

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

v.

YLLI GJELI

CRIMINAL ACTION
NO. 13-421-1

PAPPERT, J.

November 25, 2019

MEMORANDUM

Ylli Gjeli went to trial for Racketeer Influenced and Corrupt Organizations Act (“RICO”) violations and other crimes in connection with a loan sharking and illegal gambling operation.¹ The jury found him guilty on ten counts, including Count 1 alleging racketeering conspiracy in violation of RICO, 18 U.S.C. § 1962(d). (ECF No. 368.) After the trial, Judge Yohn entered a preliminary order of forfeiture holding Gjeli jointly and severally liable with his co-defendants for more than \$5 million of the RICO proceeds (ECF No. 413) and sentenced him to 168 months of imprisonment. (ECF No. 482.) Gjeli and co-defendant Fatmir Mustafaraj appealed.

The Third Circuit affirmed their convictions and sentences but remanded for reconsideration of the forfeiture orders, citing the Supreme Court’s intervening decision in *Honeycutt v. United States*. *United States v. Gjeli*, 867 F.3d 418, 427-28 (3d Cir. 2017), *as amended* (Aug. 23, 2017) (citing 137 S. Ct. 1626, 1633 (2017)). *Honeycutt* foreclosed joint and several liability under 21 U.S.C. § 853, a provision of the Controlled

¹ Three other Defendants were tried with Gjeli. Five co-defendants entered guilty pleas before trial.

Substances Act that mandates forfeiture for certain drug crimes. 137 S. Ct. at 1630. The Third Circuit held that *Honeycutt* applies to 18 U.S.C. § 1963, the RICO forfeiture provision, because it is “substantially the same as the one under consideration in *Honeycutt*.” *Gjeli*, 867 F.3d at 427-28. It allows forfeiture to reach “any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of section 1962.” 18 U.S.C. § 1963(a)(3). Thus, RICO “forfeiture is ‘limited to property each defendant himself actually acquired as a result of the crime’” and *Gjeli* cannot be liable in forfeiture under RICO for proceeds that he did not actually acquire. *Gjeli*, 867 F.3d at 428 (quoting *Honeycutt*, 137 S. Ct. at 1635.).

Because the initial preliminary order of judgment and forfeiture against *Gjeli* held him jointly and severally liable with his co-conspirators, the Government moves to amend it. This time, it pursues forfeiture only “pursuant to 18 U.S.C. Section 1963 based on [his] racketeering conspiracy conviction (Count 1).”² (Gov’t Mot., ECF No. 678 at 10.) *Gjeli* opposes the motion. (Def.’s Resp., ECF No. 686.) At the Court’s direction (ECF No. 706), the Government and *Gjeli* filed supplemental briefs. (Gov’t Supplemental Mem., ECF No. 708 and Def.’s Reply, ECF No. 709.) The Court makes the following findings of fact and conclusions of law and grants the Government’s motion in part and denies it in part.

I

RICO aims to “remove the profit from organized crime by separating the

² The Government has also moved to amend the judgment and preliminary order of forfeiture for Mustafaraj. (ECF No. 679.) The Court considers that motion in a separate opinion.

racketeer from his dishonest gains.” *Russello v. United States*, 464 U.S. 16, 28 (1983). A RICO “forfeiture claim contains at least two elements: a violation of [18 U.S.C.] § 1962 and a relationship between that violation and the property alleged to be forfeitable.” *United States v. Pelullo*, 14 F.3d 881, 901-02 (3d Cir. 1994). “The Government must prove the relationship between the property interest to be forfeited and the RICO violations beyond a reasonable doubt.”³ *United States v. Neff*, --- Fed. App’x ----, No. 18-2282, 2019 WL 4235218, at *8 (3d Cir. Sept. 6, 2019) (citing *Pelullo*, 14 F.3d at 906).

[T]here are good reasons for employing the reasonable doubt standard in the RICO context The RICO forfeiture provision is . . . far reaching, requiring the district court to order forfeiture of “any interest in,” “security of,” “claim against,” or “property or contractual right of any kind affording a source of influence over any enterprise which the person has established, operated, controlled, conducted or participated in the conduct of in violation of section 1962.”

United States v. Voight, 89 F.3d 1050, 1083-84 (3d Cir. 1996) (citing 28 U.S.C. § 1963(a)). “[S]ince the identity and extent of property subject to forfeiture will not have been addressed in the course of proving the substantive RICO charge, a reasonable doubt burden of persuasion ensures greater accuracy in determining the scope of property subject to forfeiture.” *Id.* Following a trial, the Government may rely on the evidence already in the record for the forfeiture determination. Fed. R. Crim P. 32.2(b)(1)(B).⁴

³ If the Government sought forfeiture for Gjeli’s other offenses – pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c) for Counts 14-16, 23-24, and under 18 U.S.C. § 1955(d) and 28 U.S.C. § 2461(c) for Count 25 – its burden would be the less stringent preponderance of the evidence. See *United States v. Sandini*, 816 F.2d 869, 877 (3d Cir. 1987).

