United States of America
First Circuit Court of Appeals

NO. 2014-1175

UNITED STATES OF AMERICA
Appellee,

v.

ASSORTED JEWELRY APPROXIMATELY VALUED OF $44,328.00

APPEAL FROM PUERTO RICO FEDERAL DISTRICT COURT
BRIEF OF FORFEITURE CLAIMANT, ANGEL ABNER BETANCOURT-PÉREZ

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STATEMENT OF JURISDICTION

The First Circuit Court of Appeals has jurisdiction of this forfeiture appeal pursuant to 28 U.S.C. § 1291, 28 U.S.C. § 2461, 28 U.S.C. § 1345, and 28 U.S.C. § 1355.

On January 15, 2014, following criminal convictions, property belonging to Mr. Betancourt-Pérez was forfeited to the United States by order of the District Court for the District of Puerto Rico (Camille L. Velez-Rive, *Mag.*). A notice of appeal was filed on January 29, 2014.

STATEMENT OF ISSUES

I. Did the court err in allowing forfeiture of Mr. Betancourt-Pérez's jewelry to the government when there was no substantial connection between the jewelry and Mr. Betancourt-Pérez's crimes?

II. Did the court err in allowing forfeiture of Mr. Betancourt-Pérez's jewelry to the government when the jewelry was unlawfully seized, and without the evidence of the jewelry the government cannot prove any substantial connection to Mr. Betancourt-Pérez's crimes?

STATEMENT OF FACTS AND STATEMENT OF THE CASE

I. Jewelry in the Kitchen

On May 11, 2011, there was an existing a federal warrant for the arrest of Angel Abner Betancourt-Pérez. JOINT PRE-TRIAL MEMO. (Nov. 12, 2013) at 2, *Appx*. at 98. While federal marshals and agents of the DEA were lurking in the vicinity of the "Montecillo Court Apartment Complex, in Encantada, Trujillo Alto, PR," they saw a man drive a van into the parking lot of Mr. Betancourt-Pérez's apartment, noticed the man spent about 40 minutes in apartment #4404 which was Mr. Betancourt-Pérez's suite, and saw the man and Mr. Betancourt-Pérez come out and load four white boxes into the van and another car in the lot. UNITED STATES' MOTION TO DISMISS CLAIM OR IN THE ALTERNATIVE MOTION FOR SUMMARY JUDGMENT (Nov. 19, 2013) at 15-16, *Appx*. at 110. The agents arrested Mr. Betancourt-Pérez. Although the government nowhere in the record specifies the basis for probable cause, it acquired a warrant to search the apartment. VERIFIED COMPLAINT FOR FORFEITURE IN REM (Nov. 1, 2011), *with attached* UNSWORN DECLARATION (Nov. 1, 2011) at 3-4 & 8-12, *Appx*. at 70, 77.

In Mr. Betancourt-Pérez's apartment, the government found drugs and drug paraphernalia, a gun, two laptop computers, and assorted jewelry which is the subject of this forfeiture case. COMPLAINT and DECLARATION (Nov. 1, 2011). All the drugs were found in the kitchen: some were "behind the refrigerator kitchen cabinet," REPORT OF INVESTIGATION (May 15, 2011) at 2, *Appx*. at 60 (capitalization altered throughout), some "under the sink cabinet in the kitchen," *id.*, some "on top of the water heater

located in the kitchen closet," *id.* at 3, and some "inside the kitchen oven." *Id.* A pistol was found on "top of the washer/dryer machine." *Id.* at 4. The jewelry was found "hidden behind the kitchen cabinet on top of the refrigerator located in the kitchen." *Id.* It was not specified where in the apartment were found the paraphernalia, documents, scale, and laptop computers. *Id.* at 4-9.

The jewelry consisted of two men's watches, several heavy men's jeweled gold chains and bracelets, a heavy men's ring, several women's bracelets, and a few juvenile ornaments. VERIFIED COMPLAINT FOR FORFEITURE IN REM *with attached* UNSWORN DECLARATION at 3-4 & 8-12 (containing list of jewelry)

The jewelry was collectively appraised at $44,328, APPRAISAL (May 24, 2011) (not in appendix); UNSWORN DECLARATION (Nov. 1, 2011) at 2-3; *Pretrial Settlement Conf. Trn.* (Nov. 12, 2013) at 3, and the government sought to have it forfeited. VERIFIED COMPLAINT FOR FORFEITURE IN REM (Nov. 1, 2011). Later Mr. Betancourt-Pérez plead guilty to drug-related crimes that lead to the arrest warrant, and additional drug-related crimes stemming from the day of his arrest and thereafter.[1] JUDGMENT IN A CRIMINAL CASE (3:10-cr-0175) (Apr. 14, 2014), *Appx*. at 45; JUDGMENT IN A CRIMINAL CASE (3:11-cr-0181) (Apr. 14, 2014), *Appx*. at 50; JUDGMENT IN A CRIMINAL CASE (3:11-cr-0367) (Apr. 14, 2014), *Appx*. at 55.

