

20-30-cr (L)

*United States v. Gershman*

# United States Court of Appeals for the Second Circuit

August Term, 2021

(Argued: October 7, 2021      Decided: April 12, 2022)

Docket Nos. 20-30 (L), 20-754 (Con)

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UNITED STATES OF AMERICA,

*Appellee,*

v.

LEONID GERSHMAN, aka Lenny, aka Lenny G, aka Lyonchik, aka Lyonya,  
ALEKSEY TSVETKOV, aka Pelmin, aka Lesha, aka Lyosha,

*Defendants-Appellants,*

Viktor Zelinger, AKA Vitya, AKA Vityok, Renat Yusufov, AKA Ronnie, AKA  
Ronik, Igor Krugly, Vyacheslav Malkeyev, AKA Steve Bart, Isok  
Aronov, Yusif Pardilov, AKA Yosik, Librado Rivera, AKA Macho,  
AKA Max, Eric Bobritsky, AKA Mamaz Boy, Artiom Pocinoc,

*Defendants.*

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Before:

JACOBS AND MENASHI, *CIRCUIT JUDGES*, AND CRONAN, *DISTRICT JUDGE*\*

A jury convicted Defendants-Appellants Leonid Gershman and Aleksey Tsvetkov of a slew of offenses for their role in a Brooklyn-based crime syndicate.

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\* Judge John P. Cronan, of the United States District Court for the Southern District of New York, sitting by designation.

They now appeal their convictions and sentences. Because we find that their challenges lack merit, the District Court's judgment is **AFFIRMED**.

Judge Jacobs concurs in part and dissents in part in a separate opinion.

Kevin Trowel (Andrey Spektor and Mark J. Lesko, *on the brief*), Assistant United States Attorney, *for* Breon Peace, United States Attorney for the Eastern District of New York, *for Appellee*.

Steven Yurowitz, Newman & Greenberg LLP, *for Defendant-Appellant Leonid Gershman*.

Murray Singer, Murray E. Singer, Esq., *for Defendant-Appellant Aleksey Tsvetkov*.

CRONAN, *District Judge*:

This appeal involves the convictions of two members of a Brooklyn-based crime syndicate. Like a well-run business, the syndicate diversified its activities: arson, extortion, illegal gambling, marijuana distribution, firearms trafficking, and wire fraud. After several members of the syndicate pleaded guilty, two members, Appellants Leonid Gershman and Aleksey Tsvetkov, proceeded to trial. Following a three-week trial, a jury convicted Gershman and Tsvetkov of numerous crimes, including racketeering offenses. Each man was sentenced principally to 198 months' imprisonment. Gershman and Tsvetkov now appeal

their convictions, raising a host of arguments to include challenges to the admissibility of certain trial testimony, the correctness of the jury charge, the sufficiency of the Government's proof, and the lawfulness of their sentences. Because we find that all their challenges lack merit, we affirm their convictions and sentences.

## I. BACKGROUND<sup>1</sup>

### A. Illegal Gambling

The gambling crimes began in early 2016. At that time, Gershman, Tsvetkov, and Renat Yusufov began hosting weekly high-stakes poker games at a building off McDonald Avenue in Brooklyn, New York ("McDonald Avenue Poker Spot"). The McDonald Avenue Poker Spot was short-lived, however, thanks to a police raid just over a month after the games began.

Undeterred, Gershman, Tsvetkov, and Yusufov swiftly moved their gambling operation to another building off Coney Island Avenue ("Coney Island Poker Spot"), adding three new partners: Viktor Zelinger, Igor Krugly, and Vyacheslav Malkeyev. To avoid suspicion, the group disguised the building to

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<sup>1</sup> Because this appeal follows convictions after a jury trial, the following factual recitation is drawn from the evidence adduced at trial, presented in the light most favorable to the Government. See *United States v. Litwok*, 678 F.3d 208, 210-11 (2d Cir. 2012).

make it appear to house a leasing and security company. But the inside of the Coney Island Poker Spot looked quite different. It had all the amenities needed for an illegal gambling operation: a poker room, a video poker machine, a players' lounge, and a kitchen.

During the bi-weekly sessions, the players would wager hundreds of thousands of dollars, with the partners taking a cut of those wagers. That rake yielded a hefty profit of about \$20,000 per session. The gamblers at the Coney Island Poker Spot did not immediately exchange cash with the syndicate members during the games. Rather than playing cash games, players gambled using house credit, with their wins and losses recorded in ledgers. And the gamblers were to either collect their winnings or pay their losses the next week.

This credit system came with problems, however, as unsuccessful gamblers did not always pay their debts on time or in full. So over time, the collection tactics became less friendly. For instance, Gershman recruited members of the Eastern European mafia to confront one gambler and his family in Russia and Israel. Nor was the group reluctant to resort to threats of violence to pressure defaulting gamblers: they threatened to "smash [one gambler's] f\*\*\*ing face," told another gambler that the debt pay-by dates were "not [just] words," and advised another

gambler that if he did not pay, they would not “all be living peacefully anymore.” Gov’t App’x 75-76, 88, 96-97. And when Gershman began to suspect that one gambler cheated when playing at the Coney Island Poker Spot, Gershman slapped and drop-kicked the person who he suspected invited the cheater to the game.

The syndicate employed even more violent means to protect the Coney Island Poker Spot from competition. In April 2016, Gershman and his partners began to believe that a nearby poker spot on Voorhies Avenue (“Voorhies Avenue Poker Spot”) was hurting their business. Gershman, Tsvetkov, and two other syndicate members met with the man who ran the Voorhies Avenue Poker Spot to discuss how to resolve their issues. Discussions went nowhere.

So Gershman, Tsvetkov, Zelinger, Yusufov, and Malkeyev met at the Coney Island Poker Spot to decide how to deal with this problem. Before starting the meeting, Gershman asked everyone to turn off their phones. Zelinger then proposed setting the Voorhies Avenue Poker Spot on fire, a solution to which everyone agreed. After Tsvetkov asked who would set the fire, Zelinger directed Yusufov and Malkeyev to do it.

And so in early May 2016, Yusufov and Malkeyev drove to the Voorhies Avenue Poker Spot to commit the arson. They broke in with a crowbar, doused

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