

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	Criminal No.: 07-459 (RBK)
	:	
v.	:	
	:	
SHAIN DUKA,	:	
	:	
Defendant,	:	

**BRIEF IN SUPPORT OF MOTION FOR JUDGMENT OF ACQUITTAL PER F. R.
CRIM. P. 29 (c) and FOR A NEW TRIAL PER F. R. CRIM. P. 33.**

I. PRELIMINARY STATEMENT

On December 22, 2008, the defendant, Shain Duka, was found Guilty of the following: Count 1, Conspiracy to Commit Murder, in violation of 18 U.S.C. 1117; Count 3, Possession of a Weapon in Furtherance of a Crime of Violence, in violation of 18 U.S.C. 924 (c)(1)(a); Count 5, Possession of a Machine Gun in violation of 18 U.S.C. 922 (o); Count 6, Possession of a Weapon by Illegal Alien in violation of 18 U.S.C. 922 (g)(5) and Count 7, Possession of a Weapon by Illegal Alien in violation of 18 U.S.C. 922 (g)(5).

At the conclusion of the government's case, the defendant along with co-defendants moved for dismissal of the indictment pursuant to Rule 29 (a). Defendant, Shain Duka, renews his motion for a post-verdict judgment of acquittal pursuant to Rule 29 (c).

Defendant, Shain Duka, further submits this brief in support of a post-verdict motion pursuant to Federal Rule of Criminal Procedure 33.

II. LAW AND ARGUMENT

Defendant, Shain Duka, respectfully incorporates the memorandum of law submitted by defendant, Tatar and further relies upon the memorandum submitted on behalf of defendant, Eljvir Duka. Defendant, Shain Duka, wishes to review the evidence presented in the government's case against him as follows:

1. The government presented evidence that the defendant, Shain Duka, participated in a trip to the Pocono Mountains in January 2006, but failed to charge him with possession of the weapons at that time.

2. The government presented evidence of conversations by defendant, Shnewer to CW1 in which defendant, Shnewer indicated that Shain Duka was a willing participant in plans to attack U.S. military personnel.

3. In August 2006, the government informant CW1 indicated to FBI personnel that in his judgment, Shain Duka was not a knowing participant and further was simply interested in making money and eventually raising a family. It should be noted that there was no other conversations presented by CW1 which contradicted that earlier assessment.

4. The government failed to present any evidence that there were conversations involving Shain Duka with either defendant, Shnewer or CW1 relating to the subject matter of the conspiracy at anytime.

5. The government presented evidence that Shain Duka participated in a February 2007 vacation trip to the Poconos. During which time, the activities of Shain Duka and other co-defendants were completely consistent with a vacation. The government presented videos of target practice, horseback riding and general recreational activities Shain Duka participated in.

6. The government presented testimony of Evan Kohlmen, an expert in the field of terrorism, who opined that Shain Duka did not view any of the videos that were contained in the Shnewer or the Duka laptop. In cross examination, he was taken through each of the videos that he reported on as being significant and responded that he found no evidence that Shain Duka viewed any of these.

7. There were absolutely no conversations with CW1 and Shain Duka which could possibly be construed as evidence of involving an alleged conspiracy.

8. In numerous conversations with CW2, defendant, Shain Duka was consistent in his assertions that they did not have the courage or “ass” to do anything of a violent nature towards American military personnel in the United States. Clearly during conversations with CW2, Shain Duka did voice opinions regarding the mistreatment of Muslims on a worldwide basis but never articulated any desire to join a conspiracy to attack American soldiers in the United States. On the contrary, his responses were consistently to the contrary.

9. The government presented information regarding the negotiation and purchase of weapons by defendant, Dritan Duka and CW1. There was no conversation or other evidence suggesting that Shain Duka was a participant in the negotiations or had any knowledge of them.

10. The government presented evidence that the defendant, Shain Duka was present when the weapons were to be exchanged for money. However, during the recorded conversations at that time, there was never any indication that the weapons were to be used for anything other than target shooting for sport and recreational use in the Poconos. At no time did the defendant, Shain Duka ever utter any words that would suggest that these weapons were to be used for anything other than sporting events.

In light of the fact that there is absolute absence of conversations or any other form of

evidence which suggests that Shain Duka was a knowing participant in an agreement to murder American military personnel, the jury did not have sufficient evidence before it to reach the conclusion that was reported on December 22, 2008. Defendant, Shain Duka was not aware and did not participate in any discussions regarding a map of Ft. Dix. In further, was not a participant or had any knowledge of any other plans to attack the military facilities at Lake Hurst or Dover Air Force Base.

When reviewed in its totality, the government failed to produce sufficient evidence respecting the elements necessary to convict Shain Duka of conspiracy. In light of the fact that the government's evidence was insufficient to sustain the guilt in Count 1, Count 3 should also be the subject for the judgment of acquittal.

In the alternative that the court should grant a new trial pursuant to Federal Rule of Criminal Procedure 33 in that the interest of justice requires that the convictions imposed upon Shain Duka was against the weight of the evidence and therefore a miscarriage of justice.

Dated: January 23, 2009

Respectfully submitted,

/s/ Michael E. Riley, Esquire

Michael E. Riley, Esquire
The Washington House
100 High Street, Suite 103
Mount Holly, NJ 08060
(609) 914-0300
Attorney for Defendant, Shain Duka