UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-10711
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

$17,420.00 IN UNITED STATES CURRENCY,

Defendant,

PAUL OHAEGBU,

Claimant-Appellant.

Appeal from the United States District Court
For the Northern District of Texas
(3:94-CV-209-T)

(May 2, 1995)

Before POLITZ, Chief Judge, HIGGINBOTHAM and EMILIO M. GARZA, Circuit Judges.

POLITZ, Chief Judge:[*]

Paul Ohaegbu appeals a judgment of forfeiture of $17,420 in currency seized during a narcotics raid. Finding no reversible error, we affirm.

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[*]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

Background

An investigation of drug trafficking in Florida led law enforcement authorities to Ohaegbu, the Dallas supplier of cocaine base. During the execution of a search warrant authorities found 400 grams of "crack" cocaine and $17,420 in Ohaegbu's apartment. Ohaegbu was arrested and authorities seized the contraband and currency. Ohaegbu pled guilty to conspiracy to possess with intent to distribute cocaine base in violation of 21 U.S.C. § 846 and was sentenced to 25 years imprisonment by the district court of the Middle District of Florida. The Federal Bureau of Investigation administratively forfeited the currency under 21 U.S.C. § 881(a)(6) as monies traceable to or intended for use in drug dealing, but after learning that Ohaegbu had not received notice, rescinded the administrative forfeiture and initiated judicial proceedings in the court *a` quo* which entered summary judgment in favor of the government. Ohaegbu timely appealed.

Analysis

In a civil forfeiture action, the government initially must show probable cause to believe that there is a substantial connection between the property and criminal activity. When this is done, the burden shifts to the claimant to prove "that factual predicates for forfeiture have not been met or that a defense to the forfeiture applies."[1] The government met its burden with the affidavit of an FBI agent outlining the investigation that led to

[1] **United States v. 1988 Oldsmobile Cutlass Supreme**, 983 F.2d 670, 674 (5th Cir. 1993).

Ohaegbu's arrest and the discovery of "crack cookies," manufacturing utensils, and the currency in Ohaegbu's apartment. It also presented the plea agreemenet in which Ohaegbu stipulated to involvement in a conspiracy to traffic in 1.5 to 5 kilograms of crack cocaine. Ohaegbu presented no evidence severing the connection between the money and the drug deals other than assorted invoices from his car repair business that were not sufficient to create a genuine issue of material fact.[2] Rather, he relies on other defenses to forfeiture.

Ohaegbu first complains of delay in the proceedings. Four factors determine whether a due process violation has occurred: length of the delay, the reason for the delay, the claimant's assertion of his right, and prejudice.[3] The length of the delays in giving notice -- 109 days from the seizure until first publication and 6 months from the seizure until mail notice -- was not unreasonable in light of the pendency of Ohaegbu's criminal prosecution and the need to coordinate operations between the Dallas and Tampa, Florida FBI offices.[4] The FBI did not file a judicial complaint until 22 months after seizure because it mistakenly believed that Ohaegbu had received notice of the

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[2]See **Anderson v. Liberty Lobby, Inc.**, 477 U.S. 242 (1986).

[3]**United States v. $8,850 in United States Currency**, 461 U.S. 555 (1983); **United States v. $23,407.69 in United States Currency**, 715 F.2d 162 (5th Cir. 1983).

[4]See **$8,850**.

administrative proceeding through his criminal defense attorney[5] and had waived his claim. Without deciding whether notice to the attorney was statutorily or constitutionally sufficient,[6] we conclude that the FBI's reasonable belief that the notice passed muster adequately justifies the delay in its filing of a judicial proceeding. In addition, Ohaegbu has not shown any prejudice. The delay did not violate Ohaegbu's statutory or constitutional rights.

Ohaegbu next maintains that the government was not entitled to rely on the plea agreement because of a provision that "this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and cannot bind other federal, state or local prosecuting attorneys. . . ." This agreement defines the scope of the promises by the Florida prosecutor. It does not preclude reliance on the conviction or the factual stipulation in the plea agreement as evidence of probable cause. We need not address whether Ohaegbu's promise not to contest forfeiture is enforceable outside the Middle District of Florida. The district court did not hold Ohaegbu to that promise nor do we

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[5]The attorney discarded the certified mail notice without informing Ohaegbu. When the FBI was informed, it promptly rescinded the administrative forfeiture and initiated judicial proceedings.

[6]See 19 U.S.C. § 1607(a) ("Written notice of seizure . . . shall be sent to each party who appears to have an interest in the seized article); **United States v. 51 Pieces of Real Property Roswell, N.M.**, 17 F.3d 1306 (10th Cir. 1994) (finding written notice to attorney in pending criminal defense prosecution sufficient under the constitutional standard of "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections").

in today's disposition.

Ohaegbu invokes the double jeopardy clause, contending that the forfeiture action is barred by the previous criminal prosecution. Were we to consider this issue, which is first raised on appeal,[7] we would deem it foreclosed by **United States v. Tilley**.[8] Ohaegbu likewise has waived his complaints about the admissibility of exhibits on which he claims the district court relied and we find no merit in his complaint of wrongdoing in the procurement of the warrant to search his residence.

The judgment appealed is AFFIRMED.

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[7]**United States v. Pardue**, 36 F.3d 429 (5th Cir. 1994), petition for cert. filed (Feb. 10, 1995) (No. 94-8025) (declining to consider issues first raised on appeal).

[8]18 F.3d 295 (5th Cir.), cert. denied, 115 S.Ct. 573 and 115 S.Ct. 574 (1994). But cf. **United States v. $405,089.23 in United States Currency**, 33 F.3d 1210 (9th Cir. 1994).