⁴ Neither party requested an evidentiary hearing on the forfeiture issues. Noting this in its motion, the Government states that “the trial record is extensive and provides sufficient proof for the forfeiture” it seeks. (Gov’t Mot. at 11.)

II

The Government seeks a personal forfeiture money judgment against Gjeli pursuant to 18 U.S.C. § 1963(a)(3) in the amount of \$5,072,000 for “the illegal proceeds that Gjeli obtained as a result of the racketeering conspiracy, extortion, and illegal gambling business that he participated in, and for which he was convicted”: \$1,180,000 in loan collections, \$992,000 in outstanding loan principal, plus \$2,900,000 in gross revenue from gambling operations. (Gov’t Mot. at 8 (emphasis omitted).)

The Government argues that the evidence at trial proved that the RICO enterprise, “by a conservative calculation, earned \$5.072 million in gross proceeds,” and contends that Gjeli should be required to forfeit the entire gross proceeds because “[a]s the creator and leader of the Gjeli Organization, [he] obtained the gross proceeds of the organization.” *Id.* at 13, 16. Gjeli does not contest forfeiture of the amount attributed to loan collections but contends he should not be required to forfeit the gambling revenue or outstanding loan principal.

A

Gjeli argues he should not be required to forfeit \$2,900,000 in gambling proceeds because the Government has not offered “substantive evidence which establishes the amount of earnings that Gjeli actually received,” as he insists it should after *Honeycutt*. (Def.’s Resp. at 3.) The Government argues that as the “boss” of the RICO organization, Gjeli, unlike the defendant in *Honeycutt*, “was deeply involved in the enterprise’s gambling operation, and therefore should be held liable for the entire amount of gross proceeds.” (Gov’t Supplemental Mem. at 5.) Gjeli challenges the Government’s ability to “rest[] on the broad argument that Gjeli was the head of the loan operation and

therefore was the head of the sports betting operation as well” to support its request for a forfeiture money judgment for the entirety of the gambling proceeds on remand.

(Def.’s Resp. at 4.) He argues that the trial evidence shows that his “role in the sports betting scheme was extremely limited and only surfaced shortly before his arrest.” (*Id.*)

The Government points out that at sentencing, Judge Yohn determined that Gjeli was the leader of the RICO enterprise. (*See, e.g.*, Tr. 5260 (describing Gjeli “as the leader and kingpin of this organization” and explaining that “[n]othing happened here that was not done at his direction”); Tr. 5263 (“it’s quite clear to me that he was the leader and organizer of this group of individuals”); Tr. 5340 (“Mr. Gjeli was the clear leader, and boss, and organizer of the enterprise that was involved in the illegal gambling, and the loan sharking, and the extortion.”).) The trial “evidence showed that from approximately 2002 until their arrest in August 2013, Gjeli and Mustafaraj – along with Markakis, who pled guilty prior to trial – led a multimillion-dollar criminal enterprise in the greater Philadelphia area.” (*See* April 8, 2015, Memorandum in Support of Court’s Order Denying Defendants’ Motions for Judgment of Acquittal, or, in the Alternative for a New Trial. ECF No. 419, at 1-2.) It “established . . . that Gjeli was the “boss” of the organization” (*Id.* at 1.) Gjeli did not appeal this finding.

The record also demonstrates that Gjeli obtained dishonest gains from the gambling enterprise. To define the term “obtain” in *Honeycutt*, the Supreme Court looked to dictionary definitions, such as “[t]o come into the possession or enjoyment of,” “to get or acquire,” or “to procure or gain, as the result of purpose and effort.” 137 S. Ct. at 1632 (internal quotation marks omitted). The Supreme Court has confirmed that a defendant can “obtain” forfeitable property – like gambling proceeds – directly or

indirectly through an intermediary. *Id.* at 1633.

Although Gjeli did not initiate the gambling operation, he financially supported it during the RICO conspiracy. Co-defendant George Markakis, who was a bookmaker (Tr. 3401), testified that he went to Gjeli beginning in or around the year 2000 to ask for a loan and that the first loan he received from Gjeli was for \$3,000. (Tr. 3396-99.) Markakis explained that over approximately 15 years, he received over 50 loans from Gjeli totaling an estimated \$1 million (Tr. 3428-29.) Even though it was Markakis' "ultimate goal" to pay off loans before taking out further loans to fund the gambling operation, "[o]ne loan was, normally, rolled into the next one." (Tr. 3428). Gjeli's loans ultimately became the gambling venture's primary funding source.⁵ (Tr. 3415.)

