

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA :
 :
v. : Criminal No. 2:08-cr-20585-GER-DAS-1
 :
PETER HENDRICKSON :

ORDER

AND NOW, this _____ day of November, 2009, upon consideration of Defendants' Motion for Judgment of Acquittal and/or New Trial and Defendant's Consent Motion for Leave to Supplement, IT IS HEREBY ORDERED that Defendant Peter Hendrickson shall, within thirty (30) days from the filing of the transcript in this matter, supplement, modify and/or withdraw his Motion for Judgment of Acquittal and/or Motion for New Trial.

ROSEN, C. J.

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PETER HENDRICKSON :

**DEFENDANT’S MOTION FOR JUDGMENT OF ACQUITTAL
AND/OR NEW TRIAL AND CONSENT MOTION FOR LEAVE TO SUPPLEMENT**

Defendant, Peter Hendrickson, by and through his undersigned counsel, and pursuant to the provisions of Fed.R.Crim.P. 29(c) and 33(a), hereby moves for judgment of acquittal and/or for a new trial. Additionally, Defendant, with Government consent, seeks leave to supplement this Motion upon review of the trial record. In support hereof, Defendant states the following:

1. On or about November 12, 2008, a grand jury sitting within this judicial district returned the Indictment in this matter.
2. Through the Indictment, the grand jury charged Defendant with ten (10) counts of willfully submitting false documents to the Internal Revenue Service in violation of 26 U.S.C. §7206(1). Specifically, the grand jury charged Defendant with submitting false personal income tax returns (Forms 1040) for the tax years 2000, 2002, 2003 and 2004 (Counts 1-4, respectively) and false Substitute for Form W-2, Wage and Tax Statements (Forms 4852) for the tax years 2000, 2002, 2003, 2004, 2005 and 2006 (Counts 5 through 10, respectively).
3. On October 20, 2009, Defendant proceeded to trial in this matter.
4. At the close of the Government’s case-in-chief, Defendant, in accordance with Fed.R.Cim.P. 29(a) orally moved for judgment of acquittal on all counts due to insufficient evidence as to several elements of the offenses at issue.
5. The Court denied Defendant’s oral motion for judgment of acquittal.

6. After Defendant presented some evidence, the Court submitted the case to the petit jury.

7. On October 26, 2009, the petit jury found Defendant guilty on all counts laid in the Indictment.

8. Defendant, pursuant to Fed.R.Crim.P. 29(c), hereby seeks judgment of acquittal for at least the reasons raised in his oral Fed.R.Crim.P. 29(a) motion.¹

9. Defendant also seeks a new trial under Fed.R.Crim.P. 33 for at least the following reasons:

a. The Court incorrectly instructed the jury in connection with several matters including, but not limited to, defining certain elements of the offense at issue; and

b. The Court erroneously denied certain pretrial motions.

10. Defendant makes this prophylactic Motion for Judgment of Acquittal and/or for New Trial to comply with the time constraints governing such motions as set forth in Fed.R.Crim.P. 29(c) and 33.

11. Defendant hereby seeks leave to supplement, modify, and/or withdraw his request(s) for judgment of acquittal and/or new trial for additional reasons and/or grounds which may become apparent after careful review of the trial record. Defendant expects to order the trial transcript shortly.

12. Undersigned counsel has sought and obtained Government concurrence with respect to Defendant's request to supplement his Motion for Judgment of Acquittal and/or his Motion for New Trial.

¹ In his oral Rule 29(a) motion, Defendant sought judgment of acquittal because the Government failed to offer any evidence that Defendant received wages and did not establish requisite materiality.

WHEREFORE, it is respectfully requested that, for the time being, this Court grant Defendant's Motion to Supplement, Modify and/or Withdraw the grounds for relief stated herein upon receipt and review of the record. Specifically, it is requested that the Court grant Defendant thirty (30) days from the date of filing of the transcript in which to supplement, modify and/or withdraw the grounds for relief stated herein.

