

FORFEITURE, PROPOSED JURY INSTRUCTION NO. 1¹

(To be given before supplemental evidentiary proceedings or
supplemental arguments of counsel)

Members of the Jury: Your verdict in this case doesn't complete your jury service because there is another matter you must now consider.²

In a portion of the Indictment not previously discussed or disclosed to you, it is alleged that certain property is subject to forfeiture.³

To "forfeit" a thing is to be divested or deprived of the ownership of it as a part of the punishment allowed by the law for certain criminal offenses.

In view of your verdict finding Defendants Peter Sotis and Emilie Vossiem guilty of the offenses alleged in the Indictment, you must also decide whether the requisite nexus exists between this property and the offenses they committed.⁴

In order to establish a "nexus" between the property alleged to be forfeitable and the

¹ Pattern Crim. Jury Instr. 11th Cir. (2016) ("T6 Instruction") (attached as **Attachment A**).

² Deleted "as it would in most cases" from T6 Instruction, and the following sentence:
You must decide whether the Defendant[s], _____, should forfeit certain [money or] property to the United States as a part of the penalty for the crime charged in Count _____ of the indictment.

The jury is being asked whether the requisite forfeiture nexus exists, and not deciding forfeiture, which is a sentencing matter within the province of the Court. Rule 32.2(b)(5) of the Federal Rules of Criminal Procedure, which establishes a statutory right to a jury trial on the forfeiture allegations, states, in relevant part: "...If a party timely requests to have the jury determine forfeiture, the government must submit a proposed Special Verdict Form listing each property subject to forfeiture and *asking the jury to determine whether the government has established the requisite nexus* between the property and the offense committed by the defendant." Fed. R. Crim. P. 32.2(b)(5) (emphasis added).

³ Deleted reference to deciding forfeiture. *See supra* note 2.

⁴ Deleted reference to forfeiture and substituted with requisite nexus. *See supra* note 2.

offense giving rise to the forfeiture allegation, the Government must establish a connection between the property and the offense. The connection must be more than incidental, but the connection need not be substantial.⁵

To decide whether the requisite nexus exists for forfeiture, you should consider all the evidence you have already heard plus any additional evidence that will be presented to you after these instructions.⁶

A copy of the forfeiture allegations of the Indictment will be given to you to consider during your supplemental deliberations. It describes, in particular, property allegedly subject to forfeiture to the United States. Specifically, the United States is seeking the forfeiture of four (4) rEvo III rebreathers that were exported or attempted to be exported to Libya on or about August 12, 2016.

To be entitled to the forfeiture of those items, the Government must demonstrate probable cause to believe that property to be forfeited is “merchandise exported or sent from the United States or attempted to be exported or sent from the United States contrary to law.”⁷

“Probable cause” simply means that under the totality of the circumstances it is objectively reasonable to believe that the property sought for forfeiture is “merchandise exported or sent from the United States or attempted to be exported or sent from the United States contrary to law.”⁸

⁵ Fed. Crim. Jury Instr. 7th Cir. (2012 ed.) (“Nexus Instruction”) (attached as **Attachment B**).

⁶ Deleted reference to forfeiture and substituted with requisite nexus. *See supra* note 2.

⁷ The relevant forfeiture statute, 19 U.S.C. § 1595a(d) subjects to forfeiture any “[m]erchandise exported or sent from the United States or attempted to be exported or sent from the United States contrary to law.” Pursuant to 28 U.S.C. § 2461(c) provides that all property subject to civil forfeiture is also subject to criminal forfeiture, and the procedures set forth 21 U.S.C. § 853 apply to such forfeitures.

⁸ *See* Pattern Crim. Jury Instr. 11th Cir. 5.3 – Civil (2016).

You are further instructed that what happens to any property that is declared subject to forfeiture is exclusively a matter for the Court to decide. You should not consider what might happen to the property in determining whether the property is subject to forfeiture. In this connection, you should disregard any claims that other persons may have to the property because those interests will be taken into account by the Court at a later time.⁹

While deliberating concerning the issue of forfeiture you must not reexamine your previous determination regarding the Defendants' guilt. But all the instructions previously given to you concerning your consideration of the evidence, the credibility of the witnesses, your duty to deliberate together, your duty to base your verdict solely on the evidence without prejudice, bias, or sympathy, and the necessity of a unanimous verdict, will continue to apply during these supplemental deliberations.

⁹ Fed. Crim. Jury Instr. 7th Cir. (2012 ed.) ("Property Subject to Forfeiture") (attached as **Attachment C**). See also *Libretti v. United States*, 516 U.S. 29 (1995) (forfeiture is part of a defendant's punishment and sentence); *Shannon v. United States*, 512 U.S. 573, 579 (1994) (Because the "jury has no sentencing function, it should be admonished to 'reach its verdict without regard to what sentence might be imposed.'"); 21 U.S.C. § 853(n)(6) (establishing procedures for third-party forfeiture proceedings); Fed. R. Crim. P. 32.2(c) (same). Deleted from the Property Subject to Forfeiture instruction the following two sentences:

The government is not required to prove that the money obtained by the Defendant is still in the Defendant's possession. Rather, the government is only required to prove the elements that I have described to you.

FORFEITURE, PROPOSED JURY INSTRUCTION NO. 2

A special verdict form has been prepared for you. The special verdict form lists the property which the Government asserts is subject to forfeiture.

You may answer by simply putting an “X” or check mark in the space provided next to the words “YES” or “NO.” The foreperson must then sign and date the special verdict form.