

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

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

**GOVERNMENT’S RESPONSE TO  
DEFENDANT’S MOTION FOR JUDGMENT OF  
ACQUITTAL OR IN THE ALTERNATIVE MOTION FOR NEW TRIAL**

The United States of America, by Beth Phillips, United States Attorney, and the undersigned Assistant United States Attorney, both for the Western District of Missouri, respectfully submits this response in opposition to the defendant’s Motion for Judgment of Acquittal or in the Alternative for a New Trial, stating as follows:

**I. BACKGROUND**

On Thursday, May 26, 2011, after three days of trial, the jury convicted defendant Gilberto Lara-Ruiz of one count of possession of a firearm in furtherance of a drug trafficking crime and one count of using a firearm during and in relation to a drug trafficking crime. The Government proved beyond a reasonable doubt that the defendant knowingly possessed a firearm in furtherance of a drug trafficking crime as set forth in Count Fourteen of the Indictment, and that defendant Lara-Ruiz further possessed and discharged a firearm during and in relation to a drug trafficking crime, as set forth in Count Fifteen of the Indictment.

## II. MOTIONS FOR JUDGMENT OF ACQUITTAL

### A. Legal Standard

Motions for acquittal are not favored, as it is well-settled that “jury verdicts are not lightly overturned.” *United States v. Hood*, 51 F.3d 128, 129 (8th Cir. 1995). Rather, significant restraint is placed on a district court’s authority to overturn a jury’s verdict. *United States v. Gomez*, 165 F.3d 650, 654 (8th Cir. 1999). The Eighth Circuit has held that, “[t]he jury’s verdict must be upheld if there is an interpretation of the evidence that would allow a reasonable jury to find the defendant guilty beyond a reasonable doubt.” *United States v. Moore*, 108 F.3d 878, 881 (8th Cir. 1997). A jury’s verdict will be reversed only if no reasonable jury could have found the defendant guilty. *United States v. Montano*, 506 F.3d 1128, 1131 (8th Cir. 2007) (citing *United States v. Sanders*, 341 F.3d 809, 815 (8th Cir. 2003)).

In considering a motion for judgment of acquittal based on the sufficiency of the evidence to sustain a conviction, the court must examine “the evidence in the light most favorable to the jury verdict and giving the verdict the benefit of all reasonable inferences.” *Montano* 596 F.3d at 1132 (citing *United States v. Wintermute*, 443 F.3d 993, 1003 (8th Cir. 2006)). Under this stringent standard, a verdict will be overturned “only in rare cases.” *United States v. Lee*, 356 F.3d 831, 836 (8th Cir. 2003). The Court should consider the motion with “very limited latitude” and must neither assess the witnesses’ credibility nor weigh the evidence. *United States v. Thompson*, 285 F.3d 731, 733 (8th Cir. 2002). The Court’s role is not to weigh the evidence but rather to determine whether the Government has presented evidence on each element to support a jury verdict. *United States v. Chavez*, 230 F.3d 1089 (8th Cir. 2000).

**B. Legal and Factual Analysis**

The defendant requests a Judgment of Acquittal because he believes the trial witnesses lacked credibility. Due to sentence reductions many of the witnesses received, the defendant believes the witnesses provided biased testimony. Additionally, the defendant believes any inconsistencies in the testimony at trial is the result of poor memory, drug influence, and lying.

In Count Fourteen of the indictment, the defendant was charged with possession of at least one firearm in furtherance of a drug trafficking crime. To establish that a defendant possessed a firearm in violation of 18 U.S.C. § 924(c)(1)(A)(i), the Government must prove that (1) he committed a drug trafficking crime, and (2) he possessed a firearm in furtherance of that crime. *United States v. Saddler*, 538 F.3d 879, 888 (8th Cir. 2008) (quoting *United States v. Garcia-Hernandez*, 530 F.3d 657, 661 (8th Cir. 2008)). Not only did the defendant concede to the jury that he had pled guilty to a drug trafficking crime, but seven of the eight trial witnesses testified to the fact that the only relationship they had with the defendant was for the purpose of drug trafficking, leaving the Government responsible to prove the defendant possessed a firearm in furtherance of that crime.