Markakis testified that Gjeli went from financing Markakis' bookmaking to being Markakis' partner in a gambling website (yourbetsonline.com) when Markakis was unable to make his loan payments in or around 2012 – twelve years after he first asked Gjeli for a loan. (Tr. 3461, 3463, 3465-67, 3479-80.) During the first six weeks of the partnership, one hundred percent of the website's gambling proceeds went to Gjeli to reduce the amount of Markakis' indebtedness. (Tr. 3484-85.) Thereafter, Markakis received twenty percent of the website's proceeds as his management fee for running the website, while forty percent of the proceeds was allocated to reduce Markakis' indebtedness to Gjeli and the remaining forty percent was paid to Gjeli and Mustafaraj. (Tr. at 3481-83.) Markakis testified that in weeks where his gambling wins were in

⁵ Markakis testified that while he was borrowing from Gjeli, he also borrowed money from people other than Gjeli, including co-defendant Gezim Asllani, and "[m]aybe \$100,000" from co-defendant Erion Murataj over a period of approximately eight years. (Tr. 3417-19; *see also* Tr. 1706 (Murataj testimony discussing his use of the aliases Ben and Paul).) Murataj asked Markakis "not to tell anybody" about their loan arrangement. (Tr. 3418-19.)

excess of his loan payments, he received cash, but that “most of the times [he] owed the money” to Gjeli.⁶ (Tr. 3487-88.)

At some point during the yourbetsonline.com online sports betting partnership, Gjeli, Markakis and Mustafaraj also became partners in an offline European soccer betting enterprise. (Tr. 3539.) Markakis had established a betting system for European soccer that relied on text messages and phone calls and he enlisted agents to help him with the enterprise, but then discovered his agents “were all stealing money one way or another.” (Tr. 3528-30, 3539.) Markakis testified that when he discussed his problems with Gjeli and Mustafaraj, they formed another gambling partnership, this time with a 50/50 split between Markakis on one side and Gjeli and Mustafaraj on the other. (Tr. 3541.) Soccer bettors were paid “out of the money from the kitty, which was at the [Lion B]ar.” (Tr. 3542-43.) Markakis testified that “after the partnership was formed the goal, or the whole thing was for me to step aside and the money would go there,” to the Lion Bar.⁷ (Tr. 3543.)

There is no question that Gjeli led the RICO enterprise or that the Government has shown that he obtained some amount of gambling proceeds directly through his

⁶ Indeed, despite the website partnership, when Markakis was arrested in August 2013, he had an outstanding principal loan balance of \$230,000. (Tr. 3401, 3416-17.)

⁷ Other evidence suggests that Gjeli was not necessarily the beneficiary of other soccer betting proceeds. Gjeli introduced one of his loan customers, co-defendant Ardit Pone, to Markakis so that Pone could earn money to repay his debt to Gjeli (in other words, to generate revenue for the loan operation). (Tr. at 2134-35.) Pone testified that Gjeli had told him that he “wasn’t allowed to” run soccer betting himself because “this betting belonged to someone else in the area.” (Tr. 2163-64.) Pone also testified that the money he collected from customers who lost their soccer bets went to another co-defendant, Eneo Jahaj, who then gave the money to Markakis. (Tr. 2167-68.) Although there is evidence that the loan operation and the gambling operation developed a symbiotic relationship, it is not sufficient to support a finding beyond a reasonable doubt that Gjeli “actually acquired” soccer betting proceeds beyond those generated through his partnership with Markakis.

partnerships with Markakis for yourbetsonline.com and for soccer betting and indirectly through his loans to Markakis and other gamblers. However, after *Honeycutt*, the Government must show that Gjeli “actually acquired” \$2,900,000 in gambling proceeds. See *Gjeli*, 867 F.3d at 428 (quoting *Honeycutt*, 137 S. Ct. at 1635); cf., *United States v. Bradley*, No. 3:15-CR-00037-2, 2019 WL 3934684, at *11 (M.D. Tenn. Aug. 20, 2019) (finding the Government had established that “the defendant personally obtained, directly or indirectly, at least \$1,000,000 from his participation in the opioid distribution and money laundering conspiracies” where there was evidence that the Defendant “himself [was] responsible for distributing at least 186,412 opioid pills” that sold for at least \$10 each, and not relying on the defendant’s role as the leader of the drug conspiracy to support the forfeiture order). Neither the finding that Gjeli was the leader of the RICO enterprise, nor the Government’s showing that Gjeli obtained proceeds from the gambling operation show, without more, beyond a reasonable doubt that Gjeli should be required to forfeit the full amount of the gambling proceeds. See *United States v. Leyva*, 916 F.3d 14, 30 (D.C. Cir. 2019) (explaining that because *Honeycutt* did not involve the leader of an organization, it did not answer the question of whether a leader indirectly acquires property received by persons or entities that are under the leader’s control).

