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DISTRICT COURT OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RODNEY M. KIDD,

Defendant.

CRIMINAL CASE NO. 15-00004

**ORDER AND DECISION
RE MOTION FOR JUDGMENT OF
ACQUITTAL UNDER RULE 29(c)**

Before the court is Defendant Rodney M. Kidd’s motion for judgment of acquittal under FED. R. CRIM. P. 29(c).¹ See ECF No. 50. After hearing argument from the parties on November 24, 2015, the court took the motion under advisement. For the reasons set forth below, the motion is hereby **DENIED**.

I. PROCEDURAL AND FACTUAL BACKGROUND

On February 4, 2015, Defendant Rodney M. Kidd (hereinafter “Defendant”) was indicted with the following counts: Counts 1 and 2, Theft of Government Property, in violation of 18 U.S.C. § 641; Count 3, Fraudulent Claim Against the United States, in violation of 18 U.S.C. § 287; and Count 4, False Statement to a Federal Government Agency, in violation of 18 U.S.C. §

¹ Defendant captioned his motion as “Defendant’s Trial Brief.” However, said trial brief is actually a motion for judgment of acquittal under Rule 29(c).

1 1001. *See* ECF No. 1.

2 The case proceeded to trial on July 29, 2015. *See* ECF No. 32. At the close of the
3 Government's case, Defendant moved the court for a judgment of acquittal pursuant to FED. R.
4 CRIM. P. 29(a). *See* ECF No. 42. The court found that the evidence was sufficient to sustain
5 conviction on the counts charged in the Indictment and denied the motion. At the close of all the
6 evidence, Defendant renewed his motion, which this court also denied. *Id.* On August 4, 2015,
7 the jury found Defendant not guilty as to Count 1, but guilty on all the other counts. *See* ECF No.
8 47.

9 This case involves Overseas Housing Allowance ("OHA") payments and whether
10 Defendant, who was a member of the U.S. Air Force at the time, stole money belonging to the
11 United States when he claimed under the OHA program for an amount that was more than his
12 monthly rent. Defendant claimed for a combined monthly house rental payment of \$4,400, which
13 was shared with another military member who was Defendant's co-tenant, Ms. Gillian Gallardo.
14 Both Defendant and Ms. Gallardo, however, had a separate agreement with their landlord. That
15 separate agreement was for the landlord to deduct \$455 from their monthly rent to cover certain
16 amenities: housekeeping services (\$180), Guam Telephone Authority (cable/internet/phone)
17 (\$215); and lawn services (\$60). *See* Contractual Agreement, Govt. Ex. 13.

18 **II. DISCUSSION**

19 Defendant now moves this court for judgment of acquittal pursuant to FED. R. CRIM. P.
20 29(c). *See* ECF No. 50.

21 After the return of a guilty verdict and upon motion of a defendant, the court may set
22 aside the verdict and enter an acquittal if the "evidence is insufficient to sustain a conviction."
23 FED. R. CRIM. P. 29. To determine whether the evidence is sufficient to sustain a conviction, the
24 court must "construe the evidence 'in the light most favorable to the prosecution,' and only then

1 determine whether ‘any rational trier of fact could have found the essential elements of the crime
2 beyond a reasonable doubt.’” *United States v. Nevils*, 598 F.3d 1158, 1161 (9th Cir. 2010)
3 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)); see also *United States v. Meredith*, 685
4 F.3d 814, 819 (9th Cir. 2012). Moreover, the jury’s exclusive function is to “determine the
5 credibility of witnesses, resolve evidentiary conflicts, and draw reasonable inferences from
6 proven facts.” *United States v. Nelson*, 419 F.2d 1237, 1241 (9th Cir. 1969). “Circumstantial
7 evidence and inferences drawn from it may be sufficient to sustain a conviction.” *United States*
8 *v. Reyes-Alvarado*, 963 F.2d 1184, 1188 (9th Cir. 1992). However, “evidence is insufficient to
9 support a verdict where mere speculation, rather than reasonable inference, supports the
10 government’s case.” *Nevils*, 598 F.3d at 1167.

11 In the present motion, Defendant challenges the sufficiency of the evidence. See ECF No.
12 50.

13 **i. Count 2, Theft of Government Property**

14 In order for Defendant to be found guilty of Count 2, Theft of Government Property, the
15 court instructed the jury that the Government had to show beyond a reasonable doubt, that: (1)
16 on or about May 1, 2013 to on or about May 31, 2014, the defendant knowingly stole money
17 with the intention of depriving the owner of the use or benefit of the money; (2) the money
18 belonged to the United States; and (3) the value of the money was more than \$1,000. See ECF
19 No. 43, at 15.

20 Elements 2 and 3 are not at issue. There was testimony at trial that Overseas Housing
21 Allowance money belonged to the United States, and there is also no question that the value of
22 the money was more than \$1,000. What is at issue is whether Defendant knowingly stole money
23 with the intention of depriving the United States of the use or benefit of the money.

24 Defendant argues that to steal, there must be proof that he was not entitled to the property

1 stolen. *See* ECF No. 50, at 6. This court does not disagree with Defendant. Evidence at trial,
2 however, showed proof that Defendant took money that he was not entitled to.

