules of Civil Procedure, not later than 21 days after the filing of the Claim. *See* Rule G(5)(b).

Supplemental Rule G(5)(a) provides in pertinent part: "(I) a person who as-

same case, the Court has not included the statements contained in that declaration in this Order. The Court has, however, considered the documents attached to the declaration.

serts an interest in the Defendant Property may contest the forfeiture by filing a claim in the court where the action is pending . . .” and “must (A) identify the specific property claimed; (B) identify the claimant and state the claimant’s interest in the property; (C) be signed by the claimant under penalty of perjury; and (D) be served on the government attorney designated under Rule G(4)(a)(ii)(C) or (b)(ii)(D).” See Rule G(5)(a). Supplemental Rule G(5)(b) provides in pertinent part: “[a] claimant must serve and file an answer to the complaint or a motion under Rule 12 within 21 days after filing the claim.”

The Claim and Answer shall be filed with the Office of the Clerk of Court, United States District Court for the Northern District of Georgia, Atlanta Division, 75 Spring Street, S.W., Suite 2201, Atlanta, Georgia 30303, with copies of each served upon Assistant U.S. Attorney Michael J. Brown, 75 Spring Street, S.W., Suite 600, Atlanta, GA 30303.

Pursuant to Rule G(4)(b) of the Supplemental Rules for Admiralty or Maritime and Asset Forfeiture Claims, on November 10, 2011, Plaintiff sent this Notice by certified mail, return receipt requested, to every person who reasonably appeared to be a potential claimant to the Defendant Currency on the facts known to Plaintiff. **Therefore, a verified Claim must be filed on or before December 16, 2011, and an answer to the complaint or a motion under Rule 12 within 21 days thereafter.**

(*Id.* at 1–3 (emphasis and omissions in original; footnote omitted).)

Claimant submitted a letter to counsel for the Government. (Gov’t Ex. D.) On December 2, 2011, counsel for the Govern-

ment wrote a letter to Claimant stating, in relevant part:

I have received a copy of your Claim in the above-referenced civil forfeiture action. However, it does not appear that you sent your Claim to the Clerk of District Court for filing, which is required under Rule G(5)(a) of the Supplemental Rules for Admiralty or Maritime and Asset Forfeiture Claims. In addition, the copy of the Claim you sent to me does not appear to comply with Rule G(5)(a)(i)(C).

Rule G(5)(a) expressly states that each claimant must file a claim “in the court where the action is pending” identifying the specific property claimed and his or her interest in the property, and that the claim must “be signed by the claimant under penalty of perjury” and served on the appropriate Assistant United States Attorney. If a potential claimant fails to file a verified claim with the court, that claimant lacks statutory standing to contest the forfeiture.

Please be aware that this Circuit has recognized that courts “consistently have required claimants to follow the language of the Supplemental Rules to the letter,” and, as such, a district court is “entitled to insist upon strict compliance with the procedural requirements set forth in Rule G(5) and, thus, to strike appellant’s claim for lack of statutory standing to contest the forfeiture.”

As stated in the Notice of Filing Complaint for Forfeiture that the United States served on you on November 10, 2011, your deadline for filing a verified claim with the Clerk of District Court is on or before December 16, 2011, and your deadline for filing an answer to the complaint for forfeiture is within 21 days after filing your claim. The address for

where to send your verified claim and your answer to the complaint for forfeiture is as follows:

Clerk of District Court
600 East First Street
Rome, Georgia 30161

(*Id.* at 1-2 (citations omitted).)

On December 8, 2011, the Clerk received a letter from Claimant dated November 12, 2011 and stating, in relevant part;

I Dorothy Mae Robinson who asserts an interest in the currency seized.

\$11,320.00 in United States Currency on May 4, 2011[.]

I am the sole owner of the currency seized.

Charles Gray is deceased [sic], he is no longer with me. Cause of death Heart Attack.

Gray was traveling south to visit family & friends to help & visit peers, because of the recent tornados [sic] & storms.

(Docket Entry No. 6.) The document was not signed under penalty of perjury. (*Id.*)

On that same day, the Clerk received another document from Claimant dated December 6, 2011, which stated, in relevant part:

Yes I do own the Chevrolet Equinox 2010 Michigan tag # BKY 4481

Yes I am the sole owner of the U.S. Currency \$11,320.00

Charles says officer pulled him over for changing lanes, when he stopped him.

Gray, was traveling south to shop & visit family & friends.

Yes I do keep my money inside plastic bag inside a suitcase.

1 shirt 1 pair pants 1 undergarment, 1 pair shoes inside suit case in back of truck.

[T]he reason I keep my money in my car.

In 2008 we lost everything in a condo apartment [sic] fire, I lost money purse etc. Everything in fire.

So I keep my money in my car.

Yes Gray had some cash in his traveling bag.

Gray & have been together for 17 years, Gray was traveling south to visit family members, he was concerned about his mom & family & friends, due to the tornadoes & bad weather.

Mich law requires driver's [sic] to pull to the next lane if he observes officer in the same lane he is traveling in

I believe when officer was asking Mr. Gray about the money they were giving him a hard time.

During the search of the Chevrolet Equinox 2010, the officer did damage to the vehicle but did not find any drugs.

On August 8, 2011 I Dorothy Mae Robinson filed a claim with FBI

I am the sole owner of the Defendant Currency.

(Docket Entry No. 7 at 1-3.) That document also is not signed under penalty of perjury. (*Id.* at 3.)

Claimant did not file an Answer to the Complaint, and also did not file a Motion to Dismiss.

On December 21, 2012, the Government, through counsel, served Claimant with Special Interrogatories. (Gov't Ex.

F; Docket Entry No. 9.) Special Interrogatory No. 3 asked Claimant to: "Identify the person who was driving the Equinox at the time of the traffic stop on May 4, 2011 that led to the seizure of the Defendant Currency and provide that individual's address, telephone number(s), and other personal identifiers." (Gov't Ex. F at 7.) Special Interrogatory 12 stated: "In your letter asserting a claim to the Defendant Currency, you stated that Charles Gray is deceased and that his cause of death was a heart attack. Identify the date and the location, including city and state, of Charles Gray's death." (*Id.* at 11.)

Claimant served counsel for the Government with responses to the Special Interrogatories. (Gov't Ex. G.) Claimant's response to Special Interrogatory No. 3 states that the driver of the Equinox was "Charles Gray." (*Id.* at 1.) Claimant's response to Special Interrogatory No. 12 states that Charles Gray died on October 29, 2010, in Birmingham, Alabama. (*Id.* at 2.)

On March 21, 2012, the Government filed its Motion to Strike and Motion for Judgment on the Pleadings. (Docket Entry No. 10.) The Government sought to strike the claim filed by Claimant Dorothy Mae Robinson ("Claimant"). (*Id.*) The Government also moved for judgment on the pleadings. (*Id.*)

On April 10, 2012, the Court entered an Order converting the Motion for Judgment on the Pleadings to a Motion for Summary Judgment. (Order of Apr. 10, 2012.) The Court also directed Claimant to file her response, if any, to the Motion to Strike and Motion for Summary Judgment within twenty-one days. (*Id.*) On that same day, the Clerk issued a Notice directing Claimant to respond to the Motion for Summary Judgment. (Docket Entry No. 12.)

On April 20, 2012, Claimant filed a response. (Docket Entry No. 13.) In that response, Claimant stated:

I am the sole owner of the \$11,320.00 in United States Currency et al.

I have answered all questions.

(*Id.* at 1.) Claimant, however, did not respond to the Government's Statement of Material Fact or provide any explanation for her failure to file an Answer or a verified claim signed under penalty of perjury. (*Id.* at 1-3.)

The Government has filed a reply in support of its Motion to Strike and Motion for Summary Judgment. (Docket Entry No. 14.) The Government also has indicated that it does not intend to supplement its Motion following the April 10, 2012 Order. (*Id.* at 2 n. 1.) Under those circumstances, the Court finds that this matter is ripe for resolution.

III. Summary Judgment Standard

Federal Rule of Civil Procedure 56(c) authorizes summary judgment when "there is no genuine issue as to any material fact" and "the moving party is entitled to a judgment as a matter of law." Fed. R.Civ.P. 56(c). The party seeking summary judgment bears the initial burden of showing the Court that summary judgment is appropriate, and may satisfy this burden by pointing to materials in the record. *Reese v. Herbert*, 527 F.3d 1253, 1269 (11th Cir.2008) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)); *Allen v. Bd. of Public Educ. for Bibb County*, 495 F.3d 1306, 1313 (11th Cir.2007). Once the moving party has supported its motion adequately, the non-movant has the burden of showing summary judgment is improper by coming forward with specific facts that

demonstrate the existence of a genuine issue for trial. *Allen*, 495 F.3d at 1314.

When evaluating a motion for summary judgment, the Court must view the evidence and all factual inferences in the light most favorable to the party opposing the motion. *Optimum Techs., Inc. v. Henkel Consumer Adhesives, Inc.*, 496 F.3d 1231, 1241 (11th Cir.2007). The Court also must “resolve all reasonable doubts about the facts in favor of the non-movant.” *Rioux v. City of Atlanta, Ga.*, 520 F.3d 1269, 1274 (11th Cir.2008) (quoting *United of Omaha Life Ins. Co. v. Sun Life Ins. Co. of Am.*, 894 F.2d 1555, 1558 (11th Cir.1990)). Further, the Court may not make credibility determinations, weigh conflicting evidence to resolve disputed factual issues, or assess the quality of the evidence presented. *Reese*, 527 F.3d at 1271; *Skop v. City of Atlanta, Ga.*, 485 F.3d 1130, 1140 (11th Cir.2007). Finally, the Court does not make factual determinations. *In re Celotex Corp.*, 487 F.3d at 1328.

The standard for a motion for summary judgment differs depending on whether the party moving for summary judgment also bears the burden of proof on the relevant issue. As the United States Court of Appeals for the Sixth Circuit has noted:

“When the moving party does not have the burden of proof on the issue, he need show only that the opponent cannot sustain his burden at trial. But where the moving party has the burden—the plaintiff on a claim for relief or the defendant on an affirmative defense—his showing must be sufficient for the court to hold that no reasonable trier of fact could find other than for the moving party.”

Calderone v. United States, 799 F.2d 254, 259 (6th Cir.1986) (quoting William W.

