UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. **CASE NO. 3:16cr17-MCR**
[SEALED[1]]

LARRY L. MASINO,
DIXIE L. MASINO.

Defendants.
_____/

ORDER

Following an eight-day jury trial, Defendants Larry and Dixie Masino ("the Masinos") were found guilty on federal charges stemming from the operation of an illegal gambling business in Northwest Florida. Pending before the Court are the Masinos' oral Rule 29 motions for judgment of acquittal, on which the Court reserved ruling during trial, and their subsequently filed renewed motions for judgment of acquittal and alternatively for a new trial, *see* ECF Nos. 152, 153, 166, 167, 168. After a thorough and careful review and for reasons discussed below, the motions will be granted in part and denied in part.

[1] This Order is being filed under seal because it references and quotes from transcripts that are under seal, *see* ECF No. 165.

I. Background

Larry and Dixie Masino, former spouses, were charged together in a forty-one count Superseding Indictment with offenses spanning in time from January 1, 2006 through July 31, 2015, related to their business, known as Racetrack Bingo Inc. ("Racetrack Bingo"). Racetrack Bingo was a for-profit business that operated a commercial bingo hall in Okaloosa County, Florida. For over two decades, Racetrack Bingo rented the hall to several charities and ran the bingo games for them in exchange for a large portion of the bingo proceeds. The main issues at trial turned on whether the Masinos operated Racetrack Bingo as a lawful lessor and vendor by providing a facility and bingo-related services to the charities, or instead operated illegally as a commercial bingo operation by conducting bingo and retaining bingo profits, while using the charities as a cover, contrary to Florida's bingo statute.

A. Florida's Bingo Statute

Because Florida's bingo statute is relevant to each charge against the Masinos, an overview of its provisions is necessary. In Florida, "gambling" and "lotteries" (terms that ordinarily would include the game of bingo) are broadly prohibited,[2] with

[2] Under Florida law, "gambling" is expansively defined as a game of "cards, keno, roulette, faro or other game of chance" played for money or other thing of value, Fla. Stat. § 849.08, and a "lottery" is described as a drawing for the distribution of a prize or money by lot or chance, *id.* § 849.09.

certain listed exceptions—notably bingo.[3] *See* Fla. Stat. §§ 849.08, 849.09. As a result, bingo games are lawful in Florida as long as they are conducted in accordance with Florida's bingo statute, Fla. Stat. § 849.0931, and its detailed rules and conditions. The bingo statute includes criminal penalties only for a willful and knowing violation of *any* provision of the bingo statute by *any* organization or person. Fla. Stat. § 849.0931(14); *see also Dep't of Legal Affairs v. Bradenton Grp., Inc*., 727 So. 2d 199, 201 (Fla. 1998).

The statute allows both charitable and noncharitable organizations to conduct bingo. *See Bradenton*, 727 So. 2d at 201 (finding that the bingo statute does not distinguish between organizations that are "authorized" or "unauthorized" to conduct bingo). Most relevant to this case are subsections (2) and (3), which address the manner in which charitable and noncharitable organizations may conduct bingo and restrict the use of bingo proceeds. A charity (that is, a "charitable, nonprofit, or veterans' organization engaged in charitable, civic, community, benevolent, religious, or scholastic works or other similar endeavors") may conduct bingo games

[3] Florida law defines bingo as a game "in which participants pay a sum of money for the use of one or more bingo cards." Fla. Stat. § 849.0931(1)(a). Numbers are drawn by chance and called out in order. Players match and mark them on their cards until a certain sequence of numbers is reached on the card. The first player to match the sequence calls out "bingo" and wins a predetermined prize or sum of money. *Id.*

as long as all net proceeds, after deducting "actual business expenses for articles designed for and essential to the operation, conduct, and playing of bingo," are donated to its charitable endeavors. *See* Fla. Stat. § 849.0931(2)(a). A charity, however, may not serve as a mere "sponsor" of a bingo game conducted by another. Fla. Stat. § 849.0931(2)(b). Organizations not engaged in charitable endeavors may also conduct bingo games, but their right to do so "is conditioned upon the return of *all the proceeds* from such games to the players in the form of prizes."[4] Fla. Stat. § 849.0931(3) (emphasis added). Thus, the Florida Legislature has drawn a distinct line between charitable and noncharitable organizations regarding how the proceeds of bingo games may be used. Notably, the law does not permit a noncharitable organization to retain any profit from conducting bingo or to share in any profit with a charity sponsor.[5] In other words, while the bingo statute does not prohibit vendors from making a profit by selling or leasing to charities those "articles designed for and essential to" the operation of bingo games, it does not permit large-scale

[4] Under Subsection (4), which is not at issue in this case, a homeowner association, condominium association, cooperative, or mobile home group of owners or residents may conduct bingo, as long as proceeds are returned to players, but like charities, these groups may deduct the actual expenses of the games. *See* Fla. Stat. § 849.0931(4). They also have the option to either donate the net proceeds to a charitable organization or use them to conduct bingo games without charge the following day, as in subsection (3).

[5] *See supra* note 4.

commercial bingo games. *See State v. S. Cty. Jewish Fed'n*, 491 So. 2d 1183, 1186 (Fla. 2d DCA 1986) (construing an older version of the statute, which likewise conditioned a noncharitable organization's right to conduct bingo on the return of all proceeds to players as prizes and concluding that the Florida Legislature never intended to allow "a large-scale, commercial bingo operation" under the bingo statute).

The remaining provisions of the bingo statute, subsections (5) through (13), include a list of "technical rules governing bingo operation[s]." *Bradenton*, 727 So. 2d at 201.[6] These pertain to matters such as the rules of the game, the size and number of jackpots (limiting the size to $250 and no more than three in any one session), and the number of days an organization may conduct bingo (two days per week for each organization authorized). Most pertinent to this case are subsections (8) and (11)(c). Subsection (8) requires that persons involved in conducting a bingo game must be residents of the community and "bona fide members"[7] of the charity

[6] In *Bradenton*, the Florida Supreme Court addressed the 1993 version of the bingo statute, which is the same as the current statute in all provisions that are of consequence in this case. The most significant subsequent change in the statute was the Legislature's 2007 addition of subsection (13) governing "instant bingo" and renumbering of the criminal penalty provision as subsection (14).

[7] A "bona fide member" means only that "the person is properly enrolled in the organization by paying dues and complying with the membership requirements" of the group.

conducting the game; additionally, persons conducting the games "may not be compensated in any way for [the] operation of such game."[8] Fla. Stat. § 849.0931(8). Subsection (11)(c) prescribes conditions for leasing premises to charities conducting bingo. The statute allows charities to lease property for this purpose, provided the lease is for a period of not less than one year and the rental rate for the property is not based on a percentage of the bingo proceeds and also does not "exceed the rental rates charged for similar premises in the same locale." Fla. Stat. § 849.0931(11)(c).[9]

B. Procedural History

The Masinos were indicted on federal charges in February 2016. A Superseding Indictment followed, charging them with conspiring to commit wire fraud (Count One), *see* 18 U.S.C. §§ 1343, 1349; violating the Illegal Gambling Business Act ("IGBA") (Count Two), *see* 18 U.S.C. § 1955; conspiring to commit money laundering (Count Three), *see* 18 U.S.C. § 1956(h); and committing numerous substantive money laundering charges (Counts Four through Forty-One),

---

Jewish Fed'n, 491 So. 2d at 1187. Whether the person subjectively believes in or supports the charity's mission is irrelevant under the bingo statute. *See id.*

[8] The ban on compensating persons conducting the games does not apply to tips from the players, which a volunteer charity member may accept and are not considered "compensation" under the statute. *See Jewish Fed'n*, 491 So. 2d at 1187.

[9] *See also Jewish Fed'n*, 491 So. 2d at 1186 (finding it permissible for one non-profit organization to sublease premises to another non-profit organization for the purpose of conducting bingo).

see 18 U.S.C. § 1957. The Superseding Indictment provided an overview of Florida's bingo statute and outlined how the Masinos operated Racetrack Bingo as a violation of the statute by conducting bingo games at its facility and earning a profit through lease agreements with charities.

Count One charged a wire fraud conspiracy. More specifically, Count One charged that the Masinos devised a scheme to defraud the charities out of money and property by misrepresenting the true nature of the bingo operation and by repeatedly and falsely assuring the charities that they were operating in accordance with the bingo statute. Count One also detailed the ways in which the Masinos personally profited from the bingo proceeds that were, according to the Government, supposed to go to the charities, and charged that the Masinos "fraudulently retained and diverted for their personal benefit" millions of dollars that the charities paid Racetrack Bingo in lease fees. Count Two charged that the Masinos' operation of Racetrack Bingo constituted an illegal gambling business under federal law. The Government listed the Florida bingo statute and three Florida gambling statutes as the bases for asserting that the business was a violation of Florida law. The remaining money laundering charges were based on the Masinos' monetary

transactions distributing the illegal proceeds of the wire fraud and the illegal gambling business.

Initially, the Masinos moved to dismiss the IGBA charge on grounds that a bingo offense is not considered "gambling" under Florida law. In ruling on the motion, the Court agreed that a bingo offense was not "illegal *gambling*" under Florida law, and therefore, a violation of Florida's bingo statute could not support a federal IGBA offense.[10] *See* ECF No. 90. The Government appealed the decision.[11] The Eleventh Circuit reversed and remanded, finding the allegations of the indictment sufficient to state an IGBA charge, notwithstanding the Florida Supreme Court's view that bingo is not a gambling offense in Florida. *See United States v. Masino*, 869 F.3d 1301, 1306-09 (11th Cir. 2017). Specifically, the Eleventh Circuit concluded that for purposes of the IGBA, "gambling" is defined by federal, not state, law, and under federal law, the definition of gambling includes bingo. *See id.* at 1306. The Eleventh Circuit then looked to Florida law to define whether a gambling business is "illegal" for purposes of the IGBA. The court determined that Racetrack Bingo's business as charged in Count Two was "illegal" under Florida's bingo

[10] In relevant part, an "illegal gambling business" for purposes of the IGBA is defined as a gambling business that is a violation of state law. 18 U.S.C. § 1955(b).

[11] The case was stayed pending resolution of the interlocutory appeal.

statute. *See id.* at 1307 ("If, for example, the government can prove that Racetrack Bingo illegally allows charities to sponsor bingo games without their direct involvement or that Racetrack Bingo forfeits its right to conduct bingo by not returning all of the proceeds from those games to the players, then a jury could find that Racetrack Bingo is an illegal gambling business.").

