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WHEN RULES ARE MORE IMPORTANT THAN JUSTICE

Carlisle v. United States, 116 S. Ct. 1460 (1996)

I. INTRODUCTION

In *Carlisle v. United States*,¹ the United States Supreme Court held that a federal district court lacked the authority to grant a motion for judgment of acquittal filed one day after the expiration of the time period prescribed by Federal Rule of Criminal Procedure 29(c). Rule 29(c) requires that when a jury has returned a guilty verdict, motions for judgment of acquittal must be filed within seven days of the jury's discharge.² The Supreme Court found that the Federal Rules of Criminal Procedure (the "Rules") prohibit a trial court from granting an untimely motion for judgment of acquittal.³ In addition, the Court found that a district court does not possess an inherent supervisory power that would allow it to enter a post-verdict judgment of acquittal *sua sponte*.⁴

This note argues that the Supreme Court correctly found that the Federal Rules of Criminal Procedure do not permit the granting of an untimely post-verdict motion for judgment of acquittal. Rule 29(c), when read in conjunction with Rule 45(b), prohibits a trial court from granting a motion for judgment of acquittal filed after the expiration of the seven-day time period included in Rule 29(c), unless the court has extended the time limit during the seven days. However, this note also argues that the Supreme Court erred when it rejected the existence of an inherent supervisory power as an alternative authority for the trial court's action. The Court justified its decision by noting the absence of any long, unquestioned power of federal district courts to acquit for insufficient evidence *sua sponte* after return of a guilty verdict. However, there is a tradition of entrusting lower courts with the responsibility of ensuring justice and protecting innocent criminal defendants from wrongful convictions. The Court's refusal to acknowledge this tradition of supervisory power led to the incarceration of a

¹ 116 S. Ct. 1460 (1996).

² FED. R. CRIM. P. 29(c).

³ 116 S. Ct. at 1464.

⁴ *Id.* at 1467.

man whom the trial judge believed was innocent.

II. BACKGROUND

A. RULE 2 AS A GUIDE TO INTERPRETATION OF THE FEDERAL RULES OF CRIMINAL PROCEDURE

The Federal Rules of Criminal Procedure became effective on March 21, 1946.⁵ Federal Rule of Criminal Procedure 2 explains the purpose of the Rules.⁶ The Rules were adopted for three main reasons. The first reason for the adoption of the Rules is to "secure simplicity in procedure."⁷ The courts have reached the goal of simplifying procedure by finding that the Rules were designed to abolish the technicalities which led to the dismissal of cases or the reversal of convictions for reasons unconnected with the guilt or innocence of the defendant.⁸ The second reason for the promulgation of the Federal Rules is to ensure "fairness in administration."⁹ This purpose of the Rules has been cited to justify the establishment of uniform procedures among the district courts to ensure the equal treatment of every defendant.¹⁰ The final reason given for the adoption of the Rules is to eliminate "unjustifiable expense and delay."¹¹ The Supreme Court has accepted this purpose of the Rules as expressed in Rule 2. In *Bruton v. United States*,¹² the Supreme Court opined that the Rules are intended to promote economy and efficiency so long as the rights of the defendant are not compromised.¹³ In interpreting Rule 2, the Supreme Court also said that the Rules "were designed to eliminate technicalities in criminal pleading and are to be construed to secure simplicity in procedure."¹⁴ In *Fallen v. United States*,¹⁵ the Court stated that Rule 2 makes clear that the Criminal Rules "are not, and were not

⁵ 4 LESTER B. ORFIELD & MARK S. RHODES, ORFIELD'S CRIMINAL PROCEDURE UNDER THE FEDERAL RULES § 29:5, at 511 (2d ed. 1987).

⁶ FED. R. CRIM. P. 2. Rule 2 is analogous to Federal Rule of Civil Procedure 1, which states that the Rules of Civil Procedure "shall be construed and administered to secure the just, speedy, and inexpensive determination of every action." FED. R. CIV. P. 1.

⁷ FED. R. CRIM. P. 2.

⁸ *Smith v. United States*, 360 U.S. 1, 9 (1959) ("[C]onvictions are no longer reversed because of minor and technical deficiencies which did not prejudice the accused.").

⁹ FED. R. CRIM. P. 2.

