

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PHIEU VAN NGUYEN,

Defendant.

No. CR 07-4068-MWB

**INSTRUCTIONS  
TO THE JURY  
ON FORFEITURE**

---

**TABLE OF CONTENTS**

<b>FORFEITURE INSTRUCTION. . . . .</b>	<b>1</b>
NO. 1 - INTRODUCTION. . . . .	1
NO. 2 - DRUG-TRAFFICKING OFFENSES: REQUIREMENTS FOR FORFEITURE.. . . .	3
NO. 3 - PROPERTY ALLEGEDLY SUBJECT TO FORFEITURE. . .	5
NO. 4 - APPLICABILITY OF OTHER INSTRUCTIONS AND EVIDENCE. . . . .	7
NO. 5 - OUTLINE OF PROCEEDINGS. . . . .	8
NO. 6 - DUTY TO DELIBERATE. . . . .	9
NO. 7 - DUTY DURING DELIBERATIONS. . . . .	11

**VERDICT FORM**

## FORFEITURE INSTRUCTION NO. 1 - INTRODUCTION

Members of the jury, as I explained during jury selection, because you have found defendant Phieu Van Nguyen guilty of the “CCE offense” charged in **Count 1** of the Indictment, and he has admitted that he is guilty of the “marijuana conspiracy” charged in **Count 2**, you must now determine whether he should forfeit certain property. I also told you during jury selection that there might be forfeiture proceedings against defendant Va Thi Nguyen. However, forfeiture proceedings against defendant Va Thi Nguyen are not before you at this time. Therefore, you need not concern yourself with defendant Va Thi Nguyen’s interest in any of the property in question here. Do not guess about or concern yourselves with the reasons that the forfeiture proceedings against defendant Va Thi Nguyen are not before you at this time and do not consider that fact when deciding whether or not the prosecution has proved the forfeiture issues against defendant Phieu Van Nguyen.

“Forfeiture” means that a defendant loses any ownership or interest that the defendant has or claims to have in the property, as part of the penalty for engaging in criminal activity. You need not concern yourself with any other person’s interest in the property. I will take care of any such claims. Your only concern is with defendant Phieu Van Nguyen’s interest in the property.

In these Instructions, I will explain how you are to make your determination on the forfeiture questions.

First, however, I must remind you that your previous verdict that defendant Phieu Van Nguyen is guilty of the CCE offense in **Count 1** and Phieu Van Nguyen's prior admission that he is guilty of the "marijuana conspiracy" offense in **Count 2** are binding in this part of the proceedings. Therefore, you must not discuss or seek to determine anew whether or not defendant Phieu Van Nguyen is guilty or not guilty of those charges.

Second, I must explain that the prosecution bears a different burden of proof to establish that property is subject to forfeiture than the prosecution bore to prove that a defendant was guilty of an underlying criminal charge: The prosecution must prove that property is subject to forfeiture "by the greater weight of the evidence." Proof by the "greater weight of the evidence" is a lesser standard than proof "beyond a reasonable doubt." To prove something "by the greater weight of the evidence" means to prove that it is more likely true than not true. You will decide whether the prosecution has met this burden by considering all of the evidence on the subject and deciding which evidence you believe. Each party is entitled to the benefit of all evidence received, regardless of who offered the evidence.

**FORFEITURE INSTRUCTION NO. 2 - DRUG-TRAFFICKING  
OFFENSES: REQUIREMENTS FOR FORFEITURE**

Property is subject to forfeiture if the United States proves, by the greater weight of the evidence, one or both of the following circumstances:

*One*, the property constituted or was derived from any proceeds that the defendant obtained, directly or indirectly, as a result of one or more drug-trafficking crimes for which you have found that defendant guilty (derivation);

*And/Or*

*Two*, the property was used or was intended to be used, in any manner or part, to commit or to facilitate the commission of one or more drug-trafficking crimes for which you have found the defendant guilty (facilitation).

I will explain each of these alternatives in more detail.