[1]A separate brief addressing issues related to Mr. Betancourt-Pérez's criminal convictions is being filed herewith.

II. Government Attempted No Connection Between Jewelry and Drugs

The specifics about where the jewelry was found were not presented to the district court. Rather, the government made general statements about proximity. UNITED STATES' MOTION TO STRIKE ANSWER (Dec. 20, 2011) fn. 1 at 2, *Appx*. at 84 ("*next to* the cocaine, the jewelry was found") (emphasis added); JOINT PRE-TRIAL MEMO. (Nov. 12, 2013) at 2 ("assorted jewelry *with* the aforementioned cocaine") (emphasis added); UNITED STATES' MOTION TO DISMISS CLAIM OR IN THE ALTERNATIVE MOTION FOR SUMMARY JUDGMENT (Nov. 19, 2013) at 1, ("jewelry … was found *alongside* … cocaine and marijuana") (emphasis added).

The government similarly made no effort to tie the jewelry to the drugs in a financial sense. Rather, the government made conclusory statements about its belief. VERIFIED COMPLAINT FOR FORFEITURE IN REM ¶¶ 10-12 (Nov. 1, 2011) ("affiant respectfully submits that there is probable cause to believe that the assorted jewelry … was derived from narcotics proceeds"); *Pretrial Settlement Conf. Trn.* (Nov. 12, 2013) at 10 (The court: "Your contention is that the money came from illegal proceeds." AUSA: "Illegal proceeds."); UNITED STATES' MOTION TO DISMISS CLAIM OR IN THE ALTERNATIVE MOTION FOR SUMMARY JUDGMENT (Nov. 19, 2013) at 17, ("Claimant is a convicted drug dealer and money launderer.").

Mr. Betancourt-Pérez pointed out below that the government failed to make any connection between jewelry and drugs. JOINT INITIAL SCHEDULING CONF. MEMO. (Apr. 18, 2012) at 5, *Appx*. at 89 ("In the present case, there is no connection between the seized jewelry and the illegal distribution of drugs besides the fact that they were found

inside an apartment in which drugs were also found. There is no evidence showing that said items were obtained with the proceeds of drug trafficking. In addition, none of the items were used in the commission of any crime."); MOTION FOR RECONSIDERATION (Dec. 20, 2013) at 2, *Appx*. at 145 ("[T]here is no evidence on the record about the location of the jewelry."). Mr. Betancourt-Pérez affirmatively claimed the government failed to draw a connection, ANSWER TO COMPLAINT (Dec. 13, 2011) at 1, *Appx*. at 82 ("The seized property is not related in any way to illegal activity."); VERIFIED STATEMENT OF CLAIM (Jan. 18, 2012) at 1, *Appx*. at 87 ("The seized property … is not related in any way to illegal activity."), offered purchase receipts for some of the jewelry, and suggested other pieces were his long before the crimes, belonged to members of his family, or were heirlooms from them. JOINT PRE-TRIAL MEMORANDUM (Nov. 12, 2013) at 9-10, *Appx*. at 98 (listing items).

III. Court Found Connection Based on Proximity Alone

After Mr. Betancourt-Pérez made a claim to the property, the government filed a motion for summary judgment. UNITED STATES' MOTION TO DISMISS CLAIM OR IN THE ALTERNATIVE MOTION FOR SUMMARY JUDGMENT (Nov. 19, 2013) at 15-16.

In granting the government's motion, the court mimicked the allegations. The court did not make any specific findings, but mentioned only that the jewelry was found "with," "together with," "alongside," and "in the same area of the house" as the cocaine. OPINION AND ORDER (Dec. 11, 2013) at 2, 5, 10, *Appx*. at 134.

The court made no finding suggesting the jewelry was obtained with proceeds of unlawful activities. Rather, it based its finding solely on the proximity of the items. *Id.*

at 10-11 ("In this case, under the summary judgment standard, it is clear that the government has met its burden of proof. Specifically, it is uncontested that Claimant pled guilty to the drug charges which gave rise to the present action and that the jewelry at issue was seized from Claimant's apartment together with approximately 2.185 kilograms of cocaine. It is also uncontested that the assorted jewelry was found in the same area of the house where the cocaine was found and all items were seized pursuant to a federal search warrant. *These facts are enough to make a reasonable inference to establish a nexus between the seized jewelry and the offenses* for which Betancourt-Pérez was convicted, as required by law.") (emphasis added).

Although Mr. Betancourt-Pérez requested reconsideration, the court issued a judgment forfeiting the jewelry to the United States. MOTION FOR RECONSIDERATION (Dec. 20, 2013), *Appx*. at 145; JUDGMENT (Dec. 31, 2013), *Appx*. at 148; UNITED STATES OF AMERICA'S MOTION FOR JUDGMENT (Jan. 7, 2014), *Appx*. at 149; ORDER (Jan. 15, 2014), *Appx*. at 153. This appeal followed.

SUMMARY OF ARGUMENT

After reviewing the law governing forfeiture, Mr. Betancourt-Pérez points out that because the government made no effort to show Mr. Betancourt-Pérez's jewelry was traceable as the proceeds of any unlawful transaction, the government waived any claim of forfeiture pursuant to 21 U.S.C. § 881, and that therefore the government's only allegation is of a "substantial connection" between the property and the offense pursuant to 18 U.S.C. § 983. He then argues that the only evidence of a "substantial connection" is that the jewelry was found in Mr. Betancourt-Pérez's kitchen where many of his valuables were kept, and that proximity alone is insufficient to meet the requirements of forfeiture. He also argues that because the government did not show that its seizure was lawful, evidence of the jewelry, including the location where it was found, should have been suppressed, and without any other proof of a substantial connection between the jewelry and Mr. Betancourt-Pérez's crimes, the jewelry must be returned to Mr. Betancourt-Pérez.

ARGUMENT

I. Law Requires Proof of Substantial Connection Between Property and Crime

Federal law provides that property may be civilly forfeited, 18 U.S.C. § 981(a)(1) if it is "traceable" to a drug transaction, 21 U.S.C. § 881(a)(6), or if the government by a preponderance of the evidence proves that "there was a substantial connection between the property and the offense." 18 U.S.C. §§ 983(c)(1) & (c)(3).[2] *United States v. 6 Fox St.*, 480 F.3d 38, 42 (1st Cir. 2007).

Forfeiture cases involving real estate are not helpful here because they generally involve unlawful transactions taking place on the premises, thereby easily connecting the property with the transaction. *See e.g.*, *United States v. One Parcel of Real Prop. with Buildings, Appurtenances & Improvements*, 395 F.3d 1 (1st Cir. 2004); *United States v. 6 Fox St.*, 480 F.3d 38 (1st Cir. 2007); *United States v. 8 Gilcrease Lane*, 641 F. Supp.2d 1(D.D.C 2009).

Cases involving vehicles are similarly unhelpful because the government generally has evidence that contraband was transported in them. *United States v. One 1998 Tractor*, 288 F. Supp. 2d 710 (W.D. Va. 2003), *aff'd sub nom.*, *United States v. Shimshiryan*, 117 F.

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[2]Burden of proof. In a suit or action brought under any civil forfeiture statute for the civil forfeiture of any property –

(1) the burden of proof is on the Government to establish, by a preponderance of the evidence, that the property is subject to forfeiture;

(2) the Government may use evidence gathered after the filing of a complaint for forfeiture to establish, by a preponderance of the evidence, that property is subject to forfeiture; and

(3) if the Government's theory of forfeiture is that the property was used to commit or facilitate the commission of a criminal offense, or was involved in the commission of a criminal offense, the Government shall establish that there was a substantial connection between the property and the offense.

18 U.S.C. § 983(c).

App'x 863 (4th Cir. 2004); *United States v. One 2000 Pontiac Firebird Trans Am*, 845 F. Supp. 2d 965 (E.D. Wis. 2012); *United States v. One 2005 Dodge Magnum*, 845 F. Supp. 2d 1361 (N.D. Ga. 2012).

Cases involving currency and bank accounts are also not useful here because claimants generally have a hard time explaining large amounts of cash, and the government generally can produce evidence of the cash being traded for contraband. *See e.g.*, *United States v. $21,510.00 In U.S. Currency*, 144 F. App'x 888 (1st Cir. 2005); *United States v. $7,696.00 in U.S. Currency*, 587 F. App'x 352 (8th Cir. 2014); *United States v. $252,300.00 in U.S. Currency*, 484 F.3d 1271 (10th Cir. 2007); *United States v. $31,990 in U.S. Currency*, 982 F.2d 851 (2d Cir. 1993) ("On August 28, 1988, at approximately 1:00 a.m., two New York State police officers stopped a 1977 Cadillac gypsy cab (a vehicle used to transport people for hire but not registered with a taxi medallion) on the southbound New York State Thruway near Albany. A computer check had revealed that the car's registration was suspended and that its owner was a wanted person. Both the operator of the vehicle, Carlos Coste, and his passenger, Rafael Cabreja, are citizens of the Dominican Republic. Both men had been drinking. Coste was arrested for driving while intoxicated. A search of Coste revealed one half gram of cocaine for which he also was arrested and charged with possession of a controlled substance. A subsequent inventory search of the vehicle uncovered $31,990 in cash wrapped in elastic bands and stored in plastic bags in the trunk. Coste and Cabreja denied any knowledge of the money. They said it did not belong to them nor to the registered owner of the vehicle, Carlos Martinez. They told the officers that the money belonged to an unidentified black

male to whom they had given a ride to Schenectady and who had left it behind."); *United States v. $688,670.42 Seized From Regions Bank Acct. XXXXXX5028*, 759 F. Supp. 2d 1341 (N.D. Ga. 2010), *aff'd in part, rev'd in part sub nom*., *United States v. $688,670.42 Seized from Regions Bank Account No. XXXXXX5028*, 449 F. App'x 871 (11th Cir. 2011) (proceeds deposited into account); *USA v. $58,920 Currency*, 385 F.Supp. 144 (D.P.R. 2005) (sufficient explanation for possession of currency).