Schwarzer, *Summary Judgment Under the Federal Rules: Defining Genuine Issues of Material Fact*, 99 F.R.D. 465, 487–88 (1984)). “Where the movant also bears the burden of proof on the claims at trial, it ‘must do more than put the issue into genuine doubt; indeed, [it] must remove genuine doubt from the issue altogether.’” *Franklin v. Montgomery County, Md.*, No. DKC 2005–0489, 2006 WL 2632298, at *5 (D.Md. Sept. 13, 2006) (quoting *Hoover Color Corp. v. Bayer Corp.*, 199 F.3d 160, 164 (4th Cir.1999)) (alteration in original).

IV. Discussion

A. Claimant’s Standing

[3] A claimant in a civil forfeiture action must establish both the requirements of Article III standing and statutory standing. *United States v. \$688,670.42 Seized from Regions Bank Account No. XXXXXX5028*, 449 Fed.Appx. 871, 873 (11th Cir.2011) (per curiam); *United States v. \$114,031.00 in U.S. Currency*, 284 Fed.Appx. 754, 755 (11th Cir.2008) (per curiam). The Court first determines whether Claimant has satisfied the Article III standing requirements, and then addresses the statutory standing question.

1. Article III Standing

[4, 5] “It is well established that in order to contest a forfeiture, a claimant first must demonstrate a sufficient interest in the property to give him Article III standing; otherwise, there is no ‘case or controversy,’ in the constitutional sense, capable of adjudication in the federal courts.” *United States v. \$38,000.00 in U.S. Currency*, 816 F.2d 1538, 1543 (11th Cir.1987) (quoting *United States v. One 18th Century Colombian Monstrance*, 802 F.2d 837, 838 (5th Cir.1986)). “The Article III standing inquiry focuses on the existence

of an injury.” *\$688,670.42 Seized from Regions Bank*, 449 Fed.Appx. at 874. An owner of property has Article III standing to contest the property’s forfeiture. *\$38,000.00 in U.S. Currency*, 816 F.2d at 1544. “Ownership may be established by proof of actual possession, control, title, and financial stake.” *United States v. One (1) 1983 Homemade Vessel Named Barracuda*, 625 F.Supp. 893, 897 (S.D.Fla.1986). “It is well settled that a bare assertion of ownership in the property, without more, is not enough to prove an ownership interest sufficient to establish standing.” *Arevalo v. United States*, No. 05–110, 2011 WL 442054, at *3 (E.D.Pa. Feb. 8, 2011). Instead, “a claimant must show that he has a colorable ownership or possessory interest in the funds.” *Id.*

[6] Here, Claimant has produced no evidence showing that she has a colorable ownership or possessory interest in the Defendant Currency. Instead, Claimant simply has submitted bare assertions of ownership, which are simply not sufficient to establish Article III standing. *United States v. \$26,620.00 in U.S. Currency*, No. Civ. A. 2:05CV50WCO, 2006 WL 949938, at *7 (N.D.Ga. Apr. 12, 2006) (concluding claimant’s “mere allegation” that he was owner of currency was insufficient to establish ownership). Because Claimant lacks Article III standing, the Court strikes her Claim and Answer.

2. Statutory Standing

[7] A claimant also must satisfy the statutory standing requirements to challenge a forfeiture. The claimant bears the burden of establishing standing. *\$114,031.00 in U.S. Currency*, 284 Fed. Appx. at 756.

The Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture

(“Supplemental Rules”) and 18 U.S.C. § 983(a)(4) govern civil forfeiture actions and set forth statutory standing requirements for contesting a forfeiture. *United States v. \$12,126.00 in U.S. Currency*, 337 Fed.Appx. 818, 818–19 (11th Cir.2009) (per curiam) (citing *\$38,000.00 in U.S. Currency*, 816 F.2d at 1544–45). Rule G(5)(b) of the Supplemental Rules provides, in relevant part: “A claimant must serve and file an answer to the complaint or a motion under Rule 12 within 20 days after filing the claim.” Supp. Rule G(5)(b). Rule G(8)(c) of the Supplemental Rules states:

(i) At any time before trial, the government may move to strike a claim or answer:

(A) for failing to comply with Rule G(5) or (6), or

(B) because the claimant lacks standing.

(ii) The motion:

(A) must be decided before any motion by the claimant to dismiss the action; and

(B) may be presented as a motion for judgment on the pleadings or as a motion to determine after a hearing or by summary judgment whether the claimant can carry the burden of establishing standing by a preponderance of the evidence.

Supp. R. G(8)(c).

[8] A district court has discretion to extend the time for filing an answer, but also may insist on strict compliance with the Supplemental Rules. *\$12,126.00 in U.S. Currency*, 337 Fed.Appx. at 818–19 (citing *United States v. \$125,938.62*, 370 F.3d 1325, 1328–29 (11th Cir.2004)). “[C]laimants must strictly adhere to the procedural requirements of the Supplemental Rules to

achieve statutory standing to contest a forfeiture action." *Id.* at 820.

Here, Claimant failed to file an Answer or a motion under Rule 12 within twenty days after filing her Claim. The Court cannot find that special or extenuating circumstances exist that would warrant extending the time for Claimant to file an Answer or excusing her failure to comply with Rule G(5)(b) of the Supplemental Rules. Indeed, the Notice of Filing Complaint for Forfeiture served on Claimant by the Government set forth the requirement that Claimant file an Answer within twenty-one days after filing a Claim.

[9] Under the above circumstances, "this Court is left with no explanation for [Claimant's] failure to file an answer, and no colorable basis for deviating from the strict compliance with the standing aspects of the Supplemental Rules which federal courts typically enforce strictly in the civil forfeiture context." *United States v. 40 Acres of Real Prop., More or Less*, 629 F.Supp.2d 1264, 1274-75 (S.D.Ala.2009). The Court consequently finds that the failure by Claimant to file an Answer or a motion under Rule 12 in a timely fashion, as required by Supplemental Rule G(5)(b), deprives Claimant of statutory standing to pursue her claim to the Defendant Property. *Id.* at 1275; see also *United States v. Approximately \$73,562 in U.S. Currency*, No. C 08-2458 SBA, 2009 WL 1955800, at *2 (N.D.Cal. July 6, 2009) ("The pleading requirements are strictly construed and the failure to file an answer precludes standing to challenge the forfeiture."). The Court therefore grants the Government's Motion to Strike, and strikes the Claim filed by Claimant, based on Claimant's failure to comply with applicable procedural requirements. *United States v. \$12,126.00 in U.S. Currency*, 337 Fed.

Appx. 818, 820 (11th Cir.2009) (per curiam); *40 Acres of Real Prop.*, 629 F.Supp.2d at 1275; see also *Approximately \$73.562 in U.S. Currency*, 2009 WL 1955800, at *2 ("A claim may be stricken for non-compliance with pleading requirements for challenging a proposed forfeiture.").

Section 983 and Supplemental Rule G also require that a claimant file a verified claim asserting an interest in the property. *United States v. One 2003 Chevrolet Suburban*, Civil Case No. 7:10-CV-0153 (HL), 2011 WL 4543471, at *1 (M.D.Ga. Sept. 29, 2011). The claim must identify the property claimed, identify the claimant and state the claimant's interest in the property, be signed under penalty of perjury, and be served on the designated government attorney. Supp. Rule G(5)(a)(i).

Here, Claimant's claim is not signed under penalty of perjury. Claimant's claim thus fails to satisfy the statutory requirements. *One 2003 Chevrolet Suburban*, 2011 WL 4543471, at *2 (finding claim failed to satisfy required elements where it failed to give full statement of claimant's interest and did not include required oath or affirmation); see also *United States v. One Men's Rolex Pearl Master Watch*, 357 Fed.Appx. 624, 627 (6th Cir.2009) (granting motion to dismiss where claimant failed to sign claim under penalty of perjury). Under those circumstances, the Court finds that it is appropriate to strike Claimant's claim. *One 2003 Chevrolet Suburban*, 2011 WL 4543471, at *2.

3. Summary

For the reasons discussed above, the Court finds that Claimant lacks both statutory standing and Article III standing to pursue her claim. The Court therefore grants the Government's Motion to Strike as to Claimant's claim.

B. Whether the Defendant Currency Is Subject to Forfeiture

Alternatively, the Government argues that it is entitled to judgment in its favor because no genuine dispute remains as to whether the Defendant Currency is subject to forfeiture. The Civil Asset Forfeiture Reform Act of 2000 ("CAFRA") applies to the instant forfeiture action. Under CAFRA, money is subject to civil forfeiture if it is "furnished or intended to be furnished by any person in exchange for a controlled substance or listed chemical in violation of this subchapter," if it is "proceeds traceable to such an exchange," or if it is "used or intended to be used to facilitate any violation of this subchapter." 21 U.S.C. § 881(a)(6); see also *United States v. \$291,828.00 in United States Currency*, 536 F.3d 1234, 1236-37 (11th Cir.2008) (per curiam) (same).

[10] Under CAFRA, the Government "must prove by a preponderance of the evidence that the defendant property is subject to forfeiture." *United States v. United States Currency Totaling \$101,207.00*, No. CV 101-162, 2007 WL 4106262, at *5 (S.D.Ga. Nov. 16, 2007); see also 18 U.S.C. § 983(c)(1) (stating that, in civil forfeiture action, "the burden of proof is on the Government to establish, by a preponderance of the evidence, that the property is subject to forfeiture"). Consequently, to prevail in this case, "the Government must show by a preponderance of the evidence that the currency at issue was the proceeds of drug offenses or used or intended to be used to facilitate a drug offense." *Id.*

[11] The Government "may use both circumstantial evidence and hearsay" to

3. Claimant has submitted a list of "documents" that she apparently contends are possible legitimate sources for the Defendant

satisfy its burden of proof. *\$291,828.00 in United States Currency*, 536 F.3d at 1237 (quoting *United States v. Four Parcels of Real Prop.*, 941 F.2d 1428, 1440 (11th Cir. 1991)). The Government "may use evidence gathered after the filing of a complaint for forfeiture to establish, by a preponderance of the evidence, that property is subject to forfeiture." 18 U.S.C. § 983(c)(2); see also *\$291,828.00 in United States Currency*, 536 F.3d at 1237 (stating same). The Court must evaluate the evidence "with 'a common sense view to the realities of normal life.'" *\$291,828.00 in United States Currency*, 536 F.3d at 1237 (quoting *Four Parcels of Real Prop.*, 941 F.2d at 1440). For the following reasons, the Court concludes that the evidence, even viewed in the light most favorable to Claimant as the non-movant, demonstrates that the Defendant Currency is subject to forfeiture.

