IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

UNITED STATES OF AMERICA,

vs.

DENISE COLLINS,

Defendant.

Criminal No. 2010-25

**REPORT AND RECOMMENDATION**

Before the Court is defendant Denise Collins' motion for the return of seized property. [ECF 8].[1] The government opposed the motion, defendant replied, and the government surreplied. [ECFs 11, 17, 21].

## I. BACKGROUND

In 2008, the U.S. Drug Enforcement Agency's ("DEA") High Intensity Drug Trafficking Area ("HIDTA") Task Force, which was investigating illegal drug trafficking on St. Croix, U.S. Virgin Islands, learned that Collins was selling drugs out of her St. Croix home.[2] [ECF 16-1] ¶¶ 1, 3.[3] On September 19, 2008, Collins admitted to HIDTA/DEA agents during an interview that she had sold marijuana and cocaine to numerous individuals and that she used her car, a 2007

[1] On April 25, 2022, the matter was referred to the undersigned for a Report and Recommendation. [ECF 24].

[2] Collins' home was located in Estate Sion Farm, Christiansted, St. Croix, Virgin Islands. [ECF 16-1] ¶ 3.

[3] In support of its opposition to Collins' motion, the government filed the declaration of Detective Sidney Elskoe, a Virgin Islands Police Department officer who was assigned to the HIDTA Task Force. [ECF 16-1] ¶ 1.

Lincoln MKX, to facilitate the sales. *Id.* ¶ 4. On November 7, 2008, Collins met with an Assistant United States Attorney and HIDTA/DEA agents to discuss a possible plea agreement. *Id.* ¶ 5. That same day, Collins voluntarily surrendered her car to the government; she signed the vehicle title, vehicle transfer section of the official vehicle registration form, odometer mileage statement, and bill of sale. *Id.*; [ECF 16-2]. Collins also verbally agreed to enter a plea agreement. [ECF 16-1] ¶ 6.

On December 2, 2008, the DEA sent Collins two copies of a Notice of Seizure ("Notice") by certified mail return receipt requested.[4] [ECFs 11-2, 11-3]. The first mailing was sent to Collins' home address on St. Croix. [ECF 11-2] at 1. The receipt indicates that it was "Returned to Sender." *Id.* at 2. The second mailing was sent to Collins via a Post Office Box on St. Croix. [ECF 11-3] at 1. The receipt indicates that Collins signed for it on December 9, 2008. *Id.* at 2.

The Notice identifies the property subject to seizure as a 2007 Lincoln MKX owned by Collins. [ECF 11-3] at 1. It also identifies the car's Vehicle Identification Number, its value ($24,160.00), and the date of seizure (11/07/2008). *Id.* The Notice further provides as follows:

> The above-described property was seized by the Drug Enforcement Administration (DEA) for forfeiture pursuant to **Title 21, United States Code** (U.S.C.), **Section 881,** because the property was used or acquired as a result of a violation of the Controlled Substances Act (Title 21, U.S.C., Section 801 et seq.). The seizure date and place, as well as other pertinent information regarding the property are listed above.
>
> Pursuant to Title 18, U.S.C., Section 983 and Title 19, U.S.C., Section 1602-1619, procedures to administratively forfeit this property are underway. You may petition the DEA for return of the property or your interest in the property (remission or mitigation), and/or you may contest the seizure and forfeiture of the property in Federal court. **You should review the following procedures very carefully.**

[4] On December 15, 2008, the DEA also published notice of the seizure in <u>The Wall Street Journal</u>. [ECF 11-4].

*Id.* (emphasis in original). Lastly, the Notice stated that any claim contesting forfeiture had to be filed by January 6, 2009. *Id.*

On February 17, 2009, the DEA issued a Declaration of Forfeiture. [ECF 11-5]. It states that because the Notice was "sent to all known parties who may have a legal or possessory interest" in the car, because the Notice was published, and because no claim was filed "within 30 days from the date of last publication of the advertisement," Collins' car was declared forfeited to the United States. *Id.*

In July 2009, Collins was indicted on one count of felony possession with intent to distribute marijuana. [ECF 1] in Crim. No. 09-17.[5] Thereafter, on June 18, 2010, the government charged Collins by information with one count of misdemeanor possession of marijuana. [ECF 1]. That same day, the parties entered into a plea agreement. [ECF 5]. Pursuant to the terms of the agreement, Collins agreed to plead guilty to the 2010 information and the government agreed to move to dismiss the 2009 indictment. *Id.* at 1-2. The Court entered judgment against Collins on June 21, 2010, sentencing her to six months of probation and a $25 fine. [ECF 6]. On June 22, 2010, the Court granted the government's motion to dismiss the indictment in the 2009 case. [ECF 53] in Crim. No. 09-17.