¹⁰ *Washington v. Clemmer*, 339 F.2d 715, 718 (D.C. Cir. 1964) ("[T]he decisions of the Supreme Court require that the interpretation of the Rules . . . assure 'to the greatest degree possible' 'equal treatment for every litigant' before the bar of criminal justice, regardless of financial ability.") (citations omitted).

¹¹ FED. R. CRIM. P. 2.

¹² 391 U.S. 123 (1968).

¹³ *Id.* at 131 n.6.

¹⁴ *United States v. Debrow*, 346 U.S. 374, 376 (1953).

¹⁵ 378 U.S. 139 (1964).

intended to be, a rigid code to have an inflexible meaning irrespective of the circumstances."¹⁶

B. FEDERAL RULE OF CRIMINAL PROCEDURE 29

When promulgated, Rule 29(a) abolished the common law motion for a directed verdict and replaced it with the motion for judgment of acquittal.¹⁷ The change in name did not alter the purpose or scope of the motion.¹⁸ Rule 29(a) allows the trial court to enter a judgment of acquittal if the evidence is insufficient to sustain a conviction of the offense.¹⁹ The 1966 amendments to Rule 29 divided subsection (b) into sections (b) and (c).²⁰ Currently, section (b) gives the trial court the authority to defer its decision on a motion for judgment of acquittal made at the close of the government's case or at the close of all of the evidence.²¹ Rule 29(b) allows the court to "decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict."²² However, if the court defers decision on the motion, the court must "decide the motion on the basis of the evidence at the time the ruling was reserved."²³ Section (c) provides that a defendant may enter a motion for judgment of acquittal if a jury enters a guilty verdict or is discharged without having returned a verdict.²⁴ Prior to 1966, many believed that a defendant had to move for judgment of acquittal at the close of all the evidence to preserve the right to make the motion again after the jury's discharge.²⁵ The amended Rule makes it possi-

¹⁶ *Id.* at 142.

¹⁷ Federal Rule of Criminal Procedure 29(a) provides:

Motions for directed verdict are abolished and motions for judgment of acquittal shall be used in their place. The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment or information after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses.

FED. R. CRIM. P. 29(a).

¹⁸ FED. R. CRIM. P. 29 advisory committee's note.

¹⁹ FED. R. CRIM. P. 29(a).

²⁰ FED. R. CRIM. P. 29 advisory committee's note.

²¹ FED. R. CRIM. P. 29(b).

²² *Id.*

²³ *Id.*

²⁴ Federal Rule of Criminal Procedure 29(c) provides:

If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within 7 days after the jury is discharged or within such further time as the court may fix during the 7-day period. If a verdict of guilty is returned the court may on such motion set aside the verdict and enter judgment of acquittal . . . It shall not be necessary to the making of such a motion that a similar motion has been made prior to the submission of the case to the jury.

FED. R. CRIM. P. 29(c).

²⁵ 2 CHARLES A. WRIGHT, FEDERAL PRACTICE AND PROCEDURE § 465 (1982).

ble, however, to file a motion for judgment of acquittal after the jury's discharge regardless of whether the motion was made before submission to the jury.²⁶ The 1966 amendments also extended the time period during which one must file a motion for judgment of acquittal to seven days after the jury's discharge.²⁷

The judgment of acquittal is intended to protect innocent defendants from juries that might find them guilty despite insufficient evidence.²⁸ A court cannot direct a verdict of guilty because that would violate a criminal defendant's right to trial by jury.²⁹ A defendant may move for judgment of acquittal at the close of the government's case, once all of the evidence has been presented, or within the required time period after the jury's discharge.³⁰ Regardless of when the motion is made, the appropriate standard to assess the motion is whether the government presented evidence sufficient to support a finding of guilt.³¹ If a jury returns a guilty verdict, the government can appeal a trial court's order granting a motion for judgment of acquittal because a successful appeal by the government would not necessitate a retrial in violation of the Double Jeopardy Clause.³² Instead, the appeals court would remand the case for reinstatement of the jury verdict.³³ A trial court may also enter a judgment of acquittal if the jury is discharged without returning a verdict.³⁴ However, the government cannot appeal a judgment of acquittal made in cases where the jury failed to reach a verdict because a successful appeal would result in the need for a retrial in violation of the Double Jeopardy Clause.³⁵

C. FEDERAL RULE OF CRIMINAL PROCEDURE 45

Rule 45 deals with the administration of the time limits embodied in the Federal Rules of Criminal Procedure.³⁶ Rule 45(a) addresses how time periods should be computed under the Federal Rules.³⁷ Rule 45(a) provides in pertinent part, "When a period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sun-

²⁶ FED. R. CRIM. P. 29 advisory committee's note.

