

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

UNITED STATES OF AMERICA	:	
	:	
v.	:	CRIMINAL NO.
	:	3:03cr179 (SRU)
REYNALDO ARROYO	:	
	:	
	:	
	:	

**RULING ON MOTION FOR JUDGMENT OF ACQUITTAL
AND, ALTERNATIVELY, FOR A NEW TRIAL**

On June 30, 2004, a jury convicted Reynaldo Arroyo of unlawful possession of a firearm in violation of 18 U.S.C. § 922(g)(1). Arroyo now moves for a judgment of acquittal, pursuant to Rule 29(c) of the Federal Rules of Criminal Procedure, and, in the alternative, for a new trial, pursuant to Rule 33. Because both motions are untimely, I have no authority to consider them. They are, accordingly, denied.

I. Background

The only disputed issue at Arroyo’s trial¹ was whether he ever possessed the firearm in question. The government’s evidence against Arroyo consisted principally of the testimony of the two arresting officers, who swore they saw Arroyo in possession of the firearm. The trial lasted three days. The jury returned a verdict of guilty on June 30, 2004.

On July 7, 2004, Arroyo requested an extension of time to file post-trial motions. I granted his request, allowing him until July 15, 2004 to file. On July 16, 2004, Arroyo again requested an

¹ This was Arroyo’s second trial. The circumstances occasioning my earlier grant of a new trial are set forth in a previous opinion. United States v. Arroyo, 301 F. Supp. 2d 217 (D. Conn. 2004).

extension of time, which I granted *nunc pro tunc* to July 8, 2004, extending the time until August 5, 2004. On August 6, 2004, Arroyo filed his motions.

II. Discussion

A motion for judgment of acquittal must be filed within seven days of a guilty verdict or within any other time the court sets during that seven-day period. Fed. R. Crim. Proc. 29(c)(1). The time for filing a motion for new trial is the same, except in the case of newly discovered evidence. Fed. R. Crim. Proc. 33(b)(2). These rules effectively set two time limitations: (1) the motions themselves must be filed within seven days or within the additional time set by the court, and (2) the court may only set a new deadline if it does so within the original seven days.

Because Arroyo was convicted on June 30, 2004, he was required to file his post-trial motions by July 9, 2004,² unless I extended the time. I was only permitted to extend the time if I did so before July 9, 2004. Arroyo moved for an extension of time on July 7, and I granted the motion on July 8, setting the new deadline at July 15. Once July 9 passed, the July 15 deadline became immutable. Once July 15 passed, post-trial motions could no longer be filed at all.

Accordingly, when Arroyo filed his second motion for extension of time on July 16, he was already beyond both the time for filing his substantive motions and the time in which I could grant a motion for extension of time. In short, on July 16, Arroyo was out of time to file either a motion for extension of time or a substantive motion, and, though I did grant a motion for extension of time, I was

² For purposes of calculating the filing deadline, July 9 is seven days after June 30, excluding the first day, excluding the weekend (because the period in question is less than 11 days), and including the final day. See Fed. R. Crim. Proc. 45(a)

without authority to do so.

The time limits set by Rules 29 and 33 are not flexible. A court is not permitted to extend them other than as permitted by those rules. Fed. R. Crim. Proc. 45(b)(2). Neither may a court entertain motions that fall outside the permitted time period. Carlisle v. United States, 517 U.S. 416 (1996) (holding district court had no authority to grant motion for acquittal filed one day after the Rule 29 time limit).³ I have no choice, therefore, but to deny Arroyo's motions.

It is worth noting, however, that even were I able to reach the merits of Arroyo's two motions, I would not grant them. The government's evidence consisted chiefly of the testimony of the two officers, who described the events of the night and swore they saw Arroyo with the firearm in question. Arroyo's attorney effectively cross-examined both witnesses, pointing out several inconsistencies in their testimony. Arroyo's defense consisted of the testimony of two individuals who gave an account of the events different from that of the officers and consistent with Arroyo's claim that he was not in possession of the gun. The forensic evidence in the case was inconclusive.

The case was essentially a credibility battle, and the jury apparently believed the government's witnesses, not Arroyo's. This was not outside the bounds of reasonableness. Accordingly, could I reach the issue, I would conclude that a reasonable jury could have found the contested elements of the crime proven beyond a reasonable, barring the possibility of a Rule 29 judgment of acquittal. See

³ Arroyo argues that the Rules should be read to permit granting an extension of time within an already extended time period. See United States v. Robinson, 303 F. Supp. 2d 231 (N.D.N.Y. 2004) (holding Rule 29 motion could be filed within time period set by a second extension of time that was granted within time given by first extension of time but outside seven-day period). Even if he is right, it changes nothing. His motion for extension of time was filed one day after the extended period expired, and, more importantly, his substantive motion was filed one day after the second extended deadline.

Jackson v. Virginia, 443 U.S. 307, 319 (1979) (court must uphold jury’s verdict if “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt”). Similarly, though I acknowledge that the government’s witnesses’ credibility was effectively called into question by Arroyo’s counsel, their testimony did not create one of those “exceptional circumstances,” such as “where testimony is patently incredible or defies physical realities,” that would permit me to second guess the jury’s credibility determination and, to prevent manifest injustice, order a new trial. See United States v. Ferguson, 246 F.3d 129, 133-34 (2d Cir. 2001).⁴

For the aforementioned reasons, the defendant’s motion for a judgment of acquittal and, alternatively, a new trial (doc. # 84) is DENIED.

It is so ordered.

Dated at Bridgeport, Connecticut, this 12th day of October 2004.

/s/ Stefan R. Underhill
Stefan R. Underhill
United States District Judge

⁴ Arroyo’s additional argument, that a new trial is warranted because of contact between one of the jurors and a witness, is without merit. The contact in question occurred after the trial had concluded, and the juror involved was an alternate juror who did not participate in any deliberation.