On remand, the Government provided a Bill of Particulars, identifying the provisions of the bingo statute that served as the state law predicate for the IGBA charge (Count Two), namely, subsections (2)(a) (authorizing charities to conduct bingo) and (3) (authorizing noncharitable entities to conduct bingo). Fla. Stat. § 849.0931(2)(a), (3). According to the Bill of Particulars, Racetrack Bingo was obtaining illegal profits by charging the charities an excessively high lease fee, including rent and expenses, which prevented the charities from deducting only "actual expenses" from the bingo proceeds, as authorized in subsection (2)(a). Also, it stated that Racetrack Bingo was illegally retaining bingo proceeds contrary to subsection (3) by "conducting bingo" as a noncharity without returning all proceeds of the games to the players as prizes.[12]

[12] The Masinos moved to dismiss the IGBA charge insofar as it was based on subsection (2)(a), arguing that it applied only to charities and that Racetrack Bingo was a mere vendor, whose conduct was not regulated under subsection (2)(a). The Court denied the motion before trial, explaining that the Florida Supreme Court has held that the bingo statute "is reasonably read to

After the Government presented its case at trial, the Masinos each moved for judgment of acquittal on all counts. *See* Fed. R. Crim. P. 29. The court deferred ruling on the wire fraud conspiracy charge. On the IGBA charge, the motions for judgment of acquittal were denied to the extent the charge was based on subsection (3) of the bingo statute (describing a noncharitable entity's right to conduct bingo) but granted insofar as the charge was based on subsection (2)(a) (describing a charitable entity's right to conduct bingo). The Court agreed with the Masinos that, read in isolation, the language of subsection (2)(a), authorizing a charity to conduct bingo and deduct "actual expenses" from the proceeds, indeed only governs the conduct of charities. The Court concluded that, even viewing the evidence in the Government's favor to find that Racetrack Bingo could be considered a "vendor," nothing in subsection (2)(a) expressly applies to vendors or limits the profit a vendor may charge to charities for bingo-related items or services, and thus, the motions

---

cover all organizations," *Bradenton*, 727 So. 2d at 203, and that subsections (2)(a) and (3) could be viewed together to determine whether Racetrack Bingo operated as a violation of state law for IGBA purposes. ECF No. 127, at 11-13 ("The alleged conduct [of Racetrack Bingo] is contrary to subsection (2)(a) precisely because the provision authorizes *only charities* to conduct bingo and deduct actual business expenses from proceeds."). As discussed *infra*, the Court revisited the issue during trial and decided the issue differently.

were granted on this ground.[13] The Court also concluded that because subsection (2)(a) does not clearly apply to vendors or noncharitable entities, it would be vague as applied to the facts of this case.[14] The Government agreed that, on this record, it was appropriate to proceed with the IGBA charge predicated only on subsection (3) of the bingo statute, which charged the Masinos with operating Racetrack Bingo illegally by conducting bingo without returning all proceeds to the players in the form of prizes.[15] (Tr. 1696-97). Finally, the Rule 29 motions were denied as to the money laundering counts, which were challenged only to the extent they depended on unlawful activity under the IGBA and wire fraud counts.

---

[13] The Government's pursuit of mutually exclusive theories in this case, i.e., that Racetrack Bingo was both a vendor to a charity conducting bingo under subsection (2)(a) and also the entity conducting bingo under subsection (3) has caused considerable confusion.

[14] The Court denied the renewed motions to dismiss the remaining charges on as-applied vagueness grounds. In the undersigned's view, the bingo statute, while comprehensive and clear in many ways, is not free of ambiguity, and subsection (2)(a) would be unconstitutionally vague if applied to punish a vendor for charging a profit, because it does not on its face apply to vendors. Notwithstanding, the Court determined on a full record that in other relevant respects, the bingo statute was not vague as applied to the Masinos' conduct.

[15] The Court also granted the Rule 29 motions to the extent Count Two relied on the Florida gambling statutes. As noted earlier, the Superseding Indictment also based Count Two on grounds that Racetrack Bingo operated in violation of certain Florida gambling statutes. Under Florida law, conducting bingo in knowing and willful violation of the bingo statute is a criminal violation of the bingo statute, not a violation of Florida's gambling statutes. *See Masino*, 869 F.3d at 1308-09 (citing *Bradenton*, 727 So. 2d at 201-02, as "explaining that violations of the bingo statute are punishable by the bingo statute, not other gambling statutes"). Thus, the Court determined as a matter of law that the Masinos were entitled to judgment of acquittal insofar as Count Two was based on allegations that Racetrack Bingo violated the Florida gambling house statutes. (Tr. at 1724).

C. Trial

At trial, the jury heard testimony from twenty-seven Government witnesses—including charity representatives from each of the charities that contracted with Racetrack Bingo, former employees of Racetrack Bingo, law enforcement officials, and a real estate expert—as well as audio recordings of both Larry and Dixie Masino, and Larry Masino testified in his own defense.[16] The Government also introduced scores of exhibits, including the lease agreements, bank account information, summary charts of bingo proceeds, charities' meeting minutes, and numerous emails. Having carefully examined the voluminous record in this case, the Court summarizes the evidence as follows.[17]

For over 20 years, Larry and Dixie Masino had a business relationship with the nonprofit community in Fort Walton Beach, Florida, as owners of a commercial bingo hall, initially known as Fort Walton Bingo and later as Racetrack Bingo. From

[16] For ease of reference, references to the trial transcript, which is filed in separate segments (ECF Nos. 179, 179-1, 179-2, 179-3, 179-4, 179-5, 179-6, 179-7, & 179-8) but can be opened as one consecutively paginated electronic pdf document on the Court's electronic docket, will be cited with the consecutive pdf page numbering (Tr. 1-1893), instead of the page numbers printed in each separate volume.

[17] Because the jury returned a verdict in the Government's favor in this case, the Court recounts the facts in the light most favorable to the Government. *See United States v. Maxwell*, 579 F.3d 1282, 1299 (11th Cir. 2009) (citing *United States v. Futrell*, 209 F.3d 1286, 1288 (11th Cir. 2000)).

January 1, 2006 through July 31, 2015, the dates charged in the Superseding Indictment, the Masinos operated Racetrack Bingo as a full-service bingo operation for charities through a full-service lease that included the facility and those services necessary for conducting bingo.[18] Charity representatives such as Charles Rigdon, of the Northwest Florida Fair Association, and Leo Donnelly, of the National Council on Alcoholism and Drug Dependency of Northwest Florida, testified that as far back as the early 1990s, Larry had recruited charities by touting his experience in the bingo business, promising them bingo profits through a risk-free fundraising opportunity.[19]

[18] Larry began operating a bingo hall in Fort Walton in 1992 and before that, he operated bingo parlors in Texas. Racetrack Bingo was formally incorporated in 2002. Its owners are the Masino family–Larry, Dixie, and their children. The property, located at 106 Racetrack Road, NE, Fort Walton Beach, was owned by DixLar, Inc., which, in turn, was owned by the Masinos. The Masinos built a bingo hall on the property in Fort Walton Beach.

[19] Rigdon's Fairgrounds Association had been conducting bingo on its own at the fairgrounds exhibit hall when Larry recruited it to join his bingo operation in the 1990s. (Tr. 753). According to Donnelly, Larry approached him in the 1990s and asked, "how would you like to have the ability to help people?" (Tr. 202). Donnelly testified that based on what Larry had said to him, "I understood that he [Larry] knew backwards and forwards the Florida Statute, that he had been doing this for years, the bingo operation, and he knew what he was doing. And I believed him and I trusted him at the time." (Tr. 219). Other charity representatives testified that they considered Larry Masino a "bingo expert." (Tr. 390, 635). Moreover, during the defense's case, Larry Masino himself testified that "[his] new product was bingo [a]nd [he] just took [his] knowledge of bingo and what the nonprofits were earning and took that as a tool and enticement at each new store to get the nonprofit to participate with us." (Tr. 1521).

During his years of running bingo halls, Larry Masino frequently interacted with law enforcement officials, primarily to let them know when he felt other local bingo halls were violating Florida's bingo statute and gaining a competitive edge. He also used off-duty deputies for a time to provide security at his own bingo halls. Notably, in 1999, well before the time covered by the Superseding Indictment in this case, Larry, doing business as Fort Walton Bingo on Racetrack Road, received a letter from the Okaloosa County Sheriff's office, drafted by Deputy Fred Cobb. Cobb wrote that the Sheriff's office had conducted a review of local bingo halls, including Fort Walton Bingo, at the request of the Okaloosa Board of County Commissioners. The Commissioners had received several complaints, one of which was actually from Larry, about violations of the bingo statute by another bingo hall, and consequently, the Commissioners requested an investigation of the four large bingo operations then in existence in Okaloosa County, including Larry's. The letter identified a number of bingo statute provisions that Larry's operation had violated or possibly violated. (Gov't Ex. 16c-1). For instance, Larry was informed that his organization was offering more jackpots and games than authorized by statute, and the letter questioned whether the charities were actually involved in conducting the games because Larry's employees were conducting the bingo sessions and were

solely responsible for accounting for the game proceeds. Larry was warned that the bingo statute prohibited his employees from receiving compensation for conducting bingo, referencing a legal decision from Florida's Second District Court of Appeal called *State v. South County Jewish Federation* ("*Jewish Federation*"), which holds that persons conducting bingo may not be compensated in wages but may receive tips from players, which are not considered "compensation."[20] 491 So. 2d at 1187. Deputy Cobb also observed that if the charities were merely "sponsoring" bingo games, this would be illegal. He also expressed concern that the lease amount charged to the charities was too high, although he recognized that the charities could legally pay for "rent, utilities and other intangibles" and "materials, equipment, and . . . other services." (Gov't Ex. 16c-1). He suggested using a lease agreement that differentiated between the rent charged for space and the amount charged for other bingo services and warned Larry that future violations either by Larry's organization or by one of the charities would subject both to criminal penalties; however, no

[20] The letter stated, incorrectly, that persons conducting bingo could not receive tips. It is clear under Florida law, from the case referenced in the letter, that persons conducting bingo may not be compensated in wages but may receive tips from players, which are not considered "compensation." *See Jewish Fed'n*, 491 So. 2d at 1187 (money that players give to "dues-paying members" of charities who volunteer to conduct bingo games is merely "indicative of the generosity of the players" and not compensation for work, which would violate the statute).

charges were filed at that time.[21] Larry maintained ongoing communications with Deputy Cobb during Cobb's employment with the Okaloosa County Sheriff's Office, and Cobb testified at trial that in his opinion, while Larry was cooperative, he never fully complied with the statute. Larry shared a copy of the 1999 letter with the charities. Julia McNabb, Chief Executive Officer of Horizons of Okaloosa County, which was a charity that contracted with Racetrack Bingo, testified that her charity had maintained a copy of the letter in its records as a guide for ensuring compliance with the bingo statute.

Larry and Dixie each played varying roles within Racetrack Bingo, including as co-directors, President, and Vice President. Larry and Dixie divorced in 2010, and Dixie took over at that time, but Larry continued to advise her, instructing her once by email to "[l]earn the 'bingo' side of our business. The other part is simply paying bills, maintenance & repair of the building, etc." (Gov't. Ex. 3a-7). When Dixie was in charge, she continued to run Racetrack Bingo in the same manner as Larry had and frequently sought advice from him about running the business.

[21] Deputy Cobb testified at trial that although he never told the Masinos they were in compliance with the bingo statute, he thought Larry had tried to comply with what he told him. (Tr. 511, 517-18). Deputy Cobb also testified that the bingo statute can be confusing. (Tr. 514). Donnelly testified that in connection with the letter, Larry had Deputy Cobb speak with all of the charities Larry was involved with at that time about the need to have "separation," referring to a separate charity checking account. (Tr. 250-51).

