

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 09-00362-01-CR-W-NKL
)	
JAMES J. STROBBE,)	
)	
Defendant.)	

**MOTION OF THE UNITED STATES FOR A PRELIMINARY
ORDER OF FORFEITURE, WITH SUPPORTING SUGGESTIONS**

The United States of America, by its undersigned counsel, respectfully submits its Motion for a Preliminary Order of Forfeiture in the above-entitled case for the reasons set forth in the following supporting suggestions. A proposed order is submitted with this motion.

SUPPORTING SUGGESTIONS

1. On December 1, 2009, a federal grand jury sitting in the Western District of Missouri, returned a seven-count Indictment against the defendant James J. Strobbe and another. Count One of the Indictment charged that the defendant James J. Strobbe and another, did knowingly conspire, confederate, and agree with each other and others, to distribute cocaine, a Schedule II controlled substance, in an amount of five kilograms and more, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A).

2. Count Two of the Indictment charged that the defendant James J. Strobbe and another, aiding and abetting each other, did knowingly and intentionally distribute some amount of cocaine, a Schedule II controlled substance, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), and 18 U.S.C. § 2.

3. Count Three of the Indictment charged that the defendant James J. Strobbe and another, aiding and abetting each other, did knowingly and intentionally distribute some amount of cocaine, a Schedule II controlled substance, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C) and 18 U.S.C. § 2.

4. Count Four of the Indictment charged that the defendant James J. Strobbe and another, aiding and abetting each other, did knowingly and intentionally distribute some amount of cocaine, a Schedule II controlled substance, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C) and 18 U.S.C. § 2.

5. Count Five of the Indictment charged that the defendant James J. Strobbe, did knowingly and intentionally distribute some amount of cocaine, a Schedule II controlled substance, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C).

6. Count Six of the Indictment charged that the defendant James J. Strobbe and another, aiding and abetting each other, did knowingly and intentionally distribute some amount of cocaine, a Schedule II controlled substance, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C) and 18 U.S.C. § 2.

7. Count Seven of the Indictment charged that the defendant James J. Strobbe, did knowingly and intentionally possess, with intent to distribute, some amount of cocaine, a Schedule II controlled substance, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C).

8. Forfeiture Allegation Number One of the Indictment sought forfeiture, pursuant to 21 U.S.C. § 853, of any property which was used to facilitate the commission of the alleged violation, including but not limited to:

2001 Chevrolet Extended Cab Pickup Truck, VIN: 1GCEK19VX1E01622.

9. Forfeiture Allegation Number Three of the Indictment sought forfeiture, pursuant to 21 U.S.C. § 853, of any proceeds obtained directly or indirectly and all property used, or intended to be used, in any manner or part, to commit, and to facilitate the commission of the alleged violations, including but not limited to:

\$3,950 in United States currency.

10. On September 15, 2010, the defendant James J. Strobbe entered into a plea agreement with the United States in which he agreed to plead guilty to Count One of the Indictment charging violations of 21 U.S.C. §§ 846 and 841(b)(1)(A) and to forfeit to the United States the above-described property.

11. The Court's jurisdiction in this matter is founded upon 21 U.S.C. § 853, which provides that:

Any person convicted of a violation of this subchapter . . . punishable by imprisonment for more than one year shall forfeit to the United States, . . .

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

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

. . .

The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to this subchapter . . . that the person forfeit to the United States all property described in this subsection.

12. In discussing 21 U.S.C. § 853 and the related provision for forfeiture under 18 U.S.C. § 1963 (RICO), the Senate Report notes that this language "emphasizes the mandatory nature of criminal forfeiture, requiring the Court to order forfeiture in addition to any other penalty

imposed." S. Rep. No. 225 98th Cong., 2d Sess. 200, 211, reprinted in 1984 U.S. Code Cong. & Ad. News 3383, 3394. Thus, according to the relevant statute, the Court must enter a Preliminary Order of Forfeiture in favor of the United States and against the defendant's interests in property found to have been acquired, maintained, or used in violation of the underlying forfeiture statute. Alexander v. United States, 509 U.S. 544, 562-563 (1993); United States v. Monsanto, 491 U.S. 600, 606-607 (1989); United States v. Carpenter, 317 F. 3d 618, 626 (6th Cir. 2003); United States v. Hill, 167 F.3d 1055, 1073-74 (6th Cir. 1999); United States v. Bieri, 68 F.3d 232, 235 (8th Cir. 1995).