²⁷ *Id.*

²⁸ 2 WRIGHT, *supra* note 25, § 461.

²⁹ *Id.*; U.S. CONST. amend. VI.

³⁰ FED. R. CRIM. P. 29(a) and 29(c).

³¹ *United States v. Ubl*, 472 F. Supp. 1236, 1237 (N.D. Ohio 1979).

³² *United States v. Sharif*, 817 F.2d 1375, 1376 (9th Cir. 1987); U.S. CONST. amend. V.

³³ *Sharif*, 817 F.2d at 1376.

³⁴ FED. R. CRIM. P. 29(c).

³⁵ *Sharif*, 817 F.2d at 1376.

³⁶ FED. R. CRIM. P. 45(a).

³⁷ *Id.*

days and legal holidays shall be excluded in the computation."³⁸ Section (b) of Rule 45 authorizes courts to extend time limits in certain situations.³⁹ The limitations on enlargement found in Rule 45(b) have been strictly construed.⁴⁰ Rule 45(b) states:

When an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion . . . (2) upon motion made after the expiration of the specified period permit the act to be done if the failure to act was the result of excusable neglect; but the court may not extend the time for taking any action under Rules 29, 33, 34, and 35, except to the extent and under the conditions stated in them.⁴¹

D. THE ROLE OF AN "INHERENT SUPERVISORY POWER" IN MODERN SUPREME COURT JURISPRUDENCE

*McNabb v. United States*⁴² is thought to be the first case in which the Supreme Court relied on its "supervisory power" to justify a decision.⁴³ In *McNabb*, police officers obtained a confession from suspects after unremittably interrogating them.⁴⁴ As a result, the Court excluded evidence obtained in violation of a federal statute that made certain investigative techniques unlawful.⁴⁵ The Court asserted that it possessed the authority to establish "civilized standards of procedure and evidence" for the federal courts.⁴⁶ Specifically, the Court reasoned that "[i]n the exercise of its supervisory authority over the administration of criminal justice in the federal courts" it was "guided by considerations of justice not limited to the strict canons of evidentiary relevance."⁴⁷ After *McNabb*, the Supreme Court repeatedly relied on its supervisory power to remedy potential injustices⁴⁸ and to preserve

³⁸ *Id.*

³⁹ FED. R. CRIM. P. 45(b).

⁴⁰ *See, e.g.,* *United States v. Granville*, 456 F.2d 1073, 1073 (5th Cir. 1972) (holding that the district court had no jurisdiction to consider defendant's motion to modify sentence filed 20 months after the sentencing when the Rules allow only 120 days in which to make this motion); *Allison v. United States*, 358 F.2d 60, 62 (7th Cir. 1966) (holding that pursuant to Rule 45(b) the district court did not have the authority to extend the time period in which a defendant could move for a new trial), *vacated on other grounds*, 386 U.S. 13 (1967).

⁴¹ FED. R. CRIM. P. 45(b).

⁴² 318 U.S. 332 (1943).

⁴³ Sara Sun Beale, *Reconsidering Supervisory Power in Criminal Cases: Constitutional and Statutory Limits on the Authority of the Federal Courts*, 84 COLUM. L. REV. 1433, 1435 (1984).

⁴⁴ *McNabb*, 318 U.S. at 332.

⁴⁵ *Id.*

⁴⁶ *Id.* at 340.

⁴⁷ *Id.* at 341.

