

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

RICARDO ROMERO,

Defendant.  
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OPINION AND ORDER

04-CR-0164-C-07

Defendant Ricardo Romero has moved pursuant to Fed. R. Crim. P. 29 for a judgment of acquittal, arguing that no reasonable jury could have found him guilty, in light of the inconsistent and incredible testimony of the witnesses. The motion will be denied. Although defendant has a number of arguments supporting his position, all of them rest upon the alleged lack of credibility of the witnesses, a matter firmly within the exclusive province of the jury. Drawing all inferences in favor of the government, as I must at this point, and deferring to the jury's credibility determinations, I cannot say that the "record contains no evidence, regardless of how it is weighed, upon which a rational trier of fact could find guilt beyond a reasonable doubt." United States v. Cummings, 395 F.3d 392, 397 (7th Cir. 2005).

Defendant's girlfriend, Mary Jane Almeida, testified that she and defendant were at Almeida's house on the morning of April 30, 2004, when defendant received a call from his mother's house. Shortly after receiving the call, the two of them drove to defendant's mother's residence. As they left her house, Almeida noticed that defendant had a cookie tin with him that she had never seen before. When they arrived, defendant told Almeida to hold the cookie tin, a shirt and a hat while they walked into the building. Defendant took the tin back when they entered his mother's apartment and handed it to his brother Raul. Almeida testified that a black male was in the apartment when they arrived and that after Raul went to the bathroom, the black male left the apartment. Raul then handed the tin back to Almeida, who put it in her bag and left the apartment with defendant. Several minutes later, they were stopped by the police, who discovered the cookie tin and opened it to find cocaine and cocaine base.

Danny Turner testified that on the morning of April 30, he had followed Raul Ricardo over to an apartment on Troy Drive to buy cocaine. Raul told him that the cocaine was not there but was on its way. Turner testified that about five minutes later, a Hispanic male and a Hispanic female arrived, that the three went to the back of the house and that when Raul returned, he had a cookie tin in one hand and cocaine in the other and that he handed Turner the cocaine. Turner left immediately upon receiving the cocaine.

This evidence was sufficient, if only marginally so, to allow a jury to infer that

defendant knew the contents of the cookie tin. First, he had his girlfriend hold the cookie tin on the way into the apartment, suggesting that he had reasons not to want to be caught with it in his own possession. Second, Turner described activity involving Raul and Ricardo that strongly suggested that Ricardo was delivering drugs to Raul and that Raul was then turning them over to Turner. Ricardo brought the cookie tin to the apartment, handed it to his brother, shortly thereafter Raul gave cocaine to Turner and Raul returned the tin to defendant. In light of the evidence, what rational jury would believe that defendant thought that the tin contained chocolate chip cookies?

Defendant argues that not only was the testimony about the April 30, 2004 incident insufficient to allow the jury to find that he was involved in a conspiracy to deliver cocaine, but that the testimony of David Suarez on that point was incredible as a matter of law. Suarez testified on direct examination that he saw defendant deliver cocaine to his brother Raul. Under cross-examination, Suarez said that he observed the delivery in October or November of 2003. Defendant proved that he was in custody at the Dane County jail from June 2003 until December 16, 2003. However, as the government points out, the jury could have found that Suarez was wrong about the exact time of the delivery he witnessed but correct about the fact of the delivery. This appears to be what the jury did because it found defendant guilty of the conspiracy charge contained in count 2 of the indictment.

As hard as defendant's counsel worked to show Suarez's incredibility, he never proved

that Suarez was incredible as a matter of law, that is, that he testified to certain facts that would have been physically impossible for him to have witnessed or that could not have occurred without violating the laws of nature. United States v. Griffin, 194 F.3d 808, 817 (7th Cir. 1999). In the end, the question of his credibility was one for the jury to decide. The jury decided it against defendant. I conclude that defendant has failed to sustain his burden of establishing that he is entitled to a judgment of acquittal on any of the counts on which he was convicted.

#### ORDER

IT IS ORDERED that defendant Ricardo Romero's motion for a judgment of acquittal pursuant to Fed. R. Crim. P. 29 is DENIED.

Entered this 3rd day of August, 2005.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge