

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 13-cr-20564

v.

HONORABLE STEPHEN J. MURPHY, III

D-3 FOUAD FARAJ,

Defendant.

_____ /

**ORDER GRANTING IN PART AND DENYING IN PART
FOUAD FARAJ'S MOTION FOR ACQUITTAL (document no. 252)**

A jury convicted Fouad Faraj ("Fouad") of engaging in a continuing criminal enterprise, 21 U.S.C. § 848(a) & (c), and of conspiring to sell between fifty and one hundred kilograms of marijuana, *id.* §§ 841 & 846. ECF No. 249. At the close of the government's case and again at the close of trial, Fouad moved for a judgment of acquittal, arguing that there was insufficient evidence to support his conviction. The Court took the motions under advisement. Following the jury's verdict, Fouad again moved for judgment of acquittal, or in the alternative, for a new trial. ECF No. 252. The Court ordered the government to file a supplemental brief specifically addressing whether Fouad was an organizer, supervisor, or manager of the drug organization. Having reviewed all the submissions and reexamined the trial transcript, the Court finds that there was insufficient evidence that Fouad was an organizer, supervisor, or manager within the meaning of 21 U.S.C. § 848(c)(2)(A). Accordingly, the Court will grant Fouad's motion with regard to that count only. Should the government appeal and the Sixth Circuit find that there was sufficient evidence that Fouad engaged in a continuing criminal enterprise, the Court will

order a new trial pursuant to Criminal Rule 33. Finally, the Court will deny Fouad's motion for acquittal of the conspiracy count.

BACKGROUND

I. The Drug Sales Centered Around Fouad's House

In the spring of 2009, Fouad's younger brother Mohamed approached a childhood friend, Hafez Hammoud, and asked Hammoud to help him sell marijuana. Tr. 10/30/2014 pg 66, ECF No. 269. Later that day, Mohamed and Hammoud met at Fouad's house along Rutherford Street in Detroit, and agreed to deal drugs from the home. *Id.* at 69. Customers would arrive from the City of Dearborn, which was only a few blocks away from Rutherford. Mohamed would call Hammoud, "tell [him] when to serve them up, what car they would be in, what they wanted, and [Hammoud] would . . . take care of the hand-to-hand sales." *Id.*

A few months later, a man named "Ziggy" approached Mohamed and Hammoud while they were standing on the street. *Id.* at 71–72. Ziggy offered to supply them with a more potent form of marijuana called "Kush." *Id.* They tested it out and found that although it was more expensive, it sold at a faster rate than the marijuana they had peddled previously. *Id.* at 73. The only problem was they needed money to buy an initial amount. *Id.* at 73. They approached another of Fouad's brothers, Abed, who invested \$9,000 to purchase four pounds of Kush.¹ *Id.* at 74–75.

Once they began selling Kush, the crew's business increased dramatically. *Id.* at 75. Hammoud and Mohamed hired several local teenagers to help them with the street sales. *Id.* at 77–79. They also moved the operation to abandoned and vacant homes along Rutherford Street. Tr. 10/30/2014 pg 82, ECF No. 269; Tr. 11/10/2014 pgs 69, 73, ECF No.

¹The jury acquitted Abed of all charges.

275. Fouad owned a vacant house that Hammoud used to package the marijuana each night. Tr. 10/30/2014 pg 83, ECF No. 269. From 9:00 a.m. until 2:00 a.m. they would sell drugs along the street. *Id.* Customers would call Hammoud on his drug phone and provide a description of their car. *Id.* at 80–81. When the car arrived, Hammoud would approach, ask what the customer wanted, and receive payment. *Id.* at 79–81. He would then relay the order to the younger workers, who would retrieve the drugs from burnt-out houses and take the drugs to the customer. *Id.* at 81, 84.

