

FILED
Clerk
District Court

AUG 31 2020

for the Northern Mariana Islands
By _____
(Deputy Clerk)

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EFRAIM ATALIG and EVELYN ATALIG,

Defendants.

Case No. 1:18-cr-00013

**MEMORANDUM DECISION GRANTING
DEFENDANTS' MOTION FOR
JUDGMENT OF ACQUITTAL
ON COUNT 3**

I. Introduction

Defendants Efraim and Evelyn Atalig went to trial on a five-count superseding indictment beginning on August 11, 2020. The prosecution presented its case-in-chief over three days of testimony starting August 14. When the prosecution rested on August 18, the Ataligs jointly moved for a judgment of acquittal on all counts, and the Mayor provided a pocket brief as to the motion pertaining to Count 3, theft from a program receiving federal funds in violation of 18 U.S.C. § 666(a)(1)(A). (ECF No. 344.) The next day, the Court orally granted in part on the record the Ataligs' motion, and entered a judgment of acquittal on Count 3. As the Court stated, there was insufficient evidence for any rational jury to find the Ataligs guilty of that charge. The Court now issues this written decision to memorialize its reasoning.

II. Background

During trial, the prosecution established the following undisputed facts. The Ataligs—described by all sides as “common law spouses”—are both public servants on Rota, one of the

1 three main islands in the Commonwealth of the Northern Mariana Islands (CNMI). Efraim is the
2 island's mayor, and Evelyn works as Assistant for Women's Affairs in the Office of the Mayor.
3 Throughout 2018, while the Ataligs held their government positions, both used public funds to
4 take multiple off-island trips, including to Guam, Saipan, Palau, and California. The Ataligs
5 maintained that every trip was work-related and served the interests of Rota. The prosecution, on
6 the other hand, alleged that five of these trips were for various personal agendas. For example,
7 while the Ataligs declared that they went to Palau to promote tourism on Rota, the prosecution
8 claimed it was for personal reasons, a honeymoon. Similarly, the official reason for the June Guam
9 trip was to shop for government surplus supplies, but the prosecution contended that the Ataligs'
10 actual motivation was to attend a political rally. During trial, the prosecution portrayed the Ataligs
11 as fabricating official pretexts for their trips in order to defraud the local government into covering
12 the travel costs and paying their per diems.
13

14 Relevant here, Count 3¹ charged the Ataligs with theft from a program receiving federal
15 funds in violation of 18 U.S.C. § 666(a)(1)(A). (Superseding Indictment ¶ 28, ECF No. 23.)
16 Section 666 is an anti-corruption law designed to “safeguard finite federal resources” against acts
17 of embezzlement or bribery by the very officials entrusted “with control of [those] funds.” *United*
18 *States v. Rooney*, 37 F.3d 847, 851 (2d Cir. 1994). To convict a defendant of embezzlement under
19 this statute, a prosecutor must prove two things. First, that the defendant, being an agent of any
20 organization, or of a State or local government, or any agency thereof, embezzled at least \$5,000
21 from that organization. § 666(a)(1). Second—the jurisdictional element—that this same
22 organization, government, or agency “receive[d], in any one year period, benefits in excess of
23

24
25 ¹ The other charged offenses were one count of criminal conspiracy, one count of wire fraud, and two counts of making
26 a false statement to an FBI agent. (Superseding Indictment ¶¶ 23–32, ECF No. 24.) As to these charges, the Court
denied the Ataligs' motion for a judgment of acquittal and submitted the question of guilt to the jury. In the end, the
jury acquitted the Ataligs on all counts. (Jury Verdict, ECF No. 370.)

1 \$10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance,
2 or other form of Federal assistance.” § 666(b).

3 **III. Judgment of Acquittal Standard**

4 Ordinarily, it is the exclusive purview of the jury to convict or acquit a criminal defendant.
5 However, before the Court can entrust this authority to the jury, the prosecution must first present
6 enough evidence at trial that a conviction is conceivably possible. “Under that standard, evidence
7 supports a conviction, if, viewed in the light most favorable to the government, it would allow any
8 rational [jury] to find the essential elements of the crime beyond a reasonable doubt.” *United States*
9 *v. Stoddard*, 150 F.3d 1140, 1144 (9th Cir. 1998). Conversely, if the government rests before
10 presenting enough evidence to prove every essential element of a charged offense, then the Court
11 must as a matter of law grant a judgment of acquittal. Fed. R. Crim. P. 29(a). This standard is
12 extremely deferential to the prosecution and jury. Indeed, a court may only grant a judgment of
13 acquittal if there is insufficient evidence for any rational juror to convict a defendant. *United States*
14 *v. Johnson*, 874 F.3d 1078, 1079 (9th Cir. 2017). In making that assessment, the Court “is not to
15 weigh conflicting evidence or consider the credibility of witnesses.” *United States v. Lester*, 749
16 F.2d 1288, 1296 (9th Cir. 1984).