The Government largely relies on the testimony and report of Brian Davis, a forensic examiner from the FBI’s Racketeering Records Laboratory. (Gov’t Mot at 14; citing Tr. 4183-97 and Gov’t Mot. Ex. B, ECF No. 678-3 and 678-4.) It relied on this same evidence to support its original demand for the forfeiture of \$2,900,000 in gambling proceeds in the form of a judgment that would hold Gjeli “jointly and

severally liable with his co-conspirators” for the forfeited proceeds. (Gov’t Mot. for Judgment and Prelim. Order of Forfeiture, ECF No. 398, at 4, ¶¶ 10(a)(2) and 12.) During the trial and at the time the Government sought the initial forfeiture order against Gjeli, there was no reason for Davis to divide the gambling proceeds into specific amounts that each Defendant obtained or into specific amounts generated by different aspects of the gambling enterprise, or to delineate the amounts earned from gambling each year. *Honeycutt* had not been decided and the Government had no reason to prove that Gjeli “himself actually acquired” the gambling proceeds before seeking a forfeiture order for the full amount of the gambling proceeds. *Gjeli*, 867 F.3d at 427 (quoting *Honeycutt*, 137 S. Ct. at 1635). Now, however, without joint and several liability, Davis’s report and testimony do not satisfy the Government’s burden.

Notably, Davis’s report bears the subject “George Markakis,” and not Gjeli. (Gov’t Mot. Ex. B, ECF No. 678-3, at 1.) It relies on “approximately 186 non-consecutive weekly bottom sheets and/or related spreadsheets dated February 2007 to August 2013, as well as approximately 12 undated bottom sheets” to conclude that “web-based sports bookmaking activity contributed more than \$2.9 million to the operation’s gross profit during the period.”⁸ (*Id.* at 2.) Davis testified that “[t]he primary website, the overriding website that showed up again and again in the records was a website identified as 247fantasysports.com, but there were other websites, as well, that were references, yourbetsonline, scoresandodds and 247icasino.com . . . were

⁸ Davis testified that he “only had records for approximately 55 percent of that time period . . . about 186 weeks’ worth of information. And it was . . . sort of random. I would be missing a week here and a week there, and then I might have four of five weeks in a row of material, and . . . I can’t be certain that it’s complete . . .” (Tr. 4187-88.)

also identified in the records, as well.” (Tr. 4189.) In the report, he concludes that the website “247fantasysports.com is the principal internet address associated with the sports bookmaking activity.” (Gov’t Mot. Ex. B at 2.) Although the report acknowledges that the gambling operation included “multiple websites associated with sports gambling activity,” it does not specifically break out any proceeds derived from yourbetsonline.com, which did not go online until 2011 (Tr. 3372), or from any other website and it does not break down earnings over time. (Gov’t Mot. Ex. B at 2.)

The Government also rests on Gjeli’s leadership role to support its argument that he should be required to forfeit proceeds from 247fantasysports.com and the other gambling websites. This is similarly not enough to show that Gjeli “actually acquired” the entire amount of proceeds from the online gambling. To find otherwise “would mean functionally subjecting him to joint and several liability.” *United States v. Cooper*, No. CR 15-161-08 (EGS), 2018 WL 6573454, at *3 (D.D.C. Dec. 13, 2018) (holding that making a drug defendant “liable for the entire amount of the ‘buy money’ would mean functionally subjecting him to joint and several liability” when the defendant used the buy money to purchase heroin from a supplier and there was no evidence he kept the money for himself). On this record, the Court cannot determine the amount of proceeds that Gjeli obtained from his deal with Markakis regarding yourbetsonline.com or whether he “actually acquired” any other online gambling proceeds.

In addition, the Government has not cited any evidence that would allow the Court to determine the amount of proceeds that Gjeli might have obtained from his ties to the soccer betting operation. Davis’s report acknowledges that the gambling

operation included soccer wagers not executed through any website “because their accounting is maintained separate from the accounting for other sports wagers” and “[a] series of text messages containing numerous soccer wagers dated October 5-7, 2012, seems to confirm that soccer wagers are placed outside 247fantasysports.com.” (Gov’t Mot. Ex. B at 4.) The report also identifies a series of spreadsheets detail[ing] soccer wagering activity dated January 1-27, 2013, associated with a café identified as “Girard” that “report more than 1,200 soccer wagers totaling approximately \$66,796 in wagering volume and contributing \$8,867 to the operation’s gross profit during the period.” (*Id.*) Davis cites “two additional accounting records associated with soccer wagering,” one typed and one handwritten, that appear to include overlapping wagering activity and that were both labeled “Fish Town.” (*Id.* at 4-5.) Davis’s report does not, however, break out any ultimate amount of gambling proceeds that accrued from soccer wagers, let alone any amount that might have accrued to Gjeli. The Government cannot rely on Davis’s report to meet its burden to show, beyond a reasonable doubt, that Gjeli “actually acquired” any amount from soccer wagering.

Because the record does not establish the amount of gambling proceeds that Gjeli “obtained,” *i.e.*, those that he “actually acquired,” the Court will not enter a forfeiture money judgment against him that includes an amount specific to gambling proceeds.