Numerous email exchanges between them, however, show that Larry continued to be involved with Racetrack Bingo as an owner and consultant. For 20-plus years, both Larry and Dixie made a fortune from operating a bingo hall, through profit distributions, and true to Larry's word, with Racetrack Bingo running the games for them, the charities also made a ton of money with no effort, upfront expense, or financial risk.[22]

In 2007, a group of ten charities that had been contracting with Racetrack Bingo organized themselves into a nonprofit organization known as Ft. Walton Beach Charities, LLC ("FWBC") in large part for the purposes of dealing collectively with the Masinos and distributing the bingo proceeds evenly between the charities.[23] To be part of the LLC, each member organization was required to be located within the community and to have 501(c)(3) charitable status under the Tax Code, 26 U.S.C. § 501(c)(3). During their relationship with Racetrack Bingo, the

[22] The Government presented a chart showing that during the time charged in the Superseding Indictment (2006 through August 2015), the bingo operation grossed $20 million. After paying expenses and salaries, the Masinos netted $8 million while the ten charities split a total of $4.5 million.

[23] These charities included the Boys and Girls Club of the Emerald Coast, Northwest Florida Ballet, Mental Health Association of Okaloosa-Walton County, Horizons of Okaloosa County, Horizons Foundation, Emerald Coast Science Center, Northwest Florida Fair Association, Habitat for Humanity, the Order Sons of Italy and America Lodge 2422, and the National Council on Alcoholism and Drug Dependency of Northwest Florida ("NCADD"). A representative from each charity testified at trial.

charities each signed individual but identical lease agreements every year to rent Racetrack Bingo's hall in Fort Walton Beach "for the purpose of conducting bingo." (*See, e.g.*, Gov't Ex. 16a-4, 2011 lease). The Masinos and the charities referred to the lease agreement as a "turnkey operation" because the charities paid a set amount per bingo session[24] for rent and other expenses, in exchange for a full-service bingo operation.[25] From 2010 onward, the rent was $1,050 per bingo session, with two weekly sessions being required (that is, $2,100 per charity weekly).[26] Thus, with ten charities, Racetrack Bingo was paid approximately $84,000 per month under the leases, but on occasions when proceeds were low, Racetrack Bingo would lower the

[24] Under the bingo statute, "session" is defined as "a designated set of games played in a day or part of a day," Fla. Stat. § 849.0931(1)(j), with three jackpots per "session," but the statute does not otherwise define or limit the number of games per session or the number of sessions per day. There was some dispute about whether Racetrack Bingo was holding 20 sessions per week, but the record suggested Racetrack Bingo would double up more than one charity per session at times.

[25] Prior to 2011, the leases included an attachment, consistent with Deputy Cobb's advice, showing an itemized list of expenses included within the lease fee and detailing the amounts charged for items, such as gas, water, electric, janitorial, building manager, sanitation, supplies, and security, etc. Starting in 2011, however, the leases no longer included this attachment and instead charged one lump sum for rent and services, consisting of "all utilities (including electricity, water, gas and sanitation), maintenance of the premises, and other services necessary for the Lessee [charity] to be able to conduct its bingo sessions," with no breakdown of amounts. (*See, e.g.*, Gov't Ex. 16a-4 to 16a-12) (Tr. 357-58). According to Julia McNabb, Chief Executive Officer of Horizons of Okaloosa County, the charities asked the Masinos to remove the itemized list from the lease after the Masinos refused to verify that these were "actual" expenses. After that, all turnkey charges were simply lumped together as one lease fee.

[26] Prior to 2010, the total lease amount was $1,770 per bingo session, with two sessions required weekly.

rental fee.[27] Each lease was for a one-year term but at the same time, either party had the option to terminate on 24-hours' notice. A separate provision in each lease required the charity to comply with Florida's bingo statute. On top of the "turnkey" lease fee, the charities also paid Racetrack Bingo expenses for weekly bingo supplies and equipment, ordered by Racetrack Bingo, fees for setup and cleanup by "volunteers," a fee for a Racetrack Bingo manager to act as a "member in charge" ("MIC") of the games during each bingo session, and sometimes an additional amount for security, all of which was deducted from the gross bingo proceeds. (Tr. at 282-84, 308). Racetrack Bingo employees deposited the proceeds, deducted the fees, lease fees, and related expenses paid to Racetrack Bingo, and the ten charities divided the remainder of the proceeds equally. A Government chart showing Racetrack Bingo's annual lease fee income from 2006 through July 2015 reflects that, on average, Racetrack Bingo made well over $1 million per year. (Gov't Ex. 31e).

[27] Special Agent Christopher Pekerol of the IRS Criminal Investigation Division, who reviewed Racetrack Bingo's financial records, testified that the weekly rent charged appeared to fluctuate at times based on the amount of bingo proceeds collected, and charity representatives admitted that the Masinos charged them less than the stated lease fee when the bingo proceeds were not sufficient to cover the lease fee. Racetrack Bingo Manager Peggy DeArco Kelley testified that when weekly proceeds exceeded $50,000, the rent charged to the charities would be higher, although this appears from the record to have occurred on only a few isolated occasions from 2006 through 2009, and the Superseding Indictment did not charge the Masinos with taking more than their lease agreements allowed.

The operation of this full-service bingo business was tightly controlled by the Masinos, albeit with the charities' full knowledge and acceptance. It was clear from the evidence at trial that the charities did not want the responsibility of running the games and instead simply wanted the income. McNabb, a charity representative, testified that she understood the charities had hired Larry "as our vendor to help us run bingo," (Tr. 390), and as a result of her charity's relationship with Racetrack Bingo, it received "a lot of money without the kind of work that typically goes into a fundraiser that's going to earn that much money." (Tr. 347). Leo Donnelly, the representative for the National Council on Alcoholism and Drug Dependency of Northwest Florida, which also was a member of FWBC, agreed that Racetrack Bingo really was a "golden opportunity" for the charities to obtain funding (Tr. 238), and James LaFollette, Executive Director of the Emerald Coast Science Center and for a time the manager of FWBC, likened Racetrack Bingo to "a goose that laid the golden egg."[28] (Tr. 543). Indeed, at the height of the charities' earnings with Racetrack Bingo, FWBC was making over $800,000 annually, for an average net profit to each charity of approximately $80,000 in bingo proceeds with no investment and no work. (Tr. 237-238, Govt Ex. 31e).

[28] Correspondence between the charity representatives also indicated that the charities all viewed Racetrack Bingo as "the proverbial golden goose." (Defs. Ex. 108b-3).

Bingo games were conducted at Racetrack Bingo seven days per week, every day of the year except Christmas Eve. Instead of using existing charity members as "volunteers" to operate the games, Larry and Dixie Masino hired, trained, and scheduled the "volunteer" floor workers who operated the games. Racetrack Bingo required them to sign noncompete agreements with FWBC and Racetrack Bingo in order to prevent them from working at competing bingo halls. The charities were required to add the volunteers' names to the charities' membership rosters, so that they would be considered "*bona fide* members" of the charities under the bingo statute. *See Jewish Fed'n*, 491 So. 2d at 1187 (stating a "*bona fide*" member for purposes of the statute is an individual listed as a member on the charities' membership rosters). Racetrack Bingo paid the floor worker "volunteers" a fee of $40-$45 per session, ostensibly for "setup and cleanup" duties. These same individuals passed out bingo cards, collected money, called out numbers, verified winning bingo numbers, and sold pull-tabs for instant win games. They were each paid the same fee regardless of how many "volunteers" Racetrack Bingo hired to work a shift. The MICs, often salaried Racetrack Bingo managers, who were similarly considered "volunteers" and listed on the charities' membership rosters, earned an additional fee of between $120 and $140 per bingo session to manage the

shift. According to Racetrack Bingo managers and MICs Peggy DeArco Kelley, Russell Carasquillo, and Joseph Birr, the MICs conducted bingo, including providing customers requested bingo game cards from the front desk, intervening and explaining the rules of the game to customers if necessary and also could work on the floor calling bingo. The MICs also documented and controlled the cash collected for each game, distributed payouts for each bingo game, and helped the volunteer floor workers collect game money and verify bingos when necessary. (Govt. Ex. 2d-2). The MICs paid all workers out of the total bingo proceeds for the day.

For the first few years after FWBC was formed, the charities exercised little to no oversight over the bingo operation. Donnelly, McNabb, and other FWBC charity representatives testified that they relied on Larry to operate the games, albeit in accordance with the law. The charity representatives did not work as volunteers and only occasionally stopped by the hall to observe the bingo games. McNabb testified that her charity occasionally sent a volunteer to observe the games but only to watch the number of jackpots, make sure cash was not placed in a separate drawer, and see that the charity's name was posted on the wall. (Tr. 449). The MICs collected the bingo proceeds and deposited them into FWBC's bank account,

prepared checks for the charity representatives to sign, and prepared a summary report of profits and expenses that was sent to each of the charities each week, showing all payments. (Tr. 205-09, 567-71, 818-31, 943-45, 972-73). The charities were thus aware that the "volunteers" conducting the games were paid. However, McNabb testified that she understood from Larry, whom she considered a bingo expert, that the volunteers could be paid for setup and cleanup but not for conducting bingo. (Tr. 390). Donnelly testified that, based on what Larry had told him over the years, it was legal to use Racetrack Bingo employees as "volunteers" as long as the workers' names were listed on the charities' membership rosters, as Larry and Dixie had instructed. (Tr. 261-62).

In 2010, in relation to a law enforcement investigation of a bingo operation run by Larry in Tallahassee, Florida, the FWBC's bank account was seized, and the charities learned that Larry had been under criminal investigation for violations of the bingo statute in connection with his Tallahassee operation.[29] Although Racetrack

[29] The Court admitted evidence of the Tallahassee criminal investigation as relevant to explain why the charities began looking more closely at the bingo operation. The Court, however, excluded evidence of the criminal charges themselves as well as Larry Masino's nolo contendere plea and corresponding criminal judgment, unless he opened the door to the evidence. Unfortunately for Larry, during his direct testimony, he opened the door by stating that he had been "exonerated" in the Tallahassee case. As a result, the Court allowed the Government to cross-examine Larry regarding his *nolo contendere* plea and conviction on two state law misdemeanor charges of willfully and knowingly operating a bingo establishment and/or conducting bingo for profit and using the net proceeds of the bingo games to benefit individuals other than charitable

Bingo was not implicated and FWBC's funds were ultimately returned, this caused FWBC members to begin scrutinizing the charities' relationship with Racetrack Bingo more closely. Around the same time, the charities' net profits were decreasing. As a result of these circumstances, FWBC held its first formal meeting on September 2, 2010, and demanded assurances from the Masinos that Racetrack Bingo was operating in compliance with the bingo statute. According to the meeting minutes, the charities were concerned that the bingo operation was not in compliance with the law. The minutes include the following sober recognition by FWBC: "The Bingo statute is very clear, and we are in violation." (Gov't Ex. 16b-1 at 2). Specifically, these meeting minutes identified problems such as, "[the charities] do not run the operation—it is run by Larry," the operation was not run by volunteers, the workers received a $40 fee per session, and the charities rental rate was inflated. (Gov't Ex. 16b-1 at 2). The minutes noted that FWBC's checking account, which at that time was in Dixie's name, was co-mingled with Racetrack Bingo. More completely, the meeting minutes identified the following issues:

---

organizations. Larry, in turn, was permitted to inform the jury that the more serious charges were *nolle prossed* by the state and all initially forfeited money was returned to him. Importantly, the jurors were instructed that they could consider this evidence for purposes of impeachment only, and also that Dixie Masino was not involved in the Tallahassee investigation and the evidence could not be considered against her in any way.

- The bulk of the money is going to a private individual, which is in direct violation of the statute
- We do not run the operation – it is run by Larry
- We co-mingle our funds which we are not allowed to do by statute
- We rent at an inflated rate versus normal rent for the size building
- There is really no control over the money as we do not know how much comes in. We also operate from records without backup documentation
- It is not being run by volunteers although the runners get tips and a $40 cleaning fee per shift
- Larry periodically adjusts our lease – albeit sometimes in our favor
- We understand that once our sheriff gets elected in November, there will be clarification that will put us all on the right track.

(Gov't Ex. 16b-1 at 2).

FWBC then consulted Marty Lester, Esq., a board member of one of the charities, for a legal opinion regarding its compliance with the bingo statute. According to the September 9, 2010, board meeting minutes, Mr. Lester advised the board that "[t]here are specific activities not allowed under the statute." (Gov't Ex. 16b-2 at 2). In Mr. Lester's opinion, whoever runs the games and handles the money must be a *bona fide* dues-paying member of the charity, and he noted concern over the fact that the FWBC rent was fluctuating and did not reflect true market value rent for similar commercial property in the area. However, he also stated that in his opinion, the bingo statute was "open to interpretation." (*Id.*) The charities then

decided to confront Larry and ask, "how we are meeting the statute under the current operational structure," including the rent and accountability issues regarding the control and collection of proceeds? (Gov't Ex. 16b-2 at 2). They did this at a meeting the next day, September 10, 2010.[30] In response, Larry assured the charities: "[t]here is case law in Florida," and "[w]e are operating according to the precedents set."[31] (Gov't Ex. 16b-3). The notes also reflect that the charities were assured that all proceeds were deposited into FWBC's account and the expenses were paid by invoice from FWBC's account. By email, dated October 26, 2010, Larry addressed the issue of paying the volunteers. He explained that the MICs received more pay for setup and cleanup than the floor workers because they had greater duties than the

[30] The charities also sent one representative, Tony Mallini, to observe Racetrack Bingo's operations and he provided them with a written report dated September 30, 2010. Mallini observed and reported that the volunteer floor workers were paid from bingo proceeds for cleanup and setup every shift, plus the MICs were paid from proceeds for each shift worked. He noted that Racetrack Bingo decided how many "volunteers" worked each shift and commented that "[h]aving too many volunteers on the floor is costly to the charities." (Gov't Ex. 16b-4, Tr. at 306-07). Mallini also observed that there were only 18 bingo sessions per week (though 10 charities were each paying for 2 sessions per week) and that the expense for security was paid in the lease but also separately deducted from the proceeds, as shown on the weekly summary sheets. He suggested that a security charge should be removed from the lease.

[31] No specific case law was referenced in the meeting minutes but presumably, Larry was referring to the *Jewish Federation* case, *supra,* which was repeatedly referenced during trial and cited in the 1999 letter from Deputy Cobb (Gov't Ex. 16c-1). Again, the case held that a "volunteer" is a "*bona fide* member" of a charity if the person is named on the membership roster and pays any required dues. The case did not discuss whether a volunteer could be paid by a noncharitable entity.

floor worker volunteers, but he assured the charity representatives that the MICs' additional compensation was for setup and cleanup and did "not have anything to do with working the desk or any other activities during the course of a session of bingo." (Gov't Ex. 21b-3).

FWBC's meeting minutes continued to reflect that the charity representatives repeatedly informed the Masinos that actions in violation of the bingo statute would not be tolerated and that Racetrack Bingo representatives, usually Dixie and a manager, repeatedly gave assurances that the operation was complying with the law. The board minutes also reflect that the charities considered negotiating new leases, but despite their awareness of the illegality of Racetrack Bingo's actions, they accepted the Masinos' blanket assertions that Racetrack Bingo was operating lawfully and took no action to negotiate new lease terms. In May 2011, facing declining profits and high expenses, the charity representatives merely "asked Dixie to reconsider the weekly lease arrangement" and requested approval to begin paying the expenses themselves, an option provided for in the leases.[32] (Gov't Ex. 16b-8). The minutes reflect that Dixie refused and instead told them she would be raising

[32] As noted earlier, the bingo statute allows charities to deduct from bingo proceeds their "actual business expenses for articles designed for and essential to the operation, conduct, and playing of bingo or instant bingo." Fla. Stat. § 849.0931(2)(a).

the rent based on increasing expenses. Notwithstanding this, the rent did not change and the annual leases continued.[33] At an October 2011 board meeting, Dixie told the charities that, if investigated, "she has everything she needs to justify the rent," but she offered them no proof.[34] (Gov't Ex. 16b-12).

The record also reflects that, on several occasions, the charity representatives asked the Masinos to verify their "actual expenses." For a time, a list of itemized expenses had been attached to the leases, but beginning in 2011, after the Masinos refused to verify these as actual expenses, the charities requested that the attachment be removed from the leases. Shervin Rassa, Chief Executive Officer of the Boys and Girls Club of the Emerald Coast, testified that as long as he had been involved in FWBC (since 2012), there had been discussions in board meetings about concerns over inflated prices and inflated expenditures. (Tr. 720-21). However, there was no evidence at trial that Larry or Dixie ever told the charities that Racetrack Bingo's fees were based on "actual expenses." At most, according to Charles Rigdon, CEO

[33] However, Dixie never verified the expenses or explained which expenses she had expected to increase.

[34] These board meeting minutes reflect that on this occasion, the charities met with Dixie and Carasquillo to discuss unfair competition by other bingo halls, which they felt were not complying with the limitations on jackpots. Dixie acknowledged that if the other bingo halls were investigated, Racetrack Bingo could be investigated as well, but she assured the charities that she could justify the rental rate and that Racetrack Bingo was not unlawfully giving out extra jackpots. (Gov't Ex. 16b-12). There was no issue at trial about noncompliance with the jackpot provisions.

of the Northwest Florida Fair Association which was an FWBC member, whenever charity members asked Racetrack Bingo to verify expenses, they were told, "the expenses are what they are." (Tr. 752).

From 2013 through 2015, to ensure that all bingo halls in the county were complying with the bingo statute, the charities became active in drafting and promoting a local ordinance designed to prevent unfair competition and to cap fees on expenses charged to charities. The Masinos appeared to be in agreement with the charities about the need for such an ordinance, but by email, Larry told Dixie that he believed the charities were pursuing the ordinance in order to get more of the bingo profits. Ultimately, at a county workshop on the ordinance in April 2015, Dixie voiced her opposition to the ordinance, arguing that the charities were making more money through Racetrack Bingo than they could on their own and that adding new regulations would only increase their cost of doing business. According to McNabb, after Dixie's public remarks, the ordinance was "shot down immediately" and never came up for a vote, leaving the charities "blindsided." (Tr. 343). After the ordinance failed, charity representatives again requested permission from Dixie to pay their own expenses, which she denied. They also requested that the rent be lowered to a "fair market value," which the charities estimated at $8,000 per month, but nothing

changed. Meeting minutes reflect that the charities agreed Racetrack Bingo should be "fairly financially rewarded" by making a profit, but they felt their current lease payment, which by then was giving Racetrack Bingo approximately 82% of the bingo proceeds, was simply too high in comparison to the charities' profit.

Subsequently, on June 22, 2015, McNabb's charity, Horizons of Okaloosa County, Inc., was audited by Cecil Weems, an IRS revenue agent. Weems examined the bingo operation and offered a preliminary opinion that the charity could be liable for taxes on illegal bingo revenue because the volunteers running the games were compensated beyond tips and the rent for the bingo hall exceeded the rental rates charged for similar premises in the locale. As memorialized in FWBC board minutes, McNabb defended the arrangement, explaining that the charities were paying for a "turnkey operation," not simply rent, and that "to our knowledge we are not exceeding the rate charged for similar premises because all of the charities [in the area] are being grossly overcharged for bingo. That is why we tried to get an ordinance passed!"[35] (Gov't. Ex. 16b-19).

The following week, on June 29, 2015, a federal search warrant was executed at Racetrack Bingo and at the residences of Larry and Dixie Masino. McNabb

[35] McNabb testified that her charity was never charged back taxes on its charitable bingo proceeds. (Tr. 424).

received a call from Dixie after the search, asking to set up a meeting with the charities and saying the investigation involved allegations of fraud based on the 2010 itemized lease attachment they had used to justify the lease amount. Dixie asked McNabb for a letter from the charities supporting those expenses. McNabb documented in a memo that she "found it hard to believe that the expenses charged to the [FWBC] are actual" and said she told Dixie she should have "nothing to worry about" if Racetrack Bingo was operating legally. (Gov't Ex. 16b-18). McNabb declined to write a letter in support of Racetrack Bingo because Dixie had never verified the expense list with documentation, as the charities had requested, noting that the Masinos' refusal to document or verify the expenses was the reason the charities had required the list to be removed from the leases. McNabb said the charities had no way of knowing what Racetrack Bingo's actual expenses were.

Larry and Dixie met with the charity members on July 7, 2015, and informed them of the criminal fraud investigation. They also accused the charities of reporting Racetrack Bingo to the IRS.[36] Larry requested that the charities provide a supportive letter to the authorities stating that neither he nor Dixie had ever represented what

[36] Larry was angry that FWBC had disclosed financial documents publicly without asking Dixie's permission. The charity representatives reminded him that, as § 501(c)(3) organizations, the charities' financial records are "open books."

the actual expenses were. He admitted to those present that the expenses were "marked up" but maintained that he and Dixie had never misled the charities to think they were charging actual expenses. (Gov't Ex. 16b-19). The minutes reflect that McNabb voiced her disagreement, saying this was the first time she had been told that expenses were "marked up." Larry also assured the charities that the rental rate was in line with the market and was "comparable to the Conference Center on Okaloosa Island," stating rent in the amount of "$21,000 per week was fair market value." (Gov't Ex. 16b-19). Shervin Rassa disagreed. He knew what his organization, the Boys and Girls Club, was paying for a building less than a quarter of a mile from Racetrack Bingo, and in his opinion, there was "no way" that FWBC was paying anywhere near fair market value. (Tr. 714). At one point, the board notes reflect a discussion speculating about why the sheriff had not chosen to enforce the bingo statute in this county, and Larry questioned whether the sheriff "could be bought." (Gov't Ex. 16b-19). In the end, in spite of these concerns, the charity representatives signed the same lease again that day, July 7, 2015.[37] (Gov't Ex. 16b-

[37] The minutes reflect that Larry told the charities that, although he would not verify actual expenses, he was not forcing the charities to sign with Racetrack Bingo. According to the evidence, the charities ultimately decided to enter into leases again on the same terms because they felt Racetrack Bingo was "our only option at this time." On cross-examination, McNabb testified:

19). However, subsequently, in late August 2015, all of the charities agreed to terminate their relationships with Racetrack Bingo due to the federal criminal investigation.

