

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARK DONISI,

Defendant.

No. CR 06-3055-MWB

**INSTRUCTIONS
TO THE JURY
ON FORFEITURE**

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VERDICT FORM

FORFEITURE INSTRUCTION NO. 1 - INTRODUCTION

Members of the jury, as Judge Zoss explained during jury selection, because you have found defendant Mark Donisi guilty of certain of the charges in the Indictment, you must now determine whether Mark Donisi should forfeit certain property as part of the penalty for engaging in that criminal activity. “Forfeiture” means that the defendant loses any ownership or interest that he 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 Mark Donisi’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 the defendant is guilty of one or more drug-trafficking crimes, the money-laundering conspiracy, or both drug-trafficking and money-laundering crimes are binding in this part of the proceedings. Therefore, you must not discuss or seek to determine anew whether or not defendant Donisi 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 the defendant was guilty of the underlying criminal charges: The prosecution must prove that property is subject to forfeiture “by the greater weight of the evidence.” 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 defendant Mark Donisi obtained, directly or indirectly, as a result of one or more drug-trafficking crimes for which you have found him 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 defendant Mark Donisi 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 defendant Mark Donisi obtained, directly or indirectly, as a result of one or more drug-trafficking crimes for which you have found him 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 defendant Mark Donisi during the period that he was committing the drug-trafficking crime or crimes for which he 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 defendant Mark Donisi 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 defendant Mark Donisi 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 - MONEY-LAUNDERING CONSPIRACY: REQUIREMENTS FOR FORFEITURE

Property is also subject to forfeiture if the United States proves, by the greater weight of the evidence, that it was “involved in” the money-laundering offense charged in **Count 7** or is “traceable” to such property involved in the money-laundering offense charged in **Count 7**.

Property involved in the money-laundering offense

Property that was “involved in” a money-laundering offense includes any of the following: (1) money or other property that was the subject of the financial transaction that constituted the money-laundering violation; (2) any fees or commissions paid to the money launderer; and (3) any property used to facilitate, or make easier, the money-laundering violation. For example, the property may be the proceeds of the underlying specified unlawful activity being laundered; it can be property that was commingled with those proceeds at the time the financial transaction took place; or it can be property that was obtained as part of an exchange or purchase that constitutes the money-laundering violation for which the defendant has been found guilty. To be forfeitable as “facilitating property,” however, there must be a substantial connection between the property and the violation. On the other hand, “facilitating property” need not be used exclusively for illegal activity in order to be forfeitable. Property that is used the majority of the time for legitimate purposes may nevertheless be forfeited if it facilitates a

money-laundering violation. Property that may be used to facilitate a money-laundering violation includes money in financial accounts, personal property, real property, and businesses.

Property traceable to property involved in the money-laundering offense

Property that is “traceable to such property involved in the money-laundering offense” is property that you can trace, in any way, to property that was involved as proceeds or as facilitating property in the money-laundering violation. There are a number of ways in which property may be traceable to property involved in a money-laundering violation. Proceeds or facilitating property that were involved in the money-laundering violation may be used to acquire, improve, or maintain real or personal property in a transaction that is not a money-laundering violation. If that is the case, the real or personal property that was acquired, improved, or maintained is forfeitable because it can be traced to property that was involved in a money-laundering violation. Property is also forfeitable as traceable to property that was involved in a money-laundering violation even if only some tainted funds were used to purchase, improve, or maintain the property.

Determination of value

You must determine the value of the property “involved in” and/or “traceable to property involved in” the money-laundering violation.

**FORFEITURE INSTRUCTION NO. 4 - 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 and/or was “involved in” or “traceable to property involved in” the money-laundering offense charged in **Count 7**. That property is identified in the Indictment as follows:

Cash proceeds

- (1) Approximately \$32,039.00 in United States currency; and
- (2) \$5,000 in United States currency seized in the form of a cashier’s check from Mark Donisi, dated July 11, 2006, purchased by Mark Donisi and made out to Jill Donisi; and
- (3) 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 and/or was “involved in” or is “traceable” to property involved in the money-laundering offense charged in **Count 7**. The Indictment alleges that this sum is approximately \$2.5 million.

