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# DPS TRAINING BULLETIN

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LEGAL BULLETIN NO. 195  
December 6, 1995

**FORFEITURE OF PROPERTY AND MONEY  
PURSUANT TO NEGOTIATED PLEA OF GUILTY**

**Reference:** Joseph Libretti  
v.  
United States

United States Supreme Court  
No. 94-7427  
November 7, 1995

**FACTS:**

Libretti was charged in a multicount indictment with violations of various federal drug, firearms and money-laundering laws. During his trial, Libretti entered into a plea agreement with the Government whereby, among other things, he pleaded guilty to engaging in a continuing criminal enterprise. The Government agreed to recommend that he be sentenced to the mandatory minimum of 20-years' imprisonment. Libretti agreed to surrender numerous items of his property to the Wyoming Attorney General. Property surrendered consisted of, but was not limited to, all real estate and all personal property--including guns, computer, bank accounts, retirement accounts, cash, traveler's checks and funds of any kind up to \$1,500,000.

The judge accepting the plea explained the consequences of Libretti's waiver of a jury trial, but did not expressly advise him as to the existence and scope of his right to a jury determination of forfeitability under Federal Rule of Criminal Procedure 31(e).

Libretti objected on record as to what he saw as a failure of the court to find any "factual basis," as required by Federal Rule of Criminal Procedure 11(f), for the whole forfeiture.

**ISSUE:**

Did Libretti's concession to forfeiture in the plea agreement authorize the forfeiture?

**HELD:** Yes.

**REASONING:**

1. The District Court did not rest its forfeiture order solely on the stipulation contained in the plea agreement. There is ample

evidence that the judge both understood the statutory requisites for criminal forfeiture and concluded that they were satisfied on the facts at the time sentence was imposed [Federal Rule of Criminal Procedure 11(f)].

2. Libretti's waiver of a jury determination as to the forfeitability of his personal property was plainly adequate [Federal Rule of Criminal Procedure 31(e)].

3. Libretti's waiver was accomplished by a plea agreement in which he agreed to forfeiture and waived his right to a jury trial. The plea colloquy made it abundantly clear that the plea agreement would end any proceedings before the jury and would lead directly to sentencing by the court.

**NOTES:**

In cases involving negotiated pleas where the defendant agrees to forfeiture, the court will determine if (1) the agreement was knowing and voluntary; (2) society is protected against overreaching; and (3) the rights of third-party claimants [lien holders, co-owners, etc.] are fully protected or their claims rejected.

This case should not be confused with:

Johnson v. Johnson, Legal Bulletin No. 176, where suspected drug money was illegally seized.

Austin v. United States, Legal Bulletin No. 179, where administrative forfeiture of property may violate the Eighth Amendment.

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