Cases involving jewelry, however, pose more difficult proof for the government than real estate, cars and money, because jewelry is not a house or a car in which contraband is sold or moved, nor is it direct earnings like cash or bank accounts. Thus in the jewelry cases the government generally alleges the jewelry was either the *proceeds* of crime or was itself the *object* of crime. In *United States v. Veggacado*, 37 F. App'x 189 , 190-91 (6th Cir. 2002), for example, the court found that jewelry was proceeds because the defendant "had no apparent income other than from drug trafficking," "lived affluently," drove an expensive car, and could not produce a bill of sale for any of the jewelry. Similarly, in *United States v. Brock*, 747 F.2d 761 (D.C. Cir. 1984), the government seized "over 100 pieces of jewelry … including earrings, rings, watches, cufflinks, and necklaces," worth $120,000 (in 1981 dollars), which was "concealed in a bag in the attic" of the forfeitee's home. In *United States v. $273,969.04 U.S. Currency*, 164 F.3d 462 (9th Cir. 1999), the court approved forfeiture because the jewelry itself was what the defendant criminally smuggled.

II. Government Did Not Prove Connection Between Jewelry and Drugs

Here the government made no effort to show the jewelry was traceable as the proceeds of an unlawful transaction and thus waived any claim of forfeiture pursuant to 21 U.S.C. § 881, and the court similarly made no ruling on that basis. Accordingly, the government's only remaining allegation is of a "substantial connection" between the property and the offense pursuant to 18 U.S.C. § 983.

There is scant evidence of any connection.

The only evidence the government proffered of a connection between the jewelry and any crime was that the jewelry was found in Mr. Betancourt-Pérez's kitchen. There is no evidence, for example, that Mr. Betancourt-Pérez lived lavishly, drove a fancy car, or lacked another source of income; rather he occupied unit #4404 in the Montecillo Court Apartment Complex. Moreover, the government's characterization of the proximity of the jewelry to other items in the apartment was not accurate; while all was in the kitchen, the jewelry and other items were in separate spots, not "next to," "with," or "alongside."

The jewelry was not of such rare nature, large quantity, or great value that its only credible source was unlawful, as in *Brock*, 747 F.2d at 761. Rather it consisted of two manly watches and some heavy gold chains and rings that Mr. Betancourt-Pérez is likely to have worn, a few dated women's bracelets that are likely family heirlooms as Mr. Betancourt-Pérez suggested, and some miscellaneous juvenile chains and pendants from Mr. Betancourt-Pérez's boyhood. The list of jewelry does not reveal an investment collection as a way of stowing unlawful assets, but an idiosyncratic assortment.

Mr. Betancourt-Pérez was able to produce bills of sale for a few of the pieces, but lack of receipts proves only that he was not a diligent record keeper, or as he claimed, that some of the jewelry came from his family.

Nor was the jewelry artfully or painstakingly concealed, as in the attic in *Brock* or in a secreted compartment as in *One 1998 Tractor*, 288 F. Supp. 2d at 710. Rather it was on top of the refrigerator where it was presumably not immediately obvious to a casual visitor but also not hard to reach when Mr. Betancourt-Pérez wished to wear it. Moreover, it appears Mr. Betancourt-Pérez kept many of his valuable things in the kitchen, making it unsurprising his jewelry was also there. To the extent the jewelry was concealed, this Court has recognized that concealing valuables is reasonable behavior and not probative of criminal activity. *United States v. One Lot of U.S. Currency*, 103 F.3d 1048, 1055 n. 8 (1st Cir. 1997) ("Contrary to the government's argument … there is little significance in the fact that [the] cash was "concealed," i.e., that it he carried it in a fanny pack. Few people carry money, especially large sums, in any way other than 'concealed.'").

Mr. Betancourt-Perez's case is like *United States v. Juluke*, 426 F.3d 323, 327-28 (5th Cir. 2005), where, as here, agents seized jewelry pursuant to a warrant for a fugitive defendant, who later plead guilty to drug crimes. The government there claimed the jewelry was proceeds of the crime, but the Fifth Circuit ruled that just because the jewelry was in the defendant's home and may have been purchased during the time he was dealing drugs, there was insufficient proof the jewelry was connected to the crime. *See also*, *In re Reid*, 60 B.R. 301 (Bankr. D. Md. 1986) ("close proximity" alone is

insufficient to prove connection.)

Accordingly, this Court should dismiss the government's forfeiture complaint, and order the return of Mr. Betancourt-Pérez's property to him. *United States v. $58,920.00 in U.S. Currency & $38,670.00 in U.S. Currency*, 385 F. Supp. 2d 144, 154 (D.P.R. 2005).

III. Evidence of Jewelry Should Have Been Suppressed

The government reported that it obtained a search warrant for Mr. Betancourt-Pérez's apartment after agents saw he and another man loading white boxes into two cars in the parking lot of Mr. Betancourt-Pérez's apartment complex. Nothing in the record discloses any probable cause for the government to believe the boxes contained contraband or anything suspicious that might create probable cause to search.

Although an unlawful search does not prevent the forfeiture of *in rem* property, *I.N.S. v. Lopez Mendoza*, 468 U.S. 1032, 1039 (1984); *One 1958 Plymouth Sedan v. Commonwealth of Pennsylvania*, 380 U.S. 693 (1965), it does result in suppression of the *evidence,* and thus any inferences derived from observation of the items, including their nature, quality, value, and the location whence it was seized. *United States v. Daccarett*, 6 F.3d 37, 46 (2d Cir. 1993) ("Absence of probable cause at the time of the seizure may result in the suppression of evidence in later proceedings, but the defendant property itself cannot be suppressed from the forfeiture action."); *Berkowitz v. United States*, 340 F.2d 168 (1st Cir. 1965); *United States v. $633,021.67 in U.S. Currency*, 842 F. Supp. 528, 535 (N.D. Ga. 1993) ("Even if the defendant property was seized illegally, the proper response would not be to dismiss the government's suit, but to preclude admission of the property into evidence at trial."); *United States v. One Ford 198X Mustang,* 749 F. Supp. 324, 329 (D. Mass. 1990).

Unless the government can offer alternative proof, the court can make no inferences about the jewelry, nor use such inferences as a basis for forfeiture. Because the government proffered no proof of a substantial connection other than the location where

the jewelry was seized, and suppression of the jewelry evidence includes suppression of its location, the court had no grounds on which to base its finding of a connection between the jewelry and the crime. Accordingly, the court erred in allowing forfeiture.

CONCLUSION

For the foregoing reasons, this Court should return the seized jewelry to Mr. Betancourt-Pérez.

Respectfully submitted,

Angel Abner Betancourt-Pérez
By his Attorney,

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/s/

Dated: September 24, 2015

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REQUEST FOR ORAL ARGUMENT AND CERTIFICATION

Mr. Betancourt-Pérez requests that Attorney Joshua L. Gordon be allowed oral argument.

I hereby certify that on September 24, 2015, I will forward via the ECF/PACER system an electronic version of this brief to the United States Court of Appeals for the First Circuit, and by the same method to the office of the United States Attorney.

I hereby certify that this brief complies with the type-volume limitations contained in F.R.A.P. 32(a)(7)(B), that it was prepared using WordPerfect version X6, and that it contains no more than 3,791 words, exclusive of those portions which are exempted.

/s/

Dated: September 24, 2015

Joshua L. Gordon, Esq.

ADDENDUM

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

ASSORTED JEWELRY APPROXIMATELY VALUE OF $44,328.00,

Defendant.

CIVIL NO. 11-2074 (CVR)

OPINION AND ORDER

Pending before the court is the United States of America's Motion to Dismiss or in the Alternative Motion for Summary Judgment (Docket No. 44) and claimant Angel A. Betancourt-Pérez's ("Claimant" or "Betancourt-Pérez") unsupported Opposition.[1] (Docket No. 46). For the reasons discussed herein, the government's unopposed request is **GRANTED**.

I. FACTUAL BACKGROUND[2]

The government commenced this forfeiture action alleging that certain items of jewelry[3] seized from Claimant's residence were forfeitable as drug trafficking proceeds. Specifically, the items of jewelry were found alongside two (2) kilograms of cocaine and marijuana at the arrest of Claimant while he was fugitive in Criminal Nos. 10-175 (PG), 11-181 (PG) and 11-367 (PG) (collectively, "Criminal Cases").

[1] Although Claimant filed an Opposition to the government's motion, he did not include any record or case law in support of his two (2) page long response. Accordingly, the Court is free to disregard general factual assertions made by Claimant that are not otherwise supported by competent evidence as required by Rule 56(e) of the Federal Rules of Civil Procedure. Nieves v. University of Puerto Rico, 7 F.3d 270, 276 n. 9 (1st Cir. 1993) and United States v $21,510 in U.S. Currency, 292 F.Supp. 2d 318, 322 (D.P.R. 2003).

[2] The undisputed facts are taken from Claimants' plea agreements in criminal cases (Docket Nos. 1985 and 1986 in Case No. 10-175 (PG), Docket Nos. 59 and 60 in Case No. 11-181 (PG), and Docket Nos. 1206 and 1207 in Case No. 11-367 (PG)) and have not been adequately contested by Claimant.

[3] For a detailed list of the items seized and the appraised value, see Docket No. 1, Exhibit 3.

On October 18, 2013, Claimant Betancourt-Pérez pled guilty in the Criminal Cases pursuant to a plea agreement. The Sentencing Hearing in all three (3) cases is set for April 11, 2014.

A. Criminal Case No. 10-175 (PG).

On a date unknown, but no later than in or about the year 2002, and continuing up to and until the return of the Indictment, in the Municipality of Carolina, claimant Betancourt-Pérez, participated in a conspiracy with other persons to knowingly and intentionally possess with intent to distribute controlled substances, that is: in excess of fifty (50) grams of cocaine base (crack), a Schedule II Narcotic Drug Controlled Substance; in excess of one (1) kilogram of heroin, a Schedule I, Narcotic Drug Controlled Substance; in excess of five (5) kilograms of cocaine, a Schedule II, Narcotic Drug Controlled Substance; in excess of one thousand (1,000) kilograms of marijuana, a Schedule I, Controlled Substance; a mixture or substance containing detectable amounts of Oxycodone (commonly known as Percocet), a Schedule II Controlled Substance; and a mixture or substance containing detectable amounts of Alprazolam (commonly known as Xanax), a Schedule IV Controlled Substance; within one thousand (1 ,000) feet of the real property comprising a housing facility owned by a public housing authority. All in violation of Sections 841(a)(l), 846 and 860 of Title 21 of the United States Code.

The object of the conspiracy was to distribute controlled substances at the Torres De Sabana Public Housing Project in Carolina, Puerto Rico and other areas within the Municipality of Carolina and Loiza; all for significant financial gain and profit. Claimant

Betancourt-Pérez, acted as a runner for the drug trafficking organization. As such, he would be responsible for providing sufficient narcotics to the sellers for further distribution at the drug point. He would also be responsible for collecting the proceeds of drug sales and paying the street sellers. Although multiple kilograms of heroin, cocaine, cocaine base and marihuana were distributed during the conspiracy, for the sole purpose of the Plea Agreement, the parties agreed that Betancourt-Pérez was accountable for at least three point five (3.5) kilograms but less than five (5) kilograms of cocaine.

B. Criminal No. 11-181 (PG).

On or about May 10, 2011, at approximately 3:30 p.m., United States Marshals Service Deputies along with Puerto Rico Police Department, Carolina Strike Force Agents were performing surveillance operations at the vicinity of the Montecillo Court Apartment Complex, in Encantada, Trujillo Alto, P.R., upon receiving information on the whereabouts of a federal fugitive. To that date, claimant Betancourt-Pérez was a federal fugitive who had an outstanding arrest warrant in relation to criminal case 10-175 (PG).

At approximately, 4:30 p.m., the agents observed an individual who, while driving a white Ford Econoline Van, bearing license plate number 757-678, entered the Montecillo Court Apartments' parking lot area. After entering into the parking area, the individual proceeded to park the white Van in one of the parking spaces near the vicinity of the Apartment Complex's mail boxes area. At that point, he dismounted from the white Van and walked towards Building 44 of the Apartment Complex, specifically to apartment number 4404. An individual entered the apartment and remained inside for approximately

40 minutes. At approximately 5:10 p.m., the above mentioned individual, along with claimant Betancourt-Pérez, came out of apartment 4404 of the residential complex and walked towards the front side of a Toyota Highlander, bearing Puerto Rico license plate GMA-090, that was parked in the assigned parking space for apartment 4404.

The other individual proceeded to move the white color Van from where it was originally parked and placed the same in front of the Highlander. At that point, both vehicles where parked close to each other and their rear doors were opened as to both. Claimant Betancourt-Pérez, at that point was standing right next to the Toyota Highlander with a white medium size box in his hands. Betancourt-Pérez and the other individual placed inside the Van and the Toyota Highlander a total of four (4) white boxes. The boxes were being retrieved by claimant Betancourt-Pérez and the other individual from inside apartment 4404 of the Montecillo Court Apartment Complex.

At that point, the United States Marshal Service and the Puerto Rico Police Department CSF identified Claimant as the federal fugitive that they were looking for and proceeded with his arrest. While performing a limited search of the area of the arrest the agents seized four boxes containing approximately 62 pounds of marihuana. Thereafter, agents from the Drug Enforcement Administration and the Bureau of Alcohol, Tobacco, Firearms and Explosives executed a federal search warrant on the premises of apartment 4404 of the Montecillo Court Apartment Complex (Claimant's apartment), resulting in the seizure of approximately 2.185 kilograms of cocaine, a Bushmaster, model Carbon-15, 5.56 caliber pistol, serial number D06007, among other items of evidence. Claimant Betancourt-

Pérez, acknowledged that the firearm was used and carried during and in relation to a drug trafficking crime as charged in Count One. For the purposes of the Plea Agreement entered in this case, claimant Betancourt-Pérez acknowledged that he possessed with intent to distribute at least two (2) kilograms but less than three point five (3.5) kilograms of cocaine. All in violation of Section 841(a)(l), (b)(l)(B) of Title 21 of the United States Code and Sections 924(c)(l)(A) and 2 of Title 18 of the United States Code.

The search warrant on Betancourt-Perez's apartment also resulted in the seizure of assorted jewelry with the aforementioned cocaine, which was appraised at $44, 328.00.