***Derivation***

Property is subject to forfeiture if it constituted or was derived from any proceeds that the defendant in question obtained, directly or indirectly, as a result of one or more drug-trafficking crimes for which you have found that defendant guilty. Property “derived” from the proceeds of a drug-trafficking crime includes any property obtained, either directly or indirectly, using money or any other source of wealth gained as a result of having participated in the drug-trafficking crime. Consequently, you may, but are not required to, find that property is subject to

forfeiture if the United States proves the following by the greater weight of the evidence:

*First*, such property was acquired by the defendant in question during the period that the defendant was committing the drug-trafficking crime or crimes for which he or she has been found guilty, or within a reasonable time after the commission of that offense; and

*Second*, there was no likely source for such property other than the drug-trafficking crime or crimes for which the defendant has been found guilty.

***Facilitation***

Property is also subject to forfeiture if it was used or was intended to be used, in any manner or part, to commit or to facilitate the commission of the drug-trafficking crime or crimes for which you have found the defendant in question guilty. Property that “facilitated” the commission of the drug-trafficking crimes includes property that made the commission of the drug-trafficking crimes easier or that was used to assist in the commission of the drug-trafficking crimes. To “facilitate” an offense means only that it made the prohibited conduct less difficult or more or less free from obstruction or hindrance.

**FORFEITURE INSTRUCTION NO. 3 - PROPERTY ALLEGEDLY  
SUBJECT TO FORFEITURE**

The United States alleges that certain property should be forfeited because it was property derived from or facilitated one or more drug-trafficking crimes charged in **Count 1** (CCE offense) or **Count 2** (marijuana conspiracy). That property is identified in the Indictment as follows:

*Cash proceeds*

A sum of money, the amount to be found by you, as the total that was “derived from” or “facilitated” one or more drug-trafficking crimes charged in **Count 1** (CCE offense) or **Count 2** (marijuana conspiracy). The Indictment alleges that this sum is approximately \$1.2 million.

*Vehicles*

(1) A black 2002 BMW, South Dakota license 62KJ30, vehicle identification number WBAEV53412KM24276, registered to Phieu Van Nguyen;

(2) A 2000 Chevrolet Silverado, South Dakota license 62HT68, vehicle identification number 1GCEK19T2YE204221, registered to Phieu Van Nguyen and Qua T. Nguyen;

(3) A blue 2005 Toyota Camry, South Dakota license 62EV53, vehicle identification number JTDDBE30K253031074, registered to Phieu Van Nguyen;

(4) A 2006 Caravelle motor boat, vehicle identification number VCN19173D606, registered to Phieu Van Nguyen;

(5) A 2006 Tennessee boat trailer, South Dakota license T436397, vehicle identification number 1TPSB241861062303, registered to Phieu Van Nguyen.

***Real Property***

(1) 301 S. Floyd Blvd., Sioux City, Iowa, further described as lots 11 and 12 in block 22 and all that part of the vacated north/south alley abutting lots 11 and 12 thereof, east Sioux City, in the County of Woodbury and State of Iowa;

(2) 536 East Deerfield Circle, Dakota Dunes, South Dakota, further described as lots 4 and 5, Dakota Dunes golf course, ninth addition, Dakota Dunes, Union County, South Dakota.

Property subject to forfeiture may include the property identified, whether or not that property has been seized by the United States. ***You must determine what property, if any, is subject to forfeiture.*** You may conclude that all, some, or none of the property identified is subject to forfeiture. If you find that any given property is, in fact, subject to forfeiture for more than one reason, you need not be concerned that the government will receive forfeited property twice. Rather, you must indicate on the forfeiture verdict form all bases on which you find any given property is subject to forfeiture. I will consider any issue of multiple grounds for forfeiture when I impose the sentence.

**FORFEITURE INSTRUCTION NO. 4 - APPLICABILITY  
OF OTHER INSTRUCTIONS AND EVIDENCE**

The following Instructions previously given in this case apply with respect to the forfeiture questions:

**Preliminary Jury Instruction No. 13** on the definition of evidence;

**Preliminary Jury Instruction No. 14** on the credibility of witnesses;

**Preliminary Jury Instruction No. 15** on bench conferences and recesses;

**Preliminary Jury Instruction No. 16** on objections;

**Preliminary Jury Instruction No. 17** on note-taking;

**Preliminary Jury Instruction No. 18** on conduct of the jury during trial; and

**Final Jury Instruction No. 6** on impeachment.

In addition, in deciding the forfeiture questions, you may consider all of the evidence presented in the trial of the criminal charges.

