

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION**

UNITED STATES OF AMERICA

v.

Case No. 5:20cr28-MW/MJF

JAMES DAVID FINCH,

Defendant.

_____ /

**GOVERNMENT'S RESPONSE TO RENEWED
MOTION FOR JUDGMENT OF ACQUITTAL**

Following a mistrial, Defendant James Finch filed a renewed motion for judgment of acquittal. Though the jury did not reach a verdict, the evidence was sufficient to sustain a conviction on both counts. There was evidence of \$45,000 in payments from Defendant to a City Commissioner while the latter took official action in relation to millions of dollars of City business which benefitted the Defendant and his companies. There was direct evidence of the Commissioner's solicitation of those payments. There was direct evidence of the Commissioner's acceptance of those payments with intent to be influenced regarding official action. There was direct evidence of Defendant's intent to provide

that money to influence or reward the Commissioner in relation to official action. There was abundant evidence of federal financial assistance. Accordingly, the Court should deny the motion.

BACKGROUND

The grand jury returned the third superseding indictment on October 18, 2022. ECF 355. Count One charged Defendant with conspiracy to commit federal program bribery under 18 U.S.C. §§371 and 666(a)(2). Count Two charged substantive federal program bribery under 18 U.S.C. §666(a)(2). Jury trial began on March 13, 2023. On March 16, 2023, the Court declared a mistrial after the jury informed the Court that it was deadlocked. On March 29, 2023, Defendant James Finch filed a renewed motion for acquittal.

LEGAL STANDARD

Under Federal Rule of Criminal Procedure 29(a), on a defendant's motion, the Court "must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction." Under Rule 29(c)(2), "[i]f the jury has failed to return a verdict, the court may enter a judgment of acquittal."

The test is whether, “viewing the case in the light most favorable to the Government, could a reasonably-minded jury . . . accept the relevant evidence as adequate and sufficient to support the conclusion of the defendant’s guilt beyond a reasonable doubt.” *United States v. Austin*, 585 F.2d 1271, 1273 (5th Cir. 1978) (quotation omitted). “[M]otions for a judgment of acquittal[] are routinely filed [but] almost never granted.” *Carlisle v. United States*, 517 U.S. 416, 450 (1996) (Stevens, J. dissenting). A defendant’s burden on a Rule 29 motion “is best described as ‘nearly insurmountable.’” *United States v. Moses*, 513 F.3d 727, 733 (7th Cir. 2008). As explained below, Defendant Finch failed to carry the exceedingly high burden to establish that he is entitled to judgment of acquittal.

DISCUSSION

I. The government presented sufficient evidence of a conspiratorial agreement and corrupt intent.

For Count One, the government was required to prove that Defendant and the Commissioner in some way agreed together to try to accomplish a shared and unlawful plan to violate §666(a)(2). For Count Two, the government was required to prove that Defendant acted “corruptly” in giving a thing of value (a \$5,000 check) to the

Commissioner; meaning “to act voluntarily, deliberately, and dishonestly to either accomplish an unlawful end or result or to use an unlawful method or means to accomplish an otherwise lawful end or result.”

Circumstantial evidence alone would be sufficient to sustain a conviction on these offenses. The existence of the agreement and a defendant’s participation in the conspiracy may be proven entirely from circumstantial evidence. *E.g.*, *United States v. McNair*, 605 F.3d 1152, 1195 (11th Cir. 2010). Likewise, no direct evidence of a quid pro quo is necessary to sustain a bribery conviction. See, *e.g.*, *United States v. Massey*, 89 F.3d 1433, 1439 (11th Cir. 1996). When “reviewing the sufficiency of the evidence supporting [a] bribery conviction,” the defendant cannot rest on “the incorrect assumption that the government must produce direct evidence of a verbal or written agreement in order for this court to sustain the bribery conviction.” *Id.* “Direct evidence of an agreement . . . is unnecessary: proof of such an agreement may rest upon inferences drawn from relevant and competent circumstantial evidence.” *Id.* (cleaned up). But during trial there was also direct evidence of both the Commissioner and Defendant’s corrupt intent, and thus, their conspiratorial agreement.