During 2009, several of the houses along Rutherford Street were unoccupied, but not yet abandoned. "[T]he brothers decided that they should burn it down, burn the houses down. It was to serve a dual purpose: To make them abandoned completely for us to use, and . . . Fouad was hoping the fire would sweep his houses up and get him some insurance money." *Id.* at 95. Mohamed therefore ordered one of the youths to burn down several unoccupied houses along Rutherford Street. *Id.*

At some point in 2009, Mohamed and Hammoud approached Fouad and told him that they needed a safe-house, somewhere they could flee to if they saw the police approaching. *Id.* at 90. They told Fouad that it was harder for police to get a warrant to search an occupied residence, and that use of Fouad's house would be helpful. *Id.* Fouad agreed that they could use his home as a safe-house, and in return Mohamed and Hammoud paid Fouad between \$200 and \$300 per day. *Id.* at 87, 90–91, 149. Fouad also allowed them to use the electric meters behind his house. *Id.* at 107–08. Hammoud or one of the hired teenagers would hook up a space heater to Fouad's electric meter. *Id.* They would then place the space heater in one of the abandoned houses, and use it to stay warm while selling drugs during the winter months. *Id.*

At trial, the government asked one of the teenage workers whether, during the winter of 2009, "did anybody start working as supervisors watching over you all workers . . . [i]n terms of watching over you all and warning you about police presence." Tr. 11/10/2014 pg 121, ECF No. 275. The worker responded "Yeah . . . Abed and Fouad." *Id.* The testimony does not offer any additional facts, or any particular incidents showing Fouad's supervisory role during the winter of 2009.

In September of 2010, police arrested one of the teenage workers in the alley behind Fouad's house. Tr. 10/30/2014 pg 157, ECF No. 269. The police found him asleep with an AK-47 sitting in his lap. *Id.* A few days later, police chased another young worker to Fouad's house, and arrested him on the property's front porch. Tr. 11/5/2014 pg 170, ECF No. 272. Fouad was at home that night, and told the officer that "he didn't give that guy permission to be in his house and he doesn't know who he is." *Id.* at 172. In the following days, Fouad became nervous because the police were chasing workers to his property. Tr. 10/30/2014 pg 159, ECF No. 269. Fouad did not want his house to be used as a safe-house anymore, and if it was to be used as a safe-house, he wanted more money. *Id.* at 160. Mohamed, however, was unwilling to pay him a larger portion of the profits. *Id.*

Due to the increased police presence, Mohamed moved the drug sales from Rutherford Street to different parts of the neighborhood, including Greenview Avenue and Longacre Street, a few blocks west of Rutherford. Tr. 10/30/2014 pg 161, ECF No. 269; Tr. 11/10/2014 pg 123, ECF No. 275. In April of 2011, the police arrested Mohamed as he attempted to resupply one of the teenagers working near Longacre street. Tr. 11/10/2014 pg 124, ECF No. 275. The youth escaped. He later told Fouad that Mohamed had been arrested, and gave Fouad that day's drug proceeds. *Id.* The worker testified that Mohamed

had "ordered him to give [the money] to [Fouad] or Abed if anything went wrong." *Id.* at 124–25.

Sometime in 2011, the police again arrested Mohamed, this time as the result of a traffic accident. Tr. 11/13/2014 pg 185, ECF No. 277. At the time, Hammoud had taken a temporary break from drug dealing to work as a waiter at a Coney Island style restaurant. Tr. 10/30/2014 pgs 161–62, 166, ECF No. 269. Ali Bazzi, one of the street workers, testified that for two weeks following Mohamed's arrest Fouad "would make sure that all the workers were working, he would control the money." Tr. 11/13/2014 pg 185, ECF No. 277. After that two-week period, Mohamed Ayoub was responsible for running the organization on a day to day basis. *Id.*

The locus of drug dealing stayed at Greenview Avenue until the fall of 2011, when Mohamed moved the organization back to Rutherford. Tr. 10/30/2014 pg 168, ECF No. 269. The organization continued to sell along Rutherford Street until 2013, when the police arrested most of the conspirators.

II. Other Testimony Involving Fouad

Testimony revealed additional evidence involving Fouad. Officer Wiencek testified that one night he investigated an abandoned house on Rutherford Street. Tr. 11/4/2014 pg 140, ECF No. 271. As he exited the building, Fouad approached him and told him to stop harassing the people who lived in the neighborhood. *Id.* at 143. The encounter ended with Fouad arrested, and both Fouad and Officer Wiencek going to the hospital.² *Id.* at 146.

