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2nd Circ. Says DOJ Can't Hold Property Without A Warrant

By **Stephanie Russell-Kraft**

Law360, New York (August 10, 2015, 8:13 PM ET) -- The Second Circuit on Monday vacated a lower court's ruling that allowed federal prosecutors to hold on to cars, bank accounts and a bag of cash it seized from an accused fraudster until the end of his criminal case, finding that the government had no right to do so without a warrant.

A three judge panel for the appellate court found that the government had violated William R. Cosme's Fourth Amendment rights by holding onto the seized property. Cosme was arrested in 2012 on charges of wire fraud for defrauding an international school in Korea of \$5.5 million.

"Although the substantive allegations in the indictment mention the assets in connection with the criminal conduct, at no point in this case has the government had to demonstrate that it had probable cause to restrain Cosme's assets as required by the Fourth Amendment," Circuit Judge John M. Walker Jr. wrote in the opinion for the court. "Cosme is thus entitled to a proper judicial determination of whether probable cause existed at the time of the seizure to support the forfeitability of his property."

Cosme was arrested in his Jericho, New York, home in December 2012 and charged with scamming a South Korean school out of millions of dollars that he used to underwrite his own lifestyle, which included luxury cars and jaunts to Las Vegas, according to the FBI.

On the day he was arrested, government agents seized several of his assets, including a Cadillac parked in his driveway, a Lamborghini and a Ferrari in his garage and a bag containing more than \$634,000 in currency, according to the Second Circuit's opinion. The same day, the government froze two of Cosme's bank accounts, telling the banks it was in the process of obtaining a warrant but that the "exigent circumstances" required the accounts to be frozen immediately.

After Cosme was indicted in January 2013, the government moved for a pretrial restraining order on the seized assets, and in an Aug. 6, 2013 order, a New York district court judge permitted the government to "maintain custody" of the assets through the end of Cosme's criminal case.

Cosme moved to toss that order in 2014, arguing that the government had illegally seized his assets and thereby violated his Fourth, Fifth and Sixth amendment rights. He appealed

to the Second Circuit after the district court denied his motion.

Cosme's attorney Jeff Alberts said the ruling had the potential to significantly curb the government's use of free-reign asset forfeiture in criminal and civil cases.

"In today's decision, the Second Circuit rejected the government's practice of seizing money from bank accounts without obtaining a warrant," Alberts said. "In this case, and many cases like it, federal prosecutors seized funds based only on their own determination that the funds were subject to forfeiture, without any judicial review of that determination. The Second Circuit correctly found that this practice violates the Fourth Amendment right to be free from unreasonable seizure of property."

Circuit judges John M. Walker Jr., Jose A. Cabranes and Susan L. Carney sat on the panel for the Second Circuit

The United States is represented by Assistant U.S. Attorneys Martin S. Bell, Sarah E. Paul and Bryan A. Jacobs.

Cosme is represented by Jeff Alberts of Pryor Cashman LLP.

The case is United States. v. William R. Cosme, case number 14-1625, in the United States Court of Appeals for the Second Circuit.

--Editing by Emily Kokoll.
