

CLIENT ALERT

Honeycutt v. United States: Forfeit Your Own Proceeds from Our Conspiracy

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On June 5, 2017, the United States Supreme Court issued its decision in *Honeycutt v. United States*, 581 U.S. ____ (2017), a case involving the question of whether a defendant in a drug-offense conspiracy may be held jointly and severally liable for a criminal forfeiture judgment, even if that defendant did not himself obtain any proceeds from the crime. In overturning the long-standing rule in several circuits that allowed for joint and several liability, the Court placed a significant limitation on the government's power to use criminal forfeiture statutes to seize the assets of defendants convicted of conspiracy. This development is particularly noteworthy given the government's frequent use of forfeiture statutes in recent cases.

Criminal Forfeiture and Joint and Several Liability

Criminal forfeiture statutes allow the government to seize property derived from or used to facilitate criminal activity. The criminal forfeiture statute at issue in *Honeycutt* requires the court to order a defendant, as part of sentencing, to forfeit to the government "any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation." 21 U.S.C. § 853(a)(1) (criminal forfeiture statute for Controlled Substances Act violations). Other federal forfeiture statutes contain similar language. *See, e.g.*, 18 U.S.C. § 1963(a)(3) (criminal forfeiture statute for RICO violations); 18 U.S.C. § 981(a)(1) (civil forfeiture statute applicable to fraud and other crimes).

When two or more defendants are held "jointly and severally liable" for a money judgment, each defendant may be held responsible for paying the full amount of the judgment. This doctrine is well-established in tort law, as it allows an innocent plaintiff to collect the full amount from a partially guilty party, rather than receiving nothing from an insolvent co-defendant.

In justifying joint and several liability in criminal cases, courts have typically relied on two rationales. First, if the government were required to prove the specific portion of proceeds for which each defendant is responsible, conspirators would be encouraged to conceal the allocation of the proceeds in order to avoid forfeiting them altogether. Second, the idea of holding co-conspirators jointly and severally liable is consistent with the rule articulated in *Pinkerton v. United States*, 328 U.S. 640 (1946), which states that members of a conspiracy are liable for the reasonably foreseeable conduct of their co-conspirators. After *Honeycutt*, these rationales no longer apply.

***Honeycutt* Facts and Procedural History**

In *Honeycutt*, two brothers – Terry and Tony Honeycutt – worked at a hardware store and were selling a product that they knew was being used to manufacture methamphetamine. Terry and Tony were indicted for federal drug offenses, and the government sought forfeiture money judgments, pursuant to 21 U.S.C. § 853(a)(1), against the two men in the amount of \$269,751.68, which represented the store's profits from its sales of the product. Tony, a co-owner of the store, pleaded guilty and agreed to forfeit \$200,000. Terry, a salaried employee of the store, went to trial and was convicted. At Terry's sentencing, the government sought a forfeiture judgment against Terry for the remaining \$69,751.68. However, the district court declined to order any forfeiture

judgment against Terry, reasoning that Terry was a salaried employee, not an owner of the store, and therefore did not reap the proceeds of the conspiracy.

The Court of Appeals for the Sixth Circuit reversed, holding that Terry and Tony were jointly and severally liable for any proceeds of the conspiracy. The Supreme Court granted certiorari to resolve a circuit split regarding whether joint and several liability applies under § 853.

The Court's Decision and Its Impact Going Forward

Justice Sotomayor authored the opinion for a unanimous (8-0) Court, rejecting joint and several liability and holding that forfeiture "is limited to property the defendant himself actually acquired as the result of the crime." Thus, the Court found that Terry Honeycutt was not subject to any forfeiture because he never obtained any tainted property as a result of the crime.

In its reasoning, the Court largely relied on the "plain text and structure" of the statute, particularly in regard to the word "obtained." Section 853(a)(1) limits forfeiture to property the defendant "obtained . . . as a result of" the crime." The Court explained that "[n]either 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."

The Court also emphasized the fact that joint and several liability, "by its nature, would require forfeiture of untainted property," something the statute does not contemplate. To illustrate this point, the Court offered an example in which the mastermind of a marijuana distribution scheme recruits a college student to deliver packages and pays the student \$300 each month from the distribution proceeds. In one year, the mastermind earns \$3 million, and the student earns \$3,600. The Court explained that if joint and several liability applied, the student would face a forfeiture judgment for the entire \$3 million, even though the student personally acquired only \$3,600. Thus, "[o]f the \$3 million, \$2,996,400 would have no connection whatsoever to the student's participation in the crime and would have to be paid from the student's untainted assets."

After *Honeycutt*, a co-conspirator will only be subject to forfeiture equal to the amount of proceeds that he himself obtained. And, based on the Court's reliance on the plain text of the statute, defense attorneys will have a strong argument that the Court's decision applies to other forfeiture statutes with language similar to § 853(a)(1), such as the criminal forfeiture statute for RICO violations as well as the civil forfeiture statute applicable to fraud and other crimes.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Richard L. Beizer

Partner – Washington, D.C.
Phone: +1 202.624.2590
Email: rbeizer@crowell.com

Patrick S. Brown

Associate – Washington, D.C.
Phone: +1 202.624.2653
Email: pbrown@crowell.com