²After the events leading to his arrest and hospitalization, Fouad apparently filed a civil suit against Officer Wiencek. Part of the settlement included an agreement that Fouad could not speak further about the incident. Based on the Court's concern that the agreement might prevent Fouad from telling his side of the story, the Court prevented any additional testimony regarding the encounter. *Id.* at 144–45.

In addition, neighbors testified about seeing Fouad at his house. One neighbor testified that she saw a "pretty flashy van . . . with rims" and another car that had a "chameleon paint" job parked at Fouad's house. Tr. 10/29/2014 pg 129, ECF No. 268. She identified Fouad as the owner of the "flashy van." *Id.* at 130. And she stated that the area near his house was the center of the drug sales occurring on the block. *Id.* at 131.

Another neighbor similarly testified that people were constantly transacting with cars temporarily stopped in front of Fouad's house. Tr. 11/14/2014 pg 148, ECF No. 278. He also identified Fouad's van, though he associated both the van and the house with a "short stocky guy" and did not explicitly identify Fouad. *Id.* at 149. And the person who bought the property across the street stated that when Fouad was moving out of the house (Fouad sold his house in 2013), he would sometimes speak with the people selling drugs. *Id.* at 164.

STANDARD OF REVIEW

When reviewing a motion for acquittal, the Court reviews the evidence "in the light most favorable to the prosecution." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). The Court must then determine "whether any rational trier of fact could have found the contested elements of the crime beyond a reasonable doubt." *United States v. Garcia*, 758 F.3d 714, 718 (6th Cir. 2014). The defendant "bears a 'very heavy burden' when he challenges the sufficiency of the evidence." *United States v. Owens*, 426 F.3d 800, 808 (6th Cir. 2005) (quoting *United States v. Spearman*, 186 F.3d 743, 746 (6th Cir.1999)). The Court neither independently weighs the evidence, nor makes its own assessment of the credibility of the witnesses who testified at trial. *United States v. Howard*, 621 F.3d 433, 460 (6th Cir. 2010).

Under Criminal Rule 33, "the court may vacate any judgment and grant a new trial if the interest of justice so requires." Fed. R. Crim. P. 33(a). Unlike a motion for judgment of acquittal under Criminal Rule 29, the court may weigh the evidence and assess the credibility of the witnesses. *United States v. Lutz*, 154 F.3d 581, 589 (6th Cir.1998). A motion for new trial is premised on the argument that the jury's verdict was against the manifest weight of the evidence. *United States v. Hughes*, 505 F.3d 578, 593 (6th Cir. 2007). Such motions are granted only in the extraordinary circumstance when the evidence preponderates heavily against the verdict. *Id.* at 593 (quoting *United States v. Turner*, 490 F. Supp. 583, 593 (E.D. Mich. 1979). Motions for a new trial are disfavored and should be granted with caution. *United States v. Seago*, 930 F.2d 482, 488 (6th Cir.1991).

DISCUSSION

I. Sufficiency Of The Evidence Of Continuing Criminal Enterprise

To convict a defendant of engaging in a continuing criminal enterprise, the government must prove:

(1) that the defendant committed a felony violation of federal narcotics laws; (2) that the violation was part of a continuing series of three or more drug offenses committed by the defendant; (3) that the defendant committed the series of offenses in concert with five or more persons; (4) that the defendant acted as an organizer, supervisor, or manager with regard to these five or more persons; and (5) that the defendant obtained substantial income or resources from this series of violations.

United States v. Burns, 298 F.3d 523, 535 (6th Cir. 2002); 21 U.S.C. § 848(c).

Fouad contends that there was insufficient evidence that he acted as an organizer, supervisor, or manager of more than five co-conspirators. The "defendant need not have the same type of relationship with each individual, and the relationships need not exist at

the same time." *United States v. Ward*, 37 F.3d 243, 247 (6th Cir. 1994). Furthermore, "the terms organizer, supervisor, or manager are to be given their ordinary meaning." *Id.* "To satisfy this element, the government must show the defendant specified the supervisees' activities in adequate detail." *United States v. Eiland*, 738 F.3d 338, 356 (D.C. Cir. 2013) (internal brackets and quotation marks omitted).