⁴⁸ Beale, *supra* note 43, at 1449; *see also* *Gaca v. United States*, 411 U.S. 618 (1973) (reinstating an appeal where a defendant did not know he was required to pay a \$25 filing fee despite being authorized to file an appeal in a forma pauperis); *Yates v. United States*, 356 U.S. 363 (1958) (reducing sentence for criminal contempt to time served); *Calvaresi v.*

the integrity of the courts.⁴⁹

After *McNabb*, the federal appellate courts also began relying on their supervisory power to justify decisions. For example, in *Helwig v. United States*,⁵⁰ the Sixth Circuit ordered a new trial to allow a defendant to introduce exculpatory evidence even though the evidence was not newly discovered.⁵¹ The court based its order for a new trial on its supervisory power.⁵² The Sixth Circuit cited *McNabb* to justify its "exercise of judicial supervision [over] the administration of criminal justice."⁵³

Many courts of appeals have recognized that courts must possess a supervisory power to ensure that justice is done.⁵⁴ For example, in *United States v. Brown*,⁵⁵ the Seventh Circuit utilized its supervisory power to require federal district courts faced with deadlocked juries to issue jury instructions in compliance with the standards suggested in an American Bar Association publication.⁵⁶ The Second Circuit relied on its supervisory power in *United States v. D'angiollilo*,⁵⁷ when it refused to dismiss indictments that were partially based on unlawfully collected evidence.⁵⁸ Instead, the court cited the best interest of the public and excluded the illegal evidence.⁵⁹

III. FACTS AND PROCEDURAL HISTORY

On April 12, 1993, Petitioner Charles Carlisle was charged with conspiracy to possess with intent to distribute marijuana in violation of 21 U.S.C. §§ 841 and 846.⁶⁰ On July 13, 1993, the district court jury

United States, 348 U.S. 961 (1955) (reversing convictions of trial court and ordering retrial before another judge where the record revealed tension throughout the trial between the defense counsel and the court).

⁴⁹ Beale, *supra* note 43, at 1452 (citing jury selection cases including *Thiel v. Southern Pac. Co.*, 328 U.S. 217, 225 (1946) (reversing the judgment despite absence of prejudice because wage earners had been excluded from the jury list); *Ballard v. United States*, 329 U.S. 187, 197-98 (1946) (Frankfurter dissenting) (agreeing to consider defendant's objection to the exclusion of women from the jury despite the fact that the defendant had failed to raise the objection below).

⁵⁰ 162 F.2d 837 (6th Cir. 1947).

⁵¹ *Id.* at 840.

⁵² *Id.*

⁵³ *Id.* at 840 n.1.

⁵⁴ See *Burton v. United States*, 483 F.2d 1182, 1187-88 (9th Cir. 1973) (including an extensive list of cases where various courts have relied on their "supervisory power").

⁵⁵ 411 F.2d 930 (7th Cir. 1969).

⁵⁶ *Id.* at 933.

⁵⁷ 340 F.2d 453 (2d Cir. 1965).

⁵⁸ *Id.* at 456.

⁵⁹ *Id.*

⁶⁰ Brief of Petitioner at 2, *Carlisle v. United States*, 116 S. Ct. 1460 (1996) (No. 94-9247).

found Carlisle guilty as charged.⁶¹ After learning the jury's verdict, Carlisle and his attorney decided to file a motion for a judgment of acquittal. Rule 29 states that motions for judgment of acquittal that are filed after a jury verdict may be filed within seven days of the jury verdict or within such further time as the court may fix during the seven-day period.⁶² The time limit embodied in Rule 29 does not include weekends⁶³ and thus, Rule 29 required Carlisle to file his motion on or before July 22, 1993.⁶⁴ On July 23, 1993, Carlisle, through his court-appointed attorney, filed a motion for judgment of acquittal pursuant to Federal Rule of Criminal Procedure 29(c).⁶⁵ Carlisle contended that the government had not introduced sufficient evidence to prove that Carlisle knowingly participated in the alleged conspiracy.⁶⁶ On August 19, 1993, the United States District Court for the Western District of Michigan denied Carlisle's motion for judgment of acquittal finding that the trial produced adequate evidence to justify a guilty verdict.⁶⁷ In its opinion, the district court did not discuss the significance of the motion being filed more than seven days after the jury verdict.⁶⁸ After denying the motion, the trial judge received a copy of the presentence investigation report which revealed that Carlisle had received the Bronze Star for his service in Vietnam.⁶⁹ On October 14, 1993, the day set for Carlisle's sentencing, the district court, on its own motion, reversed its earlier ruling and granted Carlisle's motion for judgment of acquittal.⁷⁰ In the written opinion, the district court stated that the government failed to prove beyond a reasonable doubt "that Carlisle 'knowingly and voluntarily' joined the conspiracy."⁷¹ The district court acknowledged in a footnote that the motion was filed one day late, but the judge refused to deny the motion on that ground.⁷² The trial judge treated the motion as timely filed because he believed that the "refusal to hear this motion would result in grave injustice."⁷³ After granting the judgment of acquittal, the trial judge

⁶¹ *United States v. Carlisle*, 48 F.3d 190, 191 (6th Cir. 1995).