The Government also presented the testimony of Walter Humphrey, an expert in commercial real estate. In Humphrey's opinion, a "full service lease" in the Fort Walton Beach area, that is, a lease in which the landlord furnishes the building, the parking and overhead costs, including janitorial services, would be higher than ordinary rent, and he estimated approximately $15.50 per square foot per year for a

---

> **MCGEE**. And after being told all of that, knowing that it was marked up, knowing there was an investigation, the question came up do y'all want to stay with them, do the charities want to stay with Racetrack?
> **MCNABB**. Yes.
> **MCGEE**. And Larry said, *Look, I'm not forcing you*, you know, *If y'all want to go, go.* You had the option to go, and you could have gone any time in the last 23 years with 24 hours' notice,
> correct?
> **MCNABB**. Yes.
> **MCGEE**. And every single one of you said you wanted to stay?
> **MCNABB**. That's right.
> **MCGEE**. And on that day you signed contracts?
> **MCNABB**. We did.

(Tr. 425-26). On redirect examination, McNabb testified:

> **FORBES**. Then why did you sign the lease agreements at the end of that meeting?
> **MCNABB.** Because we had tried to ameliorate -- or tried to address issues all the way along, and we just thought, well, maybe if we get this addressed that we could go back to paying actual expenses -- I mean, he was our only opportunity for bingo. It's not like you can start another bingo operation overnight, so we were just -- we thought, okay, we can terminate at any moment, we can terminate tomorrow, but let's stick with this and see if we can't get it where we want it to be.

(Tr. 446-47).

full-service rental rate in Fort Walton Beach.[38] According to Humphrey, using this turnkey rate, the Masinos' 8,000-square-foot building should have rented for approximately $124,000 per year. Instead, according to Humphrey, the Masinos were charging $84,000 per month (which amounted to over $1 million per year), which in his opinion was inconsistent with the market rate for similar premises in the area. Also, in Humphrey's opinion, the Fort Walton Beach convention center is not a premises comparable to the Masinos' property, because the convention center's rooms are configured differently, its interior finishes are of very high quality, and significantly, it is located on "extremely valuable" land on Okaloosa Island. (Tr. 1246-47). Humphrey's testimony was uncontroverted.

Individual charity representatives testified at trial that, although they "did not want to get out of the bingo business," they never would have risked their organizations' reputations for the bingo money if they had known Racetrack Bingo was violating the law. (Tr. 334, 413, 552, 558). For example, Virginia Barr, executive director of Mental Health Association in Okaloosa and Walton Counties, an FWBC member, explained that a charity is a "very delicate thing" and that its

[38] Humphrey testified that the fairgrounds in Fort Walton Beach charged $2,093 for a one-time bingo event, which included the cost of setup and cleanup, but he stated that an annual lease would be less. Humphrey also considered Mary Ester Bingo, a local bingo operation that had closed, which had a lease at around $8 per square foot.

§ 501(c)(3) status means everything. (Tr. 663). Similarly, Charles Rigdon, CEO of the Northwest Florida Fair, explained that his organization was chartered under the Florida Department of Agriculture and said that for this reason, it was very important for it to comply with the law. (Tr. 760-61). McNabb said that her charity's existence depends on its reputation. On the other hand, LaFollette, who was a manager of FWBC for a time, testified that even if he had known Racetrack Bingo was charging inflated expenses, his charity would have still participated because they were making money. He explained that if a golden goose "stopped laying as many eggs, are you going to give it away or kill it? No. I mean, it's still a substantial amount of revenue for a small organization." (Tr. 542-43). LaFollette also testified, however, that although his charity enjoyed the money, it would not have continued doing business with Racetrack Bingo if it had known Racetrack Bingo was not operating in compliance with the law. The record is undisputed, however, that charity members had long known of compliance issues with the Masinos and Racetrack Bingo and had repeatedly expressed concern about the high rental rate and expenses. Yet, each charity continued to sign the same lease agreements year after year.

Larry testified in his own defense that he acted in good faith in operating Racetrack Bingo. He said his understanding of the bingo statute came from

discussions with Deputy Fred Cobb in the 1990s. In Larry's opinion, the statute was poorly written, but he understood that he could not conduct bingo and retain the proceeds. He viewed his role as teaching the nonprofits and "instruct[ing] the volunteers from the nonprofit on how to do it." (Tr. 1529). Larry said he thought that signing up his employees as "volunteers" on the charities' membership rosters was consistent with Florida case law, referencing the *Jewish Federation* case, and he believed nothing more was required. (Tr. 1536-38). He understood that volunteers could not receive compensation but maintained he only paid them for setup and cleanup. Larry also testified that Dixie's involvement prior to 2010 was limited; he did not consult with her on any decisions while he was operating Racetrack Bingo. (Tr. 1572-73).

The jury returned guilty verdicts against both Larry and Dixie on all counts. A special interrogatory was included only for Count One, which, at the Masinos' request and without objection from the Government, required the jury to specifically identify the misrepresentations that formed the basis of any wire fraud conspiracy that they unanimously found.[39] The jury ultimately decided that the Masinos

[39] The special instruction was given on Defendants' request, because the Superseding Indictment asserted several different misrepresentations. The verdict form for Count One read as follows:

CASE NO. 3:16cr17-MCR

misrepresented compliance with the lease and compensation provisions of the bingo statute. Although the Government had focused much of its case on the Masinos' misrepresentation of expenses to the charities, the jury completely rejected this.

II. Discussion

A. Sufficiency of the Evidence

Federal Rule of Criminal Procedure 29 directs a court, on a defendant's motion, to "enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction." Fed. R. Crim. P. 29(a). The rule also provides that the "court may reserve decision on the motion, proceed with the trial (where the

---

If guilty, identify which of the following that you unanimously find constitute the basis of the verdict:

____ The Defendants conspired to fraudulently tell FWBC members that the Defendants were operating Racetrack Bingo in accordance with the Bingo Statute provisions regarding payments to employees conducting bingo games and regarding charging a lease fee comparable to similar locations and services provided in Okaloosa County;

____ The Defendants conspired to fraudulently tell FWBC members that written breakdowns of expenses provided represented Racetrack Bingo's actual expenses;

____ The Defendants conspired to fraudulently tell FWBC members and the Okaloosa County Board of Commissioners that Racetrack Bingo's operating expenses were increasing each year to explain why the charities were receiving less money than they had in past years, when in fact, Racetrack Bingo's expenses had decreased.

During deliberations, the jury asked whether only one of these options had to be unanimous. The undersigned answered that any decision must be unanimous and instructed the jury to consider all options listed and to mark any that the jury unanimously found, but that only one was required for a guilty verdict. ECF No. 156. After deliberating, the jury selected only the first option on the verdict form.

motion is made before the close of all the evidence), submit the case to the jury, and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty." Fed. R. Crim. P. 29(b). Where the court has reserved decision, "it must decide the motion on the basis of the evidence at the time the ruling was reserved." *Id.* The legal standard is the same, however, regardless of when the defendant makes the motion. *United States v. Burns*, 597 F.2d 939, 941 (5th Cir. 1979)[40] ("The test . . . when a trial court rules on a motion for judgment of acquittal challenging the sufficiency of evidence applies to such motions whether made at the close of the Government's case, at the close of all the evidence, or after the return of a guilty verdict."). The Court is required to view the evidence "in the light most favorable to the government, with all reasonable inferences and credibility choices made in the government's favor," *United States v. Barsoum*, 763 F.3d 1321, 1329–30 (11th Cir. 2014) (internal marks omitted), and determine "whether a reasonable jury could have found the defendant guilty beyond a reasonable doubt," *United States v. Mercer*, 541 F.3d 1070, 1074 (11th Cir. 2008) (citing *United States v. Ward*, 197 F.3d 1076, 1079 (11th Cir. 1999)). Also, a conviction based on circumstantial evidence "must be

[40] The Eleventh Circuit, in *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (*en banc*), adopted as binding precedent all decisions of the former Fifth Circuit rendered prior to October 1, 1981.

supported by reasonable inferences, not mere speculation." *United States v. Rodriguez*, 732 F.3d 1299, 1303 (11th Cir. 2013) (stating also that courts uphold a jury verdict if supported by "any reasonable construction of the evidence").

1. Illegal Gambling Business Act—Count Two

The Masinos renew their Rule 29 motions on grounds that the evidence is insufficient to support their convictions on the IGBA charge, which required proof that (1) the Masinos "conducted, financed, managed, supervised, directed, or owned" a gambling (bingo) business, and (2) the gambling business was illegal because the business was a violation of state law.[41] *See* 18 U.S.C. § 1955. Viewing the evidence in the light most favorable to the Government and the verdict, the Court finds there was ample evidence from which a reasonable jury could make both findings.

First, there is no dispute that the Masinos "conducted, financed, managed, supervised, directed, or owned" a gambling (bingo) business. Together, they owned

[41] More specifically, an "illegal gambling business" under the IGBA is defined as a business that:

> (i) is a violation of the law of a State . . . in which it is conducted;
>
> (ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and
>
> (iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day.

18 U.S.C. § 1955(b)(1). Only subsection (i) is disputed in this case.

Racetrack Bingo, which contracted with the charities for the purpose of operating bingo games for the charities. The record is clear that the Masinos managed and supervised the business and ran the bingo operation for the charities, using paid employees to conduct the games, with virtually no investment, risk, participation, or oversight by the charities. The Masinos argue that the evidence is insufficient because they did not personally conduct bingo games, but this argument misses the mark. "[T]he essence of the crime created by Congress is participation in a [gambling] '*business*'" that operates as a violation of state law. *Sanabria v. United States*, 437 U.S. 54, 70 (1978) (emphasis added) ("Congress did not . . . define discrete acts of gambling as independent federal offenses."). And, the Masinos were both involved in the business from the beginning as owners and each was in charge of its operations at various times throughout the relevant period. The evidence was clear that both Larry and Dixie directed the volunteers, managers, and MICs as to the daily operation of the games and, importantly, exercised control over the revenue generated from the games.

The second element required proof that the business operated as a violation of state law, but this does not mean there had to be evidence of an intent to violate state

law. *See United States v. Hawes*, 529 F.2d 472, 481 (5th Cir. 1976)[42] (instructing that knowledge and an intent to violate state law are not elements of § 1955; instead, the statute only "incorporates state law by reference to describe those gambling businesses which are violative of federal law," not to import a specific intent requirement). Here, however, the Government described the IGBA charge in its Bill of Particulars as requiring willfulness and also referenced willfulness in its proposed jury instructions on the IGBA charge, presumably because a violation of the Florida bingo statute is not *criminal* unless it is a knowing and willful violation. *See* Fla. Stat. § 849.0931(14) (stating a knowing and willful violation of Florida's bingo statute constitutes a criminal offense). Furthermore, both sides proceeded on the assumption that the Government had to prove a willful violation of the bingo statute for the IGBA conviction. The Court is mindful that willfulness is not an element of the IGBA charge, but because state law in this instance does not consider bingo to be gambling, *see Bradenton*, 727 So. 2d at 202, and a bingo business can only be considered criminal under Florida law if there is a willful violation of the bingo statute, *see* Fla. Stat. § 849.0931(14), the jury in this case was asked to consider willfulness, which they ultimately determined that the Government had proven.

