

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
Plaintiff,)	No. 02 CR 1050
)	
vs.)	Hon. James B. Zagel
)	
JOSEPH LOMBARDO)	
Defendant.)	

DEFENDANT LOMBARDO'S MOTION FOR AN EVIDENTIARY HEARING

Comes Now Defendant Joseph Lombardo by and through his attorney Rick Halprin and moves pursuant to Fed. R. Crim. Proc. 32.2(b)(4) that his forfeiture case before a jury. In support whereof Petitioner states as follows:

1. On September 10, 2007 the anonymous jury found Lombardo guilty of Count One of the indictment (racketeering conspiracy).
2. On September 16, 2008, the government filed a motion for preliminary order of forfeiture pursuant to 18 U.S.C. §1963 (RICO forfeiture provision), paragraph (b) at page one of which reads:

The Third Superseding Indictment sought forfeiture to the United States of specific property pursuant to the provisions of 18 U.S.C. § 1963(a)(1), (a)(2), and (a)(3), see Doc. #397 at pages 41-43.

3. Paragraph (h) of at page three of the government's motion reads:

Before or at the time of sentencing, the United States requests that this Court enter a preliminary order of forfeiture against the defendant, for a judgment, for which he is jointly and severally liable with his co-defendants, representing the \$20,258,556.00 in proceeds acquired and maintained in violation of 18 U.S.C. 1963(a)(1), (a)(2) and (a)(3).

I.

DEFENDANT LOMBARDO DID NOT KNOWINGLY AND VOLUNTARILY WAIVE HIS RIGHT TO HAVE A JURY HEAR ALL ISSUES PERTAINING TO HIS FORFEITURE AND IS THEREFORE ENTITLED TO A JURY TO HEAR AND DETERMINE ALL FORFEITURE ISSUES PURSUANT TO THE AUTHORITY OF U.S. v. ROBINSON, 8 F.3d 418 (7th Cir. 1993)¹

On September 27, 2007, the anonymous jury returned verdicts with respect to the murder allegations.² Attached here as Exhibit “1” is the very recently received transcript of a portion of the proceedings of September 27, 2007, which is relevant to this motion. Particularly relevant to these proceedings is the following. Lombardo’s lead counsel Rick Halprin, who was solely responsible for informing Lombardo of and obtaining his voluntary consent to any and all waivers of Lombardo’s rights (be the rights constitutional or statutory in nature). At page 8352 at lines four and five Halprin states, “The same is true with Lombardo, we have an agreement to waive jury forfeiture.”

At page 8352 at lines eight through ten the Court stated, “Okay. Thank you. With the exception of Mr. Calabrese and his counsel, you may go.” Here is it important to note that all counsel have not yet received a complete copy of the transcript of the proceedings. No criticism is intended by these remarks; it is simply a fact necessary to bring to the Court’s attention because of Halprin is unable to find Joe Lopez’s remarks on the subject of jury waiver in the transcripts. But it is the collective memory of Halprin and several other defense attorneys that at one point Lopez said he wished a jury to hear

¹ Robinson is discussed in the attached memorandum of authority.

² The phrase “murder allegations” is used advisedly. Count One was a straight RICO prosecution (18 U.S.C. 1962 (c) and (d)), which as a matter of law does not require proof of anything more than commission of two predicate acts done through an enterprise for conviction. Hence, the allegations at pages eight and nine of the Third Superseding Indictment at paragraphs (a) through (o) were unnecessary allegations and highly prejudicial to Lombardo. That this is the case is established by this Court having bifurcated the murders from the jury’s consideration. Lombardo recognizes that this is a subject for another day.

the forfeiture case against his client. This is corroborated by the following colloquy between the Court and Lopez at page 8352 at lines twelve through sixteen:

The Court: Okay. Thank you. With the exception of Mr. Calabrese and his counsel, you may go.

(Brief pause.)

The Court: Mr. Mars, Mr. Lopez. You heard the verdict?

Mr. Lopez: Yes.

The Court: What is it you wish to do?

Mr. Lopez: Judge we're going to waive jury.

Immediately thereafter, the Court stated, "Okay. Jury is waived on forfeiture."

II.
SUMMARY OF THE EVIDENCE THAT WILL
BE PRESENTED IN SUPPORT OF LOMBARDO'S MOTION

Rick Halprin will testify that he has continuously been Lombardo's counsel at all times. Further, that it is and was Halprin's sole responsibility to inform Lombardo at every stage of the proceedings as to what his rights were to and secure from Lombardo, if appropriate, a knowing and intelligent waiver of those rights prior to making any representations to the government and the Court indicating a waiver by Lombardo. **This did not occur.** At no time did Halprin discuss with Lombardo his right to have a jury hear the government's forfeiture case against him. Susan Shatz will testify that subsequent to her appointment by this Court, she was co-counsel for Lombardo, that it was Halprin's sole responsibility to inform Lombardo of his rights and secure, if appropriate, a voluntary and knowing waiver of those rights. Joseph Lombardo will testify that at no time was he informed by Halprin or, for that matter, Shatz of his right to have a jury determine the government's forfeiture case against him.

Further, Halprin presumes that the Court, during the lengthy proceedings, could not help but notice that Lombardo experienced difficulty with hearing. Certainly, Ms. Shatz and Halprin will testify to Lombardo's hearing impairment observed during their frequent contact with Lombardo. Finally, again from memory, Halprin's statements to the Court occurred when Halprin and Marc Martin were standing at the podium with Mr. Mars. Halprin believes that Lombardo neither understood nor heard what was going on at the podium.

Based on the above and the incontrovertible authority of *Robinson*, this Court is compelled as a matter of law to find that Lombardo did not knowingly and voluntarily waive his right to a forfeiture jury. Lastly, Halprin notes from memory that the Court, in response to Lopez's initial demand for a forfeiture jury, said, "We will assemble another jury for the forfeiture."

Wherefore, Lombardo requests that the Court set an immediate date for an evidentiary hearing to allow Lombardo to fully prosecute his right to a forfeiture jury.

Respectfully Submitted,

"s/ Rick Halprin"

Rick Halprin

One of Lombardo's Attorneys

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