[12] First, the evidence fails to indicate a legitimate source for the Defendant Currency.³ This factor counsels in favor of a finding that the Defendant Currency is related to illegal drug activity. See *United States v. \$252,300.00 in United States Currency*, 484 F.3d 1271, 1275 (10th Cir.2007) (concluding claimant's lack of evidentiary support for sources of defendant currency, including fact that claimant and other alleged contributor both had limited incomes and significant debts during relevant period, was probative of illegal drug activity); *United States v. Funds in the Amount of Thirty Thousand Six Hundred Seventy Dollars (\$30,670.00)*, 403 F.3d 448, 469 (7th Cir.2005) (concluding fact that explanations of claimant regarding sources of cash "did not add up" sup-

Currency. That list, however, does not indicate when the alleged payouts occurred and provides only conclusory information.

ported finding that property was subject to forfeiture); *United States v. \$118,170.00 in U.S. Currency*, 69 Fed.Appx. 714, 717 (6th Cir.2003) (observing that claimant's "sketchy" financial history and insufficient income to explain large amount of money seized supported conclusion that defendant currency was subject to forfeiture); *United States v. \$174,206.00 in U.S. Currency*, 320 F.3d 658, 662 (6th Cir.2003) (finding government showed, by preponderance of evidence, that defendant currency was traceable to drug offenses where evidence demonstrated that claimants' legitimate income was insufficient to explain large amount of currency found in their possession); *United States v. U.S. Currency, in the Amount of \$150,660.00*, 980 F.2d 1200, 1207 (8th Cir.1992) ("The absence of any apparent verifiable, legitimate source for the [defendant currency] . . . strongly suggests that the defendant currency was connected with drug activity.").

Further, the fact that the Defendant Currency was packaged in bundles wrapped with rubber bands is probative of a connection to illegal activity, given the law enforcement officers' testimony that, in their experience, individuals engaged in drug activity commonly package money that way. *United States v. \$242,484.00*, 389 F.3d 1149, 1161-62 (11th Cir.2004) (noting that rubber-banded money may be indicative of connection to drug activity). The fact that the Defendant Currency was concealed, however, is of little probative value. See *United States v. One Lot of U.S. Currency (\$36,634)*, 103 F.3d 1048, 1055 n. 8 (1st Cir.1997) ("Few people carry money, especially large sums, in any way other than 'concealed.'").

[13] The Eleventh Circuit has held that "a large amount of currency, in and of

itself, is insufficient to establish probable cause for forfeiture under 21 U.S.C. § 881(a)(6)." *United States v. \$121,100 in United States Currency*, 999 F.2d 1503, 1507 (11th Cir.1993). The large quantity of cash seized here, however, "is highly probative of a connection to some illegal activity." *Id.*; see also *\$242,484.00*, 389 F.3d at 1161 ("Although the quantity of the cash alone is not enough to connect it to illegal drug transactions, it is a significant fact and weighs heavily in the probable cause calculus.") (citation omitted); *United States v. \$67,220.00 in United States Currency*, 957 F.2d 280, 285 (6th Cir.1992) ("carrying a large sum of cash is strong evidence of some relationship with illegal drugs"); *United States v. \$22,991.00, more or less, in United States Currency*, 227 F.Supp.2d 1220, 1232-33 (S.D.Ala.2002) (noting that fact that defendant currency of \$22,991.00 was "an unusually large amount of cash to be transported in the trunk of an automobile," which was highly probative of link between defendant currency and illegal drug activity).

The record also demonstrates that the driver of the Equinox made several misstatements and conflicts, including erroneously giving his name as that of an individual who had died, erroneously stating that he and Claimant were married, and falsely claiming that he intended to reach Bankhead Highway by taking Interstate 75 South to Interstate 575 North. Viewed in the light most favorable to Claimant, those misstatements and conflicts are "probative of possible criminal activity." *\$67,220.00 in United States Currency*, 957 F.2d at 286; see also *\$242,484.00*, 389 F.3d at 1164-65 (observing that conflicting stories were probative of connection to illegal drug activity); *United States Currency Totaling \$101,207.00*, 2007 WL 4106262, at *6 (observing that false statements of claimant

and his son were “further circumstantial evidence of illegal activity”).

[14] Additionally, Kilo gave a positive drug alert to the Defendant Currency. Although other Circuits have expressed concern about the reliability of positive drug dog sniffs of currency, the Eleventh Circuit has declined to adopt an “ever-lasting scent, global contamination theory.” *\$242,184.00*, 389 F.3d at 1165–66 & n. 10 (collecting cases). Instead, the Eleventh Circuit has observed that a positive drug dog alert to currency is relevant to determining whether the currency at issue proceeds of an illegal drug transaction. *Id.* at 1166. Given that authority, the Court concludes that the positive drug dog alert weighs in favor of concluding that the Defendant Currency is proceeds of, or traceable to, an illegal drug transaction.

Given the factors discussed above, the Court finds that the Government has demonstrated by a preponderance of the evidence that the Defendant Currency is subject to forfeiture. The Court therefore grants summary judgment in favor of the Government.

V. Conclusion

ACCORDINGLY, the Court **GRANTS** the Government’s Motion to Strike [10–1], and **STRIKES** Claimant’s Claim to the Defendant Currency for lack of statutory standing and lack of Article III standing. The Court also **GRANTS** the Government’s Motion for Judgment on the Pleadings [10–2], which the Court has converted to a Motion for Summary Judgment, and finds that the Defendant Currency is forfeitable to the Government. The Court **DIRECTS** the Clerk to enter judgment in favor of the Government and against Claimant, and to **CLOSE** this case.

The Court **DIRECTS** the Clerk to **MAIL** a copy of this Order to Claimant at her last-known address: 825 Hazen St. SE, Grand Rapids, Michigan, 49507.



ESSAR STEEL LIMITED, Plaintiff,

v.

UNITED STATES, Defendant,

and

**United States Steel Corporation,
Defendant–Intervenor.**

**Slip–Op. 12–132.
Court No. 09–00197.**

United States Court of
International Trade.

Oct. 15, 2012.

Background: Importer filed suit challenging Department of Commerce’s final results of administrative review of countervailing duty (CVD) order on hot-rolled carbon steel flat products from India.

Holding: The Court of International Trade, Barzilay, Senior Judge, held that Commerce was required to discuss corroboration of importer’s adverse facts available (AFA) CVD rate.

Remanded.

irrelevant. The Court in *Forbes* approved of the use of lack of public support to exclude a candidate from debates, and, in that case, the Republican candidate who won the seat that Forbes was running for collected only 50.22 % of the vote, while the Democrat received 47.20 % of the vote. As Justice Stevens pointed out in his dissent, the decision to exclude Forbes may have "determined the outcome of the election," *Forbes*, 523 U.S. at 685, 118 S.Ct. at 1645, but it was still upheld as reasonable by the Court.

Finally, the plaintiffs argue that the polls picked by the defendants to assess whether candidates had met the five-percent threshold were chosen in an arbitrary manner. The court finds no evidence that APT specified which polls could be used to demonstrate a candidate had met the five-percent requirement, as APT required only that the poll be "independent" and "conducted by a recognized polling organization." The plaintiffs do not offer any evidence that they submitted independent polls that showed Sophocleus with five-percent of the votes, and that the polls were rejected because they were not ones specified by APT. Instead, the plaintiffs offer evidence of online polling, which they admit is not independent, or controlled, and say it should be considered independent. This argument is without merit.

In sum, the court finds that this case is controlled by *Forbes* and *Chandler*, and the plaintiffs have failed to demonstrate any difference between the case at hand and those two cases. Furthermore, in light of the standard that both the plaintiffs and the defendants concede govern this case, the five-percent threshold is both viewpoint neutral and reasonable in light of APT's purpose, and is, therefore, constitutional.

Because the court finds that the plaintiffs have not shown a likelihood of success

on the merits of their claim, it will not evaluate whether the plaintiffs have made the requisite showing on the other factors that are necessary for a preliminary injunction to issue.

An appropriate final judgment will be entered.

JUDGMENT

In accordance with the memorandum opinion entered today, it is the ORDER, JUDGMENT, and DECREE of the court that the application for a preliminary injunction filed by plaintiffs Alabama Libertarian Party and John Sophocleus on September 20, 2002 (Doc. no. 1), is denied.

It is further ORDERED that costs are taxed against plaintiffs Alabama Libertarian Party and Sophocleus, for which execution may issue.



UNITED STATES of America,
Plaintiff,

v.

\$22,991.00, MORE OR LESS,
IN UNITED STATES
CURRENCY

and

One American Arms .22 Magnum
Revolver, Serial No. 214835,
and Ammunition.

No. CIV.A. 00-1097-L.

United States District Court,
S.D. Alabama,
Southern Division.

July 17, 2002.

United States filed civil action in rem
against defendant for forfeiture of

\$22,991.00 in United States currency, revolver and ammunition under the Civil Asset Forfeiture Reform Act. The District Court, Lee, United States Magistrate Judge, held that: (1) defendant had standing to contest forfeiture of the defendant currency, revolver, and ammunition; (2) preponderance of the evidence existed to show substantial connection between \$22,991.00 in United States currency and purchase or sale of crack cocaine, so as to support forfeiture of currency under the Civil Asset Forfeiture Reform Act; (3) even assuming arguendo that a portion of the defendant currency was derived legitimately from the proceeds of defendant's seamstress business, defendant's admission to officer supported forfeiture of the currency under the Civil Asset Forfeiture Reform Act; and (4) preponderance of the evidence existed to show substantial connection between revolver and ammunition and drug activity, so as to support forfeiture of revolver and ammunition under the Civil Asset Forfeiture Reform Act.

Ordered accordingly.

1. Forfeitures \Leftrightarrow 5

Defendant had standing to contest forfeiture of the defendant currency under the Civil Asset Forfeiture Reform Act where she asserted that she legally owned and possessed currency. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 511(a)(6), 21 U.S.C.A. § 881(a)(6).

2. Controlled Substances \Leftrightarrow 184

Preponderance of the evidence existed to show substantial connection between \$22,991.00 in United States currency and purchase or sale of crack cocaine, so as to support forfeiture of currency under the Civil Asset Forfeiture Reform Act; it was an unusually large amount of cash to be transported in trunk of an automobile, each of three certified drug detection dogs

demonstrated a positive alert for the presence of drugs on currency, amount of currency was established to be at or near the approximate street value of one kilo of cocaine in area it was sold, several controlled crack cocaine transactions were conducted by law enforcement at defendant's residence, both before and after discovery of currency, there was no legitimate origin of currency, and defendant continually provided inconsistent and falsified testimony. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 511(a)(6), 21 U.S.C.A. § 881(a)(6); 18 U.S.C.A. § 983(c).