18 **IV. Discussion**

19 Section 666(a)(1) specifically criminalizes embezzlement, not theft in general. Moreover,
20 the statute only applies where federal funds are concerned. Consequently, to prevail at trial, the
21 prosecution had to prove two threshold facts beyond a reasonable doubt: (1) that the Ataligs were
22 agents of a distinct government, and (2) that this government received over \$10,000 in federal
23 benefits. § 666. If the prosecution fails to prove either, then it no longer matters how much evidence
24 there was of an actual theft. It does not become a federal offense.
25
26

1 1. *The Ataligs are agents of the municipal government of Rota.*

2 The alleged fraud in this case centered on the Ataligs' official positions in the Rota Mayor's
3 office. The prosecution argued its case assuming that, for purposes of § 666(a)(1), any public
4 official on Rota is an agent of the CNMI's central government. That assumption, however, was
5 incorrect.

6 Section 666 defines "agent" as "a person authorized to act on behalf of another person or
7 a government." § 666(d)(1). "Government," in turn, means any "State², local, or Indian tribal
8 government, or any agency thereof." § 666(a)(1). Because the statute explicitly distinguishes
9 between state and local governments, courts have recognized that most municipal officials are not
10 agents of their state's central government. Rather, they are agents of the local government. *See*
11 *United States v. Kranovich*, 401 F.3d 1107, 1113 (9th Cir. 2005) (elected sheriff was an agent of
12 the county government). The only exception is when state law categorizes a local official as an
13 agent of the entire state. *United States v. Langston*, 590 F.3d 1226, 1233–34 (11th Cir. 2009).

14 Each of the CNMI's three major islands—Saipan, Tinian, and Rota—is a political
15 subdivision with a locally-elected mayor. N.M.I. Const. art. VI. Essentially, the islands are
16 analogous to city-counties. There is a separate central government for the CNMI as a whole,
17 complete with at-large elections. N.M.I. Const. art. III. Given this set up, the Court has previously
18 held that the islands' local mayors are not agents of the CNMI's central government. *United States*
19 *v. Borja*, No. CV-02-0016-ARM, 2003 WL 23009006, at *4 (D. N. Mar. I. Dec. 12, 2003) ("a
20 mayor is not a member or agent of the executive branch such that an exercise of its powers and
21 duties will necessarily bind the CNMI"). Instead, the mayors are local officials with strictly local
22 powers. *Id.* That rule is decisive here. Efraim Atalig, being the mayor of Rota, is an agent of only
23
24
25

26 ² The definition of "State" includes the CNMI. § 666(d)(4).

1 the island's municipal government. The same must be said of Evelyn Atalig, who was serving in
2 the Mayor's Office. Therefore, to prove that the Ataligs violated § 666(a)(1), the prosecution had
3 to offer evidence of Rota's municipal government receiving over \$10,000 in federal benefits within
4 one year of the alleged embezzlement.

5 *2. There is no evidence of Rota receiving any sum of federal benefits.*

6 To prove this jurisdictional element, the prosecution called one witness: CNMI Treasurer
7 Asuncion Agulto. Agulto testified as follows. All government revenue in the CNMI, whether from
8 taxes or federal grants, is pooled into a single general fund. There is no effort to segregate the
9 revenue by point of origin. Instead, everything is simply mixed together. The central government
10 then withdraws from this general fund to cover its expenses. In 2018, the central government
11 received over \$15,000 from a federal grant for its public library on Saipan, the Joeten Kiyu Public
12 Library. (Government's Ex. 139.) This grant, like everything else, initially went into the general
13 fund. Also in 2018, the central government transferred portions of the general fund to Rota's
14 municipal government. This amount—called the "Imprest Fund"—was to cover the municipality's
15 local budget. The Mayor's Office had total authority over the Imprest Fund, without any oversight
16 from the central government. The five trips at the center of this controversy were all paid for out
17 of the Imprest Fund.
18

19 And that was the entirety of Agulto's testimony. The issue for the Court, therefore, is this:
20 accepting everything Agulto said as true, is it evidence of Rota's local government receiving over
21 \$10,000 in federal benefits in 2018? The most striking aspect about this testimony is what it lacks.
22 Agulto did not suggest that Rota's government ever receives direct transfers from the federal
23 government. On the contrary, to the extent that Rota has received federal dollars, it appears that
24 they first passed through the CNMI's central government as an intermediary. Moreover, Agulto
25
26

1 did not identify a single federal benefit, other than the library grant, that the CNMI has received.
2 Nor did she say whether a portion of this library grant went to Rota. Nor is there any reason to
3 assume that it did, considering that the library is on a different island.

