CARLTON FIELDS

Honeycutt v. United States: Mandated Criminal Asset Forfeiture Receives Clear Limitation — Joint and Several Forfeiture Liability Rejected

LITIGATION AND TRIALS | WHITE COLLAR CRIME & GOVERNMENT INVESTIGATIONS | JUNE 6, 2017

Erin J. Hoyle

Introduction

On June 5, the United States Supreme Court issued a unanimous opinion in *Honeycutt v. United States*, No. 16-142, 581 U.S. ___ (2017), narrowing the scope of federal criminal asset forfeiture for drug offenses. Resolving disagreement among the courts of appeals as to whether joint and several liability applies to forfeiture under the Controlled Substances Act, 21 U.S.C. § 853, the Court held such liability inconsistent with the Act's text and structure. The Court reasoned that the limitations of the Act would not allow a defendant to be held jointly and severally liable for property that a co-conspirator derived from the crime, but from which the defendant had not personally benefited. Despite only restricting criminal forfeiture related to federal drug offenses, this case suggests the Court's willingness to curb certain forfeiture practices on a broader scale.

Honeycutt v. United States

Criminal asset forfeiture allows the government to seize property received or utilized through criminal activity. *Id.* at 3. Terry Honeycutt was a salaried manager for a Tennessee hardware store owned by his brother, Tony. *Id.* at 1. Over a three-year period, the store sold more than 20,000 bottles of an iodine-based water purification product known for its use in the production of methamphetamine. *Id.* at 1–2. The resulting profits totaled roughly $270,000. *Id.* at 2.

The Honeycutt brothers were indicted, *inter alia*, for conspiring to distribute this controlled-substance ingredient. *Id.* Tony reached a plea agreement with the government that included forfeiture of $200,000. *Id.* Terry went to trial and was convicted. *Id.* At sentencing, the government argued that Terry was jointly and severally liable for the profits derived from the crime and sought to seize from him the remaining $70,000. *Id.* at 3.

Terry opposed any forfeiture, arguing that he had not received, obtained, or benefited from any unlawful profits. The government conceded that Terry had no ownership interest in the store and did not personally benefit from the unlawful sales. *Id.* at 2–3. Nonetheless, the government argued that Terry could be penalized for Tony's profits under a joint and several liability theory applying the federal *Pinkerton* rule. *Id.* at 9. That rule permits a conspirator's conviction for the foreseeable crimes of its co-conspirators and has been applied to Section 853 asset forfeitures since 1970.[1] *Id.* The district court refused to impose forfeiture on Terry without evidence that he had obtained any of the proceeds of the conspiracy. *Id.* at 3. Relying on its own precedent, the Sixth Circuit Court of Appeals reversed. *Id.*

Plain Language Provides No Joint and Several Forfeiture Liability

After analyzing multiple provisions of Section 853, the Supreme Court reversed, reasoning that the plain text and structure of that section failed to incorporate the background principles of joint and several liability. *Id.* at 9. To the contrary, the Court held that Section 853 limits asset forfeiture to the tainted property the defendant actually acquired as the result of the crime and does not provide any authority for the government to confiscate property from other defendants or co-conspirators. *Id.* at 10–11. Writing for the Court, Justice Sotomayor explained that the Act's reach "does not countenance joint and several liability, which, by its nature, would require forfeiture of untainted property." *Id.* at 5.

The Court also concluded that the term "obtain" in that section forecloses joint and several liability because it restricts

property subject to forfeiture to property that is actually acquired or controlled by the relevant party. *Id.* at 6. Justice Sotomayor wrote, “Neither the dictionary definition nor the common usage of the word ‘obtain’ supports the conclusion that an individual ‘obtains’ property that was acquired by someone else.” *Id.*

The Court further noted that another section of federal forfeiture law described the limited circumstances under which untainted, or substitute, property may be seized, suggesting that Congress considered joint liability for criminal asset forfeiture and decided against it. *Id.* at 8–9.

Conclusion

While there is no catch-all forfeiture statute, the government uses asset forfeiture in a variety of settings, including as part of the sentencing process for white collar crimes. *Honeycutt* may signal the Court’s willingness to curb the widespread use of joint and several liability to hold co-conspirators liable for the full amount of the proceeds of the conspiracy in settings beyond drug-related criminal convictions. The Court’s view would thus narrow federal criminal forfeiture, limit how prosecutors pursue asset forfeiture, and shift away from the broader view embraced by a majority of circuit courts. After *Honeycutt*, the government appears to have a limited ability to obtain joint and several forfeiture from defendants who have not “obtained” the proceeds of criminal activity.

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[1] The U.S. Court of Appeals for the D.C. Circuit, however, recently ruled the other way. *United States v. Cano-Flores,* 796 F.3d 83 (D.C. Cir. 2015) (declining to follow other circuits and holding that neither rationale for joint and several liability — *Pinkerton* liability or the language authorizing forfeiture of property obtained “indirectly” — justified holding a defendant liable for more than the amount of money personally obtained).