[42] *See Bonner*, 661 F.2d at 1209 (adopting as binding precedent all decisions of the former Fifth Circuit rendered prior to October 1, 1981).

The Masinos argue that the evidence was insufficient for a jury to find that Racetrack Bingo operated as a violation of Florida's bingo statute because it was a lessor, and it appropriately used volunteers who were signed up as charity members to conduct the games. On this record, however, a reasonable jury could find otherwise, that is, that Racetrack Bingo "conducted bingo" games, using the charities as a cover, by paying its employees to conduct the games as "volunteer" floor workers and sharing the proceeds with charities instead of returning all proceeds to the players as prizes, as required by subsection (3) of the bingo statute. The Masinos insist that Florida law requires only that volunteers be "*bona fide* members" of the charity and accordingly, because all the volunteers were listed on the charity rosters, the *charities* themselves were conducting bingo, not Racetrack Bingo. Although the Masinos correctly recite the definition of a "*bona fide* member" under the case of *Jewish Federation*, 491 So. 2d at 1186-87 (holding that a "*bona fide* member" simply means being listed on a charity membership roster and paying dues, if required, with no requirement to subjectively align with the charity's purpose), the issue in this case was the payment of persons conducting bingo, not *bona fide* membership in the charity. For this reason, the *Jewish Federation* case, which did

not involve the *compensation* of charity members by a *noncharitable organization*, as in this case, is distinguishable.

It was virtually undisputed at trial that the floor workers and MICs were listed as charity members and engaged in activities that amounted to conducting bingo, including calling bingo, collecting money for the games, verifying winning cards, and handling the proceeds, but also that they received payment out of the bingo proceeds. (*e.g.*, Tr. at 812, 814, 821, 869-70). These employees were required to sign noncompete agreements and were well-trained by the Masinos in conducting the games to maximize profit. Birr acknowledged that all employees at Racetrack Bingo were involved in running the bingo games in some capacity. Kelley, a Racetrack Bingo employee, said she had complete responsibility for the charities' bank account. (Tr. at 877). Charity representatives admittedly had little or no involvement in the conducting, promoting, or administering of bingo games at Racetrack Bingo. (Tr. 204-05, 596-97). Larry and Dixie both refused to change their practices after being confronted by the charities and even law enforcement.[43] Thus, a jury could

[43] There was also ample evidence that the Masinos' violation was willful, for purposes of being criminal under state law, given their self-professed knowledge of and experience with the bingo statute and Deputy Cobb's prior interactions with Larry. Larry and Dixie both kept copies of the statute in the back office at Racetrack Bingo, and there were also copies in Dixie's email inbox and at her home. Moreover, Deputy Cobb had specifically warned Larry in a letter years earlier that Racetrack Bingo employees could not receive compensation for conducting bingo.

conclude on this record that requiring the paid "volunteers" to be listed on the charity roster was simply a means of covering up the scheme, making it appear that the charities were conducting bingo.

To be sure, some aspects of the bingo statute are less clear than others; however, the Florida Legislature made it crystal clear that there is no lawful means for a noncharitable organization to conduct bingo for profit using paid employees, either by itself or while holding a charity out as a sponsor (or front), even if the proceeds are shared with a charity.[44] Viewing the evidence in the light most favorable to the Government, there is sufficient evidence for a reasonable jury to find that Racetrack Bingo operated as a violation of Florida law.

---

[44] During the interlocutory appeal, the Eleventh Circuit expressly referenced subsection (3) of Florida's bingo statute as providing an adequate basis for the IGBA charge against the Masinos, explaining, "if, for example, the government can prove that Racetrack Bingo illegally allows charities to sponsor bingo games without their direct involvement or that Racetrack Bingo forfeits its right to conduct bingo by not returning all of the proceeds from those games to the players, then a jury could find that Racetrack Bingo is an illegal gambling business." *United States v. Masino*, 869 F.3d 1301, 1307 (11th Cir. 2017). In one defense exhibit, charity representative Virginia Barr authored a letter to the Leon County Commissioners in connection with Larry's Tallahassee operations, speaking positively about her charity's experience with Larry's Okaloosa operation: "Our agency is a twice per week sponsor (as allowed by Florida statute) of Mr. Massino's commercial bingo organization." Def. Ex. 101b-1. The letter goes on in praise of a seven-year working relationship with Larry and his "business expertise," concluding that "charitable bingo" is an excellent community asset. Although the charities in this case were not charged under the IGBA for "sponsoring" in violation of the bingo statute, the evidence supports a conclusion that Racetrack Bingo was using the charities in this manner—as a cover for conducting a commercial bingo operation while sharing profits with the charities that it otherwise could not have earned on its own as a noncharitable organization.

2. Conspiracy to Commit Wire Fraud—Count One

The Court deferred ruling on the motions for judgment of acquittal on Count One at trial, and for purposes of this ruling, the Court considers only the evidence as presented in the Government's case in chief. To prove a conspiracy to commit wire fraud, *see* 18 U.S.C. §§ 1349, 1343, the Government must establish that the defendant "knew of and willfully joined in [an] unlawful scheme to defraud." *United States v. Rodriguez*, 732 F.3d 1299, 1303 (11th Cir. 2013). An agreement or knowledge of the scheme may be shown by direct or circumstantial evidence. *United States v. Maxwell*, 579 F.3d 1282, 1299 (11th Cir. 2009). Wire fraud requires proof that a defendant "(1) intentionally participated in a scheme to defraud another of money or property, and (2) used or caused the use of the wires for the purpose of executing the scheme."[45] *Rodriguez*, 732 F.3d at 1303; *see also United States v. Tomey*, 222 F. Supp. 3d 1106, 1109 (N.D. Fla. 2016) (citing *United States v. Smith*, 934 F.2d 270, 274 (11th Cir. 1991)[46]). Proof of conspiracy requires proof of "at least the degree of criminal intent necessary for the underlying substantive offenses."

[45] The use of the wires is not in dispute.

[46] Conspiracy to commit mail fraud was at issue in *Smith*, but because the wire fraud and mail fraud statutes use the same relevant language, case law analyzing mail fraud is equally applicable in wire fraud cases. *See Carpenter v. United States*, 484 U.S. 19, 25 n.6 (1987) ("The mail and wire fraud statutes share the same language in relevant part, and accordingly we apply the same analysis to both sets of offenses here.").

United States v. Munoz, 430 F.3d 1357, 1367-68 (11th Cir. 2005); *United States v. Simmons*, 725 F.2d 641, 642-43 (11th Cir. 1984) (citing *Ingram v. United States*, 360 U.S. 672, 678 (1959)). Thus, proof of an "intent to defraud," which is essential for wire fraud, *United States v. Bradley*, 644 F.3d 1213, 1239 (11th Cir. 2011), is also essential to the conspiracy charge, *see Munoz*, 430 F.3d at 1367-68.

Although substantive wire fraud was not charged, its elements inform the conspiracy charge. Wire fraud involves the intent to devise a "scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises," using wires in interstate commerce to execute the scheme. 18 U.S.C. § 1343. The Supreme Court and Eleventh Circuit have both explained that the requisite scheme to defraud requires proof of "wronging one in his property rights by dishonest methods or schemes," and usually by "the deprivation of something of value by trick, deceit, chicane or overreaching." *McNally v. United States*, 483 U.S. 360, 358 (1987), *superseded in part on other grounds by statute as stated in United States v. Skilling*, 561 U.S. 358, 402 (2010); *United States v. Takhalov*, 827 F.3d 1307, 1312-13 (11th Cir.) (quoting *Bradley*, 644 F.3d at 1240), *opinion modified on denial of reh'g*, 838 F.3d 1168 (11th Cir. 2016). Wire fraud, like mail fraud, originates from a "desire to protect individual property

rights, and thus requires the object of the fraud to be property in the victim's hands." *Cleveland v. United States*, 531 U.S. 12, 26 (2000).[47] Actual loss by the victim is not required but there must be an intent to harm money or property of the victim. Deceit alone is insufficient. *See Takhalov*, 827 F.3d at 1313 ("[I]f a defendant does not intend to harm the victim—to obtain by deceptive means something to which the defendant is not entitled—then he has not intended to defraud the victim.") (internal marks omitted); *see also United States v. Starr*, 816 F.2d 94, 98 (2d Cir. 1987) (recognizing that defendants must have "*contemplated* some actual harm or injury to their victims" although there need not be any resulting "actual pecuniary injury" to the victim).[48] The nature of the deceit may inform whether a particular transaction resulted from an intent to defraud; that is, deceit that causes a victim to enter a transaction that he otherwise would not have entered (and part with his property or money on deceptive terms) is insufficient to show an intent to defraud unless the

[47] Again, although *Cleveland* and *McNally* discussed mail fraud, the Supreme Court stated in *Carpenter* that the same analysis applies to both mail fraud and wire fraud because they share the same statutory language. *Carpenter*, 484 U.S. at 25 n.6.

[48] In *Takhalov*, the Eleventh Circuit expressly adopted the Second Circuit's interpretation of "scheme to defraud" under the wire fraud statute. *See Takhalov*, 827 F.3d at 1314 ("[T]he Second Circuit's interpretation of the wire-fraud statute is not a parochial interpretation of an ambiguous provision of federal law. Their interpretation follows as a matter of logic from Congress's decision to use the phrase 'scheme to defraud' rather than 'scheme' or 'scheme to deceive.' We therefore adopt that interpretation as our own.").

deceit was directed at "the very nature of the bargain itself." *See Takhalov*, 827 F.3d at 1314 (quoting *Starr*, 816 F.2d at 98) (explaining that lies can take two primary forms, lies about the price or lies about the characteristics of the goods); *see also United States v. Regent Office Supply Co.*, 421 F.2d 1174, 1182 (2d Cir. 1970) ("Where the false representations are directed to the quality, adequacy or price of the goods themselves, the fraudulent intent is apparent because the victim is made to bargain without facts obviously essential in deciding whether to enter the bargain."). Thus, a scheme to defraud requires proof of deceit and proof of the defendant's intent "to harm the person he intends to trick" by scheming "to deprive someone of something of value." *Takhalov*, 827 F.3d at 1312-13 (quoting *Bradley*, 644 F.3d at 1240, internal alterations omitted).