3 An addendum to Defendant's lease agreement was submitted to the OHA Office, which
4 was entitled "Dual Lease/Combined Rent Agreement." *See* Govt. Ex. 14-6. Therein, it states that
5 Defendant, Ms. Gallardo, and their landlord agreed to a combined rent of \$4,400 for the period
6 from May 1, 2013 to April 30, 2014. Based on this Dual Lease/Combined Rent Agreement,
7 Defendant represented to the OHA Office that he is paying a monthly housing rental amount of
8 \$4,400 (split between Defendant and Ms. Gallardo). However, based on Defendant and Ms.
9 Gallardo's separate agreement with their landlord, their actual combined rent is in the amount of
10 \$3,945 monthly. *See* Govt. Ex. 13. This is due to the landlord reducing their monthly rent by
11 \$455 to cover certain amenities. *See* Def. Ex. D at 2. The monthly rental payments of less than
12 \$4,400 are also reflected on the landlord's bank statement. *See* Govt. Ex. 15.

13 Defendant is correct in that no regulations were admitted showing that housekeeping,
14 lawn services, and cable/internet/phone services were either allowed or not allowed under the
15 OHA program. In addition, as established at trial, Defendant is correct that it may be allowable
16 for a landlord to pay for interior and exterior maintenance and such arrangements are negotiable
17 between tenant and landlord. Defendant is also correct that it may also be allowable for a
18 landlord to pay for telephone, cable and internet services (in the instance of condominiums, for
19 example). However, Defendant's case is different in that the services that the landlord agreed to
20 cover (housekeeping, lawn services, and cable/internet/phone services) were not part of the
21 \$4,400 rent payment. Rather, they were part of the discounted rent payment of \$3,945. As such,
22 Defendant falsely claimed that he was paying a combined rent of \$4,400 per month, when he was
23 actually only paying a combined rent of \$3,945 per month with Ms. Gallardo.

24 **ii. Count 3, Fraudulent Claim Against the United States**

1 In order for Defendant to be found guilty of Count 3, Fraudulent Claim Against the
2 United States, the court instructed the jury that the Government had to show beyond a reasonable
3 doubt, that: (1) the defendant presented a claim against the United States; and (2) the defendant
4 knew such claim to be false or fraudulent. *See* ECF No. 43, at 16.

5 As discussed above, Defendant presented to the OHA Office an addendum to his lease
6 agreement (Dual Lease/Combined Rent Agreement), indicating that the combined monthly rent
7 payment is \$4,400. Defendant knew that such claim is false or fraudulent because he signed a
8 Contractual Agreement with his landlord and co-tenant, Ms. Gallardo, that the monthly rent
9 would be discounted by \$455.

10 **iii. Count 4, False Statement to a Federal Government Agency**

11 In order for Defendant to be found guilty of Count 4, False Statement to Government
12 Agency, the court instructed the jury that the Government had to show beyond a reasonable
13 doubt, that: (1) the defendant made a false statement in a matter within the jurisdiction of the
14 Defense Finance and Accounting Service; (2) the defendant acted willfully—that is, the
15 defendant acted deliberately and with knowledge both that the statement was untrue and that his
16 or her conduct was unlawful; and (3) the statement was material to the activities or decisions of
17 the Defense Finance and Accounting Service—that is, it had a natural tendency to influence, or
18 was capable of influencing, the agency’s decisions or activities. *See* ECF No. 43, at 18.

19 Government Witness Staff Sergeant Barry Genon Lewis is a financial service supervisor
20 with the U.S. Air Force. Part of his duties is to process OHA allowances. Mr. Lewis testified that
21 based on the lease agreement and information provided by Defendant in his DD Form 2367
22 (Individual Overseas Housing Allowance), such information is inputted into the computer, which
23 then is transmitted to the Defense Finance and Accounting Service (“DFAS”) for processing of
24 OHA payments. Based on this testimony, the Government has established that Defendant’s

1 statement was used or relied upon by DFAS for OHA payments and because DFAS processes
2 the payments, this matter is within DFAS's jurisdiction. Further, Defendant acted willfully in
3 that he acted deliberately and with knowledge that the amount contained in the addendum to the
4 lease agreement (Dual Lease/Combined Rent Agreement) was not the actual amount of rent he
5 was paying to his landlord.

6 **III. CONCLUSION**

7 Viewing the evidence in the light most favorable to the Government, the court finds that
8 the Government presented evidence sufficient to support a jury's guilty verdict on Count 2, Theft
9 of Government Property, in violation of 18 U.S.C. § 641; Count 3, Fraudulent Claim Against the
10 United States, in violation of 18 U.S.C. § 287; and Count 4, False Statement to a Federal
11 Government Agency, in violation of 18 U.S.C. § 1001. Accordingly, the court **DENIES** the
12 Defendant's motion.

13 The Court will issue a separate sentencing scheduling order.

14 **SO ORDERED.**



/s/ Frances M. Tydingco-Gatewood
Chief Judge
Dated: Dec 23, 2015