

FACTS

In its case-in-chief, the government presented evidence showing that between the dates charged in the indictment, a narcotics trafficking organization existed and operated between buildings 12 and 13, commonly known as the Middle Court, in the P.T. Barnum Housing Project ("P.T. Barnum") in Bridgeport, Connecticut. Members of this organization, including Morris and Willie Nunley, a.k.a. "Man," regularly carried firearms and/or wore bulletproof vests, and were expected to use violence to enforce the exclusive right to sell narcotics in the Middle Court.

During the morning of August 2, 1998, Morris and Kenneth Porter, a.k.a. "Inky," were playing dice between buildings 12 and 13 at P.T. Barnum. Morris was a street-level drug dealer employed and supervised by Nunley, a lieutenant in the drug organization known to use violence. Before working in the Middle Court area, Morris had been employed as a street-level dealer at another drug outlet run and operated at another housing project within Bridgeport. Porter was a street-level dealer for a rival narcotics trafficking group.

Eugene Rhodes, another lieutenant in the organization, testified that Morris had allowed Porter to take approximately fifty dollars of Morris' money during a dice game. After

being informed of this, Nunley became angry at Morris, slapping him and berating him with statements, such as "I wouldn't let him punk me down like that" and "there aren't any punks down here." Kevin Jackson, another member of the drug organization, testified that Nunley told Morris: "You let him come over to your spot and take your money."

James Earl Jones, a lookout for the drug organization, testified that he saw Nunley walk to the vicinity of building 6, where the organization kept its firearms, and then walk to building 14. Afterward, Jones heard gunshots ring out. Jones testified that he saw Morris and Nunley converge as if they were passing an object between them. Jones also testified that, after the Porter murder, he saw Nunley meeting with Luke Jones, a high-ranking member of the drug organization, and overheard Nunley explaining what had happened. When Luke Jones directed Nunley to dispose of the firearm, Nunley responded that he had already done so.

Other people witnessed the Porter murder. For example, soon after Porter was shot, Jackson saw Morris running by holding a revolver pointed toward the sky. Rhodes also testified that Nunley had told Morris when to commence shooting at Porter.

DISCUSSION

Under Rule 29(a) of the Federal Rules of Criminal Procedure, the court "shall order the entry of judgment of acquittal of one or more offense charged in the indictment . . . if the evidence is insufficient to sustain a conviction of such offense or offenses." Fed. R. Crim. P. 29(a). A defendant seeking judgment of acquittal at the close of the government's case must demonstrate that "no rational trier of fact could [find] the essential elements of the crime charged beyond a reasonable doubt." United States v. McDermott, 245 F.3d 133, 137 (2d Cir. 2001) (internal quotation marks omitted).

The Violent Crime In Aid Of Racketeering ("VICAR") statute targets "whoever . . . for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity, murders . . . or threatens to commit a crime of violence against any individual in violation of the laws of any State . . . or attempts or conspires to do so." 18 U.S.C. § 1959(a). The Second Circuit Court of Appeals has held that the following five elements must be established to obtain a conviction under VICAR: (1) that the organization was a RICO enterprise; (2) that the enterprise was engaged in racketeering activity as defined by

RICO; (3) that the defendant in question had a position in the enterprise; (4) that the defendant committed the alleged crime of violence; and (5) that his general purpose in doing so was to maintain or increase his position in the enterprise.

United States v. Concepcion, 984 F.2d 369, 381 (2d Cir. 1992).

Although Morris does not concede that the first four elements of this offense have been proven, he primarily argues that the government has failed to meet its burden on the fifth element. More specifically, he contends that because the Porter murder arose from a dice game and not from the enterprise's drug trafficking activity, the government has failed to prove that the murder was committed for the purpose of maintaining or increasing his position in the enterprise.

Viewing the evidence presented by the government in the light most favorable to it and drawing all reasonable inferences in its favor, the court finds that a rational trier of fact could find the fifth VICAR element proven beyond a reasonable doubt. Under Concepcion, the government does not have to prove that the promotion or maintenance of one's own position within the organization was the sole, or even the principal, motivation for the crime. Rather, "the motive requirement [is] satisfied if the jury could properly infer

that the defendant committed this violent crime because he knew it was expected of him by reason of his membership in the enterprise or that he committed it in furtherance of that membership." Id. at 381 (emphasis added); see also United States v. Colon, 1998 WL 846744 (D. Conn. 1998) (violent crime triggered by victim's "disrespectful" behavior to rival gang's girlfriends), 1 Fed. Appx. 20, 2001 WL 11050 (2d Cir. 2001) (denying motion for a new trial). Moreover, a jury can "infer this motive if the act of violence was a response to any threat to . . . the defendant's position in the organization." See United States v. Thai, 29 F.3d 785, 818 (2d Cir. 1994).

A rational jury reviewing the evidence in this case could reasonably conclude that Morris murdered Porter for the purpose of maintaining his position in the organization or because he knew it was expected of him as a member of the organization. First, since Morris was a newcomer to P.T. Barnum, his involvement in the shooting could be construed as proof of a motivation to establish or increase his role in the organization. Second, although the dispute between Morris and Porter involved the small sum of fifty dollars, a jury may reasonably conclude that these funds were profits from the sale of narcotics.

Third and most importantly, a jury could conclude that Morris shot Porter because he felt obligated to serve the organization's larger objective of controlling the illegal drug trade in the Middle Court. Porter, a street-level dealer for a rival narcotics trafficking group, was killed in proximity to the Middle Court. Nunley, the lieutenant to whom Morris reported, was responsible for, among other things, keeping rival gangs from selling their drugs on this profitable turf. In fact, as Kevin Jackson testified, Nunley allegedly told Morris: "You let [Porter] come over to your spot and take your money." Furthermore, Nunley directed and supplied him with the weapon to commit the murder, and then disposed of it. Thus, based on all circumstances surrounding the shooting, a reasonable trier of fact could reasonably conclude that Morris committed the Porter murder because he knew he was expected to deter rival drug gangs from selling within or near the Middle Court. Accordingly, a jury could reasonably conclude that the fifth VICAR element has been satisfied.

CONCLUSION

For the foregoing reasons, Morris's motion for judgment of acquittal [Doc. # 1223] is DENIED.

SO ORDERED this day of November, 2002, at
Bridgeport, Connecticut.

Alan H. Nevas
United States District Judge