## II. APPLICABLE LAW

Section 881 of Title 21 of the United States Code authorizes the forfeiture of property to the United States, to include "vehicles . . . which are used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of [controlled substances]." 21 U.S.C. § 881(a)(1), (4). If "the value of such seized . . . vehicle . . . does not

[5] Citations to electronically filed documents in the 2009 case will be done expressly. Otherwise, citations to electronically filed documents are to those filed in the instant 2010 case.

exceed $500,000," 19 U.S.C. § 1607(a)(1), it is subject to an administrative forfeiture proceeding under the Civil Asset Forfeiture Reform Act of 2000 ("CAFRA"), 18 U.S.C. § 983. To initiate a proceeding under CAFRA, the seizing agency must comply with various notice requirements. First,

> [e]xcept as provided in clauses (ii) through (v),[6] in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute, with respect to which the Government is required to send written notice to interested parties, such notice shall be sent in a manner to achieve proper notice as soon as practicable, and in no case more than 60 days after the date of the seizure.

18 U.S.C. § 983(a)(1)(A)(i). Further,

> the appropriate customs officer shall cause a notice of the seizure of such articles and the intention to forfeit and sell or otherwise dispose of the same according to law to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct. Written notice of seizure together with information on the applicable procedures shall be sent to each party who appears to have an interest in the seized article.

19 U.S.C. § 1607(a)(1).

Once duly notified of the seizure, the property owner may either (1) request remission or mitigation of forfeiture, and/or (2) contest the forfeiture in United States District Court, 18 U.S.C. § 983(a)(2)(A). If the property owner does not contest the forfeiture, "the seizing agency will make a declaration of forfeiture and title will vest in the United States." *United States v. McGlory*, 202 F.3d 664, 670 (3d Cir. 2000) (citing 19 U.S.C. § 1609(a)). "This administrative declaration

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[6] Clauses (ii) through (v) address the notice requirements in cases where (1) the government "files a civil judicial forfeiture action against the property," (2) the government "obtains a criminal indictment containing an allegation that the property is subject to forfeiture," (3) "the property is seized by a State or local law enforcement agency and turned over to a Federal law enforcement agency for the purpose of forfeiture under Federal law," or (4) "[i]f the identity or interest of the party is not determined until after the seizure or turnover but is determined before a declaration of forfeiture is entered." 18 U.S.C. § 983(a)(1)(A)(ii)-(v).

has the same effect as a final decree and order of forfeiture entered in a judicial proceeding." *McGlory*, 202 F.3d at 670.

"[O]nce the government initiates an administrative forfeiture proceeding and the property is not the subject of an ongoing criminal proceeding, the district court loses jurisdiction to resolve the issue of return of property." *Linarez v. United States Dep't of Justice*, 2 F.3d 208, 212 (7th Cir. 1993) (quoted in *McGlory*, 202 F.3d at 670). The district court does, however, retain jurisdiction over claims that the administrative forfeiture proceeding failed to satisfy either statutory or due process requirements. *McGlory*, 202 F.3d at 670.

## III. DISCUSSION

In the instant motion, Collins seeks the return of her 2007 Lincoln MKX, arguing that because the government failed to "institute forfeiture proceedings prior to the conclusion of the criminal case," the government had a duty to return the car to her. [ECF 8] at 1.

In its opposition, the government contends that "the exclusive remedy for the return of seized property that has been administratively forfeited, is by a petition in a civil action brought pursuant to [18] U.S.C. § 983." [ECF 11] at 3. The government further avers that because Collins did not file a claim with the DEA prior to forfeiture and because she does not allege that notice of the forfeiture proceeding was inadequate, the Court lacks subject matter jurisdiction over her claim. *Id.* at 4-6.