4 The Supreme Court has addressed the jurisdictional element of § 666 three times. First, in
5 *Salinas v. United States*, the Court held that the statute’s bribery prohibition was not limited to
6 bribes directly influencing the expenditure of federal funds. 522 U.S. 52, 61 (1997). On the other
7 hand, *Salinas* declined to consider whether § 666 required some lesser connection between a bribe
8 or theft and the federal funds at stake. *Id.* at 59. The Court did, however, take on this issue seven
9 years later in *Sabri v. United States*, 541 U.S. 600 (2004). *Sabri* held that § 666 does not require
10 any nexus between an organization’s use of federal funds and a charged act of theft or bribery
11 within that organization. “Money is fungible, bribed officials are untrustworthy stewards of federal
12 funds, and corrupt contractors do not deliver dollar-for-dollar value. Liquidity is not a financial
13 term for nothing; money can be drained off here because a federal grant is pouring in there.” *Id.* at
14 606. Therefore, the statute prohibits embezzlement even of funds wholly unrelated to the federal
15 benefits received. *Id.* at 607.

16
17 Lastly, in *Fischer v. United States*, 529 U.S. 667 (2000), the Court answered the separate
18 question of what qualifies as a federal “benefit” within the meaning of the bribery statute at 18
19 U.S.C. § 666(a)(1)(B). Specifically, the Court had to decide whether Medicare payments to a
20 healthcare provider constitutes a benefit to that provider. As the Court explained, “[a]ny receipt of
21 federal funds can, at some level of generality, be characterized as a benefit. The statute does not
22 employ this broad, almost limitless use of the term. Doing so would turn almost every act of fraud
23 or bribery into a federal offense, upsetting the proper federal balance.” *Id.* at 681. Thus,
24 compensation that the federal government pays out as part of an ordinary business transaction is
25
26

1 not a “benefit” under the statute. *Id.* at 678. “For example, if a government agency lawfully
2 purchases more than \$10,000 in equipment from a supplier, it is not the intent of this section to
3 make a theft of \$5,000 or more from the supplier a Federal crime.” *Id.* at 679 (quoting S. Rep. No.
4 98-225, p. 370 (1984)). “To determine whether an organization participating in a federal assistance
5 program receives ‘benefits,’ an examination must be undertaken of the program’s structure,
6 operation, and purpose.” *Id.* at 681.

7
8 As to Medicare, the defendant argued that the only beneficiaries of this program are the
9 qualifying patients, as opposed to the treating hospitals. *Id.* at 670. The Supreme Court, however,
10 rejected that narrow view. Medicare payments, the Court noted, “are made not simply to reimburse
11 for treatment of qualifying patients but to assist the hospital in making available and maintaining
12 a certain level and quality of medical care, all in the interest of both the hospital and the greater
13 community.” *Id.* at 679–80. Accordingly, while qualifying patients are undoubtedly beneficiaries
14 of Medicaid, so too are participating hospitals. *Id.* at 681.

15 Importantly though, both *Fischer* and *Sabri* left unanswered the central question in this
16 case: under what circumstances is a local government’s receipt of funding from a central
17 government an indirect federal benefit? To the Court’s knowledge, the Ninth Circuit has never
18 squarely addressed this issue. Its most on-point case is an unpublished disposition holding, without
19 elaboration, that a health clinic’s receipt of federal “pass-through grants” from a central tribal
20 government was an indirect federal benefit. *United States v. Morsette*, 653 F. App’x 499, 501 (9th
21 Cir. 2016). However, the Ninth Circuit has not explained how to determine when federal funding
22 passes through a state government to its subdivisions. There is, fortunately, a persuasive body of
23 case law outside the Ninth Circuit.
24

