

In considering a motion for judgment of acquittal, the court must view the evidence most favorable to the government and assume the truth of the evidence offered by the prosecution. If there is substantial evidence justifying an inference of guilt, the motion for acquittal must be denied. 2 C. Wright, Federal Practice and Procedure: Criminal §553, p. 486 (1969).

The court believes that the evidence was more than sufficient to sustain the conviction. Anna Lopez and Agripina Almonte identified the defendant as the man they saw in the Aqui Me Quedo Bar the morning that the victim, Pablo Reyes, was shot. Both women testified to having known the defendant for many years. Reyes also identified the defendant as the man who shot him. Whether or not the defendant did not drink or wear a gold chain were questions of fact for the jury. Moreover, the court does not believe resolution of those issues was critical to the ultimate verdict. Regardless, the jury chose to disbelieve the defendant when they found him guilty. The court, therefore, will deny the motion for a judgment of acquittal.

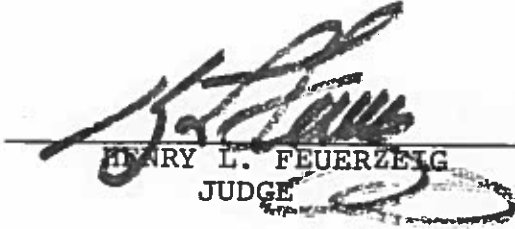
In considering a motion for a new trial, the court may weigh the evidence and consider the credibility of the witnesses. If the court reaches the conclusion that the verdict is contrary to the weight of the evidence and that a miscarriage of justice may have resulted, the court may set aside the verdict and grant a new trial. Id.

As stated, the defendant claims that he did not receive a fair trial, for among other reasons, because the sister-in-law of Joe Cranston was a juror. Cranston's name arose during the trial when defendant's counsel was cross-examining Juan Montes as to whether he knew Cranston and whether he looked like the defendant. Almost a week after the trial, defendant's counsel states that Cranston called him to say that his sister-in-law was "apparently concerned about his possible involvement."

The court believes that defendant's claim is too tenuous to justify a new trial. Because this is a small community, there always exists the possibility that one of the jurors will be related to someone who is tangentially mentioned in a case. Mere relation, however, does not indicate prejudice or a miscarriage of justice. That is particularly so where, as here, defendant's counsel expressly stated on the record that he was not in any way inferring that Cranston was connected to this incident. Even defendant's counsel's affidavit recognizes

that this fact, in and of itself, is insufficient to warrant the requested relief because counsel asks the court to investigate this matter to determine if this affected the defendant's opportunity to receive a fair trial. Moreover, the court is of the opinion that it would be improper for the court to investigate the matter because that would entail questioning a juror about the effect of an extraneous influence upon her mind. See Id., §554, p. 492. Accordingly, it is

ORDERED that defendant's motion for acquittal and for a new trial is denied.



HENRY L. FEUERZEIG
JUDGE