

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	Case No. 1:16-CR-63
v.	)	
	)	Hon. Timothy S. Black (U.S.D.J.)
TOKAI KOGYO CO., LTD., <i>et al.</i> ,	)	
	)	Hon. Karen L. Litkovitz (U.S.M.J.)
Defendants.	)	
	)	

**DEFENDANTS’ MOTION FOR JUDGMENT OF ACQUITTAL**

Defendants Tokai Kogyo Co., Ltd. and Green Tokai Co., Ltd. (collectively, “Defendants”) respectfully move the Court pursuant to Fed. R. Crim. P. 29(a) for a judgment of acquittal at the close of the government’s evidence.

Under Rule 29, the Court must enter a judgment of acquittal for any offense for which the evidence is insufficient to sustain a conviction. When evaluating the evidence, the court “must consider all of the evidence in a light most favorable to the government” and must draw all reasonable inferences in favor of the government. *United States v. Adkins*, 372 F. App’x 647, 653 (6th Cir. 2010) (citing *United States v. Adamo*, 742 F.2d 927, 932 (6th Cir. 1984)). Likewise, the Court may not make credibility determinations, and may not weigh the evidence. *United States v. Davis*, 981 F.2d 906, 908 (6th Cir. 1992). To prevail on a Rule 29 motion, the defendant must demonstrate that, when the evidence is viewed in the light most favorable to the government, no rational trier of fact could find the defendant guilty beyond a reasonable doubt. *United States v. Gen. Elec. Co.*, 869 F. Supp. 1285, 1290 (S.D. Ohio 1994).

The standard, however, is not so heavily weighted in favor of the prosecution that in ruling on a Rule 29 motion the Court must blindly and uncritically accept that every inference the prosecution argues can reasonably be drawn from the circumstantial evidence in the record. Thus, a conviction may not be based solely on circumstantial evidence from which a trier of fact could infer facts tending to prove a defendant's guilt, or facts tending to prove his innocence. Stated otherwise, circumstantial evidence is insufficient to sustain a conviction if the trier of fact is called upon to choose between reasonable probabilities of equal weight, one innocent and the other guilty. This concept does not require the Court to weigh the evidence. Rather, it is consistent with the principles that only *reasonable* inferences may be drawn in the prosecution's favor, and that the evidence, viewed in the light most favorable to the prosecution, must support a finding of guilt *beyond a reasonable doubt*.

*Id.* (emphases in original) (citing *United States v. Leon*, 534 F.2d 667, 676–77 (6th Cir. 1976); *United States v. Champion*, 560 F.2d 751, 753–54 (6th Cir. 1977); *Davis*, 981 F.2d at 908; *United States v. Abner*, 35 F.3d 251, 253 (6<sup>th</sup> Cir. 1994).

Based on the evidence presented during the government's case, no rational trier of fact could find Defendants guilty beyond a reasonable doubt of the crime actually charged in the Indictment, as further defined by the Bill of Particulars.

The Indictment alleges simply that Tokai Kogyo and Green Tokai engaged in a single conspiracy with other companies to rig bids, allocate sales, and fix prices on body sealing parts sold to Honda. (Indictment [Dkt. 1], ¶¶10, 11). Because the Indictment provided no details regarding the conspiracy Defendants allegedly joined, Defendants requested, and the government provided, a Bill of Particulars further defining the conspiracy alleged in the Indictment. (Bill of Particulars dated August 2, 2016).<sup>1</sup> Specifically, the Bill of Particulars alleges that the Defendants participated in a single conspiracy involving three Japanese companies and their respective U.S. subsidiaries: Tokai Kogyo Co. and Green Tokai Co.; Nishikawa Rubber Co. and Nishikawa Cooper LLC (NISCO); and Toyoda Gosei Rubber Co. (TG) and Toyoda Gosei North America Corp. (TGNA). (*Id.*)

---

<sup>1</sup> Attached as Exhibit A.

“When a bill of particulars has been furnished, the government is strictly limited to the particulars which it has specified, i.e., the bill limits the scope of the government’s proof at the trial.” *United States v. Haskins*, 345 F.2d 111, 114 (6th Cir. 1965). The government’s obligation is to prove the conspiracy that is actually alleged. *See United States v. Gen. Elec. Co.*, 869 F. Supp. 1285 (S.D. Ohio 1994).