For example, in *United States v. Jones*, 801 F.2d 304, 308–09 (8th Cir. 1986)³ the defendant exercised sufficient managerial authority over lower-level drug dealers when he instructed them on the language they could use to refer to drugs over the phone, set prices for the drugs, dictated whether the sales would be cash or credit, told them who they could sell drugs to, forced the customers to pay promptly, and set the quality of the drugs. In *English*, the Sixth Circuit found that the defendant was a manager over couriers who transported his drugs, as well as accomplices who stored his cocaine at their homes. 925 F.2d at 157. In addition, "[a] person can be found to be under the defendant's organization or supervision because she knew about the drug operation, took orders directly from the defendant and helped in the drug business." *United States v. Avery*, 128 F.3d 966, 973 (6th Cir. 1997); see also *United States v. King*, 169 F.3d 1035, 1042 (6th Cir. 1999) (finding defendant had managerial authority over at least five couriers whom the defendant recruited, and who operated at the defendant's direction).

³ In *United States v. Baltimore*, 482 F. App'x 977, 984 (6th Cir. 2012), *Ward*, 37 F.3d at 247, *United States v. Chalkias*, 971 F.2d 1206, 1214 (6th Cir. 1992), and *United States v. English*, 925 F.2d 154, 157 (6th Cir. 1991), the Sixth Circuit cited *Jones* as persuasive authority.

A. Mohammed Alhakami

Mohammed Alhakami was one of the youths that Mohamed and Hammoud recruited to sell marijuana. Tr. 10/30/2014 pg 95, ECF No. 269. In 2011, Mohamed moved the drug operation to streets west of Rutherford, including Longacre Street. Tr. 11/10/2014, pg 123, ECF No. 275. In April of 2011, the police arrested Mohamed as he attempted to deliver a marijuana resupply to Alhakami. *Id.* As the police approached, Alhakami jumped a fence and escaped. *Id.* Alhakami testified that later that day he "gave the marijuana sales money to Fouad" and "let him know that [Mohamed] got arrested at Longacre." *Id.* at 124. He explained that he "was ordered from [Mohamed] to give [the money] to [Fouad] or Abed if anything went wrong." *Id.* at 124–25.

A jury could find that Fouad exercised supervisory or managerial authority over Alhakami. Admittedly, the testimony does not reveal that Fouad ordered Alhakami to do anything, or took any steps other than receiving the money. Nonetheless, the testimony stated that Mohamed ordered Alhakami to report to Fouad if anything went wrong, and gave a specific incident where Fouad acted in a position of authority.

B. Ali Bazzi

Ali Bazzi was another street worker in the organization. He testified that at some point in 2011, the police arrested Mohamed due to a traffic accident. Tr. 11/13/2014 pg 185, ECF No. 277. Bazzi testified that for two weeks after the arrest, Fouad "would make sure that all the workers were working, he would control the money." *Id.* The testimony did not include any additional factual development. It did not specify the time frame to anything more specific than, "I'd say around like 2011." *Id.* And it did not specify what people were working during the two-week period. The last point is important because many of the

workers came and went on an intermittent basis. Thus, while a jury could infer that, for those two weeks, Fouad supervised Bazzi, there was insufficient evidence that he supervised anyone else.

C. Ali Al-Hisnawi

While the government does not mention Al-Hisnawi in its supplemental brief, the Court finds that there was evidence that Fouad had a managerial role over Al-Hisnawi. Hammoud testified that Mohamed and Fouad decided to burn down several unoccupied houses along the street. Mohamed wanted to burn down the houses so he could use the shells to sell drugs; Fouad hoped the fires would consume his houses, so that he could recover insurance money. Tr. 10/30/2014 pgs 94–95, ECF No. 269. While Mohamed was the person who ultimately gave the order to Al-Hisnawi to torch the residences, the jury could find that Fouad occupied a position of authority over Al-Hisnawi when he burned down the buildings.