B

The Government also counts \$992,000 in uncollected loan principal as part of the proceeds for which it asks the Court to enter a forfeiture money judgment against Gjeli. (Gov’t Mot. at 13 (“[W]hen agents executed the search warrants, 82 loans remained

open having a total principal amount of \$992,000.”.) Gjeli, while not challenging the Government’s calculation of the amount of outstanding principal, argues that he should not be required to forfeit that amount because he should not be obligated to pay a penalty on principal that he gave to borrowers that he will never recover. (Def.’s Reply at 6.) He argues that he made multiple loans “during the period that he was being observed by law enforcement and that many of those applying for the loans were cooperating with law enforcement.” (*Id.* at 5.) Gjeli contends it is inequitable to require him to forfeit the principal balance when it “was given to those applying for the loan[s] and has not been required to be returned,” and speculates that the “principal lined the pockets of the cooperating witnesses who spent the money for their own personal gains.” (*Id.*)

Gjeli cites no legal authority in support of his argument that the loan principal should not be subject to forfeiture. Indeed, there is nothing in the text of the RICO forfeiture provision that entitles him to deduct it from the forfeiture amount.⁹ Without principal loaned to his customers in violation of Section 1962, there would have been no loan operation. Requiring Gjeli to forfeit the outstanding loan principal is consistent with RICO’s aim. *See United States v. Ofchinick*, 883 F.2d 1172, 1177 (3d Cir. 1989) (“Congress believed that the economic power of organized crime derived from its huge illegal profits and that any attack on organized crime would fail if it did not reach racketeering profits and the economic base from which organized crime exercised control over the economy.”) Gjeli’s argument that loan principal came from his “savings

⁹ Even if the uncollected loan principal does not constitute forfeitable “proceeds” pursuant to 18 U.S.C. § 1963(a)(3), Gjeli’s interest in the loan principal “afford[ed] a source of influence over” his loan operation and is thus subject to forfeiture under 18 U.S.C. § 1963(a)(2).

over his lifetime and there is no argument that the money was the product of ill gotten gains” is unavailing.¹⁰ (Def.’s Reply at 6.) “One of the aims of criminal forfeiture is deterrence, which is not achieved if the defendant is returned to the economic position he occupied before his criminal offense.” *United States v. Hallinan*, No. CR 16-130-01, 2018 WL 3141533, at *9 (E.D. Pa. June 27, 2018), *aff’d sub nom. Neff*, 2019 WL 4235218.

C

Gjeli also argues that “any assessed earnings against any co-conspirator should serve to lower the amount [of any forfeiture money judgment] against [him].” (Def.’s Reply at 5.) Gjeli has not set forth any legal authority in support of his request for an offset. Nor has he shown that that the Government will over-collect on proceeds from the RICO enterprise in the absence of an offset. *Cf. United States v. Carlyle*, 776 F. App’x 565, 572 (11th Cir. 2019) (holding that an “offset provision was particularly important to ensure the government did not over-collect for [a wire fraud] scheme” where, without it, “the government could have recovered \$3.2 million, when the loss was only \$1.8 million”). The Court declines to hold that the amount Gjeli must forfeit should be offset by any amounts that his co-defendants have been ordered to pay.

III

The Government also seeks direct forfeiture of the following specific property: \$114,248.67 in U.S. currency seized in August 2013; \$860 in U.S. Currency seized from

¹⁰ Because Gjeli argues that the loan principal came from his savings, and not from the proceeds of other loans, his circumstances are distinguishable from those in *United States v. Hallinan*, where the Court declined to require the defendant to forfeit loan principal because it “would result in counting the same proceeds many, many times over” where the defendant “reinvested the money he received from borrowers . . . by extending additional loans.” No. CR 16-130-01, 2018 WL 3141533, at *7, 10 (E.D. Pa. June 27, 2018), *aff’d sub nom. Neff*, 2019 WL 4235218.

an office at 7024 Frankford Avenue; \$1,462.67 in U.S. currency seized from Gjeli's person at the time of his arrest at 7024 Frankford Avenue; one Smith & Wesson, 638 Model, .38 special revolver bearing serial number CEP9363, seized from a large safe located in the closet of the Lion Bar basement; real property located at 7016 Frankford Avenue, Philadelphia, PA 19315; real property located at 7018 Frankford Avenue, Philadelphia, PA 19135; Pennsylvania liquor license (No. R-3383) in the name of 2 Brothers Corp., issued by the Pennsylvania Liquor Control Board; and one yellow 2006 Hummer, Model H2; bearing Pennsylvania license plate GDK2140, and titled to Ylli Gjeli (Title No. 62432160). (Gov't Mot. at 16-17.) Gjeli argues that he should not be required to forfeit the properties at 7016 and 7018 Frankford Avenue, the Pennsylvania liquor license, or the yellow Hummer. He does not challenge the Government's request for cash or the other items.

The RICO forfeiture statute provides that

[w]hoever violates any provision of section 1962 . . . shall forfeit to the United States, irrespective of State law. . . any property. . . affording a source of influence over [] any enterprise which the person has established, operated, controlled, conducted, or participated in the contract of, in violation of section 1962.