In order to establish that the firearm was possessed ‘in furtherance’ of the drug trafficking crime, there must be evidence of a nexus between possession of the firearm and the drug trafficking convictions. *United States v. Thorpe*, 447 F.3d 565, 568 (8th Cir.2006). However, “a jury may find the requisite nexus when a firearm is discovered in close proximity with drugs so as to support an inference that the firearm is for the protection of the drugs.” *Saddler* at 888; see also, *United States v. Close*, 518 F.3d 617, 619 (8th Cir.2008) (holding that a quickly accessible

firearm in close proximity to drugs helps establish a nexus between the defendant's possession of the firearm and the drug crime).

The lay witnesses consistently testified that they observed firearms in the defendant's possession. Their interactions with the defendant primarily consisted of drug transactions, establishing the required nexus between the possession of the firearm and the crime.

The defendant was also charged with using and discharging a firearm during and in relation to a drug trafficking crime. 18 U.S.C. § 924(c)(1)(A)(iii). David Phinney and Leatha Gutierrez both testified as to the defendant's use of a firearm in a basement. Laci Dawn Hughes testified as to the defendant's discharge of weapons outside a residence on Kennington in Kansas City, Missouri, to frighten people from his drug stash. Gutierrez, Heather Bledsoe and Hughes testified about the defendant's use of a firearm to strike at least two people related to drug trafficking issues. Bledsoe, Gutierrez, and Hughes testified as to the defendant shooting Bledsoe's car over a drug debt her boyfriend, Phinney, owed the defendant. There is a police report, photographs and witness testimony of the damage by Drug Enforcement Administration (DEA) Special Agent (SA) Brendan Fitzpatrick that corroborates this testimony.

When all of these facts were presented at trial, the jury reached a guilty verdict, validating that the Government proved beyond a reasonable doubt that the defendant committed the crimes as charged. To reach a verdict, the jury is often required to weigh the credibility of the witnesses. *See, e.g., United States v. Daugherty*, 952 F.2d 969, 970 (8th Cir.1991). Witness credibility is "quintessentially a judgment call and virtually unassailable on appeal." *United States v. Sicaros-Quintero*, 557 F.3d 579, 582 (8th Cir. 2009). It is the function of the jury to resolve conflicts in the testimony or to judge the credibility of the witnesses. *United States v. Hernandez*, 569 F.3d

893, 897 (8th Cir. 2009). The Court is especially unwilling to overturn a jury's verdict when it so manifestly depends on credibility assessments. *United States v. Weaver*, 554 F.3d 718, 721 (8th Cir. 2009).

Many of the lay witnesses received sentence reductions, but it does not necessarily make the testimony unreliable. *United States v. Boyce*, 564 F.3d 911, 915 (8th Cir.2009). The jury was made aware of the reductions received, and the evidence was consistent enough for a guilty verdict.

Although the defendant attacks the credibility of the witnesses due to minor inconsistencies, the jury assessed the witnesses and their testimony and found them credible. *See United States v. Hodge*, 594 F.3d 614, 618 (8th Cir.), cert. denied, — U.S. —, 130 S.Ct. 3401, 177 L.Ed.2d 314 (2010) (“A jury's credibility determinations are well-nigh unreviewable because the jury is in the best position to assess the credibility of witnesses and resolve inconsistent testimony.”). The finder of fact may accept the parts of a witness's testimony that it finds credible while rejecting any portion it finds implausible or unreliable. *See United States v. Hall*, 999 F.2d 1298, 1300 (8th Cir.1993). A district court's finding that a witness's testimony is credible is only error in extreme circumstances, such as when the witness testified to facts that are physically impossible. *United States v. Hakim*, 491 F.3d 843, 845 (8th Cir. 2007). Therefore, in light of the witnesses' consistent statements that the defendant possessed a gun, the uncertainties about the type of gun is not a basis for rejecting the credibility of the witnesses, and none of the facts testified to were “physically impossible.”

