

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

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

**ORDER**

Pending before the Court is the Defendant’s fully-briefed Motion for judgment of acquittal or, in the alternative, a new trial. Docs. 343, 348. For the reasons discussed herein, this Motion is DENIED.

**Discussion**

On April 9, 2009, the Defendant was indicted with 12 drug trafficking and money laundering counts, and two firearms counts. Doc. 1. On February 7, 2011, the Court dismissed all but the firearms counts pursuant to the terms of a prior plea agreement, adopting the Report and Recommendation of United States Magistrate Judge John T. Maughmer in full. Doc. 237. The remaining counts proceeded to a jury trial which commenced on May 24, 2011. On May 26, 2011, the Defendant was convicted of both remaining counts—possession of a firearm in furtherance of a drug trafficking crime and use of a firearm during and in relation to a drug trafficking crime. Docs. 332, 334-35, 339-340. The Defendant then filed the pending Motion, asserting that the Court erred in denying his Motions<sup>1</sup> for judgment of acquittal. Doc. 343.

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<sup>1</sup> The Defendant so moved twice—at the close of the Government’s case-in-chief and at the close of all evidence. He raised no new arguments the second time.

In support of this Motion, the Defendant raises a sole ground related to the credibility of the witnesses against him and the sufficiency of the evidence. As the Defendant notes—and argued to the jury—the majority of the witnesses against him were co-conspirators who received significant sentence reductions in exchange for their testimony. The Defendant’s counsel repeatedly and ably argued that the jury should reject these witnesses’ testimony as incredible. But the jury rejected these arguments. Decisions about the credibility of witnesses are “virtually unassailable” and are not a basis to disturb a verdict unless testimony “assert[ed] facts that are physically impossible.” *United States v. Sicaros-Quintero*, 557 F.3d 579, 582 (8th Cir. 2009), *United States v. Hakim*, 491 F.3d 843, 845 (8th Cir. 2007) (citations omitted). The Court must consider the facts in the light most favorable to the jury’s verdict in considering a motion for judgment of acquittal. *United States v. Montano*, 506 F.3d 1128, 1132 (8th Cir. 2007). To the extent that the Defendant’s Motion is one for a new trial under Rule 33, the Court can only grant it “if the evidence weighs so heavily against the verdict that a miscarriage of justice may have occurred.” *United States v. McClellon*, 578 F.3d 846, 857 (8th Cir. 2009) (quotation omitted). That is simply not the case here. Numerous witnesses testified to the Defendant’s use and possession of firearms in furtherance of and during and in relation to his drug dealing. The fact that they are cooperating witnesses does not render them incredible, and the Court finds no other reason to discredit their testimony. *United States v. Boyce*, 564 F.3d 911, 915 (8th Cir. 2009) (testimony in exchange for sentence reduction not “inherently unreliable”). For the foregoing reasons, the Defendant’s Motion for judgment of acquittal or a new trial is DENIED.

**IT IS SO ORDERED**

Dated: July 14, 2011

/s/ Greg Kays  
GREG KAYS,  
UNITED STATES DISTRICT JUDGE