

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
KANSAS CITY, MISSOURI**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 09-00121-01-CR-W-DGK
	)	
<b>GILBERTO LARA-RUIZ,</b>	)	
	)	
Defendant.	)	

**MOTION FOR JUDGEMENT OF ACQUITTAL OR IN THE ALTERNATIVE  
MOTION FOR NEW TRIAL**

COMES NOW the defendant, Gilberto Lara-Ruiz, by and through undersigned counsel, Jacquelyn E. Rokusek, and moves pursuant to Fed. R. Crim. P. 29(c) for judgment of acquittal. In the alternative, Mr. Lara-Ruiz moves for a new trial pursuant to Fed. R. Crim. P. 33. In support of this motion, Mr. Lara-Ruiz submits the following:

1. The Court erred in denying Mr. Lara-Ruiz’s Motion for Judgment of Acquittal.

At the conclusion of the evidence Mr. Lara-Ruiz moved for a judgment of acquittal. Mr. Lara-Ruiz made that motion based on the fact that the witnesses whom testified at trial lacked sufficient credibility. Of the witnesses called at trial, two (2) law enforcement witnesses and seven (7) lay witnesses were called by the government. Of the seven lay witnesses, all were cooperating indicted or unindicted co-conspirators. All of the six charged, cooperating co-defendants had received significant reductions for their cooperation in this case. A total of 462 months has been awarded off of the cooperating defendant’s sentences to date. Further, additional reductions via Rule 35 are expected.

Thus, a significant motivation to conform the testimony to fit the government's theory exists in this case.

As highlighted during the testimony of these lay witnesses, their statements at trial were not consistent with the statements given to law enforcement over the five-year period before the trial. Although some of the inconsistencies could be considered immaterial, other inconsistencies brought forth through cross-examination clearly highlighted the fact that the lay witnesses either did not have recall of the events from 2006; the lay witnesses were so impaired by methamphetamine and other illegal drugs that they could not accurately recall the events from 2006; or the lay witnesses were not truthful during their testimony at trial. Clearly, all of the lay witnesses have motivation to testify in a manner consistent with the government's request, in that all had received significant sentence reductions in return for their cooperation.

One specific instance of inaccurate testimony concerned the shooting of Heather Bledsoe's vehicle. Leatha Guitierrez testified that she took Heather Bledsoe's keys from the car to keep the defendant from taking the vehicle. Laci Hughes, the daughter of Ms. Guitierrez, testified that she definitely took the keys from the car to keep the defendant from taking the car.

Other inconsistencies include:

1. Kevin Funk told law enforcement that he "sold" two guns to Laci Hughes (who allegedly gave them to the defendant) to include a .22 and a .32 caliber. Funk testifies at trial that he sold Laci Hughes a .22 and a .25 caliber gun.
2. Laci Hughes denies that she has *ever* traded a gun for drugs. She specifically testifies that she *never* traded any guns for drugs with Funk.

3. David Phinney was so inconsistent in his original proffers with the government that the government was concerned about using the drug quantity amounts at grand jury. Phinney then testifies at trial that he was given a \$500 drug debt reduction for trading the defendant a gun for drugs, yet he had told law enforcement that he was given a mere \$200 drug debt reduction.
4. Phinney also testifies at trial that the defendant discharged an AR-15 in the basement “shrine” room. This was the *first time this was mentioned...four years later*.
5. Leatha Guitierrez also testified at trial that the defendant discharged his firearm in the shrine room. Again, this was a fact not mentioned in the 5 previous years of proffers with law enforcement.
6. Further, although there was no mention to law enforcement of the defendant holding a gun to the head of Ms. Guitierrez during the alleged shooting incident, Laci testifies to this at trial – nearly six years after the incident.

In addition to the lay witnesses, two law enforcement officers were called by the government to testify at trial. Officer Taff of the Kansas City, Missouri Police Department had drafted a report of an investigation he conducted on November 18, 2006. This investigation concerned the shooting of Heather Bledsoe’s car - a significant part of the government’s case. Officer Taff testified under oath that he had absolutely no recall of the event and could not refresh his recollection by reviewing his own police report. Further, the shell casings recovered as evidence in the investigation in 2006 could not be located in the Kansas City, Missouri Police Department evidence room.

The government's second law enforcement witness, DEA Agent Brendan Fitzpatrick, testified that the government's evidence had evaporated in that the shell casings from the shooting in question were unable to be located and Agent Fitzpatrick had personally drafted an order in 2007 to destroy the recorded phone calls between Heather Bledsoe and Gilberto Lara-Ruiz. These conversations allegedly contained information pertaining to Mr. Lara-Ruiz's admissions concerning the shooting. As the government had no direct evidence and due to the fact that all of the government's circumstantial evidence was based on information which lacked sufficient credibility to prove Mr. Lara-Ruiz guilty beyond a reasonable doubt, the defendant is respectfully requesting this Court enter a Motion for Judgment of Acquittal. In the alternative, the defendant would request a Motion for New Trial. The interest of justice requires that the Court grant the Motion for New Trial based on the lack of credibility on the part of the lay witnesses whom testified at trial for the government.

### **Conclusion**

For all of these reasons, Mr. Lara-Ruiz asks the Court to reconsider all of its rulings and enter a Judgment of Acquittal. In the alternative, Mr. Lara-Ruiz asks the Court to grant a new trial.

Respectfully submitted,

*/s/ Jacquelyn E. Rokusek* \_\_\_\_\_

Jacquelyn E. Rokusek #16308

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 2, 2011, I electronically filed with the clerk of the court by using the CM/ECF system which will send a notice of electronic filing to the following attorney of record:

AUSA Bruce Rhoads

/s/ Jacquelyn E. Rokusek \_\_\_\_\_  
Attorney for Defendant