In *Gen. Elec.*, the government alleged a *per se* price fixing conspiracy in violation §1 of the Sherman Act. *Id.* at 1288, 1301. The indictment specifically alleged that one of the conspirator companies had acted through a certain individual, but there was no proof at trial to support that allegation. *Id.* at 1290, 1292. Despite the fact that that the specific individual through whom a conspirator company acts is not an essential element of a Sherman Act violation, Judge George Smith granted a Rule 29 judgment of acquittal. *Id.* at 1291-92. Judge Smith recognized that the government must prove the actual conspiracy it has alleged:

This is not an essential element of the government’s case in the same sense as the existence of a price-fixing agreement. Nevertheless, in light of the indictment, as well as the proof the government offered in its case, the government has obligated itself to prove the fact.

*Id.* at 1291.

The government’s obligation in this case is to prove beyond a reasonable doubt the charges it has alleged in the Indictment and Bill of Particulars: a conspiratorial agreement between Tokai Kogyo/Green Tokai, Nishikawa/NISCO, and TG/TGNA. Even viewing the evidence in the light most favorable to the government, no rational trier of fact could find the Defendants guilty beyond a reasonable doubt of the conspiracy alleged in the Indictment and Bill of Particulars.

None of the government’s witnesses testified that there was a conspiratorial agreement between Tokai Kogyo/Green Tokai, Nishikawa/NISCO, and TG/TGNA. In fact, Mr. Nakamichi

and Mr. Matsushita both clearly testified that there was **never** a three-party agreement. Instead, those witnesses tried to describe separate two-party agreements – one between Tokai Kogyo/Green Tokai and Nishikawa/NISCO – and the other between Nishikawa/NISCO and TG/TGNA. (Transcript of Proceedings, Day 3 [Dkt. 202], 57-60, 81, 93-96; Transcript of Proceedings, Day 6 [Dkt. 211], 105; Transcript of Proceedings, Day 7 [Dkt. 212], 20, 21, 60). The government’s third Japanese witness, Mr. Miyaoka, also never described a three-party conspiracy. (Transcript of Proceedings, Day 5 [Dkt. 207], 26, 31).

The government has not proved the conspiracy it alleged in the Indictment and Bill of Particulars. Instead, it has abandoned that approach, and put on confusing evidence of multiple, ad-hoc agreements between various companies. That is not what is alleged in the Indictment or the Bill of Particulars. Thus, even viewing the evidence in the light most favorable to the government, no rational trier of fact could find Defendants guilty beyond a reasonable doubt of the conspiracy alleged. Accordingly, the court must enter a judgment of acquittal under Rule 29.

Respectfully submitted,

*/s/ Meena T.Sinfelt*

---

Meena T. Sinfelt, Esq. (0082780)  
Bradley R. Love, Esq., pro hac vice  
Neal Brackett, Esq., pro hac vice  
BARNES & THORNBURG LLP  
41 South High Street, Suite 3300  
Columbus, Ohio 43215  
Telephone: (202) 371-6368  
meena.sinfelt@btlaw.com  
bradley.love@btlaw.com  
neal.brackett@btlaw.com

*and*

Larry A. Mackey, Esq., pro hac vice  
Kendall M. Millard, Esq., pro hac vice  
BARNES & THORNBURG LLP  
11 South Meridian Street

Indianapolis, Indiana 46204-3535  
Telephone: (317) 231-7236  
larry.mackey@btlaw.com  
kendall.millard@btlaw.com

*and*

Ralph W. Kohnen, Esq. (0034418)  
Chad R. Ziepfel, Esq. (0084274)  
TAFT STETTINIUS & HOLLISTER LLP  
425 Walnut Street, Suite 1800  
Cincinnati, Ohio 45202-3957  
Telephone: (513) 381-2838  
Fax: (513) 381-0205  
kohnen@taftlaw.com  
ctiepfel@taftlaw.com

*Attorneys for Defendants Tokai Kogyo Co.,  
Ltd. and Green Tokai Co., Ltd.*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 20th, 2017, I electronically transmitted the foregoing *Defendants' Motion for Judgment of Acquittal* to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel who have appeared in this matter.

*/s/ Meena T.Sinfelt*

\_\_\_\_\_  
Meena T. Sinfelt, Esq.