D. The First Few Months Of The Conspiracy

The Government also relies on Fouad's role at the beginning of the conspiracy to show that he had a managerial position over five people. During the spring of 2009, Mohamed and Hammoud met at Fouad's house, and decided that they would sell drugs out of the home. Tr. 10/30/2014 pg 69, ECF No. 269. A few months later Ziggy approached Mohamed and Hammoud while they were standing in the street, and offered to supply them with Kush. *Id.* at 71–72. Mohamed, Hammoud, and Abed later met in Fouad's house; Abed agreed to invest \$9,000 in the new product, and the group began selling Kush from abandoned homes down the street. *Id.* at 74–75.

Hammoud's testimony about the crew's origin does not establish that Fouad joined the conspiracy, much less that he had a managerial role. Indeed, Hammoud's testimony about the beginning of the drug sales does not mention Fouad, other than to say Mohamed and Hammoud conducted business out of his house. The testimony does not mention any actions that Fouad took. Nor did Hammoud state that Fouad was present at either his initial meeting with Mohamed, or his later meeting with Mohamed and Abed.

E. The Bag-Up House

After Mohamed and Hammoud began selling Kush, they moved the point of sale to abandoned houses down the street. Tr. 10/30/2014 pg 82, ECF No. 269. Hammoud also used a vacant house on the block, owned by Fouad, to package the marijuana. *Id.* at 83. And in the winter, Hammoud and the workers connected a space heater to Fouad's electric meter as a way to keep warm while bagging marijuana at night. *Id.* at 107–08.

Even assuming that Fouad acquiesced in the use of his vacant property and electric meters, the evidence does not show that he had managerial authority. Indeed, Hammoud's testimony about this time period does not disclose any instance when Fouad ordered anyone to do anything. Nor did the testimony show that Fouad supervised the bagging operation, or participated in the drug sales. Furthermore, while courts have stated that a person who stores drugs in their home may be a supervisee, *see English*, 925 F.2d at 157, a person does not become a supervisor merely because he allows others to use his property for drug sales, without exercising some other form of control or supervision. For example, in *Ward*, 37 F.3d at 249, defendant Ward rented a house where Mark and Edroy Dickens sold drugs. The Court found that Ward had managerial control over Mark and Edroy, but only after noting a specific instance when the brothers acted as Ward's

enforcers during a drug transaction. *Id.* Here, unlike in *Ward*, the testimony did not reveal any specific occurrence when Fouad controlled or supervised the bagging operation, or when the street workers acted at his behest.

F. The Safe House

At some point in 2009, Mohamed and Hammoud asked Fouad if they could use his property as a safe-house, explaining that it was harder for the police to get a warrant to search an occupied residence. Tr. 10/30/2014 pg 90, ECF No. 269. Fouad agreed to allow people to use his house as a way to evade the police, in return for \$200 to \$300 per day. *Id.* at 87. Furthermore, in September of 2010, the police chased a fleeing worker to Fouad's house and arrested the worker on the front porch. Tr. 11/5/2014 pg 170, ECF No. 272.

The government argues that the testimony "demonstrated how the defendant acted as a supervisor for the younger workers, someone who the dealers could go to avoid police." Supplemental Br. 6, ECF No. 341. The testimony only showed, however, that workers could go to Fouad's house to avoid police because the Fourth Amendment "has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." *Payton v. New York*, 445 U.S. 573, 590 (1980). That protection existed regardless of whether Fouad was at home, or undertook any additional actions, managerial or otherwise. But the testimony did not reveal a single instance when Fouad acted to protect or hide the workers, other than by allowing them to flee to his home. Indeed, the only testimony that involves Fouad actually taking an affirmative action was when he told Officer Jaber that "he didn't give that guy permission to be in his house and he doesn't know who he is." Tr. 11/5/2014 pg 172, ECF No. 272.

And, as explained above, merely renting out his property as a safe house does not establish that he held a managerial position over the workers.

G. Fouad's Role In The Winter Of 2009

During his testimony, the government asked Mohammed Alhakami:

Q: Now, during the winter of 2009 did anybody start working as supervisors watching over you all workers?