C. Criminal No. 11-367 (PG).

In or about the year 2010, and continuing up to and until the return of the Indictment filed in this case, in the Districts of Puerto Rico, California, Florida, Mexico and elsewhere, claimant Betancourt-Pérez and other persons, did knowingly and intentionally, combine, conspire, and agree with each other and with diverse other persons known and unknown to the Grand Jury, to commit the following offense against the United States: to possess with the intent to distribute 1000 kilograms or more of a mixture or substance containing detectable amounts of marijuana, a Schedule I Controlled Substance, in violation of Sections 841(a)(l) & (b)(l)(A) of Title 21 of the United States Code.

The object of the conspiracy was to purchase, transport and distribute large amounts of marijuana throughout Puerto Rico, all for significant financial gain and profit. Claimant Betancourt-Pérez acted as a facilitator for the drug trafficking organization. As a facilitator, Betancourt-Pérez would assist and coordinate the process to launder the controlled

substances proceeds and could facilitate the final distribution of the marijuana within the District of Puerto Rico. Claimant Betancourt-Pérez acknowledged that the conspiracy charged in this case is different, separate, and unrelated to the conspiracy charged in Criminal No. 10-175 (PG).

II. LEGAL ANALYSIS

A. Standing.

The court will briefly discuss the government's argument regarding Claimant's lack of standing to challenge the forfeiture. The government contends that Claimant's answer and Verified claim are legally insufficient and that Betancourt-Pérez does not have standing to contest the forfeiture. (Docket No. 44 at pp. 2-13).

As the First Circuit Court of Appeals recently reiterated, "[s]tanding is a threshold consideration in all cases, including civil forfeiture cases." U.S. v. $8,440,190.00 in U.S. Currency, 719 F.3d 49, 57 (1st Cir. June 17, 2013)(citing United States v. One–Sixth Share of James J. Bulger in All Present & Future Proceeds of Mass Millions Lottery Ticket No. M246233, 326 F.3d 36, 40 (1st Cir. 2003)).

In forfeiture cases, the property is the defendant and therefore defenses against forfeiture can only be brought by a third-party intervenor (here, claimant Betancourt-Pérez), who generally must have independent standing. Id. When faced with a motion seeking to strike a claim, the burden is on the party contesting the forfeiture to establish standing by a preponderance of the evidence. Supplemental Rule for Admiralty or Maritime Claims and Asset Forfeiture Actions G(8)(c)(ii)(B). To meet his burden, the claimant must

start by demonstrating an ownership or possessory interest in the seized property. $8,440,190.00 in U.S. Currency, 719 F.3d at 57; see also One–Sixth Share, 326 F.3d at 41. At the initial stages of intervention, the requirements are not arduous and typically "any colorable claim on the defendant property suffices." $8,440,190.00 in U.S. Currency, 719 F.3d at 57 (quoting One–Sixth Share, 326 F.3d at 41); see also U.S. v. U.S. Currency, $81,000, 189 F.3d 28, 35 (1st Cir. 1999)(considering standing at the motion to dismiss stage); United States v. One Parcel of Real Prop. with Bldgs., Appurtenances & Improvements Known as 116 Emerson St., 942 F.2d 74, 78–79 (1st Cir. 1991) (deciding the claimant's standing at the motion to intervene stage). An allegation of ownership, coupled with some evidence of ownership, is sufficient to establish constitutional standing to contest a forfeiture. U.S. Currency $81,000, 189 F.3d at 35; see also, U.S. v. $263,327.95, et al., 936 F.Supp. 2d 468, 473-474 (D.N.J. 2013) (holding that even a simple description of claimant's interest in the property is sufficient to create standing to challenge forfeiture) (internal citations omitted).

In this case, contrary to the government's allegations that Claimant submitted a "blanket assertion of ownership," it is clear that Claimant met his burden and that he satisfies standing requirements to contest forfeiture. More specifically, as it appears from Claimants' Verified Claim (Docket No. 18) and his Answers to Interrogatories (Docket No. 44) (submitted by the government in support of its request) Claimant provided a more detailed statement, under penalty of perjury, identifying his interest and claiming full ownership rights on the particular items at issue.

As such, the government's request to dismiss the complaint on standing is **DENIED** as the evidence submitted by Claimant is sufficient to establish constitutional standing to contest a forfeiture.

B. The Civil Asset Forfeiture Reform Act ("CAFRA") of 2000.

As previously stated, the government alleges in the alternative that summary judgment should be entered as there is no genuine dispute as to any material fact and the government is entitled to judgment as a matter of law. (Docket No. 40 at pp. 13-19). It is the government's contention that the jewelry seized are proceeds traceable to the exchange of controlled substances under 21 U.S.C. § 881(a)(6). In Claimant's opposition, he did not address the government's arguments at all. Therefore, per Local Rule 56(e)(2), the government's motion is deemed unopposed and the court will deem as admitted those facts which are supported by the record, and which Claimant failed to deny or qualify.