⁶² FED. R. CRIM. P. 29(c).

⁶³ FED. R. CRIM. P. 45(a).

⁶⁴ Brief for the United States at 6 n.2, *Carlisle v. United States*, 116 S. Ct. 1460 (1996) (No. 94-9247).

⁶⁵ *Id.* at 5.

⁶⁶ *Id.*

⁶⁷ Brief for the Petitioner at 5, *Carlisle v. United States*, 116 S. Ct. 1460 (1996) (No. 94-9247).

⁶⁸ *Id.*

⁶⁹ Brief for the United States at 8, *Carlisle v. United States*, 116 S. Ct. 1460 (1996) (No. 94-9247).

⁷⁰ *United States v. Carlisle*, 48 F.3d 190, 191 (6th Cir. 1995).

⁷¹ *Id.*

⁷² *Carlisle v. United States*, 116 S. Ct. 1460, 1463 (1996).

⁷³ *Id.*

added that “[t]he [c]ourt doesn’t meet too many Bronze Star recipients” and then thanked Carlisle for his service in Vietnam.⁷⁴ The government appealed the judgment of acquittal to the United States Circuit Court of Appeals for the Sixth Circuit.⁷⁵ The Sixth Circuit reversed the judgment of acquittal and remanded the case to the district court for sentencing.⁷⁶ The appeals court noted that Carlisle filed his motion for judgment of acquittal one day late.⁷⁷ Accordingly, the Sixth Circuit found that the District Court erred in granting the motion for acquittal because “under Rule 29, it is beyond the court’s jurisdiction to grant an untimely motion for acquittal.”⁷⁸ In addition, the Sixth Circuit stated that a court cannot “enter a judgment of acquittal *sua sponte* after the case has been submitted to the jury.”⁷⁹ The appeals court relied on *United States v. Davis*,⁸⁰ which held that a district court does not have inherent supervisory power even when used in an attempt to correct manifest injustice.⁸¹ The Supreme Court granted Carlisle’s Petition for Certiorari on September 27, 1995.⁸²

IV. SUMMARY OF OPINIONS

A. THE MAJORITY OPINION

Justice Scalia, writing for the majority,⁸³ affirmed the decision of the Sixth Circuit.⁸⁴ The Court found that the Federal Rules of Criminal Procedure do not allow a district court to grant a motion for judgment of acquittal that was not filed within the required timeperiod.⁸⁵ In addition, the majority determined that a district court does not possess an inherent supervisory power that gives it the authority to enter a *sua sponte* judgment of acquittal.⁸⁶ Consequently, the district court lacked authority to grant Carlisle’s motion for judgment of acquittal that was filed one day after the expiration of the time period pre-

⁷⁴ Brief for the United States at 8, *Carlisle v. United States*, 116 S. Ct. 1460 (1996) (No. 94-9247).

⁷⁵ *United States v. Carlisle*, 48 F.3d 190, 191 (6th Cir. 1995).

⁷⁶ *Id.* at 192.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ 992 F.2d 635 (6th Cir. 1993).

⁸¹ *Id.* at 640.

⁸² *Carlisle v. United States*, 116 S. Ct. 40 (1995).

⁸³ Chief Justice Rehnquist and Justices O’Connor, Souter, Thomas, Ginsburg, and Breyer joined Justice Scalia in the majority opinion. *Carlisle v. United States*, 116 S. Ct. 1460, 1462 (1996).

⁸⁴ *Id.* at 1470.

⁸⁵ *Id.* at 1464.