3. Controlled Substances \Leftrightarrow 165

Even assuming arguendo that a portion of the defendant currency was derived legitimately from the proceeds of defendant's seamstress business, defendant's admission to officer that at a significant portion of currency derived from one or more drug transactions involving her friend supported forfeiture of the currency under the Civil Asset Forfeiture Reform Act. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 511(a)(6), 21 U.S.C.A. § 881(a)(6); 18 U.S.C.A. § 983(c).

4. Controlled Substances \Leftrightarrow 165

When a claimant to a forfeiture action has actual knowledge, at any time prior to the initiation of the forfeiture proceeding, that claimant's legitimate funds are commingled with drug proceeds, traceable in accord with the forfeiture statute, the legitimate funds are subject to forfeiture.

5. Forfeitures \Leftrightarrow 5

Defendant had standing to contest forfeiture of the defendant revolver and ammunition under the Civil Asset Forfeiture Reform Act, though she did not assert legal ownership over revolver and ammunition where she asserted some degree of

possessory interest over them. 18 U.S.C.A. § 981 et seq.

6. Forfeitures ⇐5

A claimant need not own the property in order to have standing to contest its forfeiture; lesser property interest, such as a possessory interest, is sufficient for standing.

7. Controlled Substances ⇐184

Preponderance of the evidence existed to show substantial connection between revolver and ammunition and drug activity, so as to support forfeiture of revolver and ammunition under the Civil Asset Forfeiture Reform Act; when approached by police officer, defendant then told officer that she had a gun in her purse, she eventually handed to officer a loaded .22 "American Arms" magnum revolver that had been in her purse, defendant testified that revolver belonged to a "friend" of another friend of hers, whom evidence at trial showed was engaged in at least one drug transaction at defendant's residence, and defendant stated to officer that she possessed the revolver for her own "protection." Comprehensive Drug Abuse Prevention and Control Act of 1970, § 511(a)(11), 21 U.S.C.A. § 881(a)(11); 18 U.S.C.A. § 983(c).

8. Criminal Law ⇐404.65

It is generally recognized that firearms are tools of the trade of those engaged in illegal drug activities and are highly probative in proving criminal intent.

Ronald Wise, U.S. Attorney's Office, Mobile, AL, for plaintiff.

1. On May 23, 2001, Chief District Judge Butler, to whom this action initially was assigned, entered a "Default Judgment on Forfeiture" as to the interest of Derrick Wise in the defendant currency, revolver and ammunition. (Doc. 28).

Bruce Maddox, Montgomery, AL, for claimant.

ArLease Prevo, Montgomery, AL, pro se.

Derrick Wise, Montgomery, AL, pro se.

MEMORANDUM OPINION AND ORDER

LEE, United States Magistrate Judge.

This is a civil action *in rem* for the forfeiture of \$22,991.00 in United States currency pursuant to 21 U.S.C. § 881(a)(6), and of a revolver (and ammunition) pursuant to 21 U.S.C. § 881(a)(11). On May 30, 2002, a bench trial was held before the undersigned Magistrate Judge for the purpose of eliciting evidence with respect to the plaintiff United States' allegations in this action. Prior to the commencement of trial, the parties executed their written consent to the exercise of jurisdiction in this action by a United States Magistrate Judge, in accordance with 28 U.S.C. § 636(c) and Fed.R.Civ.P. 73, and the matter was referred to the undersigned. (*See* Court File). As set forth below, the undersigned has determined to enter judgment in favor of the United States, and, accordingly, the defendant currency, revolver and ammunition shall be forfeited to the permanent custody and control of the United States.¹

FINDINGS OF FACT²

I. *The Events of August 13, 2000*

1. The Claimant in this case is Ms. ArLease Prevo, who at all relevant times

2. The facts found herein by the Court are derived from the undisputed facts set forth in the parties' pretrial order, filed on April 5, 2002 (Doc. 66), the credible testimony of witnesses presented at trial, and documents and pictures admitted into evidence during trial.

has resided at 2174 George Mull Street, Montgomery, Alabama.

2. On August 13, 2000, at approximately 8:45 a.m., Ms. Prevo drove her own vehicle from her home in Montgomery to the Loxley Work Release Center ("Center") in Loxley, Alabama. The Center is a correctional institution. Ms. Prevo arrived at the Center premises for the purpose of picking up inmate Derrick Wise on the basis of an "eight-hour pass" to leave the Center premises granted to Mr. Wise.

3. At that time, Mr. Wise was incarcerated at the Center in connection with a ten-year sentence he was serving on drug-related charges. In particular, Mr. Wise had pled guilty to, and had been convicted of, dealing crack cocaine on four separate occasions out of Ms. Prevo's residence. Mr. Wise, referred to by Ms. Prevo as her "common law husband," had lived with Ms. Prevo at her residence from an unspecified date in 1995 until April 1999, when he was incarcerated for the above-referenced drug-related offenses. The testimony at trial also established that Mr. Wise has an extensive criminal history, other than with respect to these particular drug offenses, and in prior years had been incarcerated on other unspecified charges.

Documents and pictures admitted into evidence during trial are referred to specifically as either "Govt. Exh." when tendered by the United States, or "Def. Exh." when tendered by the claimant Ms. Prevo.

In addition, at the outset of Ms. Prevo's testimony during the presentation of the government's case-in-chief, as well as during the testimony Ms. Prevo gave on her own behalf during the presentation of her case, the Court fully explained to her the nature and availability of the privilege against self-incrimination afforded by the Fifth Amendment to the United States Constitution. At trial, Ms. Prevo stated that there were criminal charges pending against her. Nevertheless, with the exception of one line of questioning posed to

4. Captain Gary Hetzel of the Alabama Department of Corrections ("ADOC"), an Assistant Warden at the Center, testified that Mr. Wise began his incarceration in the custody of the ADOC on or about April 23, 1999, and was transferred to the Center on or about April 28, 2000.

5. At all relevant times, at the entrance to the Center, a sign was posted clearly notifying all visitors that vehicles entering the premises were subject to search; that firearms, alcoholic beverages and illegal or narcotic substances were strictly prohibited; and that anyone transporting or possessing such items was subject to criminal prosecution. (Gov.Exh. 3A).

6. Around the time of Ms. Prevo's arrival at the Center on August 13, 2000, routine searches of visiting automobiles for contraband and other items were being conducted under the supervision of Captain Hetzel. Such searches included the use of certified drug detection dogs under the supervision of qualified staff at the Center.

7. Upon having entered the Center's visitor parking area, Ms. Prevo was approached in her automobile by Sergeant Kerry Mitchum of the Loxley, Alabama, Police Department. Ms. Prevo was asked whether she had any weapons or drugs in

Ms. Prevo by the government concerning certain aspects of her history of drug use, Ms. Prevo otherwise knowingly and voluntarily waived her privilege against self-incrimination during trial, and gave testimony during the government's case-in-chief and during the presentation of her case. "The very fact of a parallel criminal proceeding, however, does not alone undercut [a claimant's] privilege against self-incrimination, even though the pendency of the criminal action forced [her] to choose between preserving [her] privilege against self-incrimination and losing the civil suit." *United States v. Lot 5, Fox Grove, Alachua County, Florida*, 23 F.3d 359, 364 (11th Cir.1994)(quoting *United States v. Little Al*, 712 F.2d 133, 136 (5th Cir.1983)).

her vehicle. Ms. Prevo responded by stating that said she wanted to leave, but was not allowed to do so by Sergeant Mitchum. Ms. Prevo complied with Sergeant Mitchum's directive to turn off the ignition and to exit the vehicle. Ms. Prevo then told Sergeant Mitchum that she had a gun in her purse.

8. At this point, Officer James Turberville of the Chickasaw, Alabama Police Department, who was assisting at the Center that day, had arrived at the area where Ms. Prevo's automobile was parked. Ms. Prevo handed to Officer Turberville a loaded .22 "American Arms" magnum revolver that had been in her purse on the front seat of her automobile. Ms. Prevo did not have a permit to carry a gun, and denies ownership of the defendant revolver and ammunition. Ms. Prevo testified that the revolver belonged to a "friend" of another friend of hers named Wardell Washington, whom, as discussed *infra*, the evidence at trial shows was engaged in at least one drug transaction at Ms. Prevo's residence in October 2000.

9. At this time, a more extensive search of Ms. Prevo's automobile was conducted, which included Officer Turberville's certified drug detection dog being walked around the automobile. Officer Turberville is a certified handler of drug detection dogs. Officer Turberville's dog "alerted on" the trunk area of Ms. Prevo's automobile. The key to the trunk was retrieved from the automobile's ignition.

10. Officer Turberville then placed his dog in the trunk of Ms. Prevo's automobile. The dog immediately alerted on a brown wooden box with a padlock on it. The key to the box was retrieved from Ms. Prevo. The box was opened, and was found to contain two bundles of United States currency, namely one-hundred dollar bills, banded with paper wrappers.

11. Having discovered the bundled cash in the wooden box, other areas of the trunk were searched, yielding two additional items of note—a blue "beach" bag which already was open, and a leather purse. The bag contained: (a) two additional bundles of one-hundred dollar bills, similarly banded with paper wrappers; (b) a home-made crack cocaine pipe, made from a liquor bottle, which had been used and had lipstick on or about the mouth of the bottle; and (c) two small film canisters, one of which contained several off-white colored rocks which were later shown by an analysis performed by the Alabama Department of Forensic Sciences to contain 0.68 grams (or 0.02 ounces) of crack cocaine. (Govt.Ex. 7). The canisters were packed individually in coffee grounds and were covered with aluminum foil. Officer Turberville testified that, in the drug trade, it is common for coffee grounds to be used to mask the smell of crack cocaine. Furthermore, the leather purse was found to contain within it a small green pouch holding a stack of one-hundred dollar bills, which, unlike the other cash discovered at that time, was not bundled with paper wrappers.

12. In total, the aggregate amount of \$22,991.00 in cash in United States currency was found in the trunk of Ms. Prevo's automobile in the wooden box, beach bag and leather purse. (Govt. Exhs. 1-A through 1-J, and 25-A through 25-F).

13. The law enforcement officers on the scene gathered all of the cash together and placed it on the ground of the parking lot next to Ms. Prevo's automobile. At that time, Officer Turberville's dog demonstrated a positive alert for the presence of drugs on the cash. Immediately thereafter, Officer James Ferguson and Officer Mitchum escorted their own drug dogs to the area, who also demonstrated, respectively, positive alerts for the presence of

drugs on the cash. Ms. Prevo did not dispute the testimony of the government's witnesses at trial that these three dogs were certified to engage in drug detection and that these three law enforcement officers were certified drug dog handlers.

