UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

United States v. Nidal Ahmed Waked Hatum

No. 18-11951, United States Court of Appeals for the Eleventh Circuit (August 11, 2020)

SUMMARY

The Eleventh Circuit held that forfeiture under 18 U.S.C. § 982(a)(1) for money laundering is mandatory and cannot be denied based on equitable considerations or the fact that laundered funds were returned to the victim bank with interest. The court ruled that the laundered funds constitute property "involved in" the offense, forfeiture money judgments are authorized, and the district court erred in its Eighth Amendment excessive fines analysis by focusing only on financial harm to the bank rather than societal harm from money laundering. The case also clarifies that Honeycutt v. United States does not bar in personam money judgments under § 982(a)(1) and that substitute forfeiture under 21 U.S.C. § 853(p) may be available for laundered funds transferred to third parties.

CASE DETAILS

COURT	United States Court of Appeals for the Eleventh Circuit
WRITING FOR THE COURT	Martin, Circuit Judge; Grant, Circuit Judge; Lagoa, Circuit Judge
JURISDICTION	Federal
DECIDED	August 11, 2020
DOCKET	18-11951
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from the United States District Court for the Southern District of Florida from the denial of the government's motion for forfeiture and denial of Rule 35(a) motion.
STANDARD OF REVIEW	We review de novo the district court's legal conclusions regarding forfeiture and the court's findings of fact for clear error. We also review de novo the district court's determination of whether a fine is constitutionally excessive, while reviewing for clear error the factual findings made by the district court in conducting the excessiveness inquiry.
PRECEDENTIAL VALUE	published
PARTIES	United States of America v. Nidal Ahmed Waked Hatum

TOPICS

criminal procedure | sentencing | appellate procedure | constitutional law | remedies

PRACTICE AREAS

criminal law | forfeiture | appellate procedure

QUESTIONS PRESENTED

1. Whether an order of forfeiture under 18 U.S.C. § 982(a)(1) is mandatory when the money laundering scheme caused no financial harm to the bank.
2. Whether a forfeiture money judgment is authorized by statute.
3. Whether the forfeiture amount of $20,852,000 (or $10,426,000) would be unconstitutionally excessive under the Eighth Amendment.

HOLDINGS

1. Forfeiture under § 982(a)(1) is mandatory. The district court's denial based on equitable considerations or because the laundered money was returned was error.
2. Forfeiture money judgments are permitted under § 982(a)(1) because the defendant has a personal interest in the corpus of laundered funds.
3. The district court erred in its Eighth Amendment analysis by considering only the harm factor and by misdefining harm. The court must consider all three factors from Sperrazza, and the harm from money laundering extends beyond the victim's loss.

KEY QUOTATIONS

> *"If a defendant is convicted of a money laundering scheme that caused no financial harm to an innocently involved bank, is an order of forfeiture still mandatory? We conclude that it is and reverse the District Court's denial of the government's forfeiture motion in this case."* (Page: 2)

> *"Because forfeiture under § 982(a)(1) is mandatory, to the extent the District Court's denial of the government's motion was based on 'equitable considerations,' such as the statute's purpose, this ruling was in error."* (Page: 10)

> *"The definition of property in 18 U.S.C. § 982(a)(1) is distinct from that in the other subsections of § 982(a), as well as 21 U.S.C. § 853(a). Our ruling allows forfeiture in the amount of property that Mr. Waked transferred as a part of his laundering scheme."* (Page: 19)

FACTUAL BACKGROUND

Nidal Ahmed Waked Hatum was part owner and general manager of Vida Panama, an electronics wholesaler. He also owned two Miami-based corporations, Star Textile and Global World. Between 2000 and 2009, he engaged in mirror-image financial transactions: Star Textile would send phony invoices to Vida Panama, he would draw on Vida Panama's line of credit to pay those invoices, and then the money would be returned to Vida Panama via checks. The bank incurred no financial loss because all draws were repaid with interest. Mr. Waked admitted to misrepresenting the purpose of the draws to the bank.

PROCEDURAL HISTORY

Mr. Waked was indicted for conspiracy to commit money laundering and bank fraud. He pled guilty to the money laundering count. The district court sentenced him to 27 months and denied the government's forfeiture motion, holding that forfeiture was not mandatory because the bank suffered no loss and that the requested amount would be unconstitutionally excessive. The government appealed.

DISPOSITION

other

REMAND INSTRUCTIONS

The District Court must conduct factfinding to determine the proper forfeiture amount and to perform a proper Eighth Amendment analysis.

CASES CITED

- United States v. Monsanto, 491 U.S. 600 (1989)
- United States v. Bajakajian, 524 U.S. 321 (1998)
- Honeycutt v. United States, 581 U.S. ___, 137 S. Ct. 1626 (2017)
- United States v. Seher, 562 F.3d 1344 (11th Cir. 2009)
- United States v. Elbeblawy, 899 F.3d 925 (11th Cir. 2018)
- United States v. Sperrazza, 804 F.3d 1113 (11th Cir. 2015)
- United States v. Martin, 320 F.3d 1223 (11th Cir. 2003)
