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2017 | Cited 0 times | D. Oregon | November 3, 2017

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Plaintiff, v. TAQUARIUS KAREAM FORD,

Defendant.

3:14 -cr-00045-HZ OPINION & ORDER

Billy Williams United States Attorney Steven Mygrant Leah Bolstad Assistant United States Attorneys 1000 SW Third Avenue, Suite 600 Portland, OR 97204 Attorneys for United States of America // Laurie Bender Laurie Bender, PC 735 SW First Avenue, 2nd Floor Portland, OR 97204 Bryan Boender Boender & Kerns 1188 Olive Street Eugene, Oregon 97401 Attorneys for Defendant

HERNÁNDEZ, District Judge: The parties have raised an issue of first impression before the Court regarding forfeiture. Specifically, the parties dispute whether an in personam money judgment is available to the *Honeycutt v. United States*, 581 U.S. ___, 137 S. Ct. 1626 (2017). The Government moves the Court to enter preliminary and final orders of forfeiture including an in personam money judgment against Defendant which crimes. See

curiae object, arguing in relevant part, that *Honeycutt* foreclosed on imposing such a money judgment and limits forfeiture to only the actual property that Defendant acquired. In other words, Defendant argues that forfeiture can only be ordered against the actual tainted assets themselves as opposed to an in personam money judgment against Defendant himself that could, the record in this case, and the relevant law, the Court concludes that *Honeycutt* does not prohibit the Government from seeking an in personam money judgment against Defendant. Accordingly, the in part. //

BACKGROUND After an eleven-day trial, a jury found Defendant guilty of one count of sex trafficking conspiracy, two counts of sex trafficking, and one count of obstruction. See Verdict Form, ECF 281. The Second Superseding Indictment also included criminal forfeiture allegations stating that Defendant shall forfeit under 18 U.S.C. § 1594 l or personal, that was used or intended to be used to commit or to facilitate the commission of such violations, and any property, real or personal,



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constituting or derived from any proceeds obtained, directly or indirectly, as a result of such violations 3, ECF 104. The Government submitted an Amended Bill of particulars identifying twenty-six assets as subject to criminal forfeiture. See Am. Bill of Particulars, ECF 265. forfeitable assets, the Government also indicated that it would separately seek a money judgment

against Defendant. See Applicable P. for Forfeiture 5, ECF 268. After trial, Defendant waived his right to a jury determination as to forfeiture. See Stip. & Waiver of Jury Trial Regarding Forfeiture, ECF 285. On September 1, 2017, the Government filed its forfeiture motion, seeking: (1) an in personam money judgment of \$600,000, a result of his criminal activity and property used or intended to be used to commit or facilitate specific facilitating property; and (3) substitute assets based on the unavailability of directly

forfeitable property. Defendant opposes an in personam money judgment arguing that it is no longer available under *Honeycutt*. See See amicus brief in support of D See FPD Amicus Br., ECF 316.

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STANDARDS If applicable, forfeiture is mandatory and imposed as punishment for a crime. See *United States v. Monsanto*, 491 U.S. 600, 606 07 (1989) in a criminal

United States v. Davis, 706 F.3d 1081, 1083 (9th Cir. 2013) (s imposed as punishment for

United States v. Newman, 659 F.3d 1235, 1240 (9th Cir. 2011) (citing *United States v. Casey*, 444 F.3d 1071, 1076 (9th Cir. 2006)). The government carries the burden of establishing facts warranting forfeiture by a preponderance of the evidence. *United States v. Christensen*, 828 F.3d 763, 822 (9th Cir. 2015). The government may seek criminal forfeiture in the form of: (1) an in personam money judgment against the defendant; (2) forfeiture of specific assets; and (3) forfeiture of substitute assets. *Newman*, at 1242 43 (citing Fed. R. Crim. P. 32.2). Courts have unanimously agreed that in personam money judgments are proper even where forfeiture statutes do not refer to money judgments. *Id.* at 1242 (citing *United States v. McGinty*, 610 F.3d 1242, 1246 (10th Cir. 2010) (collecting cases)).