The Government's theory on Count One was that the Masinos conspired to create a scheme to obtain bingo proceeds and thus profit from the operation of Racetrack Bingo by lying to the charities about Racetrack Bingo's compliance with the bingo statute, in regards to the compensation of employees conducting bingo games and the rental rate under the lease.[49] On careful review of the record at the

[49] The Government also proceeded on a theory that the Masinos conspired to create a scheme to obtain personal profit from bingo proceeds by lying to the charities about the expenses being charged for Racetrack Bingo's services. The jury considered and rejected this theory, and thus, it is not part of the wire fraud conspiracy discussion.

close the Government's case, viewing the evidence in the light most favorable to the Government, the motions for judgment of acquittal on Count One will be granted for insufficient evidence of an intent to defraud the charities. *See Rodriguez*, 732 F.3d at 1303 (conspiracy requires proof the defendant "knew of and willfully joined in" a scheme to defraud); *Muniz*, 430 F.3d at 1367-68 (noting proof of conspiracy requires proof of intent to defraud).

First, regarding the conspiracy itself, the Court finds that there was sufficient evidence of an unlawful agreement between Larry and Dixie. An agreement can be inferred from Larry's misrepresentations, Dixie's acquiescence and assurances of compliance while continuing to operate the business in the same manner, and from evidence that both Larry and Dixie profited from the scheme for many years. *See United States v. Naranjo*, 634 F.3d 1198, 1207 (11th Cir. 2011) ("Evidence that a defendant personally profited from a fraud may provide circumstantial evidence of an intent to participate in that fraud."). Not only did they both profit, but they discussed together how the bingo operation should be run, both participated in operating it and assuring the charities of their compliance with the law, and they discussed with one another wanting the proposed County ordinance to fail to avoid a cap on lease fees. Thus, both Larry and Dixie knew the "essential nature of the

conspiracy," and the surrounding circumstances show they each committed acts that "furthered the purpose of the conspiracy." *United States v. Crabtree*, 878 F.3d 1274, 1285 (11th Cir. 2018) (quoting *United States v. Vernon*, 723 F.3d 1234, 1274 (11th Cir. 2013)); *United States v. Toll*, 804 F.3d 1344, 1356 (11th Cir. 2015).

The Court also finds the evidence sufficient to create a jury question on whether the Masinos acted with an intent to deceive the charities about Racetrack Bingo's compliance with the bingo statute's provisions prohibiting the compensation of persons conducting bingo and the lease provision. The Masinos were aware that compliance with the law was important to the charities. The jury reasonably could find that the Masinos' repeated general assurances that Racetrack Bingo was operating in compliance with the law and that Larry had expertise in operating a bingo business were calculated to convince the charities to continue signing the leases with Racetrack Bingo. Larry knew that volunteers could not be paid but convinced the charities that it was lawful to pay them a fee for setup and cleanup duties, which the jury could conclude was false. Both Larry and Dixie paid employees in the same manner from the bingo proceeds. There also was evidence that Larry and Dixie agreed to lie about the rent being similar to other premises in the area. They refused to lower the rent, and both were present when Larry

specifically told the charities that the lease fee was comparable to the rental rate for the Okaloosa Island Convention Center, which the jury also could find was false.

On the other hand, there was also a great deal of evidence admitted at trial through testimony and the charities' own meeting minutes from which a jury reasonably could find that the charities were not actually deceived by the Masinos but rather knew true well how the bingo operation was run, how much they paid for the lease, that the lease rental fee was well above ordinary commercial leases in the locale, and that "volunteers" and MICs were being paid out of the bingo proceeds. FWBC board minutes reflect that as early as 2010, during the period covered by the Superseding Indictment, the charities collectively believed the law was clear and that Racetrack Bingo was operating in violation of law. The FWBC board acknowledged in minutes that "[t]he Bingo statute is very clear, and we are in violation." (Gov't Ex. 16b-1 at 2). The board also knew: "We do not run the operation—it is run by Larry," the bingo operation "is not being run by volunteers," and "[w]e rent at an inflated rate versus normal rent for the size building" and have no control over the money. (*Id.*). The charities even consulted a lawyer with these concerns and resolved to renegotiate a new lease, but never did. Meeting minutes and testimony confirm that the charities viewed Racetrack Bingo as "the golden goose," giving

them free money, with no expenditure, work, or investment on the part of the charities. Thus, there certainly was evidence from which a jury reasonably could find that the charities dug their heads into the sand and willingly accepted whatever deal the Masinos offered them because, as described by charity representatives themselves, the relationship effectively provided free money that was essential to fulfill their charitable purposes.

That said, the issue for the Court is not whether the charities were deceived but whether there was evidence that the Masinos *intended* to deceive them. The Government was not required to prove that the charities actually were deceived or even that the scheme was such that it would mislead a person of ordinary prudence. *See United States v. Svete*, 556 F.3d 1157, 1166-67 (11th Cir. 2009) (*en banc*) (reversing precedent requiring "proof of a scheme calculated to deceive a person of ordinary prudence" instead and joining other circuits that "long ago had recognized that the subjective unreasonableness of a statement is persuasive evidence that the statement was criminally fraudulent"). Instead, the misrepresentations must have been material and thus calculated to influence the charities' decision-making. *See Maxwell*, 579 F.3d at 1299 (stating that a misrepresentation or omission is material if it is "capable of influencing the decision maker to whom it is addressed"). As

detailed above, the record presented jury questions as to whether the Masinos conspired with an intent to deceive the charities by misrepresenting their compliance with the law and whether the nature of the deceit was capable of influencing the charities' decision to continue signing the lease agreements with Racetrack Bingo.

As discussed in *Takhalov*, however, an intent to deceive alone is not enough to prove a wire fraud conspiracy; there must also be an intent to harm the victim. 827 F.3d at 1312-13. Thus, the evidence must show that the Masinos intended to harm the charities by depriving them of money or property, i.e., "something of value." *Id.* The Masinos argue that, at most, the record shows an intent to trick the charities into entering a lease transaction they otherwise would not have entered. They insist there is no evidence of an intent to harm by depriving the charities of money or property because the transaction required no financial investment or risk by the charities, and the charities benefitted financially, just as provided for in the lease agreements. *See id.* at 1313 (if the defendant "does not intend to harm the person he intends to trick," then there is no intent to defraud); *see also id.* at 1315 (requiring acquittal if "the alleged victims 'received exactly what they paid for'" (quoting *United States v. Shellef*, 507 F.3d 82, 108 (2d Cir. 2007)). After careful consideration, the Court agrees with the Masinos that, even viewing the record in

the light most favorable to the Government, there is no evidence in the trial record of the Masinos' intent to harm money or property of the charities.

First, the Government argues there is sufficient evidence of the Masinos' intent to harm the charities because the bingo proceeds *should have belonged to the charities.* The Court disagrees. The record shows that the bingo proceeds did not belong to the charities, nor should they have belonged to them on this record, and the Government's argument otherwise misconstrues the law, both on wire fraud and the Florida bingo statute. As noted, a scheme to defraud must contemplate harm to something of value belonging to the victim. At trial, the Government argued and proved that Racetrack Bingo was the entity conducting the games (using paid employees), not the charities. This fact, which the Court must view in the Government's favor (and there really was no evidence to the contrary), actually defeats the Government's argument on intent to harm and *requires* a conclusion that the bingo proceeds did not belong to the charities. Under the bingo statute, when a noncharitable organization conducts bingo, which is exactly what the Government proved at trial with Racetrack Bingo, the proceeds must be returned to the players as prizes.[50] *See* Fla. Stat. § 849.0931(3). There was no evidence that the charities had

[50] The Government never charged or argued in any way that the players were defrauded out of something of value by the Masinos' scheme.

any role in the bingo operation.[51] Even though the Masinos may have deceived the charities into believing that they were conducting bingo because the "volunteers" were *bona fide* members of the charities, this belief does not make it so and certainly does not entitle the charities to the bingo proceeds on this record. Thus, the Government's argument that "the charities were harmed because money that could have gone into their pockets was lost," (Tr. 1823), is based on a faulty assumption that the charities were conducting bingo and thus entitled to the proceeds, which is not supported by the record or the law.

Second, the Government argues that contemplated harm can be inferred from the fact that the scheme included a misrepresentation about the value or nature of the bargain the charities made with Racetrack Bingo. Cases discussing whether there has been a fraud affecting the value or "nature of the bargain itself" involve an underlying bargain. *See Takhalov*, 827 F.3d at 1312-1315 & n.7 (discussing deceit in the sale of drinks at a bar); *Regent*, 421 F.2d at 1182 (discussing deceit in the sales of stationary supplies). Ordinarily, a transaction consists of an exchange of money or goods, and consequently, a trick that misrepresents the essential nature of the

[51] The charities knew they had no role in the operation, and this was appealing to them. They were happy to turn the bingo games over to Racetrack Bingo, so long as it was lawful to do so. It is not unlawful for a noncharitable entity to conduct bingo. It is only unlawful for a noncharitable entity conducting bingo to retain the profits.

bargain, such as the quality or price of the goods, clearly evidences an intent to harm money or property *of the victim*. *See Takhalov*, 827 F.3d at 1314 (explaining that lies can take two primary forms, lies about the price or lies about the characteristics of the goods). The Government's argument about the value of the bargain is based on an underlying assumption that the bargain between the charities and Racetrack Bingo involved something of value belonging to the charities. But on this record, the transaction involved no financial investment by the charities and no exchange of goods—again, the "thing of value" that the Masinos sought to obtain (bingo proceeds) would have only belonged to the charities if the charities in fact had conducted bingo (and there was no evidence of that). Essentially, the charities and Racetrack Bingo agreed to share bingo proceeds that Racetrack Bingo would earn conducting the games. Racetrack Bingo did its part by conducting the games and sharing the proceeds with the charities, as promised in the agreements, which the charities renewed year after year. The charities agreed to the terms of the lease, and they knew and agreed to the expenses charged, which were disclosed to them in the weekly summary sheets.[52] To be sure, there is no evidence that the Masinos took

[52] To the extent there was some evidence that the expense for security was being deducted twice from the bingo proceeds, the Court finds this immaterial. The Superseding Indictment did not allege that the charities were deceived or cheated by having to pay double security expenses,

more money from the bingo proceeds than their agreements with the charities permitted. In fact, there was evidence that the charities received more financial value than they were entitled to under the leases because the Masinos lowered the rent when the proceeds were insufficient to cover it. As charity representatives conceded, the bingo proceeds were free money for the charities, with no investment and no risk. No intent to harm can be inferred from these transactions.

The Government also argues that harm can be inferred because charity representatives testified that a lawful operation was essential to their bargain. There was testimony to this effect by charity representatives; however, a "lawful bingo operation," is not "property" belonging to the charities. *See Cleveland*, 531 U.S. at 26 (stating that "the object of the fraud [must] be property in the victim's hands"). At most, the charities bargained away their right to lawfully conduct bingo based on a lie from the Masinos that Racetrack Bingo could lawfully conduct bingo for them using paid "volunteers"—but this is not a property right. There is no state-created or constitutionally protected "property right" to lawfully conduct bingo. The bingo statute permits anyone to conduct bingo but closely regulates the ownership and disposition of the resulting bingo proceeds in such a way that a noncharitable

---

the charities had been aware of this since Mallini's report in September 2010, and the jury expressly rejected any conspiracy to defraud based on a misrepresentation of expenses.

organization conducting bingo must return all proceeds to the players as prizes, Fla. Stat. § 849.0931(3). Thus, as stated, the proceeds were never lawfully the property of the charities nor could they be as long as Racetrack Bingo was conducting the bingo games.

