

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
CLARENCE BRISCOE-BEY,)
)
 Defendant.)

Criminal Action No. 03-18-KAJ

MEMORANDUM ORDER

I. Introduction

On October 24, 2003, following a two-day jury trial, the Defendant was convicted of distributing more than 500 grams of cocaine, in violation of 21 U.S.C. § 841(a)(1), subjecting him to the penalties listed in 21 U.S.C. § 841(b)(1)(B). The defendant has filed three post trial motions: a Motion for Judgment of Acquittal (Docket Item ["D.I."] 134) and, in a combined document, a Motion for New Trial and a "Motion to Order the Government to Obtain and Analyze Palm Prints" (D.I. 135). The motions are without merit and are denied.

II. Background and Discussion

Detailed background information is not required to explain my ruling.¹ Suffice it to say that the trial involved a wealth of evidence from which a rational jury could conclude that the Defendant was guilty of the charged offense. Among other things, the jury listened to recorded conversations of the Defendant discussing with an informant a

¹The ruling rendered on the Defendant's motion to suppress contains greater detail about the background facts, as they existed on record before trial. (See D.I. 51.)

transaction involving ounces and “keys,” which a DEA agent testified meant ounce and kilogram quantities of cocaine; testimony from law enforcement officers who directly witnessed the Defendant come and go twice from the informant’s residence, consistent with the earlier mentioned recorded conversations; testimony that on his second trip to the residence, the Defendant appeared to be carrying something secreted under his coat, following his promise to return quickly (“give me about ten minutes”) with one “key”; testimony from a case agent about the kilogram of cocaine delivered to the DEA by the informant immediately after the Defendant left the informant’s residence on that occasion; and additional recorded conversations in which the informant and the Defendant discussed delivery of the payment for the transaction that had taken place. The jury also watched a videotape of the Defendant meeting with the informant, and, capping it all off, the jury heard testimony that the Defendant confessed to the crime and provided information about his drug source during the interview after his arrest.

The standard for determining whether to grant a judgment of acquittal in the face of a jury’s guilty verdict is stringent.

In reviewing a Fed.R.Crim.P. 29 post-verdict motion for judgment of acquittal, a district court must "review the record in the light most favorable to the prosecution to determine whether any rational trier of fact could have found proof of guilt beyond a reasonable doubt based on the available evidence." *United States v. Wolfe*, 245 F.3d 257, 262 (3d Cir.2001). The court is required to "draw all reasonable inferences in favor of the jury's verdict." *477 *United States v. Anderskow*, 88 F.3d 245, 251 (3d Cir.1996). Thus, a finding of insufficiency should "be confined to cases where the prosecution's failure is clear." *United States v. Leon*, 739 F.2d 885, 891 (3d Cir.1984).

United States v. Smith, 294 F.3d 473, 476 -477 (Third Cir. 2002).

Given the evidence, it is obvious that there was a more than sufficient basis for the jury's guilty verdict.

The Defendant's Motion for a New Trial and his motion to compel the development of further evidence are similarly without foundation. The Defendant asserts two theories for the relief he seeks. First, he tries to spin the prerequisite of newly discovered evidence into a rule allowing him to go fishing for new evidence. He notes that the undercover videotape of the Defendant with the informant failed to capture the second meeting between the two when the cocaine was allegedly delivered by the Defendant. According to the Defendant, he thought that a malfunction in equipment accounted for that but he later learned from testimony at trial that the meeting was not on tape because the transaction occurred not in the basement, where the camera was, but at the backdoor on the ground floor. (See D.I. 135 at 2.) He then argues that an unidentified palm print on the packaged kilogram of cocaine may belong to the informant's girl friend. The Defendant asks that the girl friend be made to give a palm print to be tested against the unidentified print, since a match "would support the finding that these were drugs [the informant] had already possessed and that a delivery did not take place [as alleged]" (D.I. 135 at 3.) The Defendant's second theory is that "the Government violated *Brady v. Maryland*, 373 U.S. 83 (1963) and Federal Rule of Criminal Procedure 16(a)(1)(E) by failing to disclose the above described context of the ... videotape of the basement of [the informant's] apartment." (D.I. 135 at 6.)

Federal Rule of Criminal Procedure 33 provides that "the court may vacate any judgment and grant a new trial if the interest of justice so requires."

The standard under Rule 33 is:

- (a) the evidence must be in fact newly discovered, i.e. discovered since trial;
- (b) facts must be alleged from which the court may infer diligence on the part of the movant;
- (c) the evidence relied on must not be merely cumulative or impeaching;
- (d) it must be material to the issues involved; and
- (e) it must be such, and of such nature, as that, on a new trial, the newly discovered evidence would probably produce an acquittal.

United States v. Barbosa, 271 F.3d 438, 467 (3d Cir. 2001). The Defendant has not even remotely met those requirements, and indeed has not directed his argument to showing that he has.

Perhaps it is because his argument for a new trial under this standard is so clearly deficient that the Defendant has tried to turn his demand for new evidence into a claim that the government has violated its *Brady* obligations. But, as the government points out, “the defendant has failed to cite a single case (under *Brady* or otherwise) in which the Government was required to *interpret* the discovery produced to the defendant” (D.I. 141 at 2; emphasis in original.) The Defendant was given the videotape. He could see on the tape that during the second meeting no one was on camera. More to the point, he himself was at the backdoor with the informant, a fact which he apparently does not deny, since the conversation was caught on audiotape. His assertion, then, that “because of the Government’s failure to disclose the context of the tape[,] the substance of the tape was not understood to the defense[,]” is simply incredible. He has not established any basis, under *Brady* or otherwise, for an order requiring a new trial or requiring the government to go about gathering further evidence for him.

Accordingly, it is hereby ORDERED that the Defendant's Motion for Judgment of Acquittal (D.I. 134), Motion for New Trial and "Motion to Order the Government to Obtain and Analyze Palm Prints" (D.I. 135) are DENIED.

Kent A. Jordan
UNITED STATE DISTRICT JUDGE

March 19, 2004
Wilmington, Delaware