⁸⁶ *Id.* at 1466.

scribed by Rule 29(c).⁸⁷

Justice Scalia began by observing that the Federal Rules of Criminal Procedure are clear and unambiguous.⁸⁸ Specifically, he focused on the plain language of Rule 29 which sets a seven-day time limit⁸⁹ on filing motions for judgment of acquittal when the jury has returned a guilty verdict.⁹⁰ In addition, Justice Scalia noted that Rule 45(b) states that “the court may not extend the time for taking any action under Rule 29 . . . except to the extent and under the conditions stated in [the Rule].”⁹¹ After reviewing the text of these two Rules, Justice Scalia concluded that the Rules did not give the trial court discretion to grant a motion for judgment of acquittal filed after the expiration of the seven-day period.⁹²

The majority then responded to the Petitioner’s argument that Rule 29(a) affords district courts the power to enter a judgment of acquittal *sua sponte* at any time before sentencing.⁹³ The Court rejected the petitioner’s arguments on three grounds. First, noting that Rule 29(a) is entitled “Motion Before Submission to Jury,” the Court rejected the notion that Congress intended the Rule to allow a court to enter a *sua sponte* judgment of acquittal at any point up until sentencing.⁹⁴ Second, Justice Scalia pointed out that the Petitioner’s interpretation of Rule 29 would allow a trial court to enter a judgment of acquittal beyond the time when defense counsel could move for the very same judgment.⁹⁵ As support, Justice Scalia reviewed *United States v. Smith*,⁹⁶ in which the Court stated, “[I]t would be a strange rule which deprived a judge of power to do what was asked when request was made by the person most concerned, and yet allowed him to act without petition.”⁹⁷ Justice Scalia suggested that the interpretation asserted by Carlisle might “subject trial judges to private appeals.”⁹⁸ Rule 29(b)⁹⁹ would serve no purpose if the court could enter a judg-

⁸⁷ *Id.* at 1470.

⁸⁸ *Id.* at 1464.

⁸⁹ Rule 29(c) provides for additional time to file the motion if the court granted additional time before the expiration of the seven day period.

⁹⁰ *Carlisle*, 116 S. Ct. at 1463.

⁹¹ *Id.* at 1463-64 (alteration in original) (quoting FED. R. CRIM. P. 45(b)).

⁹² *Id.* at 1464.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ 331 U.S. 469 (1947).

⁹⁷ *Carlisle*, 116 S. Ct. at 1464 (alteration in original) (quoting *Smith*, 331 U.S. at 474).

⁹⁸ *Id.* (quoting *Smith*, 331 U.S. at 474).

⁹⁹ Federal Rule of Criminal Procedure 29(b) allows a court to reserve decision on the motion for judgment of acquittal and decide it after submission to the jury.

ment of acquittal at any time before sentencing.¹⁰⁰ As a result of the section headings of Rule 29, the consequences of the interpretation suggested by the Petitioner, and the import of Rule 29(b), the majority concluded that Rule 29(a) and (b) apply to motions made before submission to the jury, and subsections (c) and (d) apply to motions made after the jury's discharge.¹⁰¹

Finally, the Court focused on the language of Rule 29(c) to prove that a trial court lacked the power to enter a *sua sponte* judgment of acquittal after the case's submission to the jury.¹⁰² The majority rejected the argument that Federal Rule of Criminal Procedure 2¹⁰³ permitted the court to grant an untimely motion for judgment of acquittal.¹⁰⁴ The opinion explained that Rule 2 is a guiding principle which should only be used when the Rules are unclear.¹⁰⁵ Because of the unambiguous nature of Rules 29 and 45, the Court determined that Rule 2 was not applicable.¹⁰⁶ Justice Scalia distinguished one case¹⁰⁷ that used Rule 2 to depart from time limits imposed by the Federal Rules of Criminal Procedure.¹⁰⁸ The Court also denied that Rule 57¹⁰⁹ applied because Rule 29 provides for the length of time allowed to file a motion for judgment of acquittal and, therefore, governed the issue.¹¹⁰

The majority next rejected the Petitioner's argument that the district court possessed an "inherent supervisory power" that allowed it to

¹⁰⁰ *Carlisle*, 116 S. Ct. at 1464.

¹⁰¹ *Id.*

¹⁰² *Id.* at 1465.

¹⁰³ Federal Rule of Criminal Procedure 2 provides: "These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay."