The direct and circumstantial evidence here would have been sufficient to sustain a conviction on both counts. Beginning in September 2015, and continuing until December 2017, the Commissioner solicited and received \$45,000 in checks, purportedly as business loans, from Defendant. The Commissioner began his solicitation by stating he was not coming in his role as a Commissioner, which a rational juror could conclude had the opposite intent and effect; to convey exactly the opposite intention. The allegedly loaned monies were never repaid. Under the circumstances a rational juror could conclude they were never expected or intended to be repaid. At the same time, Defendant had millions of dollars in contracts pending before the City. Defendant was actively pressing City officials to expand his contracts and to implement them in a way that maximized the work and payments to Defendant's company. The last check, the subject of Count Two, was given in December 2017, not long after the City Commission (including the Commissioner) had voted to borrow \$6 million to fund another phase of Defendant's half-cent sales tax infrastructure contract.

There was substantive evidence before the jury that the Commissioner "sought, agreed to accept, and received [the \$45,000 in

checks] from [Defendant] “with the intent that he would be influenced in the performance of official acts,” that he “understood that he was expected, as a result of these payments, to support [Defendant’s] projects as specific opportunities arose,” and thereafter “took official action in favor of [Defendant’s] projects.” Gov’t Exh. 5n ¶13; see Fed. R. Evid. 801(d)(1)(A).

Likewise, former City Manager Michael White, hired in the summer of 2017, testified about a subsequent interaction he had with Defendant at Sheffield Park. ECF 529 at 26. The 17th Street project was coming back before the City Commission. White related to Defendant that they would need the votes to secure it, which is when the Commissioner’s name came up. Defendant said, “he’ll dance if I tell him to dance,” explaining that the Commissioner wanted to come see him and “probably just wants me to throw some more money his way.” ECF 525 at 27. This is direct evidence of Defendant’s intent to influence or reward the Commissioner by giving him things of value. As the government explained in closing argument, when White disclosed this information to the government during his initial proffer in December 2019, he had no

way to know that Defendant had paid money to the Commissioner unless White had actually heard it from Defendant.

Seeking to discredit this evidence, Defendant says “[t]he record evidence conclusively shows that the funding associated with the 17th Street ditch was approved by the City commission well before Michael White was even hired as Lynn Haven City Manager.” ECF 542 at 11. Citing City Commission meeting minutes ending in July 2017, Defendant says “[a]s a result of the irrebuttable inconsistencies within Michael White’s Court may conclude that the government elicited perjured testimony in that it was factually impossible for the conversation described by Michael White to have taken place.”

The record evidence does not conclusively show that; it shows the opposite. As Defendant well knows,¹ financing on the 17th Street project *did* come back before the Commission on September 12, 2018:

¹ Defendant previously claimed the government violated *Brady* by not producing a recording of this very meeting about this project. ECF 228 at 13.

Item #18. Approval of the addendum to the 17th Street Ditch Financing Agreement to include the first Scope of Work involving City Stormwater Improvements from the City's Stormwater Master Plan: City Manager explained and gave some background on the 17th Street Ditch project. It was a design/build project with financing provided by Phoenix Construction. The original contract was for \$3.7 million, which we are still paying on today. A change order was done in 2017, which was for a ditch on the opposite side of HWY 77. FDOT will do a component of the ditch for \$750K, which they previously traded land for by the former City Manager Joel Schubert. Our part that was task order three which was left to pay in the amount \$668,300, which will go in conjunction with construction on HWY 390. Lynn Haven has some storm water problems. Mississippi, Colorado and Texas are some of the problem areas. He asked them to start there. He has had several resident text photos of their flooded properties. All of the models and engineering have already been done for the project to correct this issue. It would take \$790,250 to fix the issue. He said he has asked the owner of Phoenix Construction if he could tie this project in with the 17th St. ditch project. And make an amendment to this contract which according to our City Attorney we don't have to bid this out because it is consider a loss of property according to the statues. If we added this amendment to this contract with task order three

On Vote: Barnes aye
 Russell aye
 Tinder aye
 Friend aye
 Anderson aye

Motion passed: 5-0

Gov't Exh. 6d at 64-65. In other words, the context of Defendant's statement to White was that the Commissioner had received more money from Defendant around the time of voting to borrow \$6 million of additional money for Defendant's half-cent contract (Gov't Exh. 6c at 8) and Defendant wanted an expansion of his business on the 17th Street project.