14. The cash was not counted by law enforcement officials on the scene. After all three of the dogs positively alerted on the cash, the cash was taken inside the Center facility and was counted. A separate laboratory analysis of the presence of drugs on the cash was never conducted. The only analysis that was conducted was, as referred to *supra*, with regard to the crack cocaine itself.

15. Officer Mitchum testified that Ms. Prevo's purse found on the front seat of her automobile also contained cash, but that cash was not seized. Only the cash found in trunk of Ms. Prevo's automobile, totaling \$22,991.00, was seized.

16. Agent David Fagan, of the federal Drug Enforcement Agency ("DEA") task force, interviewed Ms. Prevo on August 13, 2000. Agent Fagan testified that Ms. Prevo told him that she had planned, after returning Mr. Wise to the Center at the end of that day, to travel to Tallahassee, Florida, for the purpose of moving there. When Agent Fagan questioned her about the lack of luggage in the automobile, or other indicia of moving, Ms. Prevo responded that she was just going to stay with a male friend in Tallahassee and that she might be returning to Montgomery.

17. With respect to the defendant loaded revolver in her purse, Ms. Prevo admitted to Agent Fagan that she had possessed the revolver for her own "protection." Ms. Prevo also admitted to Agent Fagan that the crack cocaine found in her automobile was hers, that she was a user of crack cocaine, and that she had purchased the crack cocaine from a woman in Montgomery.

18. With respect to the amount and ownership of the cash found in the trunk of her automobile, Ms. Prevo gave inconsistent accounts to Agent Fagan as to the exact amount of cash she possessed, guessing several times. Ms. Prevo also stated inconsistently to Agent Fagan that, on the one hand, the money belonged to her and that she had been saving it for some time. On the other hand, she stated on at least two occasions that approximately \$8,000.00 to \$14,000.00 of the money belonged to Mr. Wise, and that the cash constituted proceeds from drug sales.

19. Agent Fagan testified that the \$22,991.00 found in the trunk of Ms. Prevo's automobile was, at the time, within the approximate range of \$22,000.00 to \$25,000.00, the price of one kilo of cocaine in the Mobile, Alabama, area.

20. The defendant currency, revolver, and ammunition were confiscated and subsequently delivered to the United States Marshal's Service pursuant to a seizure warrant issued by this Court. In connection with these events, Ms. Prevo was charged in state court with unlawful possession of a controlled substance, possession of drug paraphernalia, and carrying a pistol without a permit. (Def.Exh. 6-B).

21. On November 16, 2000, Ms. Prevo submitted to the DEA her "Statement of Claimant/Property Seized." (Govt.Exh. 6). This lengthy and detailed statement was signed and dated by Ms. Prevo on that date, and was signed under penalty of perjury before a notary public. The Court notes that the date of this statement is only approximately three months after August 13, 2000. In pertinent part, Ms. Prevo stated as follows:

Upon my arrival at the Loxley Work Release Center, unfortunately, the law officers was [sic] having a prejudice routine search. I was only going to be

there for a matter of minutes; just to pick up my common-law husband, who was going on his [third] 8 hours pass. After being given a choice, I chose not to have my car search[ed]. I quoted to him, "that I would rather leave, than to have my car search[ed]." Then the officer asked me if I had any weapons in the car, slowly, I gracefully handed him the pistol from my purse. They rudely demanded me out of my car, putting hand-cuffs on me. Then they forcefully search[ed] my car inside, finding nothing, then outside. This is when they found the money, (\$20,000.00) in the trunk of my car. Having to come back to get (\$2,991.00) from my purse, leaving approximately (\$129.00) scattered in my purse. I wondered why did they get some money then leave some there? While I was being search[ed] in the facility restroom, I returned outside to my car to find that a small portion of an unlawful controll[ed] substance (.06) grams was found in the front seat of my car. I assumed that I had accidentally put it there, being that I was rushing to make that long drive. Nevertheless, I do have a drug addiction problem that I'm seeking help for.

(*Id.*, at 4). Thus, Ms. Prevo admitted that she placed crack cocaine in her automobile, and that at the time she was suffering from a drug addiction. The Court notes that the evidence presented at trial does not reflect any drugs actually being found in the "front seat" of Ms. Prevo's automobile, as she states above, as the drugs and drug paraphernalia were found in the trunk. The Court finds this discrepancy to be immaterial, as it is highly significant that Ms. Prevo incriminated herself by admitting, in a sworn statement to a law enforcement agency, to having placed drugs in her car on August 13, 2000.

II. *Additional Evidence of Ms. Prevo's Involvement with Drugs and Drug Transactions, Both Prior to and After August 13, 2000*

22. Ms. Prevo testified that she has smoked crack cocaine. While she denied during her trial testimony to having ever had an addiction to drugs, in contrast, her November 16, 2000 sworn statement to the DEA, referred to *supra*, indicates to the contrary that she has had a drug addiction problem. (Govt.Exh. 6).

23. At trial, the government presented credible and probative testimony of four witnesses that controlled drug transactions were conducted at Ms. Prevo's residence both before and after August 13, 2000. This testimony was provided by Officers Williams Simmons and William Hamil, both narcotics detectives with the Montgomery, Alabama Police Department, as well as by two undercover informants paid by that department, Carl Stovall and Tim Tucker. The detectives testified that Ms. Prevo's residence is known to law enforcement as an address at which drug transactions routinely have been conducted, during the time Ms. Prevo resided there.

24. First, the government's evidence at trial demonstrated that, between February 11, 1998 and May 7, 1998, four separate controlled crack cocaine purchases, overseen by Officer Hamil, occurred at Ms. Prevo's residence. The amount of crack cocaine involved in each purchase varied between \$60.00 worth to \$100.00 worth. On each occasion, Ms. Prevo's alleged "common law husband," Mr. Wise, sold the crack cocaine to the informant Mr. Stovall, and on the first and last occasion, Ms. Prevo was involved to some degree. With respect to the first occasion, Ms. Prevo greeted Mr. Stovall at the back door of her residence when he arrived in his vehicle, prior to the drug transaction occurring. With respect to the fourth and final occa-

sion, Ms. Prevo handed the crack cocaine to Mr. Stovall. At trial, Mr. Stovall identified Ms. Prevo in open court as being this person, on both occasions. Mr. Wise was indicted for his participation in these four controlled drug buys. Mr. Wise pled guilty and was incarcerated, as referred to, *supra*. Ms. Prevo's and Mr. Wise's participation together in the drug trade is further supported by language contained in a letter she wrote to him approximately one month after he was incarcerated, on May 3, 1999: "It's 7:30 a.m. the morning of your Birthday. I'm getting ready to handle your business now. I did just that." (Govt.Exh. 19).

25. Second, on October 28, 2000, approximately one month after the defendant items were seized from Ms. Prevo's automobile on August 13, 2000, Officer Simmons oversaw another controlled crack cocaine purchase at Ms. Prevo's residence, conducted by the informant Mr. Tucker. On this occasion, when Mr. Tucker arrived at Ms. Prevo's residence in his vehicle, Ms. Prevo came to the back door of the residence and stated to him, "What you want, forty?" Mr. Tucker did not exit his vehicle, and nodded his head in the affirmative. A few moments later, Ms. Prevo's friend, Wardell Washington, emerged from the residence and approached Mr. Tucker in his vehicle. Mr. Tucker gave the man \$40.00 in cash, that had been given to him by the detectives, and Mr. Washington handed Mr. Tucker \$40.00 worth of crack cocaine. (Govt.Exh. 23). At trial, Mr. Tucker identified Ms. Prevo in open court as being the person who first greeted him in regard to this transaction.

26. The Court finds the above to constitute credible and probative evidence that Ms. Prevo was a participant in the transacting of crack cocaine for money, on the premises of her own residence, both

before and after the events at issue on August 13, 2000.

III. *Absence of Legitimate Origin of Currency*

27. The \$22,991.00 in cash found in Ms. Prevo's automobile on August 13, 2000, is an unusually large sum of cash, and an amount not commonly kept in one's own vehicle. At trial, the government tendered evidence to demonstrate the absence of a legitimate origin of the currency confiscated from her automobile and to refute Ms. Prevo's claim that she had accumulated this sum of money over a period of years.

28. At trial, the government introduced records generated by the Social Security Administration ("SSA") (Govt.Exh. 20), which reflect the following earnings for Ms. Prevo reported to the SSA, broken down by calendar year: 1980: \$2323.00; 1981: \$1252.00; 1982: \$497.00; 1987: \$1962.00; 1990: \$3334.00; 1991: \$5586.00; 1992: \$3987.00; 1993: \$8538.00. As is reflected, there is no income accounted for during several years between 1980 and 1993.

29. Moreover, at trial, Mary Ann Osborne of the Internal Revenue Service ("IRS") testified for the government that, from tax years 1990 through 2000, Ms. Prevo self-reported income only for the years 1993 and 1994, reflecting \$8,790.00 and \$3,571.00, respectively, in adjusted gross income. Ms. Osborne also testified that the IRS audited Ms. Prevo's tax returns for these years and made additional tax assessments totaling \$4,157.82, due to the fact Ms. Prevo had claimed a dependant whom she was not legally entitled to claim. Ms. Osborne further testified that, while the IRS has asked for these assessments to be paid, Ms. Prevo still failed to pay them.

30. At trial, Ms. Prevo testified during the government's case-in-chief that her av-

erage monthly expenses have been comprised of an electric bill of \$120.00; a water and garbage bill of \$28.00; a gas bill of \$116.00; a telephone bill of \$400.00; and a food bill of \$300.00. The Court totals these amounts to comprise approximately \$11,500.00 per year, which would appear to far exceed Ms. Prevo's approximate annual income. Ms. Prevo also testified that, between 1995 through 2000, she put a new roof on her house at the cost of \$600.00; incurred automobile repairs totaling \$600.00; and purchased at least one automobile for the sum of \$1900.00. She also testified that, because she had no medical insurance, she paid \$2,500.00 toward a \$8,714 medical expense she incurred for surgery performed in June 2000.

31. Testimony also was elicited by the government from Ms. Prevo about her numerous outstanding debts, which further undermines Ms. Prevo's claim that the defendant currency was accumulated over a period of years. (Govt. Exhs. 10 through 14, 16, 17). For example, the government's evidence showed that, prior to the seizure of the currency, Ms. Prevo had a difficult time paying her bills and incurred several collection notices. (Govt.Exh.13). Again, Ms. Prevo failed to pay a debt to the IRS that has been due since 1994. Ms. Prevo testified that she did "the best I can to pay my bills," but that she also testified that she "wasn't too anxious on paying a bill right then" and that she "always let them get behind or sometimes cut off before [she] would pay them." It is not credible that Ms. Prevo would possess such a large amount of money (\$22,991.00) during this time period, yet not use it to pay any of these comparatively small debts.