In her reply, Collins contends that the government breached an agreement it had made with her in connection with the surrender of her vehicle. [ECF 17] at 1-2.[7] Collins argues that in exchange for, *inter alia,* voluntarily surrendering her car, the government promised not to charge

[7] Collins filed the reply under seal, presumably because she was recounting the details of her alleged agreement. The Court need not repeat those details here, and so further sealing is not required.

her with any criminal activity. *Id.* Collins further indicates that she "now seeks the return of her vehicle in light of the Government breaching the agreement not to charge her, and specifically on the basis that the Government had no authority to seize her vehicle for a misdemeanor and without establishing a connection between her vehicle and drug related activity," as detailed in Detective Elskoe's declaration. *Id.* at 2. According to Collins, because nothing in the record supports the government's contention that her car "constituted the proceeds of drug transactions," the administrative civil forfeiture proceeding the government conducted "is a legal nullity."[8] *Id.* at 4. Lastly, Collins denies that she received adequate notice. *Id.* at 5. In Collins' view, because she received the Notice after she had signed the car over to the government, she had no "basis or reason[] to know that she could object to the forfeiture." *Id.* at 6.

In its surreply, the government argues that it is too late for Collins to claim the government breached any agreement with her. [ECF 21] at 2. Rather, the government contends that Collins should have raised any such argument at the plea hearing. *Id.* In addition, the government avers that the plea agreement itself states that there are no other extant agreements between the parties. *Id.*[9] Finally, the government argues that the forfeiture was properly initiated and completed under 18 U.S.C. § 983, that Collins admitted receiving the Notice, and that if Collins was unsure about how to respond, she should have sought legal advice. *Id.* at 3-5. In sum, the government argues that the instant motion is not properly before the Court. *Id.* at 5.

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[8] Collins objects to the government's submission of Detective Elskoe's declaration, suggesting that the statement is unreliable because it is "unsworn." [ECF 17] at 5. In fact, the declaration was submitted "under penalty of perjury" pursuant to 28 U.S.C. § 1746. Therefore, Collins' objection has no merit.

[9] *See* [ECF 5] at 5.

The undersigned concludes, based on the record before it, that the District Court lacks subject matter jurisdiction over Collins' claim.[10] On November 7, 2008, the DEA seized Collins' car. Because the car was valued at under $500,000.00 ($24,160.00), the DEA appropriately initiated administrative forfeiture proceedings by successfully notifying Collins of the seizure within 60 days (on December 9, 2009). Collins did not request remission or mitigation of forfeiture, nor did she file a claim by the date indicated on the Notice (January 6, 2009). Further, Collins neither denies that she received the Notice, nor that she failed to respond to the Notice in any way. Instead, Collins now disputes that her car was purchased with drug money and challenges the government's recollection of the terms of their agreement. However, neither of these theories falls within the Court's limited jurisdiction to review statutory or due process challenges to administrative forfeiture proceedings. *See Ramos v. United States*, 2015 WL 1433549, at *6 (D.V.I. 2015) ("The instant suit does not raise any due process challenges to the administrative forfeiture that would trigger the jurisdiction of this Court. The complaint simply challenges the merits of forfeiture, which this Court does not have jurisdiction to review."). In sum, the Court lacks subject matter jurisdiction over Collins' claim.

## IV. CONCLUSION

For the foregoing reasons, IT IS RECOMMENDED that the motion be denied for lack of subject matter jurisdiction.

Any objections to this Report and Recommendation must be filed in writing within 14 days of receipt of this notice. Failure to file objections within the specified time shall bar the aggrieved

[10] Both parties address the propriety of Collins having filed the instant motion under Rule 41 of the Federal Rules of Criminal Procedure. If the undersigned had concluded that the Court had jurisdiction over Collins' claim, she would have had to consider whether the motion should be construed as a civil complaint. *See McGlory*, 202 F.3d at 670. Because the undersigned concludes that the Court lacks subject matter jurisdiction over Collins' claim, no such discussion is necessary.

party from attacking such Report and Recommendation before the assigned District Court Judge.

28 U.S.C. § 636(b)(1); LRCi 72.3.

**Dated:** April 27, 2022

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**RUTH MILLER**
United States Magistrate Judge