The government presented evidence of a conspiratorial agreement and corrupt intent sufficient to sustain a conviction on Counts One and Two.

II. The government presented sufficient evidence of federal financial assistance.

Under §666(b), there must be proof that the local government received, “in any one year period, benefits in excess of \$10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance.”

At trial, the Government called three state employees as witnesses to explain and link three federal benefit programs—from DOJ, FEMA, and NOAA—to related Florida (state) grant programs. The government submits such testimony is sufficient by itself. Testimony need not corroborated by documentary evidence to prove the federal funds element. *See United States v. Brown*, 727 F.3d 329, 336–37 (5th Cir. 2013). Even where the government “could have easily produced documentation to establish the amount of federal funding, its failure to do so does not preclude a reasonable juror from finding that this jurisdictional qualification was satisfied.” *Id.* (citing *United States v. McAllister*, 141 F.3d 1181, at *1 (9th Cir. 1998) (unpublished)).

Nor does the law even require testimony from federal employees. *See, e.g., Brown*, 727 F.3d at 336 (testimony of City's accounting manager that in each of the charged years, the City received more than \$10,000 in federal funding was sufficient for conviction of 18 U.S.C. § 666); *United States v. Robinson*, 663 F.3d 265, 270 (7th Cir. 2011) (government's reliance on testimony from the Director of Grants for the Chicago Police Department about the City receiving a law-enforcement grant from the U.S. Department of Justice ("DOJ") in the amount of \$4.2 million was "easily sufficient" proof); *United States v. Baldrige*, 559 F.3d 1126, 1133, 1138–39 (10th Cir. 2009) (evidence sufficient where "[t]wo individuals testified that for the fiscal year ending June 30, 2005, Rogers County received ... a total of \$685,464.97" in federal funds); *United States v. Kranovich*, 401 F.3d 1107, 1112–13 (9th Cir. 2005) (evidence sufficient where police sergeant testified that county had been approved for a federal grant of \$12,775).

However, in this case, the government did not just rely on witness testimony to establish the "structure, operation, and purpose" of the DOJ, FEMA, and NOAA grant programs. *Fischer*, 529 U.S. 681. The defense motion overlooks multiple items of important documentary evidence

which undermines its argument and justification for acquittal. *See, e.g.*, Gov't Exhs. 2b1, 2a6, 2a2, 2a3, 2a4, and 2c. These introduced trial exhibits sufficiently establish "a nexus between the funds and their ultimate use." *United States v. McLean*, 802 F.3d 1228, 1240 (11th Cir. 2015).

For example, as to the DOJ Justice Assistance Grant (JAG) program, the Government highlights the following trial exhibits:

Gov't Exh. 2b1 at pg. 3

The Office of Criminal Justice Grants (OCJG) administers the JAG Program for the State of Florida. The JAG Program replaced the Byrne Formula and Local Law Enforcement Block Grant (LLEBG) programs with a single funding mechanism that simplifies the administration process for grantees and allows states and local governments to support a broad range of activities to prevent and control crime and to improve the criminal justice system.

The procedure for allocating JAG funds is a formula based on population and crime statistics in combination with a minimum allocation. Traditionally, under the Byrne Formula and LLEBG Programs, funds were distributed 60/40 between state and local recipients. This distribution continues under JAG. FDLE has designated the 60% funding awarded to the State of Florida as JAG Countywide, which has a variable pass through requirement to locals. The 40% funding designated for units of local government receiving awards of \$10,000 or less, passed through the State of Florida, is referred to as the Florida JAG Direct. It is possible for a unit of government to receive funding under both JAG Countywide and Florida JAG Direct. This program announcement is for the JAG Countywide funds. The Florida JAG Direct funds will be announced once JAG Countywide is complete.