Title 21, section 881(a)(6) of the United States Code states in pertinent part, "all monies, negotiable instruments, securities, or other things of value furnished or intended to be furnished by a person in exchange for a controlled substance and all proceeds traceable to such an exchange are subject to forfeiture."

Under CAFRA, the government must prove, by a preponderance of the evidence that the property is subject to forfeiture. 18 U.S.C. § 983(c)(1). Where, as here, the "Government's theory of forfeiture is that the property was used to commit or facilitate the commission of a criminal offense, or was involved in the commission of a criminal offense,

the Government shall establish that there was a substantial connection between the property and the offense." 18 U.S.C. § 983(c)(3). Because the United States is proceeding under 21 U.S.C. § 881, it must establish a substantial connection between the property and currency and a criminal offense involving the exchange of a controlled substance. See, 21 U.S.C. §§ 881(a)(4) and (6); see also U.S. v. $58,920.00 in U.S. Currency, 385 F.Supp.2d 144, 150 (D.P.R. 2005). The United States, however, need not link the defendant property to a particular drug transaction. See, e.g., U.S. v. $40,000.00 in U.S. Currency, 999 F.Supp. 234, 239 (D.P.R. 1998); United States v. $59,074.00 in U.S. Currency, 959 F.Supp. 243, 249 (D.N.J. 1997); U.S. v. Parcels of Real Property With Bldg., Appurtenances and Improvements, 913 F.2d 1, 3 (1st Cir. 1990). "The probable cause showing need only link the defendant property with illegal drug activity generally, not to a particular transaction." U.S. (Drug Enforcement Agency) v. One 1987 Jeep Wrangler, 972 F.2d 472, 476 (2nd Cir.1992).

C. Standard for Summary Judgment.

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). Pursuant to the language of the rule, the moving party bears the two-fold burden of showing that there is "no genuine issue as to any material facts," and that he is "entitled to judgment as a matter of law." Vega-Rodríguez v. Puerto Rico Tel. Co., 110 F.3d 174, 178 (1st Cir. 1997).

After the moving party has satisfied this burden, the onus shifts to the resisting party to show that there still exists "a trial worthy issue as to some material fact." Cortés-Irizarry v. Corporación Insular, 111 F.3d 184, 187 (1st Cir. 1997). A fact is deemed "material" if it potentially could affect the outcome of the suit. Id. Moreover, there will only be a "genuine" or "trial worthy" issue as to such a "material fact," "if a reasonable fact-finder, examining the evidence and drawing all reasonable inferences helpful to the party resisting summary judgment, could resolve the dispute in that party's favor." Id.

At all times during the consideration of a motion for summary judgment, the Court must examine the entire record "in the light most flattering to the non-movant and indulge all reasonable inferences in the party's favor." Maldonado-Denis v. Castillo-Rodríguez, 23 F.3d 576, 581 (1st Cir. 1994). "[T]he nonmovant bears 'the burden of producing specific facts sufficient to defect the swing of the summary judgment scythe.' " Noviello v. City of Boston, 398 F.3d 76, 84 (1st Cir. 2005); see also, Rosario-González v. U.S., 898 F.Supp. 2d 410, 417-418 (D.P.R. 2012).

In this case, under the summary judgment standard, it is clear that the government has met its burden of proof. Specifically, it is uncontested that Claimant pled guilty to the drug changes which gave rise to the present action and that the jewelry at issue was seized from Claimant's apartment *together* with approximately 2.185 kilograms of cocaine. It is also uncontested that the assorted jewelry was found in the same area of the house where the cocaine was found and all items were seized pursuant to a federal search warrant. These facts are enough to make a reasonable inference to establish a nexus between the seized

jewelry and the offenses for which Betancourt-Pérez was convicted, as required by law. Furthermore, Claimant failed to contest, deny or produce any evidence to controvert the government's position.

Even crediting the conclusory, self-serving statements made by Claimant in his affidavit (submitted by the government in support of its motion and uncorroborated by any other evidence that could confirm that the jewelry seized originated from legal source), those statements are insufficient to defeat summary judgment. See, $8,440,190.00 in U.S. Currency, 719 F.3d at 58-59 (citing SMS Sys. Maint. Servs., Inc. v. Digital Equip. Corp., 188 F.3d 11, 20(1st Cir. 1999) and noting that conclusory, self-serving testimony need not be credited on summary judgment); see also, United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990)(arguments "adverted to in a perfunctory manner [or] unaccompanied by some effort at developed argumentation" are waived).

III. CONCLUSION

In view of the foregoing, the government's Motion to Dismiss Claim is **DENIED** and the Motion for Summary Judgment is **GRANTED**. Accordingly, the defendant (Assorted Jewelry with an approximate value of $44,328.00) is ordered forfeited to the United States of America for disposition in accordance with the law.

Judgment shall be entered accordingly.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 11th day of December of 2013.

S/CAMILLE L. VELEZ-RIVE
CAMILLE L. VELEZ-RIVE
UNITED STATES MAGISTRATE JUDGE