DISCUSSION Defendant claims that in *Honeycutt*, the Supreme Court restricted forfeiture to only what is within the plain text of forfeiture statutes. The Supreme Court determined that under 21 U.S.C. § 853, a co-conspirator could not be held liable for tainted proceeds that he did not personally obtain. *Honeycutt*, 137 S. Ct. at 1634 35. Here, the Government argues that *Honeycutt* is factually distinguishable and inapplicable because it turned on an issue of joint and several liability not present in this case. While the Supreme Court did not squarely address whether an in personam money judgment under 18 U.S.C. § 1594(d) remains permissible, Defendant argues that *Honeycutt* edent to the contrary. I. Forfeiture Statutes The Government invokes 18 U.S.C. § 1594(d), the specific criminal forfeiture statute as the basis for an in personam money judgment against Defendant. The statute provides:



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(d) The court, in imposing sentence on any person convicted of a violation of this chapter, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person shall forfeit to the United States involved in, used, or intended to be used to commit or to facilitate the commission of such violation, and any property traceable to such property; and (2) any property, real or personal, constituting or derived from, any proceeds that such person obtained, directly or indirectly, as a result of such violation, or any property traceable to such property. 18 U.S.C. § 1594(d) (emphasis added). The general criminal forfeiture statute at issue in *Honeycutt*, 21 U.S.C. § 853, contains similar provisions:

(a) Property subject to criminal forfeiture Any person convicted of a violation of this subchapter or subchapter II of this chapter punishable by imprisonment for more than one year shall forfeit to the United States, irrespective of any provision of State law (1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation; or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation 21 U.S.C. § 853 shall be liberally construed to effectuate In addition, § 853 mandates forfeiture of substitute property under five circumstances:

(1) In general Paragraph (2) of this subsection shall apply, if any property described in subsection (a), as a result of any act or omission of the defendant (A) cannot be located upon the exercise of due diligence; (B) has been transferred or sold to, or deposited with, a third party; (C) has been placed beyond the jurisdiction of the court; (D) has been substantially diminished in value; or (E) has been commingled with other property which cannot be divided without difficulty. (2) Substitute property In any case described in any of subparagraphs (A) through (E) of paragraph (1), the court shall order the forfeiture of any other property of the defendant, up to the value of any property described in subparagraphs (A) through (E) of paragraph (1), as applicable. 21 U.S.C. § 853(p). II. The *Honeycutt* Decision In *Honeycutt* may be held jointly and severally liable for property that his co-conspirator derived from the crime but 137 S. Ct. at 1630. The Court held that such liability *Id.* *Honeycutt* involved the defendant Terry *Honeycutt* and his brother Tony *Honeycutt*, who were selling iodine-based water- purification products out of Ton could be used in the manufacture of methamphetamine. *Id.* After observing iodine products, Terry asked the police if the iodine crystals could be used to make meth. *Id.* An officer confirmed that they could and advised Terry to cease selling the products if the sales made him uncomfortable. *Id.* The brothers sold large quantities of the iodine filters despite knowing that there was no legitimate use that most consumers would have for consuming such large quantities. *Id.* -year period from sale of the water-purification products. *Id.*

A DEA investigation led to an indictment of the brothers. Pursuant to 21 U.S.C. § 853(a)(1), which provides for the forfeiture of any proceeds obtained as the result of the charged crime, the government sought forfeiture money judgments against both brothers totaling sales of the filters. Tony pleaded guilty and agreed to forfeit \$200,000. *Id.* Terry went to trial and was found guilty of conspiracy to distribute the iodine. The trial court declined to impose a money judgment against Terry and found that he had no controlling interest in the store and did not actually benefit from the



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sale of the filters. The Sixth Circuit reversed, concluding that, as co-conspirators, the brothers were jointly and severally liable for the proceeds of the conspiracy. The Supreme Court reversed the Sixth Circuit, holding that § 853(a) limits forfeiture to the tainted property and does not reference joint and several liability, which would require forfeiture of untainted property. *Id.* at 1632. Importantly, the Court construed the use of the term *Id.* defendant actually obtain the forfeitable property. *Id.* Furthermore, the Court found that reading joint and several liability into the statute would nullify another provision of the statute, § 853(p), which delineates five conditions under which untainted substitute property shall be forfeited. *Id.* at 1634 (citing 21 U.S.C. § 853(p)). Ultimately, the Supreme Court looked at the plain text of § 853 to conclude that Congress intended only § 853(p) to deal with untainted assets and the statute did not contemplate otherwise imposing joint and several liability. In reaching this conclusion, the Court spoke broadly about how the general criminal forfeiture statute should be construed:

Traditionally, forfeiture was an action against the tainted property itself and thus proceeded in rem; that is, proceedings in which in rem stood independent of, and wholly unaffected

by any criminal proceeding in personam Congress altered this distinction in enacting § 853 by effectively merging the in rem forfeiture proceeding with the in personam criminal proceeding and by expanding forfeiture to include not just . . . derived from . . . crime. § 853(a)(1). But as is clear from its text and structure, § 853 maintains traditional in rem unless one of the preconditions of § 853(p) exists. For those who find it relevant, the legislative history confirms as much: Congress 225, p. 192 (1983). By adopting an in personam aspect to criminal forfeiture, and providing for substitute-asset forfeiture, Congress made it easier for the Government to hold the defendant who acquired the tainted property responsible. Congress did not, however, enact any significant expansion of the scope of property subject to

Forfeiture pursuant to § 853(a)(1) is limited to property the defendant himself actually acquired as the result of the crime. *Id.* at 1634 35 (internal citations omitted). // III. Applicability of *Honeycutt* It is well-established in this jurisdiction that courts are required to impose money judgments on criminal defendants under certain circumstances. In *Casey*, the Ninth Circuit explained that notwithstanding § 853(p), courts are required to impose in personam money judgments against criminal defendants to ensure that they do not profit from their criminal activity:

Requiring imposition of a money judgment on a defendant who currently possesses no assets furthers the remedial purposes of the forfeiture statute by ensuring that all eligible criminal defendants receive the mandatory forfeiture sanction Congress intended and disgorge their ill-gotten gains, even those already spent. 444 F.3d at 1074. The *Casey* Court elaborated that the punitive nature of forfeiture is fulfilled by permitting the seizure of future assets. *Id.* (citing *United States v. Hall*, 434 F.3d 42, 59 (1st Cir. 2006)). Defendant and FPD argue that *Casey* and its progeny cannot survive *Honeycutt*. According to Defendant, § 853(p) is the only way for the Government to obtain untainted assets. Defendant interprets *Honeycutt* as standing for the proposition that forfeiture can only be



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sought against the tainted property itself or substitute property under § 853(p); by contrast, an in personam money judgment against a criminal defendant that could reach future untainted assets is not within the plain text of forfeiture statutes and is therefore prohibited. The Court disagrees and finds that Honeycutt's broad as Defendant claims and is inapplicable to the instant case. Honeycutt is factually and legally distinguishable from the forfeiture matter currently before the Court. The issue before the Supreme Court was whether § 853 supported the imposition of joint and several liability for forfeiture purposes. The Supreme Court considered whether the defendant could be held financially accountable for proceeds from the charged criminal sales that his brother obtained. In that case, however, the proceeds from those sales never passed through declined to enter a forfeiture judgment, reasoning that [the defendant] was a salaried employee Honeycutt, 137 S. Ct. at 1631. The Supreme Court held that Terry could only be required to forfeit property that the defendant Id. at 1635. Accordingly, because the defendant did not personally receive any proceeds from his crime, the Supreme Court held a money judgment against him for those proceeds was improper. Id.

Here, by contrast, the Court finds that Defendant has personally obtained proceeds as a result of his crimes. The Court is convinced that the Government has established by a preponderance of the evidence that Defendant obtained proceeds from his crimes of conviction. See 27 (reciting testimony from trial demonstrating that Defendant obtained proceeds from his crimes). The Government estimates, based on the evidence adduced at trial, that Defendant obtained at least \$312,700 in proceeds. 1

See 27. The Government was only able to locate \$3,445 in proceeds seized from Defendant in his 2012 arrest and \$6,360.81 seized from Defendant in 2014 to be used as a substitute asset. Id. at 28-30.

Defendant urges the Court to read Honeycutt to mean that the Government can only seek forfeiture of the res, i.e. the actual physical money that Defendant obtained, as opposed to seeking an in personam money judgment against Defendant for the amount of tainted proceeds. Honeycutt, criminal defendants could benefit from their ill-gotten gains by simply spending their proceeds or otherwise putting them beyond the g Honeycutt does not require such a result. Honeycutt does

1 - trafficking offenses to be at least \$600,000, and after reducing this figure by the amount of proceeds to avoid double counting, the government is therefore seeking facilitating property money judgment of \$287,300 (\$600,000 minus not espouse a broad rule categorically barring in personam money judgments; rather, it prohibited the Government from imposing an in personam money judgment against a co-conspirator who never received or possessed profits from his crimes. In other words, Honeycutt does not require that Defendant still be in possession of his ill-gotten proceeds, it merely limits forfeiture to proceeds that he obtained at some point from his crimes. Had the defendant in Honeycutt obtained money from the illegal sales, then the government could have sought a money judgment against him for that amount. In this case, Defendant obtained proceeds from his sex-trafficking crimes and it is proper for the Government to seek a money judgment against him for those proceeds.