During trial, the witnesses were cross-examined about their drug addiction and use, providing ample opportunity for the jury to consider the extent to which drug use or other

conditions affected the ability of the witness to perceive the events testified about. The defendant argued to the jury that the witnesses' credibility should be discounted due to their drug addiction, but again, the jury was able to use their discretion to determine the truth of facts and return a guilty verdict. *United States v. Payton*, 636 F.3d 1027, 1041 (8th Cir. 2011).

The defendant also accuses the witnesses of lying. A fundamental premise of our criminal trial system is that “the jury is the lie detector.” *United States v. Gianakos*, 415 F.d 912, 925 (8th Cir. 2009). Again, determining the weight and credibility given to witness testimony is the function of the jury, who are presumed “to be fitted for it by their natural intelligence and their practical knowledge of men and the ways of men.” *United States v. Scheffer*, 523 U.S. 303, 313, 118 S.Ct. 1261, 140 L.Ed.2d 413 (1998). For these reasons, the Motion for Judgment of Acquittal should be denied.

### **III. MOTION FOR NEW TRIAL**

#### **A. Legal Standard**

Motions for new trials based on the weight of the evidence generally are disfavored, and the court’s authority to grant a new trial should be exercised sparingly and with caution. *United States v. Campos*, 306 F.3d 577, 579 (8th Cir. 2002). Only where “a serious miscarriage of justice may have occurred” should they be granted. *United States v. Huerta-Orozco*, 272 F.3d 561, 565 (8th Cir. 2001); *see also*, *United States v. Smith*, 487 F.3d 618, 621 (8th Cir. 2007). “The jury’s verdict must be allowed to stand unless ‘the evidence weighs heavily enough against the verdict [such] that a miscarriage of justice may have occurred.’” *United States v. Johnson*, 474 F.3d 1044, 1051 (8th Cir. 2007) *quoting* *United States v. Lacey*, 219 F.3d 779,783 (8th Cir. 2000). The granting of a new trial under Rule 33 is a remedy to be used only “sparingly and with

caution.” *United States v. Lincoln*, 630 F.2d 1313, 1319 (8th Cir. 1980). To make this determination, the district court “may weigh the evidence and, in so doing, evaluate for itself the credibility of witnesses.” *United States v. Walker*, 393 F.3d 842, 847 (8th Cir.), *cert. denied*, 546 U.S. 953 (2005). The grant of a new trial is reserved for “exceptional cases in which the evidence preponderates heavily against the verdict.” *See* 3 Charles Alan Wright, et al., *Federal Practice and Procedure* § 553 (3rd ed. 2004).

**B. Legal and Factual Analysis**

The defendant asserts the interest of justice requires a new trial based on his belief that the witnesses lacked credibility. All of the lay witnesses testified to seeing the defendant in possession of a gun and several testified to seeing the defendant discharge the gun.

These facts confirm that the jury's guilty verdicts on the firearm counts must stand. The jury's verdicts, based on the record evidence and all the reasonable inferences drawn from the evidence, are not against the weight of the evidence and do not create a miscarriage of justice. The grant of a new trial under Rule 33 is reserved for “exceptional cases in which the evidence preponderates heavily against the verdict.” *See* 3 Charles Alan Wright, et al., *Federal Practice and Procedure* § 553 (3rd ed.2004). This case does not fall within this category, and the defendant’s request for a new trial should be denied.

#### IV. CONCLUSION

For the foregoing reasons and authorities, the Government respectfully requests the defendant's motions for acquittal or new trial be denied.

Respectfully submitted,

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By */s/ Bruce Rhoades*

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#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on June 16, 2011, to the CM-ECF system of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

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*/s/ Bruce Rhoades*

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