32. Ms. Prevo asserted at trial that the defendant currency was the result of savings from her free-lance seamstress business, operated out of her home. In sup-

port of this contention, she entered into evidence drawings of flyers promoting her fashion business and other similar items, and documents reflective of income derived from her business in the form of receipts given to customers. (Def.Exh. 3-D).

33. With respect to the flyers promoting her fashion business, such were made in the early to mid 1980s, and are too far removed in time from the events of August 2000 to be considered credible evidence to show a connection between the fruits of her business and cash she possessed approximately fifteen to twenty years later.

34. In any event, assuming Ms. Prevo maintained an ongoing seamstress business from the early 1980s through the period of time leading up to August 2000, the credible evidence of record reflects that she did not generate enough legitimate income during this time to amount to the \$22,991.00 at issue. At trial, Ms. Prevo introduced copies of "receipts" of work she performed for customers during the years 1998, 1999 and 2000. (*Id.*). Ms. Prevo testified that her records of receipts for other years burned in a fire in a storage area adjacent to her residence, but did not offer evidence through other means to reflect income in prior years. The Court has totaled the sums of the receipts for these three years, which appear to amount to only approximately \$5843.00, or approximately \$1500.00 per year.

35. In an attempt to link the defendant currency specifically to a legitimate source, Ms. Prevo alleged at trial that, in 1996, she withdrew funds from her bank accounts, then kept that sum at her house before placing it in the trunk of her car for "safe-keeping" on an unspecified date prior to August 13, 2000. (Trial Trans., at 66). Ms. Prevo maintained during her testimony that this cash directly represents the proceeds legitimately derived from her

seamstress business, and actually constituted more than the \$22,991.00 at issue. In this regard, Ms. Prevo entered into evidence bank statements and related documents regarding one trust account and one savings account, representing to the Court that these documents would prove that she withdrew more than \$22,991.00 in 1996. (Def.Exh. 4-B).

36. With respect to the trust account, Ms. Prevo introduced a bank statement reflecting a balance on June 30, 1996 of \$9,067.63, and numerous withdrawal slips reflecting funds subsequently withdrawn from that account from that date through the end of 1996 totaling \$6,020.00. This account was a savings account held in trust, in the name of, Leticia Nicole Hill, of which Ms. Prevo was listed as trustee. Ms. Prevo testified rather nonchalantly that these were really her monies which she placed into a trust in the name of her ten-year old niece for the purpose of avoiding the repayment of federal education loans. With respect to the savings account, Ms. Prevo introduced a bank statement reflecting a balance on December 31, 1995 of \$2,021.21. (*Id.*). There is no indication that this particular amount was ever withdrawn from the bank. Such evidence, relating at most to the withdrawal of some funds during 1996, hardly provides credible evidence of a legitimate source for the defendant currency found approximately four years later. Contrary to her testimony, the documentary evidence tendered by Ms. Prevo herself reflects that the amount she actually withdrew from the bank in 1996 was well short of the \$22,991.00 at issue.

37. In sum, Ms. Prevo's average monthly expenses and other expenditures referred to, *supra*, easily would have exhausted the money she asserts she withdrew from the bank, referred to *supra*, or otherwise generated in income.

38. The Court finds the above to constitute credible and probative evidence that there is not a legitimate or innocent source of the currency at issue, prior to its seizure on August 13, 2000.

IV. Ms. Prevo's Testimony Was Without Credibility

39. Throughout trial, Ms. Prevo's testimony was inconsistent, evasive and without credibility. Some examples, other than what is referred to elsewhere in this Memorandum Opinion and Order, are as follows.

40. First, based upon all the prior pleadings, the exhibits and the prior representations to the Court, the amount of money seized and at issue in this case has always been alleged by Ms. Prevo to be \$22,991.00, which is consistent with the amount the government's witnesses allege was seized from Ms. Prevo's automobile trunk on August 13, 2000. For example, in Ms. Prevo's "Statement of Claimant Property Seized" (Govt.Exh. 6), submitted by her to the DEA in November 2000, only approximately three months after the seizure, Ms. Prevo repeatedly refers to the amount of money that was in her vehicle as \$22,991.00. In fact, Ms. Prevo begins her statement with the words, "I, Arlease Prevo declare that the \$22,991.00 that was seized from my vehicle on August 13, 2000; was earned legally and accumulated over a number of years, from hard honest work. I will provide you with the time and labor that I devoted for most of my life to accumulate this saving of \$22,991.00." (*Id.*, at 1).

41. However, at trial, Ms. Prevo testified, and alleged for the first time, that she actually had \$35,000.00 in currency in her vehicle when the officers seized the money—apparently implying that the officers stole or lost approximately \$12,000. The Court finds that Ms. Prevo's testimony at

trial that there actually was \$35,000.00 in her automobile to be an outright fabrication, in light of her numerous prior representations.

42. Second, Ms. Prevo testified several times at trial that she had no idea how the crack cocaine that was found in her vehicle got there. However, again, Ms. Prevo's own pre-trial statements severely contradict her trial testimony. As referred to *supra*, Ms. Prevo admitted in her November 16, 2000 sworn statement to the DEA that she "assumed" that she "accidentally put it there, being that I was rushing to make that long drive." (Govt. Exh. 6, at 4). When confronted with this inconsistency on cross-examination during trial, the Court observed Ms. Prevo's attempt to reconcile the contradictory statements wholly incredible. In this regard, Ms. Prevo testified: "This says: 'Accidentally put it there.' But back then I was—I wasn't sure of what was going on. I wasn't sure. I don't know. I don't think I put it there. I know I didn't put it there now. But back then I wasn't sure." (Trial Trans., at 84). Agent Fagan testified that on the day of the seizure, Ms. Prevo admitted to him that the crack cocaine found in the automobile was hers.

43. Third, Ms. Prevo testified at trial that she had never been addicted to any kind of drug, in direct contradiction to a statement she made to the DEA in her "Statement of Claimant Property Seized," referred to, *supra*, that, "I do have a drug addiction problem that I'm seeking help for." (Govt. Exh. 6).

44. Fourth, during her testimony at trial, Ms. Prevo denied she was at her residence when any drug sales were made, and denied knowledge of any drug-related arrests on or about the premises of her residence. For example, Ms. Prevo was asked: "And during the last five years have there been at least three drug ar-

rests" at her address "that you know about?" Ms. Prevo responded, "I'm not sure." (Trial Trans., at 8). However, Ms. Prevo later admitted she was at her residence on one occasion when Mr. Wise sold crack cocaine to an informant for the Montgomery Police Department. Ms. Prevo also testified that, "[e]ven though these things happened at my house, most of the times I am not there." (Trial Trans., at 63).

45. The Court finds Ms. Prevo's inability or unwillingness to testify consistently and truthfully throughout the trial in this action further belies her assertion that the defendant currency was derived from a legitimate source. Moreover, the fact of Ms. Prevo's untruthfulness about the source of the cash provides additional evidentiary support for the government's assertion that the defendant currency is in fact drug proceeds.

CONCLUSIONS OF LAW

The instant complaint was filed on December 19, 2000. (Doc. 1). Thus, the standards set forth in Civil Asset Forfeiture Reform Act of 2000 ("CAFRA") (Pub. L.106-185; 18 U.S.C. § 981, *et seq.*) apply to this action, as section 21 of CAFRA provides that it is intended to govern civil forfeiture proceedings commenced on or after August 23, 2000. *See, e.g., U.S. v. Real Property in Section 9, Town 29 North, Range 1 West Township of Charlton, Otsego County, Michigan*, 241 F.3d 796, 798 (6th Cir.2001). The provisions of CAFRA "materially altered the various burdens of proof in civil forfeiture actions filed in federal courts." *U.S. v. One Parcel of Property Located at 2526 Faxon Avenue, Memphis, Tennessee*, 145 F.Supp.2d 942, 949 (W.D.Tenn.2001). Now, under CAFRA, "the burden of proof is on the Government to establish, by a preponderance of the evidence, that the

property is subject to forfeiture....” 18 U.S.C. § 983(c)(1).

Because the government’s theory of forfeiture in this action “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...,” under CAFRA, the government now is required to establish by a preponderance of the evidence “that there was a substantial connection between the property and the offense.” 18 U.S.C. § 983(c)(3). In attempting to meet its burden in this regard, the government is entitled to use evidence “gathered after the filing of a complaint for forfeiture.” 18 U.S.C. § 983(c)(2).³

With regard to the element of “substantial connection” which must be proved by the government, although a showing of mere “probable cause” no longer is sufficient, there continues to be no requirement that the government tender direct evidence of a connection between the subject property and a specific drug transaction. 18 U.S.C. § 983. *See, e.g., U.S. v. \$4,255,000.00*, 762 F.2d 895, 904 (11th Cir. 1985), *cert. denied*, 474 U.S. 1056, 106 S.Ct. 795, 88 L.Ed.2d 772 (1986)(prior to enactment of CAFRA; declining to impose a requirement that evidence be presented of a “particular narcotics transaction”).

3. Among other things, CAFRA has enhanced the government’s initial burden of proof from a mere showing of “probable cause” to believe that the subject property was involved in unlawful activity, to proof by a preponderance of the evidence of “a substantial connection between the property and the offense.” 18 U.S.C. § 983(c)(1) and (3). However, in essence, the government is obligated to prove the same connection between the subject property and the offense that it was required to prove under the pre-CAFRA law, but it now must do so by a preponderance of admissible, non-hearsay, evidence. *See The Civil Forfeiture Reform Act of 2000: Expanded Government Forfeiture Authority and Strict Deadlines Imposed on All Parties*, 27 J.Legis. 97, ¶10

Thus, the presentation of circumstantial evidence by the government continues to be a permissible form of proof in a civil forfeiture action. *See, e.g., U.S. v. \$345,510.00 in U.S. Currency*, 2002 WL 22040, *3 (D.Minn. Jan.2, 2002)(post-CAFRA case: “the Government has produced an aggregate of circumstantial evidence sufficient to establish by a preponderance of the evidence that the Defendant currency was connected with narcotics activity.”).

I. *The Defendant Currency*

[1] As an initial matter, the Court concludes that Ms. Prevo has standing to contest the forfeiture of the defendant currency, because she asserts that she legally owns and possesses the currency. *See, e.g., U.S. v. Carrell*, 252 F.3d 1193, 1201 (11th Cir.2001)(“[t]o have standing to contest a § 881(a)(6) forfeiture, a claimant must have an ownership or possessory interest in the property seized.”)(internal quotation marks and citation omitted).