Real property

The real property known as 4831 AB Raven Avenue in Rockwell, Iowa.

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. 5 - APPLICABILITY
OF OTHER INSTRUCTIONS AND EVIDENCE**

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

Instruction No. 12 on the definition of evidence;

Instruction No. 13 on the credibility and impeachment of witnesses;

Instruction No. 14 on bench conferences;

Instruction No. 15 on objections;

Instruction No. 16 on note-taking; and

Instruction No. 17 on conduct of the jury during trial.

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

FORFEITURE INSTRUCTION NO. 6 - 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.

FORFEITURE INSTRUCTION NO. 7 - 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. 8 - 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 Mark Donisi'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.*

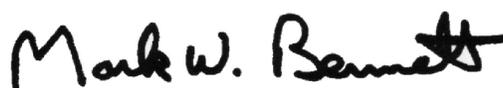
Fourth, your verdict must be based solely on the evidence and on the law in these instructions. Therefore, you must return a separate, unanimous determination on whether each item of property in question is subject to forfeiture. Nothing I have said or done is intended to suggest what your verdict should 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 3rd day of October, 2007.



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

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

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARK DONISI,

Defendant.

No. CR 06-3055-MWB

**COURT'S
FORFEITURE
VERDICT FORM**

We, the Jury, unanimously find as follows on the forfeiture questions submitted:

DRUG-TRAFFICKING: DETERMINATION OF PROPERTY SUBJECT TO FORFEITURE		
Please place an "X" or a check mark before those items of property that you unanimously find are 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.		
<input type="checkbox"/> Approximately \$32,039.00 in United States currency as property	<input type="checkbox"/> that was derived from, and/or <input type="checkbox"/> that facilitated	drug-trafficking crimes
<input type="checkbox"/> \$5,000 in United States currency seized in the form of a cashier's check from Mark Donisi, dated July 11, 2006, purchased by Mark Donisi and made out to Jill Donisi, as property	<input type="checkbox"/> that was derived from, and/or <input type="checkbox"/> that facilitated	drug-trafficking crimes

\$ _____ as the sum of money we find as the total that the defendant received from the sale of drugs as a result of a finding of guilty on the drug-trafficking offenses charged in Counts 1 through 5 , as property	_____ that was derived from, and/or _____ that facilitated	drug-trafficking crimes
_____ The real property known as 4831 AB Raven Avenue in Rockwell, Iowa, as property	_____ that was derived from, and/or _____ that facilitated	drug-trafficking crimes
MONEY-LAUNDERING: DETERMINATION OF PROPERTY SUBJECT TO FORFEITURE		
Please place an "X" or a check mark before those items of property that you unanimously find are subject to forfeiture as involved in money-laundering crimes or traceable to property involved in money-laundering crimes. Where required, please enter a dollar amount. Also indicate whether the property is subject to forfeiture because it was "involved in" or "traceable to property involved in" money-laundering crimes, or both, as those two grounds for forfeiture are explained in Instruction No. 3.		
_____ Approximately \$32,039.00 in United States currency as property	_____ that was involved in, and/or _____ that was traceable to property involved in	money-laundering crimes
_____ \$5,000 in United States currency seized in the form of a cashier's check from Mark Donisi, dated July 11, 2006, purchased by Mark Donisi and made out to Jill Donisi, as property	_____ that was involved in, and/or _____ that was traceable to property involved in	money-laundering crimes
\$ _____ as the sum of money we find as the total proceeds of the money-laundering offense charged in Count 7 , as property	_____ that was involved in, and/or _____ that was traceable to property involved in	money-laundering crimes
_____ The real property known as 4831 AB Raven Avenue in Rockwell, Iowa, as property	_____ that was involved in, and/or _____ that was traceable to property involved in	money-laundering 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