Respectfully submitted,

CEDRONE & PINTO, P.C.

Dated: November 3, 2009

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**BRIEF/MEMORANDUM IN SUPPORT OF DEFENDANT'S
CONSENT MOTION FOR LEAVE TO SUPPLEMENT MOTIONS
FOR JUDGMENT OF ACQUITTAL AND/OR NEW TRIAL**

Defendant, by and through his undersigned counsel, submits this brief/memorandum in support of his Consent Motion for Leave to Supplement his simultaneously filed Motions for Judgment of Acquittal and/or New Trial.

I. INTRODUCTION/PROCEDURAL HISTORY

On or about November 12, 2008, a grand jury sitting within this judicial district returned the Indictment in this matter. Through the Indictment, the grand jury charged Defendant with ten (10) counts of willfully submitting false documents to the Internal Revenue Service in violation of 26 U.S.C. §7206(1). Specifically, the grand jury charged Defendant with submitting false personal income tax returns (Forms 1040) for the tax years 2000, 2002, 2003 and 2004 (Counts 1-4, respectively) and false Substitute for Form W-2, Wage and Tax Statements (Forms 4852) for the tax years 2000, 2002, 2003, 2004, 2005 and 2006 (Counts 5 through 10, respectively).

On October 20, 2009, Defendant proceeded to trial in this matter. At the close of the Government's case-in-chief, Defendant, in accordance with Fed.R.Cim.P. 29(a) orally moved for judgment of acquittal on all counts based on insufficient evidence as to several elements of the offenses at issue. The Court denied Defendant's oral motion for judgment of acquittal. After Defendant presented some evidence, the Court submitted the case to the petit jury. On October 26, 2009, the petit jury found Defendant guilty on all counts laid in the Indictment.

Simultaneous with this Memorandum, Defendant has moved, pursuant to Fed.R.Crim.P. 29(c) for judgment of acquittal. Preliminarily, Defendant requests judgment of acquittal for the reasons raised in his oral Rule 29(a) motion.

Defendant also seeks a new trial under Fed.R.Crim.P. 33. Specifically, Defendant requests a new trial based on erroneous jury instructions and the Court's denial of certain pretrial motions.

Defendant, with Government consent, seeks leave to supplement, modify and/or withdraw his request for judgment of acquittal and/or new trial for reasons or grounds which may become apparent after counsel reviews the trial record. Defendant expects to order the trial transcript shortly. Specifically, Defendant has requested that the Court allow him to supplement his Motion for Judgment of Acquittal and/or New Trial within thirty (30) days of the filing of the trial transcript.

II. ANALYSIS

Defendant has moved for judgment of acquittal and new trial under Fed.R.Crim.P. 29(c) and 33, respectively. Both of those rules contain time limits. Specifically, motions for judgment of acquittal and for new trial must be filed within seven (7) days of the jury's verdict.

The commentary to both rules, as well as Fed.R.Crim.P. 45 contemplates that the deadline for filing such motions can be extended. Defendant, however, has opted to file the motions and seek leave to supplement based upon grounds that may become apparent after more careful review and consideration of the trial record. Obviously, if Fed.R.Crim.P. 45(b) provides for extending the deadline to file motions for judgment of acquittal and/or new trial under Fed.R.Crim.P. 29(c) and 33, respectively, this Court certainly is authorized to accept the motion as presently filed and grant leave to supplement those motions for additional reasons which may become apparent upon review of the record.

As set forth in the Motion, Defendant's counsel has sought and obtained the concurrence of the Government with respect to its request for leave to supplement.

III. CONCLUSION

For all of the above reasons, it is respectfully requested that this Court grant Defendant's Motion for Leave to Supplement his timely Motions for Judgment of Acquittal and/or for New Trial pursuant to Fed.R.Crim.P. 29(c) and 33, respectively.

Respectfully submitted,

CEDRONE & PINTO, P.C.

Dated: November 3, 2009

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served this 3rd day of November, 2009, via the Electronic Case Filing ("ECF") System, upon the following:

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