## **FORFEITURE INSTRUCTION NO. 5 - OUTLINE OF PROCEEDINGS**

The forfeiture proceedings will be conducted as follows:

You have heard all of the evidence in this matter. Therefore, after these forfeiture instructions, the lawyers will make their arguments to summarize and interpret the evidence as it relates to the forfeiture issues. As with opening and closing arguments in the trial on the merits, arguments on forfeiture issues are not evidence. They are simply summaries of what the lawyers believe the evidence on forfeiture issues to be. I will then give you the remaining Forfeiture Instructions on deliberations, and you will retire to deliberate on your forfeiture verdict.

The parties will now give their arguments on forfeiture issues.

## **FORFEITURE INSTRUCTION NO. 6 - DUTY TO DELIBERATE**

As was the case with the criminal charges, the verdict on forfeiture questions must represent the considered judgment of each juror. *Your verdict on each forfeiture question must be unanimous.* It is your duty to consult with one another and to deliberate with a view to reaching agreement if you can do so without violence to your individual judgment. Of course, you must not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinions of other jurors or for the mere purpose of returning a verdict. Each of you must decide the forfeiture questions for yourself; but you should do so only after consideration of the evidence with your fellow jurors.

In the course of your deliberations you should not hesitate to re-examine your own views, and to change your opinion if you are convinced that it is wrong. To bring twelve minds to an unanimous result, you must examine the forfeiture questions submitted to you openly and frankly, with proper regard for the opinions of others and with a willingness to re-examine your own views.

Remember that if, in your individual judgment, the evidence fails to establish that a particular item of property is subject to forfeiture, then you must vote not to allow forfeiture of that item of property. If all of you reach the same conclusion, then the item of property in question is not subject to forfeiture. Of course, the opposite also applies. If, in your individual judgment, the evidence establishes that a particular item of property is subject to forfeiture, then you must vote to allow forfeiture of that item of property. If all of you reach that conclusion, then that item

of property is subject to forfeiture. As I instructed you earlier, the burden is upon the prosecution to prove by the greater weight of the evidence that a particular item of property is subject to forfeiture.

Remember, also, that the question before you can never be whether the prosecution wins or loses the forfeiture case as to any particular item of property. The prosecution, as well as society, always wins, regardless of whether your verdict is for or against the forfeiture of any particular item of property, when justice is done.

Finally, remember that you are not partisans; you are judges—judges of the facts. Your sole interest is to seek the truth from the evidence. You are the judges of the credibility of the witnesses and the weight of the evidence.

You may conduct your deliberations as you choose. However, I suggest that you carefully consider all of the evidence bearing upon the questions before you. You may take all the time that you feel is necessary.

There is no reason to think that another trial on the forfeiture questions would be tried in a better way or that a more conscientious, impartial, or competent jury would be selected to hear it. Any future jury must be selected in the same manner and from the same source as you. If you should fail to agree on a forfeiture verdict, then the forfeiture questions are left open and must be disposed of at some later time.

## **FORFEITURE INSTRUCTION NO. 7 - DUTY DURING DELIBERATIONS**

Again, there are certain rules that you must follow while conducting your deliberations and returning your verdict on the forfeiture questions:

*First*, the foreperson you have previously selected will preside over your discussions on the forfeiture questions and will speak for you here in court.

*Second*, you may not consider in any way the consequences of your forfeiture decision in deciding whether or not to allow the forfeiture of any item of property. As I explained in Forfeiture Instruction No. 1, you need not concern yourself with any other person's interest in the property. I will take care of any such claims. Your only concern is with defendant Phieu Van Nguyen's interest in the property.

*Third*, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible, either in writing or orally in open court. *Remember that you should not tell anyone—including me—how your votes stand numerically on any forfeiture question.*

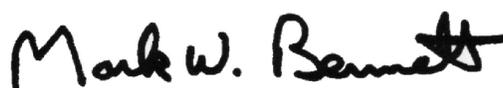
*Fourth*, your verdict must be based solely on the evidence and on the law in these instructions. Therefore, you must return a separate, unanimous determination on whether each item of property in question is subject to forfeiture. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

*Fifth*, in your consideration of whether any property should or should not be forfeited, you must not consider the defendant's race, color, religious beliefs, national origin, or sex. You are not to return a forfeiture verdict as to any item of

property unless you would return the same verdict for that item of property without regard to the defendant's race, color, religious beliefs, national origin, or sex. To emphasize the importance of this consideration, the verdict form contains a certification statement. Each of you should carefully read the statement, then sign your name in the appropriate place in the signature block, if the statement accurately reflects the manner in which each of you reached your forfeiture decision.