18 U.S.C. 1963(a)(2)(D). Before the Court can require forfeiture, the Government must establish that the relevant property had a "substantial connection" to Gjeli's violations of 18 U.S.C. § 1962. *See Pelullo*, 14 F.3d at 901 (explaining that "[s]ection 1963(a) essentially provides that any person who violates § 1962 shall forfeit to the United States any of his property if the property had a substantial connection to his violation of § 1962"). Property has a "substantial connection" to a RICO violation "when the property is used to further the affairs of the enterprise, . . . or where use of the property

made the prohibited conduct less difficult or more or less free from obstruction or hindrance.” *Hallinan*, 2018 WL 3141533, at *14 (internal citations and quotation marks omitted), *aff’d sub nom. Neff*, 2019 WL 4235218.

A

The Government argues that the property located at 7016 and 7018 Frankford Avenue is subject to forfeiture because it was the location of the Lion Bar, which “essentially served as the headquarters of the [RICO] operation.” (Gov’t Mot. at 18.) Gjeli responds that that the property “was not used to facilitate the illegal business” and asserts that “he has no current property interest in that address,” which belongs to Astrit Gjeli. ((Def.’s Resp. at 7.)

The Government previously conceded that “[p]roperty records indicate that 7016 Frankford Avenue is titled in the name of Astrit Gjeli Property records also indicate that in March 2007, 7016 and 7018 Frankford Avenue were purchased together by Astrit Gjeli in a single real estate transaction.”¹¹ (*See* Gov’t Mot. for Judgment and Prelim. Order of Forfeiture, at 5-6 n.3.) In its amended motion for forfeiture, the Government contends “that Gjeli and his coconspirators used the property” but it does not assert that he owns either 7016 or 7018 Frankford Avenue. (Gov’t Mot. at 18-19.) The Government has not responded to Gjeli’s argument that he should not be required to forfeit the property because he does not have an interest in it.

Regardless of whether the Lion Bar was used to facilitate the RICO enterprise,

¹¹ In its original forfeiture motion, the Government questioned whether the owner of 7016 and 7018 Frankford Avenue had properly recorded “the true physical condition of the properties because the legal descriptions of the property at 7016 and 7018 Frankford Avenue appear inconsistent with the physical condition of the Lion Bar,” but it did not show that Ylli Gjeli was or is the owner of either parcel. (*See* Gov’t Mot. for Judgment and Prelim. Order of Forfeiture, at 5-6 n.3.)

RICO does not permit the Court to order its forfeiture in the absence of any evidence that it belongs to Gjeli. “RICO forfeiture is an in personam sanction against the individual, not an in rem action; so § 1963 forfeiture reaches only the criminal defendant’s interest in the property.” *U.S. v. Totaro*, 345 F.3d 989, 993 (8th Cir. 2003); *see also Pelullo*, 14 F.3d at 902 (“Section 1963(a) is a criminal forfeiture mechanism, enacted as a provision for *in personam* criminal penalties.”); *cf. United States v. Vampire Nation*, 451 F.3d 189, 202 (3d Cir. 2006) (“[T]he scope of *in personam* judgment in forfeiture is more limited than a general judgment *in personam*.”) The Government has not shown that Gjeli has an ownership interest in either 7016 or 7018 Frankford Avenue and the Court will not order forfeiture of the properties.

B

The Government seeks forfeiture of the Pennsylvania liquor license (No. R-3383) held in the name of 2 Brothers Corp. used to operate the Lion Bar. In his response, Gjeli concedes that he “operated” the Lion Bar & Grill, and that as its owner, and the owner of other businesses, he “was president of ‘2 Brothers Corp.’ and had a valid Pennsylvania liquor license.” (Def.’s Response at 6-7.) He argues, without any supporting legal authority, that the license is not subject to forfeiture because “[t]he Government has not established that the liquor license was purchased with ill gotten gains nor that the Lion Bar was instrumental to the loan sharking or sports betting business.” (*Id.* at 7.)

18 U.S.C. § 1963(a)(2)(D) does not require the Government to prove that the liquor license was purchased with ill-gotten gains. The Government only has to show that the license “afford[ed] a source of influence” over the RICO enterprise. *Id.* There

is ample evidence showing that Gjeli and his co-conspirators used the Lion Bar's liquor license to facilitate the RICO enterprise's gambling and loansharking operations. Loan paperwork and collection sheets were kept in and seized from the bar's basement and many witnesses testified about occasions when Gjeli met with loan customers at the bar to discuss possible loans, to complete loan paperwork or to collect loan payments. (*See, e.g.*, Tr. 778-79; 792, 793, 818-19, 1666, 1668, 1748-49, 1802-05, 1937-38, 2066.) Gjeli used his access to the Lion Bar to afford a source of influence over the RICO enterprise. *See United States v. Angiulo*, 897 F.3d 1169, 1214-15 (finding that a defendant's interest in a café was subject to forfeiture where he held meetings at the café that "furthered the affairs" of a RICO enterprise because they were "related to the collection of weekly payments owed to the enterprise . . . as a result of loansharking transactions). And the Lion Bar's liquor license provided a "façade of legitimacy" that helped to conceal the gambling and loansharking operations. *Cf., United States v. Seher*, 562 F.3d 1344, 1369 (11th Cir. 2009) (finding forfeiture of accounts and inventories was appropriate under a facilitation theory in a money laundering case where the property was used "to create a façade of legitimacy, which aided in the concealment of [the defendant's] actions"). Even though there is evidence that customers of the RICO enterprise had meetings in other locations including Dunkin Donuts (Tr. 2308, 2406) and at least one Wawa (Tr. 2362), having a liquor license for the Lion Bar made the gambling and loansharking operations "less difficult or more or less free from obstruction or hindrance." *Hallinan*, 2018 WL 3141533 (internal citations and quotation marks omitted), at *14, *aff'd sub nom. Neff*, 2019 WL 4235218.