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In sum, *Honeycutt* did not overrule the universally recognized rule among the federal courts of appeals permitting in personam money judgments against criminal defendants.

Moreover, cases decided since *Honeycutt* show that its holding was intended to resolve issues of joint and several liability. For example, in *United States v. Brown*, the Third Circuit concluded that *Honeycutt* applied with equal force to another forfeiture statute, 21 U.S.C. § 982(a)(2). No. 15-1505, 694 Fed. Appx. 57, 57 58 (3d Cir. Aug. 9, 2017); see also *United States v. Gjeli*, 867 F.3d 418, 426 (3d Cir. 2017) (same). The Third Circuit reversed the trial for a forfeiture money judgment. *Brown*, 694 Fed. Appx. at 57 58. This decision was based on the similarities between § 982(a)(2) and § 853 limiting

Id. Likewise, in *Gjeli* the Third Circuit al liability for forfeiture. 867 F.3d at 427. The *Gjeli* Court remanded for the district court to determine the amount of forfeiture attributable to each criminal defendant. *Id.*

In further example, the Tenth Circuit reversed a forfeiture judgment where the district *United States v. Pickel*, 863 F.3d 1240, 1260 61 (10th Cir. 2017). The court in *Pickel* determined that under *Honeycutt*, nted property as a result of the crime, § *Id.* (citing *Honeycutt*, 137 S. Ct. at 1635). whether the defendant had obtained tainted proceeds as the trigger for a money judgment, not whether the defendant retained possession of those proceeds. *Id.*; see also *United States v. Ward*, No. 2:16-cr-6, 2017 WL 4051753, at *4 (W.D. Mich. Aug. 24, 2017), report and recommendation adopted, No. 2:16-cr-06-01, 2017 WL 3981160 (W.D. Mich. Sept. 11, 2017) (permitting a money judgment against the defendant in the sum of the tainted proceeds, \$475,254.30, even though the government had only been able to locate approximately \$10,694.36); *United States v. Lobo*, No. 15 CR. 174 (LGS), 2017 WL 2838187, at *7 (S.D.N.Y. June 30, 2017) (concluding that, in light of *Honeycutt*, the defendant was liable for the tainted proceeds obtained directly or indirectly from his drug importation conspiracy).

Similarly, in *United States v. Carlyle*, the Eleventh Circuit applied *Honeycutt* to another forfeiture statute. No. 15-12977, 2017 WL 4679564 (11th Cir. Oct. 18, 2017). In that case, the government conceded that the defendant co-conspirator could not be jointly and severally liable for the entire amount of proceeds from a wire-fraud scheme. *Id.* at *3. The government asked for *Id.* The ine the appropriate amount of *Id.* at *3. The Court finds this remand order instructive in that it focuses on the amount of proceeds attributable to the defendant rather than concluding that money judgments are unavailable under *Honeycutt*.

the obtained proceeds themselves as opposed to a money judgment against the individual who obtained the tainted proceeds. Cases considering *Honeycutt* have all involved co-conspirator liability. Some of those courts have denied or reversed money judgments where it was not shown that the co-conspirator actually obtained the proceeds of the criminal conspiracy. Consistent with those opinions, other courts have permitted money judgments where such a showing was made. None of the cases that the Court reviewed, however, concluded that it was improper to impose an in personam money judgment against a criminal defendant where it was shown that the defendant



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obtained proceeds from his crimes. Accordingly, the Court concludes that Honeycutt liable for the amount of those proceeds. Forfeiture is not limited to the physical proceeds