A. Supervisors as not making narcotic deals?

Q. In terms of watching over you all and warning you about police presence?

A. Yeah.

Q. Who?

A. Abed and Fouad.

Tr. 11/10/2014 pg 121, ECF No. 275. Beyond this brief exchange, there is no factual development about Fouad's role supervising workers during the winter of 2009. As the D.C. Circuit recently explained when rejecting similarly conclusory testimony about a criminal defendant's position in an organization's hierarchy, a lay witness's "opinion regarding [defendant's] role has no more weight than the facts upon which it is based, and those facts were insufficient." *Eiland*, 738 F.3d at 357. Here, the government elicited no additional facts from which a jury could determine that Fouad was a supervisor during the winter of 2009.

H. The Decision To Move The Organization

After the police arrested several workers in September of 2010, including one on Fouad's front porch, there was a rift between Fouad and Mohamed. According to Hammoud's testimony, the "upper echelon of our crew," which he defined as including Fouad, "started getting nervous about it because people that would run to Fouad's house,

the police started chasing them there. They started knowing where to follow us." Tr. 10/30/2014 pg 159–60, ECF No. 269. Based on the heightened police presence on the block, "Fouad didn't want his house to be used as a safe house no more, and it was to be used as a safe house, he wanted a bigger cut. [Mohamed] wasn't willing to give him more money and it was just too much to handle." *Id.* at 160. Shortly thereafter, Mohamed and Hammoud moved the stash house, and Mohamed moved the locus of street sales west to Greenview Avenue. *Id.* at 160–61.

The testimony does not show that Fouad supervised or organized any of the workers. Hammoud's conclusion that Fouad was part of the group's upper echelon, much like Alhakami's statement that Fouad was a supervisor, is only probative to the extent it is buttressed by facts. The testimony revealed that Fouad was concerned because he did not want the police to connect his residence to the drug sales. And he therefore negotiated for a higher price. But it was Mohamed that made the decision not to pay Fouad any additional money for the use of his property. And it was Mohamed and Hammoud who made the decision to move the main stash house from Dearborn to Hammoud's apartment, and to move the drug sale location away from Rutherford Street.

An analogous situation would be if a landlord rented commercial space to a tenant. The landlord would not be a supervisor of the tenant's employees. Nor would negotiating with the tenant for higher rent mean the landlord occupied a position of management within the tenant's business. The same principle applies here.

I. Fouad's Interaction With Officer Wiencek

Officer Wiencek testified that Fouad accosted him while he investigated an abandoned house along Rutherford Street. Tr. 11/4/2014 pg 140, ECF No. 271. Taking every inference in favor of the government, the testimony showed at most that Fouad knew the organization was selling drugs out of the abandoned houses and wanted to prevent Officer Wiencek from seizing any contraband. Such evidence could show that Fouad was a part of the conspiracy. But it is not probative of Fouad's role within the organization: A low-level worker, as much as a manager, could take steps to prevent an officer from discovering drugs. Moreover, it does not establish that Fouad exercised authority over any other person because no other conspirator was involved in the incident.

J. Other Testimony

Several neighbors also testified about the drug transactions along Rutherford Street. Two neighbors testified that the drug sales centered on Fouad's house, that there was a flashy van parked along the street outside the property, and that they associated the vehicle with Fouad. Tr. 10/29/2014 pg 129, ECF No. 268; Tr. 11/14/2014 pg 148, ECF No. 278. But neither neighbor testified that they saw Fouad participate in any drug sales. And the only reason they could connect Fouad to the residence was because his car was parked out front. The testimony demonstrated that the organization was selling drugs around Fouad's house while Fouad was home, but does not otherwise show his role within the organization. And as explained above, merely selling drugs near Fouad's house does not establish that he was a manager within the organization.

Another neighbor testified that when Fouad was moving out of his house in 2013 he would occasionally speak with the workers. Tr. 11/14/2014 pg 148, ECF No. 278. But the testimony did not reveal whether the discussion was drug related. A jury could not infer

from the neighbors' testimony that Fouad managed any of the workers. See *Eiland*, 738 F.3d at 358 (explaining that testimony showing the defendant met with a drug dealer outside of a restaurant did not support an inference that defendant managed the dealer).