C

Unlike 7016 and 7018 Frankford Avenue, the yellow 2006 Hummer, Model H2; bearing Pennsylvania license plate GDK2140, is titled to Ylli Gjeli (Title No. 62432160). The Government argues that it “was utilized to transport conspirators to meetings with customers and to transport proceeds of the gambling and loan sharking operations” and should be forfeited because it facilitated relevant criminal activity. (Gov’t Mot. at 19.) Gjeli contends that requiring forfeiture of the Hummer would violate his rights under the Eighth Amendment given his “minimal use” of the vehicle and argues that there is no evidence that it was “purchased with ill gotten gains.” (Def.’s Resp. at 8.)

Here again, 18 U.S.C. § 1963(a)(2)(D) does not require the Government to show that the Hummer was purchased with ill-gotten gains before forfeiture. Rather, it must show that the Hummer “afforded a source of influence” over the RICO enterprise. The Government has met its burden. For example, on April 21, 2011, Gjeli used the Hummer to collect a \$20,000 loan payment from a customer outside of Philadelphia. (Tr. 1168-69.) On another occasion, Gjeli drove the Hummer to the Dolphin Diner in Burlington New Jersey to discuss a \$5,000 loan to a client. (Tr. 3184-87.) Gjeli and a co-defendant also used the Hummer to meet with another individual about a possible \$5,000 loan in a Dunkin Donuts parking lot. (Tr. 2415-16.) Gjeli and others used the Hummer to make their “prohibited conduct less difficult or more or less free from obstruction or hindrance.” *Hallinan*, 2018 WL 3141533, at *14 (internal citations and quotation marks omitted), *aff’d sub nom. Neff*, 2019 WL 4235218.¹²

¹² As for Gjeli’s argument that forfeiture of the liquor license and the Hummer would violate his rights under the Eighth Amendment, “a punitive forfeiture violates the Excessive Fines Clause if it is grossly disproportional to the gravity of a defendant’s offense.” *United States v. Bajakajian*, 524 U.S. 321, 334 (1998). Neither forfeiture of his interest in the liquor license nor the forfeiture of the

IV

For the reasons stated above, Gjeli will be required to forfeit \$1,180,000 in loan collections and \$992,000 in outstanding loan principal as proceeds of the RICO conspiracy charged in Count 1 pursuant to 18 U.S.C. § 1963(a)(3). Gjeli also will be required to forfeit the following property that afforded a source of influence over the RICO enterprise pursuant to 18 U.S.C. § 1963(a)(2)(D): (1) his interest in a Pennsylvania liquor license (No. R-3383) held in the name of 2 Brothers Corp.; and (2) a yellow 2006 Hummer, Model H2; bearing Pennsylvania license plate GDK2140, titled to Ylli Gjeli (Title No. 62432160).

In addition, absent an objection to the Government's request that Gjeli forfeit the following, he will be directed to forfeit: (1) \$114,248.67 in U.S. currency seized in August 2013; (2) \$860 in U.S. Currency seized from an office at 7024 Frankford Avenue; (3) \$1,462.67 in U.S. currency seized from Gjeli's person at the time of his arrest at 7024 Frankford Avenue; and (4) one Smith & Wesson, 638 Model, .38 special revolver bearing serial number CEP9363, seized from a large safe located in the closet of the Lion Bar basement.

An appropriate Order follows.

BY THE COURT:

/s/ Gerald J. Pappert
GERALD J. PAPPERT, J.

Hummer constitute an excessive fine given the magnitude of the RICO enterprise that Gjeli led.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

v.

YLLI GJELI

CRIMINAL ACTION
NO. 13-421-1

AMENDED JUDGMENT AND PRELIMINARY ORDER OF FORFEITURE

AND NOW, this 25th day of November, 2019, upon consideration of the Government's motion pursuant to Federal Rule of Criminal Procedure 32.2(b)(2) requesting an Amended Judgment and Preliminary Order of Forfeiture as to Defendant Ylli Gjeli (ECF No. 678), Defendant's response in opposition (ECF No. 686), the Government's supplemental memorandum in support of its motion (ECF No. 709), Gjeli's reply brief (ECF No. 709) and relevant testimony and exhibits and for the reasons set forth in the accompanying memorandum, it is **ORDERED** that the motion is **GRANTED in part** and **DENIED in part** and the April 6, 2015 Preliminary Order of Judgment and Forfeiture (ECF No. 413) is **AMENDED** to reflect the following:

1. As a result of defendant Ylli Gjeli being found guilty of Count 1¹ of the indictment, charging racketeering conspiracy in violation of Title 18, United States Code, Section 1962(d), for which the Government sought forfeiture, Gjeli is required to forfeit to the United States any interest acquired or maintained in violation of section 1962; any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which Gjeli has established,

¹ In its motion, the Government asserts that it seeks forfeiture only pursuant to this Count. (Gov't Mot. at 10.)

operated, controlled, or participated in the conduct of, in violation of Section 1962; and any property constituting or derived from, any proceeds obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of Section 1962, pursuant to Title 18, United States Code, Section 1963(a).