themselves, which in most cases will be unobtainable. IV. Constitutional Arguments Defendant also claims that his waiver of a jury determination on forfeiture was premised on the Government seeking forfeiture of specific assets. Had Defendant known that the Government would be seeking an in personam money judgment, Defendant argues that he would not have stipulated to a waiver of his right to a jury. Further, Defendant argues that the Government failed to provide constitutionally adequate notice that it would seek a personal money judgment. The Court finds that these arguments are without merit. A review of it was not conditional on the Government limiting its forfeiture requests. See Stip. & Waiver of Jury Trial Regarding Forfeiture. Prior to filing that waiver, the Government had stated in its briefing that it would separately seeking a money judgment against in addition to the other specific forfeitable assets. See Mem. Regarding Applicable P. for Forfeiture 5. In its Motion, the Government argued that under Ninth Circuit precedent and Rule 32.2, a jury was not needed to determine forfeiture of a personal money judgment and the Court must determine the amount of money that Defendant will be ordered to pay. See Christensen, 828 F.3d at 821 21 (citing Rule 32.2 to hold that a jury is not required to determine in personam money judgment forfeiture); Fed. R. Crim. P. 32.2(b)(1)(A) ey judgment, the court must determine the amount of Accordingly, the Court concludes that the Government provided constitutionally adequate notice of its intent to seek an in personam money judgment against Defendant and Defendant has waived his right to a jury determination on this issue. 2 V. Money Judgment Amount Once more, the Government seeks forfeiture in the amount of \$600,000, which mes of conviction. The Government bears the burden of establishing forfeitability by a preponderance of the evidence. Furthermore, because forfeiture proceedings are part of sentencing, the Federal Rules of Evidence do not apply. United States v. Sustaita, 1 F.3d 950, 952 (9th Cir. 1993) (quoting United States v. Notrangelo, 909 F.2d 363, 365 66 (9th Cir. 1990)

2 sive fine in violation of the Eighth Amendment. As discussed above, personal money judgments are proper where the dollar Newman Defendants must pay bo 659 F.3d at 1241 (citing McGinty, 610 F.3d at 1247 48). The district court has the discretion to admit a broad range of evidence including hearsay when determining forfeitability. United States v. Alonso, 48 F.3d 1536, 1545 46 (9th Cir. 1995) (noting that under U.S.S.G. without regard to its admissibility under the rules of evidence applicable at trial, provided that the information has

The calculation of forfeiture amount does not demand mathematical exactitude and the . . . and may make reasonable extrapolations from the evidence established by a preponderance of the United States v. Treacy, 639 F.3d 32, 48 (2d Cir. 2011).

The Court finds that the Government has proven by a preponderance of the evidence that an in personam money judgment against Defendant in the amount of \$600,000 is warranted. The s calculation includes proceeds and facilitating property of Counts 1, 2, and 3 of the Second



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Superseding Indictment. The money judgment amount verdict, the evidence presented at trial, as well as the evidence submitted by the Government at

the forfeiture hearing. With respect to proceeds, the Government has proven by a preponderance of the evidence that Defendant directly or indirectly obtained \$222,700 in proceeds from sex trafficking victims A.F.W., T.H., A.C.W., C.H., and D.J. Regarding A.F.W., the Government extrapolated from her , that she made \$300,000 over the ot. 10 11. The Court finds that the evidence adduced at trial shows that A.F.W., more likely than not, earned a lesser amount for Defendant, approximately \$210,000 (\$700 a day for 300 days). The Court further finds that the remainder of preponderance of the evidence and are accurate.

Regarding facilitating property, the Court finds that the Government has proven by a preponderance of the evidence that Defendant used or intended to use \$600,000 to commit or facilitate the commission of the sex trafficking conspiracy. The Government reduces that figure the

facilitating property figure to \$377,300 reduced proceeds calculation above (\$600,000 minus \$222,700). includes rent and costs; money that Defendant received from Konia Prinster that he used to facilitate the sex trafficking conspiracy; and money Defendant used to recruit and retain sex trafficking victims. The evidence adduced at trial as well as the evidence presented at the forfeiture hearing prove that it was more likely than not that Defendant used or intended to use the property identified above to facilitate the sex trafficking conspiracy. In sum, the Court finds that the government has demonstrated that an in personam money judgment against Defendant in the amount of \$600,000 is supported by a preponderance of the evidence (\$222,700 in proceeds from sex trafficking victims and \$377,300 in facilitating property).

CONCLUSION for an in personam money judgment against Defendant is GRANTED in part. The Court finds that an in personam money judgment against Defendant in the sum of \$600,000 is warranted. A preliminary order of forfeiture pursuant to Federal Rule of Criminal Procedure 32.2 will be issued separately. In the preliminary order of forfeiture, the dollar amount of any substitute property subject to forfeiture will be subtracted from the amount of the in personam money judgment.

DATED this day of , 2017.

MARCO A. HERNÁNDEZ United States District Court Judge