13. Rule 32.2(b)(1)(A) and (B), 32.2(b)(2)(A) and (B), and 32.2(b)(3), Federal Rules of Criminal Procedure, provide that:

(b)(1)(A) As soon as practicable after a verdict or finding of guilty, or after a plea of guilty or *nolo contendere* is accepted, on any count in an indictment or information regarding which criminal forfeiture is sought, the court must determine what property is subject to forfeiture under the applicable statute. If the government seeks forfeiture of specific property, the court must determine whether the government has established the requisite nexus between the property and the offense. If the government seeks a personal money judgment, the court must determine the amount of money that the defendant will be ordered to pay.

(b)(1)(B) The court's determination may be based on evidence already in the record, including any written plea agreement, and any additional evidence or information submitted by the parties and accepted by the court as relevant and reliable. If the forfeiture is contested, on either party's request the court must conduct a hearing after the verdict or finding of guilty.

(b)(2)(A) If the court finds that property is subject to forfeiture, it shall promptly enter a preliminary order of forfeiture setting forth the amount of any money judgment, directing the forfeiture of specific property, and directing the forfeiture of any substitute property if the government has met the statutory criteria. The court must enter the order without regard to any third party's interest in the property. Determining whether a third party has such an interest must be deferred until any third party files a claim in an ancillary proceeding under Rule 32.2(c).

(b)(2)(B) Unless doing so is impractical, the court must enter the preliminary order sufficiently in advance of sentencing to allow the parties to suggest revisions or modifications before the order becomes final as to the defendant under Rule 32.2(b)(4).

(b)(2)(C) If, before sentencing, the court cannot identify all the specific property subject to forfeiture or calculate the total amount of the money judgment, the court may enter a forfeiture order that:

(i) lists any identified property;

(ii) describes other property in general terms; and

(iii) states that the order will be amended under Rule 32.2(e)(1) when additional specific property is identified or the amount of money judgment has been calculated.

(b)(3) The entry of a preliminary order of forfeiture authorizes the Attorney General (or a designee) to seize the specific property subject to forfeiture; to conduct any discovery the court considers proper in identifying, locating, or disposing of the property; and to commence proceedings that comply with any statutes governing third-party rights. The court may include in the order of forfeiture conditions reasonably necessary to preserve the property's value pending any appeal.

14. Based upon the evidence set forth in the plea agreement, the United States has established the requisite nexus between the property and the offense to which the defendant has pleaded guilty. Accordingly, the 2001 Chevrolet Extended Cab Pickup Truck, VIN: 1GCEK19VX1E01622 and \$3,950 in United States currency are subject to forfeiture to the United States pursuant to 21 U.S.C. § 853.

15. Upon the issuance of a Preliminary Order of Forfeiture and pursuant to 21 U.S.C. § 853, the United States will publish for at least 30 consecutive days on the government's official web site, www.forfeiture.gov, notice of the Preliminary Order of Forfeiture, notice of the United States Marshal Services' intent to dispose of the property in such manner as the Attorney General may direct and notice that any person, other than the defendant James J. Strobbe, having or

claiming a legal interest in the property must file a petition with the Court (and serve a copy on Charles E. Ambrose, Jr., Assistant United States Attorney) within thirty (30) days of the final publication of notice or of receipt of actual notice, whichever is earlier. This notice shall state that the petition shall be for a hearing to adjudicate the validity of the petitioner's alleged interest in the property, shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title or interest in the forfeited property and any additional facts supporting the petitioner's claim and the relief sought. The United States may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the Preliminary Order of Forfeiture, as a substitute for published notice as to those persons so notified.

WHEREFORE, the United States respectfully requests that this Court enter a Preliminary Order of Forfeiture forfeiting to the United States the property described in Forfeiture Allegation Numbers One and Three of the Indictment and order the United States Marshals Service to seize and maintain custody of the forfeited property and dispose of it in accordance with the law.

Respectfully submitted,

Beth Phillips
United States Attorney

By

/s/ Charles E. Ambrose, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2010, the foregoing motion was electronically filed with the Clerk of the Court using the CM/ECF system for electronic delivery to all counsel of record.

/s/ Charles E. Ambrose, Jr.
Charles E. Ambrose, Jr.
Assistant United States Attorney