Although intangible property rights can be the object of a scheme to defraud, *see Cleveland*, 484 U.S. at 25, the Government has neither charged nor properly supported such a theory. The Superseding Indictment included the bare bones statutory language that the scheme involved "obtaining money and property," and the manner and means section discussed only a scheme of obtaining bingo proceeds for personal profit. No other property right was mentioned. The evidence at trial likewise was focused solely on the money obtained unlawfully by the Masinos, as was the Government's Rule 29 argument. Not until closing argument did the Government suggest that the charities' reputation or their § 501(c)(3) status under the Tax Code was put at risk by the Masinos and thus could be considered a contemplated harm to the charities. The Government argued in one sentence in its closing argument that, in addition to the loss of bingo proceeds, the charities' "other loss was their reputation," that is, "being associated with Racetrack Bingo . . . threatened their status as 501(c)(3) reputable organizations in Okaloosa County."

(Tr. 1823). After trial, the Government argued in its written response to the renewed motions that "a lawful operation was imperative [to the bargain], because otherwise [the charities] could suffer harm to their reputations in the community, which could lead to the loss of other sources of funding and revocation of their tax-exempt status by the Internal Revenue Service, triggering the payment of back taxes on bingo proceeds." ECF No. 171, at 11. This conclusory statement does not reflect the intended harm identified in the Superseding Indictment as the object of the conspiracy. Moreover, the Government cited no law to support a conclusion that these intangible rights constitute "property rights" for purposes of the wire fraud conspiracy charged.[53] Nor has "the ethereal right to accurate information" been

[53] The Supreme Court noted in *Cleveland*, that defining a property right in this context is a matter of federal law. The Court further noted that it has held that an individual has a constitutionally protected property interest in a state-issued license that is essential to pursuing a livelihood. 531 U.S. at 25 n.4. Also, the Supreme Court has indicated that there could be a property interest in the right to control one's own assets. *See McNally*, 483 U.S. at 360 (reversing because the object of the conspiracy did not belong to the victim and noting the jury was not charged that it could find the victim was deprived of control over how its money was spent); *see also United States v. Finazzo*, 850 F.3d 94, 105-115 (2d Cir. 2017) (collecting cases and discussing the right to control as a property right); *United States v. Gray*, 405 F.3d 227, 234 (4th Cir. 2005) (collecting cases discussing the right to control); *United States v. Frank*, 156 F.3d 332, 336 (2d Cir. 1998) (intent to harm was established where a scheme involved payment of a premium for a special service that was not provided, and the failure to provide the contracted service could have subjected the victim to fines). The Government in this case made no argument that a "right to control" was at issue and made no legally supported argument that either a risk of loss of reputation or Section 501(c)(3) status constituted a "property right" in the charities' hand for purposes of a wire fraud conspiracy. It certainly did not charge this as an object of the conspiracy. The Court rejects the Government's bare assertion that this also could be considered harm to the charities. Even if the Government could have proceeded on a different theory—one that was not squarely

recognized as a property right. *See United States v. Sadler*, 750 F.3d 585, 591 (6th Cir. 2014) (noting that "when Congress amended the fraud statutes to cover some intangible rights, it did not stretch the statute to cover the right to accurate information before making an otherwise fair exchange"). The prosecution of the Masinos was based on their obtaining bingo proceeds unlawfully. To allow the Government to shift its theory of the case in a post-trial argument or to sustain the convictions on a theory that was never charged, barely argued, and not supported by any citation of law, would turn due process on its head.

In sum, a conspiracy to devise a scheme to violate the law, even a deceitful scheme, is insufficient to establish a "scheme to defraud" for purposes of a wire fraud conspiracy, without evidence of an intent to harm money or property belonging to the person being tricked. *See generally*, *McNally*, 483 U.S. at 360 (it was not enough to prove mail fraud where the schemer received commissions where those commissions were not the victim's money). In this case, the wire fraud conspiracy

---

raised by the Government or adequately briefed—that is not grounds for denying the Defendants' properly supported motions for judgment of acquittal. *See generally*, *Sekhar v. United States*, 570 U.S. 729, 743 (2013) (Alito, J., concurring) (concluding that extortion was not proven under the theory of "property" that the government pursued and commenting, "[t]his is not to say that the Government could not have prosecuted petitioner for extortion on these same facts under some other theory"—but it did not); *United States v. Elkins*, 885 F.2d 775, 782 (11th Cir. 1989) (stating the court would not affirm a criminal conviction based on a theory not contained in the indictment or presented to the jury, and "the scope of the conspiracy is that charged in the indictment").

claim fails because no view of the evidence would permit a jury to find both deceit *and* an intent to harm the charities' money or property.

B. New Trial

The Masinos each move for a new trial under Federal Rule of Criminal Procedure 33 based on the weight of the evidence as well as on grounds previously raised related to constitutional vagueness. The Federal Rules of Criminal Procedure permit a district court to grant a new trial based on newly discovered evidence or in the interest of justice.[54] Fed. R. Crim. P. 33. The defendant bears the burden to establish the existence of grounds justifying a new trial. *See United States v. Campa*, 459 F.3d 1121, 1151 (11th Cir. 2006). When the motion is based on the weight of the evidence, as here, the court "may weigh the evidence and consider the credibility of the witnesses," and is not required to view the record in the light most favorable to the verdict. *United States v. Martinez*, 763 F.2d 1297, 1312 (11th Cir. 1985). The Court will grant the motion *only* if "the evidence preponderates sufficiently heavily against the verdict that a serious miscarriage of justice may have occurred." *Id.* at

[54] No evidentiary hearing was held on the motions. An evidentiary hearing on the motion is not required if the record contains all the evidence needed to dispose of each ground asserted in the motion for new trial. *United States v. Scrushy*, 721 F.3d 1288, 1305 n.30 (11th Cir. 2013); *see also United States v. Schlei*, 122 F.3d 944, 994 (11th Cir. 1997) (stating in the absence of unique circumstances, "the acumen gained by a trial judge over the course of the proceedings" qualifies her to rule on the motion without a hearing).

1312-13. Under this standard, the Court may not simply reweigh the evidence and set aside a verdict because "some other result would be more reasonable." *Id.* In this circuit, a new trial is appropriate on the weight of the evidence "only where the credibility of the government's witnesses had been impeached and the government's case had been marked by uncertainties and discrepancies." *Id.* at 1313; *see also United States v. Cox*, 995 F.2d 1041, 1045 (11th Cir. 1993). The Eleventh Circuit instructs that motions for new trial "are highly disfavored" and "should be granted only with great caution." *Scrushy*, 721 F.3d 1288, 1304 (11th Cir. 2013) (quoting *Campa*, 459 F.3d at 1151).

Considering only the IGBA charge, in light of the Court's decision to grant the Rule 29 motion on the wire fraud conspiracy count, the motion will be denied. The Masinos make no argument that any particular Government witness was seriously impeached in a manner that caused great uncertainty. Instead, they argue that the evidence was insufficient for the same reasons as stated in their Rule 29 motions, leaving the Court to determine whether the evidence preponderates so heavily in their favor that a miscarriage of justice may have occurred. While there were discrepancies within the testimony and also between charity representatives' testimony and the board meeting minutes regarding the charities knowledge of how

Racetrack Bingo was being operated, the jury heard all of the evidence and resolved the conflicts against the Masinos. The conflicts noted in the record are the type that allow for varying reasonable inferences, between which the jury was free to choose, and there are no grounds for this Court to "overrule the credibility choice made by the jury." *Martinez*, 763 F.2d at 1314. To grant a judgment of acquittal on the weight of the evidence in this case would be nothing more than this judge's determination that another result would be more reasonable than the one reached by the jury, which would be improper. For the reasons stated above in denying the Rule 29 motions on Count Two (based on subsection (3) of the bingo statute as the underlying state law predicate), the Court also finds that the evidence does not preponderate so heavily against the Masinos as to cause a miscarriage of justice.

The Masinos also argue that a new trial is required in light of the Court's decision mid-trial to grant judgment of acquittal insofar as the IGBA charge was based on subsection (2)(a) of the bingo statute. As explained, the Court agreed with the Masinos that subsection (2)(a) does not regulate vendors or limit the profit a vendor may charge charities when providing services essential to conducting bingo and thus the IGBA charge could not be premised on it. To the extent the ruling at trial conflicted with the Court's prior Order, ECF No. 127, that portion of the Order

should be vacated. Larry Masino now argues that a new trial is required because this ruling rendered much of the evidence admitted at trial regarding Racetrack Bingo's profit and expenses inadmissible as unduly prejudicial. The Court disagrees. Although the Court's partial judgment of acquittal on Count Two mooted any dispute concerning the amount of profit a vendor may lawfully charge a charity under subsection (2)(a), evidence of the Masinos' profit on the full-service lease agreements remained highly relevant. Count Two went forward based on a charge of noncompliance with subsection (3) of the bingo statute, which unambiguously prohibited Racetrack Bingo from conducting bingo and retaining *any* profit from the proceeds, so all evidence of profit was relevant and necessary for the jury to have a complete picture of Racetrack Bingo's business and the manner in which the Masinos operated it. The evidence was necessary to complete the story and was not unduly or unfairly prejudicial.[55] Consequently, the interests of justice do not warrant a new trial on this ground.

The Masinos' renewed as-applied vagueness challenge also fails. The void-for-vagueness doctrine guarantees that ordinary people have "fair notice" of the conduct a statute proscribes. *Papachristou v. Jacksonville*, 405 U.S. 156, 162

[55] The jury was repeatedly instructed that nothing in the bingo statute prohibited a *vendor* from making a profit.

(1972). In light of the Court's decision to grant judgments of acquittal on Count One, only subsection (3) of the bingo statute remains at issue, pertaining to the IGBA charge, and there was no argument that this provision is vague. A new trial is not warranted.

Accordingly:

1. Defendants' oral motions for judgment of acquittal on Count One, ECF Nos. 152, 153, are **GRANTED**.

2. Dixie Masino's Renewed Motion for Judgment of Acquittal, ECF No. 167, and Motion for New Trial, ECF No. 166, are **MOOT** as to Count One and **DENIED** in all other respects.

3. Larry Masino's Renewed Motion for Judgment of Acquittal or in the Alternative, Motion for a New Trial, ECF No. 168, is **MOOT** as to Count One **DENIED** in all other respects.

4. Defendants' oral renewed motions to dismiss are **GRANTED in part** and **DENIED in part** as follows: **GRANTED** insofar as Count Two of the Superseding Indictment is based on subsection (2)(a) of the bingo statute and the Florida gambling house statutes and **MOOT** or **DENIED** in all other respects.

Therefore, the Court's Order, ECF No. 127 at 11-13, is **VACATED in part**, consistent with this ruling.

DONE AND ORDERED this 2nd day of November 2018.

M. Casey Rodgers

M. CASEY RODGERS
UNITED STATES DISTRICT JUDGE