25 The first appellate court to touch on this issue was, aptly enough, the First Circuit. The
26

1 relevant facts of that case, *United States v. Dubon-Otero*, 292 F.3d 1 (1st Cir. 2001), were as
2 follows. A federal agency awarded the Puerto Rican government a grant to assist AIDS patients in
3 Puerto Rico. *Id.* at 8. The Puerto Rican government then transferred a portion of this grant to the
4 municipal government of San Juan. *Id.* The municipality, in turn, paid over \$10,000 to a private
5 healthcare corporation for the care of local AIDS patients. *Id.* at 4. The issue on appeal was whether
6 the corporation was itself a federal grant recipient for purposes of § 666. The First Circuit held that
7 it was. *Id.* at 8–9. The court reasoned that the movement of federal funds through several
8 intermediaries did not break the statute’s jurisdictional hook of federal benefits. *Id.* However, in
9 reaching this conclusion, the court relied on the fact that the corporation ultimately received the
10 funds in furtherance of the grant’s original mission: helping AIDS victims. *Id.* Therefore, the
11 payment to the corporation furthered the grant’s “structure, operation, and purpose.” *Id.* at 7–9.

13 The following year, the Fifth Circuit decided *United States v. Jackson*, 313 F.3d 231, 233
14 (5th Cir. 2002). The defendant was charged under § 666 as an agent of the Monroe, Louisiana city
15 government. *Id.* at 233. To prove the jurisdictional element, the prosecution relied on testimony
16 that the city was an indirect recipient of a federal grant passing through the state government. *Id.*
17 at 235. The testimony was that the National Endowment for the Humanities (NEH) paid a
18 federal grant to the Northeast Louisiana Arts Council (NELAC). *Id.* at 234–35. NELAC later paid
19 the city government \$10,090 to help fund a local folk festival. *Id.* On appeal, the Fifth Circuit
20 reversed the defendants’ convictions due to insufficient evidence. One reason was because the
21 prosecution did not attempt to prove that over \$10,000 of NELAC’s payment to the city originated
22 from the NEH grant. *Id.* at 235. If more than \$89 came from other sources mixed in with the NEH
23 grant, then the city would not have received over \$10,000 from the federal government. *Id.*

25 Lastly came the Eleventh Circuit’s decision in *United States v. McLean*, 802 F.3d 1228
26

1 (11th Cir. 2015). In that case, the defendant was a city commissioner and a board member of a city
2 redevelopment agency called MCRA. *Id.* at 1232. “The evidence in the record that the MCRA
3 received federal benefits was twofold: 1) the City received federal funds and the City in turn
4 provided funding to the MCRA; and 2) Broward County used federal stimulus funds to construct
5 six bus shelters, which were placed in the continued care of the MCRA.” *Id.* at 1243. The Eleventh
6 Circuit ultimately held that this was insufficient evidence of MCRA being an indirect recipient of
7 federal benefits. “[I]ndirect receipt of funds qualifies as a benefit only if the government can show
8 a relationship between the structure, operation, and purpose of the federal scheme authorizing the
9 distribution of funds and their ultimate use at the relevant local level.” *Id.* at 1244 (internal
10 quotation marks omitted). And “absent from the government's proof was any evidence identifying
11 the relationship between the program authorizing a disbursement of federal funds [to the city and
12 county] and the ultimate use of those funds [by MCRA].” *Id.*

14 Reading these cases together with *Fischer* establishes a clear rule: Evidence that a local
15 government received federal funds through an intermediary can be used to prove that the local
16 government was an indirect recipient of federal benefits. However, to satisfy the jurisdictional
17 element this way, the prosecution must further prove two things. First, that over \$10,000
18 transferred to the local government is traceable back to the federal source. Second, that the
19 expenditure of those funds at the local level relates to the “structure, operation, and purpose” of
20 the original federal grant.

22 In this case, the prosecution proved neither fact. There is no evidence that over \$10,000
23 from the federal library grant went into Rota’s Imprest Fund. Nor is there any evidence that the
24 Rota Mayor’s expenditure of its Imprest Fund related to the structure, operation, and purpose of
25 the library grant. The fact that the library grant dissolved into the general fund does not transform
26

1 every recipient of the general fund into an indirect beneficiary of the grant.

2 If the Municipality of Rota did receive over \$10,000 in federal benefits in 2018, it was the
3 prosecution's burden to present evidence of this at trial, and that did not happen. As a result, there
4 was insufficient evidence to prove the jurisdictional element of Count 3. And without proof of the
5 jurisdictional element, it was impossible for the jury to convict the Ataligs of that offense.

6 **V. Conclusion**

7 For the foregoing reasons, the Court GRANTED the Ataligs' motion for a judgment of
8 acquittal on Count 3 of the superseding indictment.

9 DATED this 31st day of August, 2020.

10
11
12 
13 RAMONA V. MANGLONA
14 Chief Judge
15
16
17
18
19
20
21
22
23
24
25
26