21 U.S.C. § 881(a)(6) provides in pertinent part that the defendant currency is subject to forfeiture if it constitutes “...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

(2001). As stated by one sister court has observed, as a consequence of CAFRA:

[T]he government is not entitled to proceed by civil complaint for forfeiture solely on probable cause, but must establish, by a preponderance of the evidence, that the property is subject to forfeiture. This being true, it cannot proceed on mere hearsay. And a claimant (who has appropriate standing) can now put the government to its proof, without doing more than denying the government’s right to forfeit the property.

One Parcel of Property Located at 2526 Faxon Avenue, Memphis, Tennessee, 145 F.Supp.2d at 950 (footnote omitted).

moneys...used or intended to be used to facilitate [such an exchange]....” The “violation of this subchapter” alleged by the government is the “Controlled Substances Act, as amended.” (Doc. 1, at 5). Cocaine, the drug at issue in this regard, is a controlled substance for these purposes. See, e.g., *U.S. v. One 1976 Lincoln Continental Mark IV, VIN 6Y89A852019*, 584 F.2d 266, 268 (8th Cir.1978). The term “facilitate” means making the illegal activity “easy or less difficult.” *U.S. v. Approximately 50 Acres of Real Property Located at 42450 Highway 441, North Fort Drum, Okeechobee County, Florida*, 920 F.2d 900, 902 (11th Cir.1991) (citation omitted).

Thus, in sum, it is the government’s burden with respect to the defendant currency to prove by a preponderance of the evidence that there is a “substantial connection” between the currency and the purchase or sale of cocaine. See, e.g., *\$345,510.00 in U.S. Currency*, 2002 WL 22040, at *2 (interpreting CAFRA: “[t]he Court must...determine whether these facts are sufficient to establish by a preponderance of the evidence that the Defendant currency is connected with illegal narcotics activity.”)(citing 18 U.S.C. § 983(c)(1)).⁴

[2] In the present action, the Court concludes that the government has sustained its burden of proof to warrant the forfeiture of the defendant currency. Seven factors, considered in their aggregate, persuade the Court that a preponderance of the evidence exists to show a “substan-

tial connection” between the defendant currency and the purchase or sale of crack cocaine. As derived from the Court’s findings of fact, *supra*, the Court addresses and weighs the legal significance of each of the pertinent factors, below.

First, the defendant currency, \$22,991.00, is an unusually large amount of cash to be transported in the trunk of an automobile. (See Finding of Fact 12, *supra*). The Court deems this to be highly probative, although not dispositive, circumstantial evidence of a link between this exorbitant amount of cash and illegal drug activity. Courts have recognized that, for purposes of a civil forfeiture action, the possession of a large sum of currency is strong evidence of narcotics trafficking. See, e.g., *U.S. v. \$121,100.00 in U.S. Currency*, 999 F.2d 1503, 1507 (11th Cir.1993)(“[a]lthough insufficient by itself to demonstrate a connection to illegal drugs, the quantity of cash seized [may be] highly probative of a connection to some illegal activity.”). See also *U.S. v. Puche-Garcia*, 2000 WL 1288181, *4 (4th Cir.2000)(unpublished opinion)(“[t]he carrying of ‘unusually large amounts of cash’ can help to establish the link to drug activity....”)(quoting *U.S. v. Thomas*, 913 F.2d 1111, 1115 (4th Cir.1990)); *U.S. v. One Lot of U.S. Currency (\$36,634.00)*, 103 F.3d 1048, 1055 (1st Cir.1997)(“[c]arrying a large sum of cash is ‘strong evidence’ of [a connection to illegal drug activity] even without the presence of drugs or drug paraphernalia.”)(quoting *U.S. v. U.S. Currency*, \$83,310.78, 851 F.2d 1231, 1236 (9th

4. The Court observes that Ms. Prevo has not alleged the affirmative defense of “innocent owner” pursuant to 18 U.S.C. § 983(d). The defense applies to situations in which, generally speaking, the claimant either did not know of the illegal conduct or knew of the conduct but took steps to prevent the subject property from being used to further the conduct. *Id.* Indeed, the underlying purpose of

the defense would be incompatible with Ms. Prevo’s claim to the subject property in this action—that the currency at issue constituted proceeds legitimately derived from her scamstress business, and not derivative of any drug-related transactions. Thus, in this Memorandum Opinion and Order, the Court does not address the elements of the innocent owner defense.

Cir.1988), *cert. denied*, 497 U.S. 1005, 110 S.Ct. 3242, 111 L.Ed.2d 752 (1990)); *U.S. v. Blackman*, 904 F.2d 1250, 1257 (8th Cir.1990)("large sums of unexplained currency," in connection with other evidence of drug trading, is "circumstantial evidence" of the intent to distribute cocaine); *U.S. v. \$2,361.00 U.S. Currency, More or Less*, 1989 WL 135257, *2 (S.D.N.Y.1989)(a substantial amount of cash present is probative of illegal drug activity, because it is "well-known that drug-traffickers usually deal in cash."); *U.S. v. \$32,310.00 in U.S. Currency*, 1988 WL 169271, *6 (D.N.J. 1988)("[a] large amount of cash unsatisfactorily explained constitutes strong evidence, standing alone, from which we may permissibly infer that the money was furnished in exchange for illegal drugs."); *U.S. v. \$2,500.00 in U.S. Currency*, 689 F.2d 10, 16 (2nd Cir.), *cert. denied*, 465 U.S. 1099, 104 S.Ct. 1591, 80 L.Ed.2d 123 (1984)(characterizing an amount of cash as low as \$2,500.00 as being "substantially greater than is commonly kept... by law-abiding wage earners.").

Second, the defendant currency was located in close proximity to crack cocaine and cocaine paraphernalia. In fact, some of the cash was found in the same blue beach bag that contained the cocaine and paraphernalia. (See Findings of Fact 10, 11 and 12, *supra*). Ms. Prevo conceded to Agent Fagan that she had purchased the cocaine, and she represented in her sworn statement to the DEA that she "assumed" she placed the cocaine in her automobile. (See Findings of Fact 17 and 21, *supra*). The Court deems the proximity of the currency to drugs itself to be highly probative circumstantial evidence of a link between the cash and illegal drug activity.

Indeed, courts have recognized that, for purposes of a civil forfeiture action, the physical location of the subject property to the drugs, at the time those items are

detected by law enforcement, is strong circumstantial evidence of narcotics trafficking. See, e.g., *U.S. v. \$10,700.00 in U.S. Currency*, 258 F.3d 215, 224 (3rd Cir.2001)("claimants' possession of drugs or drug paraphernalia at the time of the seizure... would support the government's theory that the money in claimants' possession is connected to illegal drug trafficking."); *U.S. v. Currency: \$4,424.00 (U.S.)*, 1994 WL 568594, *4 (N.D.N.Y.1994)(probative that claimant possessed subject cash "in close proximity to distribution quantities of narcotics."); *U.S. v. \$149,442.43 in U.S. Currency*, 965 F.2d 868, 877 (10th Cir.1992)("[t]he unusually large amount of hidden currency, the presence of drug paraphernalia, including packaging supplies and drug notations reflecting large drug transactions, establishes a sufficient nexus between the defendant property and claimant[s] involvement in drug trafficking."); *U.S. v. \$80,760.00 in U.S. Currency*, 781 F.Supp. 462, 473 (N.D.Tex.), *aff'd*, 978 F.2d 709 (5th Cir.1992)("a large amount of money, found in combination with other persuasive circumstantial evidence, particularly the presence of drug paraphernalia..." is probative in a civil forfeiture proceeding); *U.S. v. \$24,000.00 in U.S. Currency*, 722 F.Supp. 1386, 1390 (N.D.Miss.), *aff'd*, 902 F.2d 956 (5th Cir.), *cert. denied*, 498 U.S. 1024, 111 S.Ct. 671, 112 L.Ed.2d 664 (1991)("[t]he storage of the unexplained \$24,000.00 in close proximity to a suitcase of eighteen pounds of marijuana in the cinder block foundation of the claimant's house indicates that the money seized is drug-related.").

Third, each of three certified drug detection dogs demonstrated a positive alert for the presence of drugs on the defendant currency. (See Findings of Fact 9, 13 and 14, *supra*). Although courts are divided as to the weight to be accorded evidence of this nature, it is commonly recognized that

such evidence is of at least minimal probative value, and should be considered in the totality of the evidence presented in a civil forfeiture action. "[A] positive alert by a police dog on a cache of money can have some probative value... particularly when it is considered along with other telling circumstances... [o]rdinary experience suggests that currency used to purchase narcotics is more likely than other currency to have come into contact with drugs." *Puche-Garcia*, 2000 WL 1288181, at *4. See also *U.S. v. \$67,220.00 in U.S. Currency*, 957 F.2d 280, 285 (6th Cir.1992) ("a positive dog reaction is at least strong evidence of a connection to drugs.").

Fourth, the amount of the defendant currency was established to be at or near the approximate street value of one kilo of cocaine in the Montgomery, Alabama. (See Finding of Fact 19, *supra*). Such is probative evidence that the \$22,991.00 in question either was intended to be used to purchase a kilo of cocaine, or already had been received in exchange for a kilo of cocaine. See, e.g., *U.S. v. \$33,500.00 in U.S. Currency*, 1988 WL 169272, *4 (D.N.J.1988) (inference that the currency is drug-related becomes "even stronger" where the amount seized is "approximately equivalent to the street value of one kilogram of cocaine.").

Fifth, several controlled crack cocaine transactions were conducted by law enforcement at Ms. Prevo's residence, both before and after August 13, 2000. Such transactions included the personal participation of Ms. Prevo, as recently as approximately one month after the events of August 13, 2000. (See Findings of Fact 23 through 26, *supra*). Ms. Prevo conceded to Agent Fagan that a significant portion of the defendant currency represented proceeds from one or more drug transactions conducted by her alleged "common

law husband," Mr. Wise. (See Finding of Fact 18, *supra*).

Ms. Prevo's personal involvement in the drug trade both before and almost immediately after the events of August 13, 2000, and her concession to a law enforcement official at least a large percentage of that the cash actually was derived from the drug trade, obviously is very strong evidence of a "substantial connection" between the currency and drug trafficking. See, e.g., *Carrell*, 252 F.3d at 1201 ("[e]vidence that claimants are generally engaged in the drug business over a period of time" is probative evidence in civil forfeiture proceeding) (citation omitted). See also *\$10,700.00 in U.S. Currency*, 258 F.3d at 224 ("[a]s a matter of logic, circumstantial evidence implicating claimants in recent drug activities, such as, for example, evidence of claimants' contemporaneous affiliation with known drug traffickers, or claimants' possession of drugs or drug paraphernalia at the time of the seizure, would support the government's theory that the money in claimants' possession is connected to illegal drug trafficking."); *Currency: \$4,424.00 (U.S.)*, 1994 WL 568594, at *4 (evidence of claimant's "history of involvement in narcotics distribution" is probative); *Thomas*, 913 F.2d at 1116-17 (claimant's "history of illegal drug activity" and evidence of "[a]n informant's statement" implicating claimant in such activity is probative); *U.S. v. \$37,780.00 in U.S. Currency*, 920 F.2d 159, 163 (2nd Cir.1990) (probative evidence introduced of claimant's "extensive involvement in drug activities.").