*Finally*, I am giving you the forfeiture verdict form. With respect to each item of property, you are asked to determine unanimously whether or not it is to be forfeited to the United States. You may answer by simply putting an "X" or a check mark in the space provided next to each item of property that is to be forfeited. When you have reached a unanimous forfeiture verdict, your foreperson must complete one copy of the verdict form and all of you must sign that copy to record your individual agreement with the forfeiture verdict and to show that it is unanimous. The foreperson must bring the signed verdict form to the courtroom when it is time to announce your forfeiture verdict. When you have reached a forfeiture verdict, the foreperson will advise the Court Security Officer that you are ready to return to the courtroom.

**DATED** this 2nd day of September, 2008.



---

MARK W. BENNETT  
U. S. DISTRICT COURT JUDGE  
NORTHERN DISTRICT OF IOWA

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PHIEU VAN NGUYEN,

Defendant.

No. CR 07-4068-MWB

**FORFEITURE  
VERDICT FORM**

***I. PHIEU VAN NGUYEN***

We, the Jury, unanimously find as follows on the forfeiture questions submitted to us regarding defendant Phieu Van Nguyen:

<b>DRUG-TRAFFICKING: DETERMINATION OF PROPERTY SUBJECT TO FORFEITURE</b>		
Please place an "X" or a check mark before each item of property that you unanimously find is subject to forfeiture because it was derived from or facilitated drug-trafficking crimes. Where required, please enter a dollar amount. Also indicate whether the property is subject to forfeiture because it was "derived from" or "facilitated" drug-trafficking crimes, or both, as those two grounds for forfeiture are explained in Instruction No. 2.		
\$ _____ as the sum of money we find as the total that this defendant received from the sale of drugs as a result of a finding of guilty on the drug-trafficking offenses charged in <b>Count 1</b> and <b>Count 2</b> as property	_____ that was derived from, and/or _____ that facilitated	drug-trafficking crimes

_____ A black 2002 BMW, South Dakota license 62KJ30, vehicle identification number WBAEV53412KM24276, registered to Phieu Van Nguyen, as property	_____ that was derived from, and/or _____ that facilitated	drug-trafficking crimes
_____ A 2000 Chevrolet Silverado, South Dakota license 62HT68, vehicle identification number 1GCEK19T2YE204221, registered to Phieu Van Nguyen and Qua T. Nguyen, as property	_____ that was derived from, and/or _____ that facilitated	drug-trafficking crimes
_____ A blue 2005 Toyota Camry, South Dakota license 62 EV 53, vehicle identification number JTDBE30K253031074, registered to Phieu Van Nguyen, as property	_____ that was derived from, and/or _____ that facilitated	drug-trafficking crimes
_____ A 2006 Caravelle motor boat, vehicle identification number VCN19173D606, registered to Phieu Van Nguyen, as property	_____ that was derived from, and/or _____ that facilitated	drug-trafficking crimes
_____ A 2006 Tennessee boat trailer, South Dakota license T436397, vehicle identification number 1TPSB241861062303, registered to Phieu Van Nguyen, as property	_____ that was derived from, and/or _____ that facilitated	drug-trafficking crimes
_____ 301 S. Floyd Blvd., Sioux City, Iowa, further described as lots 11 and 12 in block 22 and all that part of the vacated north/south alley abutting lots 11 and 12 thereof, east Sioux City, in the County of Woodbury and State of Iowa, as property	_____ that was derived from, and/or _____ that facilitated	drug-trafficking crimes
_____ 536 East Deerfield Circle, Dakota Dunes, South Dakota, further described as lots 4 and 5, Dakota Dunes golf course, ninth addition, Dakota Dunes, Union County, South Dakota, as property	_____ that was derived from, and/or _____ that facilitated	drug-trafficking crimes

**CERTIFICATION**

By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant was not involved in reaching his or her individual decision, and that the individual juror would have returned the same verdict on the forfeiture question regardless of the race, color, religious beliefs, national origin, or sex of the defendant.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Foreperson

\_\_\_\_\_  
Juror

\_\_\_\_\_  
Juror