K. Fouad Did Not Act Through Co-conspirators

The final issue is whether Fouad acted through his co-conspirators to manage low-level workers. In general, "[a]n individual need not have direct communications with participants in order to be their supervisor . . . If a defendant personally hires only the foreman, that defendant is still responsible for organizing the individuals hired by the foreman to work as the crew." *United States v. Patrick*, 965 F.2d 1390, 1397 (6th Cir. 1992) (citing *United States v. Rosenthal*, 793 F.2d 1214, 1226 (11th Cir. 1986)). If the rule were otherwise, "drug king pins [could] organize their dealings in such a way as to escape responsibility." *King*, 169 F.3d at 1043; see also *Ward*, 37 F.3d at 250 (rejecting government's argument that Ward acted through his co-conspirator and reasoning that "there is simply no proof that Hicks was a 'foreman' for Ward. While Hicks may have been in partnership with Ward, there is insufficient evidence that Hicks was under Ward's control").

The only instance when Fouad arguably acted through an intermediary was when Mohamed ordered Al-Hisnawi to burn down several houses along the street, see Section I.C., *supra*. Other than that, however, there is no evidence that Fouad gave orders to or supervised Mohamed, Hammoud, or Ayoub, or that their supervision of street workers was on Fouad's behalf.

L. Conclusion

In short, the Court finds that the jury could have found Fouad held a supervisory position over Mohammed Alhakami, Ali Bazzi, and Ali Al-Hisnawi. But there was insufficient evidence that Fouad occupied a managerial position with respect to any other person. While the Court must make every inference in favor of the government, the Court cannot credit testimony that was not given in the case. Accordingly, the Court will grant Fouad's motion for acquittal.

II. New Trial Regarding Continuing Criminal Enterprise

If the government seeks appellate review and the Sixth Circuit finds that the evidence was sufficient to support the conviction, the Court will nonetheless order a new trial. Fed. R. Crim. P. 33. The evidence showing Fouad's managerial role in the conspiracy was slim, at best. There was no testimony that Fouad ordered anyone to do anything. He was not present at the meetings at the beginning of the conspiracy. Tr. 10/30/2014 pgs 66, 71–72, 74–75, ECF No. 269. He did not know the location of the main stash house. *Id.* at 136. It was Mohamed, not Fouad, who decided where and when to move the drug sales in 2010 and 2011. *Id.* at 161. There was no evidence that Fouad directly participated in the sale or packaging of marijuana, other than allowing the crew to use his properties. Indeed, the few mentions of Fouad in the case were buried in four weeks of testimony, much of which was irrelevant to Fouad's role in the enterprise. The case presents the rare extraordinary circumstance when a new trial is warranted.

III. Sufficiency Of Evidence Regarding Conspiracy To Sell Marijuana

Fouad also argues that there was insufficient evidence that he joined the conspiracy to sell marijuana. To establish a conspiracy under 21 U.S.C. § 846, the government must prove 1) an agreement to violate the drug laws, 2) knowledge and intent to join the

conspiracy, and 3) participation in the conspiracy. *United States v. Martinez*, 430 F.3d 317, 330 (6th Cir. 2005).

The testimony established that Fouad joined the conspiracy to sell marijuana. In particular, Hammoud testified that Fouad allowed the organization to use his property as a safe house. The organization also used one of his other properties to bag marijuana. And it used his electric meters to stay warm during the winter while selling drugs. In return for use of his house, several witnesses testified that Mohamed ordered the workers to pay Fouad on a regular basis. Furthermore, Mohammed Alhakami testified that on one occasion he gave Fouad money from the day's drug sales. The evidence was therefore sufficient to show that Fouad joined a conspiracy to sell marijuana under 21 U.S.C. § 846.

CONCLUSION

For the above reasons, the Court will grant Fouad's motion for acquittal of the continuing criminal enterprise count. If the Sixth Circuit disagrees with the Court's analysis, the Court will order a new trial regarding that count. Finally, the Court will deny Fouad's motion for acquittal regarding the conspiracy charge.

ORDER

WHEREFORE, it is hereby **ORDERED** that Fouad Faraj's Motion For Judgment Of Acquittal (document no. 252) is **GRANTED IN PART** and **DENIED IN PART**.

SO ORDERED.

s/Stephen J. Murphy, III

STEPHEN J. MURPHY, III
United States District Judge

Dated: August 17, 2015

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on August 17, 2015, by electronic and/or ordinary mail.

s/Carol Cohron

Case Manager