Sixth, the evidence presented by the government at trial established the absence of a legitimate origin of the defendant currency. (See Findings of Fact 27 through 38, *supra*). Such evidence, considered together with the other evidence presented at trial, suggests a "substantial

connection" between the currency and the drug trade. See, e.g., *Carrell*, 252 F.3d at 1201 ("[e]vidence that claimants... have no visible source of substantial income," is probative evidence in civil forfeiture proceeding) (citation omitted). See also *U.S. v. U.S. Currency, in the Amount of \$150,660.00*, 980 F.2d 1200, 1207 (8th Cir. 1992) ("the absence of any apparent verifiable, legitimate source for the [subject currency], coupled with all of the other evidence... strongly suggests that the defendant currency was connected with drug activity."); *Thomas*, 913 F.2d at 1115 ("[e]vidence that cash expenditures [by claimant] hugely exceeded any verifiable income suggests that the money was derived illegally."); *U.S. v. \$250,000.00 in U.S. Currency*, 808 F.2d 895, 899 (1st Cir. 1987) ("[t]he absence of any apparent legitimate sources for the \$250,000 suggests that the money is derived from drug transactions.").

[3, 4] Even assuming *arguendo* that a portion of the defendant currency was derived legitimately from the proceeds of Ms. Prevo's seamstress business, as she maintains, Ms. Prevo's admission to Agent Fagan that at a significant portion of the currency derived from one or more drug transactions involving Mr. Wise supports the forfeiture of the currency. (See Finding of Fact 18, *supra*). "As a wrongdoer, any amount of the [subject property] traceable to drug activities forfeits the entire property." *U.S. v. One Single Family Residence Located at 15603 85th Avenue North, Lake Park, Palm Beach County, Florida*, 933 F.2d 976, 981 (11th Cir.1991). "[W]hen a claimant to a forfeiture action has actual knowledge, at any time prior to the initiation of the forfeiture proceeding, that claimant's legitimate funds are commingled with drug proceeds, traceable in accord with the forfeiture statute, the legitimate funds are subject to forfeiture."

Id., at 982. See also *U.S. v. Certain Funds on Deposit in Account No. 01-0-71417, Located at the Bank of New York*, 769 F.Supp. 80, 84 (E.D.N.Y.1991) ("[e]ven if a portion of the property sought to be forfeited is used to 'facilitate' the alleged offense, then all of the property is forfeitable.").

Seventh, and finally, Ms. Prevo continually provided inconsistent and falsified testimony with respect to several key points raised during the trial, including her own attempts to show a legitimate origin of the defendant currency. (See Findings of Fact 18, and 32 through 45, *supra*). Ms. Prevo's lack of veracity and credibility provides another circumstance lending additional support for the government's assertion that the defendant currency is "substantially connected" to the drug trade. See, e.g., *Puche-Garcia*, 2000 WL 1288181, at *4 ("[t]he explanation that [claimant] provided to the deputies was inconsistent and confusing."); *\$37,780.00 U.S. Currency*, 920 F.2d at 163 (claimant's "evasive, confused explanation for carrying such a large sum" of currency may support a finding of forfeiture); *U.S. v. \$9,135.00 in U.S. Currency*, 1998 WL 329270, *3 (E.D.La.1998) ("the myriad of inconsistencies evident in claimant's explanation as to the source of the money and the duration of her stay in Houston, a known source city for drugs, underscores the fact that her story is simply not credible.").

On the basis of the above factors, the Court concludes that the government has sustained its burden of proof to warrant the forfeiture of the defendant currency. "The aggregation of facts, each one insufficient standing alone, may suffice to meet the government's burden." *\$67,220.00 in U.S. Currency*, 957 F.2d at 284. In this regard, in civil forfeiture proceedings, "[c]ourts have been cautioned not to dis-

sect strands of evidence as discrete and disconnected occurrences." *Thomas*, 913 F.2d at 1115 (quotation marks and citations omitted). In such cases, the Court must judge the evidence "not with clinical detachment but with a common sense view to the realities of normal life," in the "totality of the circumstances." *U.S. v. \$4,255,000.00*, 762 F.2d 895, 903-04 (11th Cir.), cert. denied, 474 U.S. 1056, 106 S.Ct. 795, 88 L.Ed.2d 772 (1986). See also *Puche-Garcia*, 2000 WL 1288181, at *4 (in evaluating evidence in a civil forfeiture proceeding, the court shall "consider all of these facts in the totality . . .").

The above factors, considered in their aggregate, persuade the Court that a preponderance of the evidence exists to show a "substantial connection" between the defendant currency and the purchase or sale of crack cocaine. 18 U.S.C. § 983(c)(3). As such, the currency is subject to forfeiture because the currency constitutes "...moneys... furnished or intended to be furnished by any person in exchange for a controlled substance...[or] all proceeds traceable to such an exchange, [or]...moneys...used or intended to be used to facilitate..." the same. 21 U.S.C. § 881(a)(6).

II. *The Defendant Revolver and Ammunition*

[5, 6] As an initial matter, Ms. Prevo has standing to contest the forfeiture of the defendant revolver and ammunition. Although Ms. Prevo does not assert legal ownership over the revolver and ammunition, she appears to assert some degree of possessory interest over them. Again, Ms. Prevo testified that the revolver had been given to her by a "friend" of another friend of hers named Wardell Washington. (See Finding of Fact 8, *supra*). "A claimant need not own the property in order to have standing to contest its forfeiture; a lesser

property interest, such as a possessory interest, is sufficient for standing." *U.S. v. \$38,000.00 in U.S. Currency*, 816 F.2d 1538, 1544 (11th Cir.1987).

The Court concludes that the government has met its burden of demonstrating an entitlement to forfeiture of the defendant revolver and ammunition. 21 U.S.C. § 881(a)(11) provides in pertinent part that "[a]ny firearm...used or intended to be used to facilitate the transportation, sale, receipt, possession, or concealment of [drugs or drug paraphernalia]..." is subject to forfeiture. Thus, in sum, it is the government's burden with respect to the defendant revolver and ammunition to prove by a preponderance of the evidence that there is a "substantial connection" between those items and drug activity. 18 U.S.C. § 983(c). The Court observes that the evidence presented at trial by the government with regard to these items was largely un rebutted by Ms. Prevo.

[7] In the present action, as found *supra*, when approached by Officer Mitchum on August 13, 2000, Ms. Prevo then told Sergeant Mitchum that she had a gun in her purse. (See Finding of Fact 7, *supra*). Ms. Prevo eventually handed to Officer Turberville a loaded .22 "American Arms" magnum revolver that had been in her purse on the front seat of her automobile. Ms. Prevo testified that the revolver belonged to a "friend" of another friend of hers, Wardell Washington, whom, as discussed *supra*, the evidence at trial shows was engaged in at least one drug transaction at Ms. Prevo's residence in October 2000. (See Finding of Fact 25, *supra*). Ms. Prevo stated to Agent Fagan that she possessed the revolver for her own "protection." (See Finding of Fact 17, *supra*). Considering that the Ms. Prevo possessed both illegal drugs and a large sum of money which the court has determined to be substantially connected to the drug trans-

action, the court finds that the gun was also substantially connected to the furtherance of drug activity.

[8] Accordingly, the Court concludes that the defendant revolver and ammunition, in association with the defendant currency, the crack cocaine, and the crack cocaine paraphernalia, more likely than not was a tool of the drug trade. It is generally recognized that firearms are "tools of the trade of those engaged in illegal drug activities and are highly probative in proving criminal intent." *U.S. v. Martinez*, 808 F.2d 1050, 1057 (5th Cir.), *cert. denied*, 481 U.S. 1032, 107 S.Ct. 1962, 95 L.Ed.2d 533 (1987). It has been observed that, "[e]xperience on the trial and appellate benches has taught that substantial dealers in narcotics keep firearms on their premises as tools of the trade almost to the same extent as they keep scales. . . glassine bags, cutting equipment and other narcotic equipment." *U.S. v. Perez*, 648 F.2d 219, 224 (5th Cir.), *cert. denied*, 454 U.S. 1055, 102 S.Ct. 602, 70 L.Ed.2d 592 (1981) (citations omitted).⁵ See also *U.S. v. Kearney*, 560 F.2d 1358, 1369 (9th Cir.), *cert. denied*, 434 U.S. 971, 98 S.Ct. 522, 54 L.Ed.2d 460 (1977)("[p]ossession of a firearm demonstrates the likelihood that a defendant took steps to prevent contraband or money from being stolen.").

Therefore, a preponderance of the evidence exists to show a "substantial connection" between the defendant revolver and ammunition and drug activity. 18 U.S.C. § 983(c). As such, these items are subject to forfeiture because they were "used or intended to be used to facilitate the transportation, sale, receipt, possession, or concealment of [drugs or drug paraphernalia] . . ." 21 U.S.C. § 881(a)(11).

5. In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir.1981), the Eleventh Circuit adopted as binding precedent all deci-

CONCLUSION

Accordingly, the undersigned determines that judgment be entered in favor of plaintiff United States, and that the defendant currency (\$22,991.00), revolver (.22 Magnum, Serial Number 214835) and ammunition, be forfeited to the permanent custody and control of the United States. The United States Marshall's Service is directed to take appropriate and customary action with respect to these items.



Corine CHEVES, Vincent Cheves,
and Estate of Robert Cheves,
Jr., Plaintiffs,

v.

DEPARTMENT OF VETERANS AFFAIRS, Unnamed Supervisors and Employees of the Department of Veterans Affairs, Defendants.

No. 6:01-CV-196-ORL-31JG.

United States District Court,
M.D. Florida,
Orlando Division.

Aug. 16, 2002.

Veteran's surviving spouse and children, together with his estate, brought action against Department of Veterans Affairs (VA) and VA employees. On motion to dismiss, the District Court, Presnell, J., for reasons stated in report and recommendation of James A. Glazerbrook, Unit-

sions of the former Fifth Circuit handed down prior to October 1, 1981.