2. Based on the record, and for the reasons set forth in the accompanying memorandum, the Court finds, beyond a reasonable doubt, that the following property is subject to forfeiture pursuant to 18 U.S.C. Section 1963 as a result of the illegal acts alleged in Count 1 for which Gjeli was found guilty:

- a. The sum of \$1,180,000 in loan collections and \$992,000 in outstanding loan principal, for a total of \$2,172,000 in United States currency (in the form of a forfeiture money judgment);
- b. Gjeli's interest in Pennsylvania liquor license (No. R-3383) in the name of 2 Brothers Corp., issued by the Pennsylvania Liquor Control Board; and
- c. One yellow 2006 Hummer Model H2, bearing Pennsylvania license plate GDK2140, titled in the name of Ylli Gjeli (No. 62432160).
- d. \$114,248.67 in United States currency seized by law enforcement in August 2013;
- e. One Smith and Wesson, 638 Model, .38 special revolver, bearing serial number CEP9363, seized from a large safe located in the closet of Lion Bar Basement.

3. A personal forfeiture money judgment in the amount of \$2,172,000 is hereby entered against Defendant Ylli Gjeli.

4. Any property of Gjeli located and forfeited by the Government, after any third-party claims to the property have been resolved, shall reduce Gjeli's outstanding liability on the personal forfeiture money judgment.

5. Upon entry of this Order, the Attorney General or a designee, is

authorized to conduct any discovery necessary to identify, locate, or dispose of property subject to this Order pursuant to Federal Rule of Criminal Procedure 32.2(b)(3).

6. Pursuant to Federal Rule of Criminal Procedure 32.2(b)(6) and Title 21, United States Code, Section 853(n)(1), the United States shall place on an official Government forfeiture website (www.forfeiture.gov) for 30 consecutive days, notice of the Government's intent to dispose of the property in such manner as the Attorney General may direct and notice that any person, other than Gjeli, having or claiming a legal interest in any of the property subject to this Order must file a petition with the Court within 30 days of the receipt of actual notice or within 30 days after the last day of publication on the official Government forfeiture website, whichever is earlier.

7. The United States, to the extent practicable, also shall provide direct written notice to any person known to have alleged an interest in the property that is subject to this Amended Judgment and Preliminary Order of Forfeiture, or to their attorney, if they are represented, as a substitute for published notice as to those persons so notified. If direct written notice is provided, any person having or claiming a legal interest in any of the property subject to this Order must file a petition with the Court within 30 days after the notice is received.

8. Any person other than Gjeli asserting a legal interest in the subject property may, within the time periods described above for notice by publication and for direct written notice, petition the Court for a hearing without a jury to adjudicate the validity of his or her alleged interest in the subject property and for further amendment of the Order of Forfeiture pursuant to Title 21, United States Code, Section 853(n)(6).

9. Any such petition shall be signed by the petitioner under penalty of

perjury and shall set forth the nature and extent of the petitioner's right, title or interest in each of the forfeited properties and any additional facts supporting the petitioner's claim, and the relief sought.

10. After the disposition of any motion filed under Federal Rule of Criminal Procedure 32.2(c)(1)(A), and before a hearing on the petition, discovery may be conducted in accordance with the Federal Rules of Civil Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues. When discovery ends, a party may move for summary judgment under Federal Rule of Civil Procedure 56. *See* Fed. R. Crim. P. 32.2(c)(1)(B).

11. The United States shall have clear title to the subject property following the Court's disposition of any third-party interests.²

12. The Court shall retain jurisdiction to enforce this Order, and to amend it as necessary, pursuant to Federal Rule of Criminal Procedure 32.2(e).

13. The Clerk of Court shall deliver a certified copy of this Amended Judgment and Preliminary Order of Forfeiture to the Federal Bureau of Investigation, the United States Marshals Service, and counsel for the parties.

BY THE COURT:

/s/ Gerald J. Pappert
GERALD J. PAPPERT, J.

² The Government shall file a motion seeking a final forfeiture order following the disposition of any third-party claims or, if there are none, following the expiration of the time permitted for the filing of such claims. *See* Fed. R. Crim. P. 32.2(c)(2); *see also* *United States v. Bennett*, 423 F.3d. 271, 276 (3d Cir. 2005) (holding that "a 'final order of forfeiture' that is not part of the judgment of sentence has no effect").