

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
at COVINGTON**

CRIMINAL ACTION NO. 11-70-DCR

UNITED STATES OF AMERICA

PLAINTIFF

**V. DEFENDANT’S MOTION UNDER FED. R. CRIM. P. 29(c)
TO SET ASIDE THE VERDICT AND ENTER A JUDGMENT OF ACQUITTAL**

RONALD E. WEINLAND

DEFENDANT

* * * * *

Defendant Ronald E. Weinland, through undersigned counsel, having previously moved for a judgment of acquittal under Federal Rule of Criminal Procedure 29(a) at both the end of the government’s case-in-chief and at the close of evidence, now moves the Court pursuant to Fed. R. Crim. P. 29(c) to set aside the verdict in this matter as to each of the five counts against the Defendant and enter a judgment of acquittal for each count. The government failed to present evidence sufficient to prove beyond a reasonable doubt the essential elements of each of the five counts against the Defendant. For this reason, the Court should set aside the verdicts in this matter and enter a judgment of acquittal under Fed. R. Crim. P. 29(c).

ARGUMENT

I. Procedural Background.

On or about November 10, 2011, a Grand Jury in the Eastern District of Kentucky returned an indictment charging the Defendant with five separate counts of income tax evasion in violation of 26 U.S.C. § 7201 for the calendar years 2004 through 2008. Each count of the Indictment alleged that the Defendant violated 26 U.S.C. § 7201 “by filing a false income tax

return, by underreporting his income, and using COG contributions for personal use and not reporting the funds as income on his tax return, by failing to file a Report of Foreign Bank regarding an account in Switzerland, by failing to report the existence of that foreign account on the Schedule B of his income tax returns, and by failing to report any of the interest made on the foreign account as income....”

A jury trial began on June 4, 2012. The Defendant made an oral Rule 29 motion for all five counts after the government presented its case-in-chief and after the close of all of the evidence in the case. The Court denied both of the Defendant’s oral motions. The jury began its deliberation on June 13, 2012 and found the Defendant guilty on all five counts. The Defendant files this motion for a judgment of acquittal, pursuant to Fed. R. Crim. P. 29(c)(1), as to the guilty verdict on all five counts of the indictment.

II. Legal Standard.

Under Fed. R. Crim. P. 29(c)(1), a “defendant may move for a judgment of acquittal...within 14 days after a guilty verdict...” Where the “jury has returned a guilty verdict, the court may set aside the verdict and enter an acquittal.” Fed. R. Crim. P. 29(c)(2). A defendant is entitled to a judgment of acquittal if the evidence presented at trial is insufficient to support his conviction. *See* Fed. R. Crim. P. 29(a)(1).

A. The Rule 29 Standard.

In considering a Rule 29 motion, the relevant question is “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in the original); *see also United Jones v. Jones*, 102 F.3d 804, 807 (6th Cir. 1996) (citations omitted); *United States v. McGee*, 529 F.3d 691, 696 (6th Cir.

2008) (citations omitted). Furthermore, a conviction can only be sustained where the evidence supporting the jury's verdict is "substantial." *United States v. McKee*, 506 F.3d 225, 232 (3d Cir. 2007) (stating that the court "must sustain the verdict if a rational trier of fact could have found the defendant guilty, and the verdict is **supported by substantial evidence**") (emphasis added); see also *United States v. Burgos*, 94 F.3d 849, 862 (4th Cir. 1996) (quoting *Glasser v. United States*, 315 U.S. 60, 80 (1942)). "[S]ubstantial evidence is evidence that a reasonable finder of fact could accept as adequate and sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." *Id.*

Thus, the question raised by a motion for a judgment of acquittal is whether "as a matter of law the government's evidence is insufficient 'to establish factual guilt' on the charges in the indictment." *United States v. Alvarez*, 351 F.3d 126, 129 (4th Cir. 2003) (quoting *Smalis v. Pennsylvania*, 476 U.S. 140, 144 (1986)). "[T]o avoid a Rule 29 judgment of acquittal, the government must have presented sufficient evidence to support a conviction based on reasonable inferences, as the fact finder is not entitled to make 'leaps of logic.'" *United States v. Crounsset*, 403 F. Supp. 2d 475, 479 (E.D. Va. 2005) (quoting *Evans-Smith v. Taylor*, 19 F.3d 899, 908 n.22 (4th Cir. 1994)).

B. The Government Has Not Presented Evidence Sufficient to Satisfy the Rule 29 Standard.

As stated above, Counts I through V of the indictment allege that the Defendant willfully attempted to evade and defeat the payment of a large part his income tax due and owing for the calendar years 2004 through 2008, all in violation of 26 U.S.C. § 7201, "by filing a false income tax return, by underreporting his income, and using COG contributions for personal use and not reporting the funds as income on his tax return, by failing to file a Report of Foreign Bank regarding an account in Switzerland, by failing to report the existence of that foreign account on

the Schedule B of his income tax returns, and by failing to report any of the interest made on the foreign account as income....”

The Court instructed the jury that the elements of the offenses charged were as follows:

- (1) *First*, an income tax was due and owing from the Defendant in addition to that declared in his income tax return;
- (2) *Second*, the Defendant made an affirmative attempt, in any manner, to evade or defeat this income tax; and
- (3) *Third*, the Defendant acted willfully in attempting to evade and defeat the tax.

Even viewing the evidence in this matter in the light most favorable to the government, the government failed to provide sufficient evidence for any rational trier of fact to find guilt beyond a reasonable doubt on each of the essential elements for each of the offenses alleged in the indictment. First, for each count of the indictment, the government failed to prove that the Defendant had an income tax due and owing in addition to what he declared on his income tax return. Second, for each count of the indictment, the government failed to prove that the Defendant made any affirmative attempt to evade or defeat any additional income. Finally, for each count of the indictment, the government failed to prove that the Defendant acted willfully in attempting to evade or defeat any tax.

As a result, the government failed to present sufficient evidence as to each element of each offense alleged in the indictment for a jury to find the Defendant guilty beyond a reasonable doubt. Accordingly, the Court must set aside the guilty verdict as to all five counts in the indictment and enter a judgment of acquittal.

CONCLUSION

For each of these reasons, the Defendant Ronald E. Weinland, by counsel, respectfully requests that the Court grant Defendant's motion for a judgment of acquittal.

A proposed order is submitted herewith.

Respectfully submitted,

/s/ J. Christopher Coffman

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J. Christopher Coffman

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CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2012, I electronically filed this document with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to counsel of record.

By: /s/ J. Christopher Coffman
J. CHRISTOPHER COFFMAN
Counsel for Ronald E. Weinland