Gov't Exh. 2b1 at pg. 4

Purpose Areas

JAG funds may be used for state and local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, and information systems for criminal justice for any one or more of the following purpose areas:

1. Law enforcement programs;
2. Prosecution and court programs;
3. Prevention and education programs;
4. Corrections and community corrections programs;
5. Drug treatment and enforcement programs;
6. Planning, evaluation, and technology improvement programs; and
7. Crime victim and witness programs.

Gov't Exh. 2b1 at pg. 3

The procedure for allocating JAG funds is a formula based on population and crime statistics in combination with a minimum allocation. Traditionally, under the Byrne Formula and LLEBG Programs, funds were distributed 60/40 between state and local recipients. This distribution continues under JAG. FDLE has designated the 60% funding awarded to the State of Florida as JAG Countywide, which has a variable pass through requirement to locals. The 40% funding designated for units of local government receiving awards of \$10,000 or less, passed through the State of Florida, is referred to as the Florida JAG Direct. It is possible for a unit of government to receive funding under both JAG Countywide and Florida JAG Direct. This program announcement is for the JAG Countywide funds. The Florida JAG Direct funds will be announced once JAG Countywide is complete.

Each county is allocated a sum of money for use by all local governments within the county. This amount is determined through a funding algorithm established in the administrative rule. Chapter 11D-9, Florida Administrative Code, requires that units of government in each county reach consensus concerning the expenditure of these funds, including projects to be implemented and the agency responsible for such implementation.

Gov't Exh. 2b1 at pg. 7

Prohibited Uses & Controlled Expenditures

JAG funds may not be used directly or indirectly for security enhancements or equipment to nongovernmental entities not engaged in criminal justice or public safety.

JAG funds may not be used to supplant state or local funds; this includes overtime pay, uniforms, clothing allowances, etc. for a given activity.

Controlled Expenditures

Items listed below are strictly prohibited and cannot be approved for JAG programs under any circumstances as per Executive Order 13688 on Federal Support for Local Law Equipment Acquisition:

1. Tracked armored vehicles
2. Weaponized aircraft, vessels and vehicles of any kind
3. Firearms and/or ammunition with a caliber of .50 or higher
4. Grenade launchers
5. Bayonets
6. Camouflage Uniforms (digital pattern) - woodland and desert patterns are allowable based on operational needs. Camouflage may not be worn in urban or populous areas.

Gov't Exh. 2b1 at pg. 29

Application for Funding Assistance

Florida Department of Law Enforcement
Justice Assistance Grant - County-wide

Section 2: Project Overview

General Project Information

Project Title: NOPTIC UNITS AND COVERT EAR PIECES
Subgrant Recipient: City of Lynn Haven
Implementing Agency: Lynn Haven Police Department
Project Start Date: 10/1/2016 **End Date:** 9/30/2017

Problem Identification

Problem Description #1:

The Lynn Haven Police Department (LHPD) has found that locating and apprehending suspects is more difficult in the evenings after the sun has set. Crime often rises at night as criminals utilize the cover of darkness to commit crimes and elude law enforcement.

Police officers have spot lights installed on their patrol vehicles, but these devices quickly alert a suspect that law enforcement is in the area conducting a search. As crime and violence increases officers must be given the tools necessary to assist them in their endeavors to apprehend suspects who are using the cover of darkness to avoid apprehension.

Problem Significance #1:

The LHPD patrol officers and patrol supervisors are primarily the individuals affected by this problem, as they are the public safety personnel on the ground 24/7. When crime occurs in a neighborhood the first people to respond are the on-duty patrol officers. Whether it be a

Gov't Exh. 2b1 at pg. 39

Section 4: Financial (cont.)

Budget Narrative:

EXPENSES:

Covert ear pieces with Push to Talk switch and a radio quick disconnect adapter.....32 @ \$78.00 = \$2,496.00

OPERATING CAPITAL OUTLAY:

NOPTIC unit with cables.....2 @ \$3,852.00 = \$7,704.00

TOTAL GRANT REQUEST.....\$10,20.00

There are no extended warranties included in the above prices. Shipping costs are included in the above.

The purchase of these items are not included in the City's FY16/17 budget.

As to the FEMA's federal benefit program—the "Hazard Mitigation Grant Program" (HMGP)—the Government highlights the following trial exhibits:

Gov't Exh. 2a6 at pg. 1

The purpose of this memorandum is to address FEMA's authority to fund the purchase and installation of generators through the Hazard Mitigation Grant Program (HMGP) authorized under Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170c; and in accordance with 44 C.F.R. Part 206, and Hazard Mitigation Assistance (HMA) criteria set forth in the Hazard Mitigation Assistance Unified Guidance (HMA Unified Guidance), dated June 2010.

Ensuring the continuity of life saving and life sustaining community services provided by critical facilities such as police and fire stations, hospitals and water and sewer treatment facilities reduces hardship, loss or suffering resulting from a major disaster. Therefore, this memorandum clarifies FEMA's determination that the purchase and installation of generators for critical facilities are eligible under HMGP, provided they are cost-effective, contribute to a long-term solution to the problem that it is intended to address and meet other project eligibility criteria as required by 44 C.F.R. § 206.434(c). Data needed to determine cost-effectiveness include return interval of the event(s) that results in the use of the generator and the value of losses avoided and other quantifiable benefits derived from its use. Generator projects that cannot be determined cost-effective via standard HMA benefit-cost methodology may be eligible under the 5 percent discretionary allowance, as described in current HMA Unified Guidance. See HMA Unified Guidance, Part III.D.1 and Part VIII.A.10. Any additional guidance clarifications specific to funding of generators via HMGP will be addressed in the next version of the HMA Unified Guidance.

Gov't Exh. 2a2 at pg. 6

STATEMENT OF PURPOSE:

The purpose of Scope of Work (SOW) project shall provide constant and consistent power to 100% of Lynn Haven's Emergency Operation Center (EOC) located at: 1412 Pennsylvania Avenue, Lynn Haven, Florida 32444, (30.23696,-85.64802). Extended power outages are typically brought on as a result of hurricanes or possibly tornadoes in this part of the country. During such an event it is crucial that Police and Fire Departments have the ability to serve its citizens in a timely and efficient manner. After installation of the generator the department will be able to work at full capacity, using all of the lights outlets and heating/cooling systems. All data stored on computers will be readily available for use. The Fire Department shall have the ability to automatically open their bay doors when an emergency call comes in instead of taking valuable time to manually open the doors. The department will have the ability to recharge portable radios, pagers, and cell phones.

OVERVIEW:

As a Hazard Mitigation Grant Program (HMPGP) the Recipient, City of Lynn Haven's EOC and other emergency departments will be able to operate at full capacity during power outages. When completed, the project will be designed to provide a 19- year protection. All activities will be executed in compliance with any applicable codes and regulations.

Gov't Exh. 2a2 at pg. 8

DELIVERABLES:

Mitigation activities shall consist of installation of a generator that shall provide constant and consistent power to 100% of Lynn Haven's EOC, Police Department and Fire Department. Provided the Subgrantee performs in accordance with the Scope of Work outlined in this Agreement, the Division will reimburse the Subgrantee based on the percentage of overall project completion.

Gov't Exh. 2a3 at pg. 9

The above referenced project was approved by State and FEMA Environmental staff contingent upon compliance with environmental conditions as outlined in the State contract. The project has been reviewed by State Environmental Staff for compliance with all environmental conditions as previously identified by the reviewing agencies. It has been determined and verified by the State Environmental Reviewer that this project has been completed in accordance with all of the required environmental conditions. It is recommended to close-out this project.

