

Section 2.10: Trial and post-trial motions

judgment of acquittal is vacated or reversed on appeal. See Fed. R. Crim. P. 29(d).

- (c) When the court grants a motion for judgment of acquittal, it should consider whether the evidence was sufficient to sustain conviction of a lesser offense necessarily included in the offense charged.

3. Standard

- (a) The motion shall be granted "if the evidence is insufficient to sustain a conviction of such offense or offenses." Fed. R. Crim. P. 29(a).
- (b) In resolving the motion, the court should not assess the credibility of witnesses, weigh the evidence, or draw inferences of fact from the evidence.<sup>1</sup> The role of the court is simply to decide whether the evidence viewed in the light most favorable to the government was sufficient for any rational trier of fact to find guilt beyond a reasonable doubt.

*Caution:* Consult your circuit's law for any special rules governing consideration of the evidence.

B. Fed. R. Crim. P. 33—Motion for New Trial

1. Timing

Except as noted below with respect to newly discovered evidence, the motion must be made within seven days after a verdict or finding of guilty, *unless* within the same seven days the court fixes a longer period.

*Exception:* A motion for a new trial based on newly discovered evidence may be made only within three years after the verdict or finding of guilty. If made during the pendency of an appeal, the motion may be granted only if the case is remanded.

2. Procedure

Whether an oral hearing will be held or the motion will be decided on written submissions only is a matter within

---

1. Of course, these restrictions do not apply in a bench trial. However, the standard for deciding the motion remains the same.