Prepared and submitted by:

**Paula
Catledge**

Digitally signed by Paula Catledge
DN: cn=Paula Catledge, o=Florida Division of
Emergency Management, ou=Investigation,
email=Paula.Catledge@fla-em.com,
c=US
Date: 2016.08.12 12:39:13 -0400

Paula Catledge, Environmental Specialist

Gov't Exh. 2a4 at pg. 1



U.S. Department of Homeland Security
FEMA Region IV
3003 Chamblee Tucker Road
Atlanta, GA 30341

FEMA

July 19, 2017

Mr. Bryan W. Koon, Director
Florida Division of Emergency Management
2555 Shumard Oak Blvd.
Tallahassee, Florida 32399-2100

Attention: Miles Anderson, State Hazard Mitigation Officer

Reference: 4138-0011-R City of Lynn Haven

Dear Mr. Koon:

We have received the State's letter requesting closeout for the above referenced project. As identified, there are no federal project cost over/under runs associated with this project. Therefore, the date of this letter will be used as the final claim for this project. Below is a summary of project amounts:

Finally, as to the NOAA federal financial assistance program, the

Government highlights the following Government Exhibits:

Gov't Exh. 2c at pg. 5

C. WORK PLAN (Expand text boxes as needed, keeping within the 10-page Work Plan limit)

This section describes the project and cannot exceed 10 single sided pages or 5 double sided pages. If letters of support or other materials are submitted to address the Work Plan components below, these items will count toward the maximum 10 pages of the application Work Plan; any additional pages or Appendices will be discarded and not considered in the evaluation of the application. The Title Page, Location Map, Budget and Budget Narrative do not count toward the 10-page limit of the Work Plan.

1. PROJECT DESCRIPTION.

a. Describe in detail the activity or work to be conducted; include project location information. (15 pts.)

The City of Lynn Haven is located in Bay County and shares its southern boundary with the City of Panama City. The City has 25.9 miles of coastline which includes numerous bayous and canals. Its most prominent and vulnerable coastline is along North Bay.

The City owns A. L. Kinsaul Park, an 11.6 acre park located at the end of West 5th Street that is used for outdoor recreation. The park houses a soccer/football field, baseball field, playground, gazebo, and picnic facilities. The park is located in a VE flood zone which makes its shoreline exposed to erosion caused by water action, particularly during tropical storms and hurricanes. Over the past ten years, a 350 linear foot portion of the shoreline has experienced extensive erosion.

To prevent further erosion damage to the shoreline along the west side of Kinsaul Park we propose the installation of a 350 foot rip rap revetment system to protect the shoreline from wave action, future erosion, and silt runoff into the seagrass beds.

Gov't Exh. 2c at pg. 13

DEP AGREEMENT NO. CM816

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
FLORIDA COASTAL MANAGEMENT PROGRAM
GRANT AGREEMENT
PURSUANT TO THE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION COOPERATIVE AWARD**

THIS AGREEMENT is entered into between the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, whose address is 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000 (hereinafter the "Department") and the CITY OF LYNN HAVEN, whose address is 825 Ohio Avenue, Lynn Haven, Florida 32444 (hereinafter the "Grantee"), a local government to provide federal funding for A. L. Kinsaul Park Shoreline Stabilization, pursuant to Section 215.971, Florida Statutes (F.S.). Collectively, the Department and the Grantee may be referred to as "Parties" or individually as a "Party".

WHEREAS, the Department is authorized to administer funds pursuant to the Coastal Zone Management Act (hereinafter the "Act"), in accordance with §380.22, F.S.; and,

WHEREAS, the Department is the recipient of federal financial assistance from the National Oceanic and Atmospheric Administration (NOAA), awarded on July 1, 2017, pursuant to Cooperative Agreement Award No. #NA17NOS4190059, for projects and activities that promote the protection and management of coastal resources in the State of Florida; and,

WHEREAS, pursuant to §380.22, F.S., and all rules adopted thereunder, as recommended by the Department's Florida Coastal Management Program (FCMP) and as approved by the NOAA process as appropriate, the Grantee is a subrecipient of federal financial assistance from NOAA. Thus, the parties are responsible for complying with the appropriate federal guidelines in the performance of project activities pursuant to this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual benefits to be derived under this Agreement, and pursuant to the Act and all rules adopted thereunder, the parties do hereby agree as follows:

I. TERMS OF AGREEMENT:

The Grantee agrees to perform in accordance with the terms and conditions set forth in this Agreement, Attachment A, Project Work Plan, and all attachments and exhibits named herein, which are attached hereto and made a part hereof. For purposes of this Agreement, the terms "Grantee" and "Recipient" are used

Gov't Exh. 2c at pg. 33

Scope of Work:

The project includes installing approximately 505 tons of 6" to 12" diameter rip rap armor stone along the Kinsaul Park Shoreline for approximately 330 ft. The width of the rip rap protection is approximately 20 ft. and extends 10 ft. waterward of the mean high-water line.

Total Budget Summary:

	Grant	Match
AGREEMENT TOTAL	\$30,000.00	\$38,772.00

TOTAL GRANT FUNDS

Categories	Task 1	TOTAL BY CATEGORY
Contractual	\$30,000.00	\$30,000.00
SUB-TOTAL BY TASK	\$30,000.00	\$30,000.00

Gov't Exh. 2c at pg. 74



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office for Coastal Management
Silver Spring Metro Center, Building 4
1305 East-West Highway
Silver Spring, Maryland 20910

MEMORANDUM TO: The Record

FROM: Patmarie S. Nedelka *Patmarie S. Nedelka*
OCM NEPA/EC Coordinator

SUBJECT: NEPA/Environmental Compliance Review Findings

FOR: SAC Review for FL CZMP – NA17NOS4190059 – A.L. Kinsaul
Park Shoreline Protection

DATE: 6 September 2017

NEPA: Before the award was made, OCM determined that (1) a CE was appropriate to the proposed award, and (2) no extraordinary circumstances (NAO 216-6A Companion Manual) were identified in connection with the proposed award.

At the time the award was made, the applicant did not have complete details for this task. Subsequently, the applicant has provided the necessary details (attached) to allow for an accurate NEPA and environmental compliance review.

NOAA funds will support a shoreline restoration project in Lynn Haven, Florida. The A. L. Kinsaul Park is an 11.6 acre park that is used for outdoor recreation. The park houses a soccer/football field, baseball field, playground, gazebo, and picnic facilities. The park is located in a VE flood zone which makes its shoreline exposed to erosion caused by water action, particularly during tropical storms and hurricanes. Over the past ten years, a 350 linear foot portion of the shoreline has experienced extensive erosion.

To prevent further erosion damage to the shoreline along the west side of Kinsaul Park, the City of Lynn Haven will install a 350 foot rip rap revetment system. The proposed project will protect the shoreline of the park, prevent future silt runoff into North Bay, and protect natural environmental resources. The silt runoff into the seagrass has covered some of the beds over the years. The stabilized shoreline will minimize future impact of ~~these seagrass beds~~

The trial evidence proved that various Florida state agencies received federal grant funds as pass-through recipients (with the City of Lynn Haven being the ultimate grant recipient). It is true that “regardless of whether an agency receives federal funds directly or

indirectly, there must be a nexus between the funds and their ultimate use to satisfy § 666.” *United States v. McLean*, 802 F.3d 1228, 1240 (11th Cir. 2015).

Here the trial testimony of Cody Menacof, Pamela Price, and Holly Edmonds, coupled with the Gov’t Exhs. 2, 2a1-2a8, 2b1-2b2, and 2c, all establish this requisite nexus. Therefore, the Court properly denied the defense (Rule 29) motion for judgment of acquittal on this ground, and should do so again with respect to the pending motion.

CONCLUSION

Accordingly, this Court should deny Defendant Finch’s motion for judgment of acquittal.

Respectfully submitted,

JASON R. COODY
United States Attorney

/s/Andrew J. Grogan
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LOCAL RULE 7.1 CERTIFICATE

I certify that the foregoing does not exceed 8,000 words, per Microsoft Word's word count, which complies with the word limit requirements set forth in Local Rule 7.1(F).

/s/ Andrew J. Grogan
ANDREW J. GROGAN
Assistant United States Attorney