¹⁰⁴ *Carlisle*, 116 S. Ct. at 1465.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Fallen v. United States*, 378 U.S. 139 (1964). In *Fallen*, an incarcerated paraplegic pro se petitioner failed to file a notice of appeal within the time limit provided in Federal Rule of Criminal Procedure 37(a). However, the petitioner had mailed a notice of appeal to the court clerk's office two days before the time limit expired. The Court, citing Rule 2, overlooked the defendant's failure to file in a timely fashion stating that the petitioner "had done all that could reasonably be expected." *Id.* at 144.

¹⁰⁸ *Carlisle*, 116 S. Ct. at 1465 (stating that "*Fallen* was a narrow ruling when it was announced.").

¹⁰⁹ At the time the criminal proceedings against the petitioner commenced, Federal Rule of Criminal Procedure 57 provided that: "In all cases not provided for by rule, the district court judges . . . may regulate their practices in any manner not inconsistent with federal law, these rules, and local rules of the district." The current version of Rule 57 is captioned "Procedure When There Is No Controlling Law" and provides that: "A judge may regulate practice in any manner consistent with federal law, these rules, and local rules of the district."

¹¹⁰ *Carlisle*, 116 S. Ct. at 1466.

grant an untimely motion for judgment of acquittal.¹¹¹ The defense asserted that the district courts possess a general supervisory power to protect innocent defendants from wrongful convictions.¹¹² Carlisle stated that the "purpose underlying the supervisory power of the federal courts is to provide a remedy for a violation of a defendant's rights and to preserve judicial integrity by ensuring that a conviction is valid."¹¹³ Justice Scalia conceded that federal courts may create procedural rules not required by the Constitution or Congress;¹¹⁴ however, he insisted that courts cannot use their inherent power to "circumvent or conflict with the Federal Rules of Criminal Procedure."¹¹⁵ The Court reviewed the case law that examined the scope of a court's supervisory power and determined that the Court should respect a lower court's well-established inherent power.¹¹⁶ However, the opinions stated that lower courts have not historically had the power to enter a judgment of acquittal *sua sponte* after a guilty verdict.¹¹⁷ Thus, Justice Scalia found that Supreme Court jurisprudence did not recognize an "inherent power" to act in opposition to the applicable Rules.¹¹⁸

The Court then focused on the Petitioner's arguments that the district court had power to enter a judgment of acquittal pursuant to the All Writs Act,¹¹⁹ the Due Process clause of the Fifth Amendment,¹²⁰ or the duty to avoid needless appeals.¹²¹ Justice Scalia began by explaining that Carlisle could not rely on the All Writs Act and the writ of *coram nobis*¹²² because Carlisle did not ask the district court to issue and the district court did not indicate that it was issuing a writ of *coram nobis*.¹²³ In addition, the majority noted that the Court previously stated in *Pennsylvania Bureau of Correction v. United States Marshals Service*¹²⁴ that the All Writs Act was a source of authority to be used only when a statute did not address a particular issue.¹²⁵ Justice Scalia

¹¹¹ *Id.*

¹¹² Brief of Petitioner at 9, *Carlisle v. United States*, 116 S. Ct. 1460 (1996) (No. 94-9247).

¹¹³ *Id.*

¹¹⁴ *Carlisle*, 116 S. Ct. at 1466.

¹¹⁵ *Id.* (citing *Bank of Nova Scotia v. United States*, 487 U.S. 250, 254-55 (1988)).

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 1467.

¹¹⁹ 28 U.S.C. § 1651.

¹²⁰ U.S. CONST. amend. V.

¹²¹ *Carlisle*, 116 S. Ct. at 1467-68.

¹²² The writ of *coram nobis* was "traditionally available only to bring before the court factual errors 'material to the validity and regularity of the legal proceeding itself.'" *Id.* at 1467.

¹²³ *Id.*

¹²⁴ 474 U.S. 34, 43 (1985).

¹²⁵ *Carlisle*, 116 S. Ct. 1460, 1467.

concluded that since Rule 29(c) embodies a seven-day time limit, the All Writs Act was inapplicable.¹²⁶ The Court then addressed Carlisle's assertion that the Due Process Clause confers on the court the authority to enter a judgment of acquittal on a motion filed after the time period provided in Federal Rule of Criminal Procedure 29(c).¹²⁷ Justice Scalia dismissed the argument noting a lack of support for the assertion and refusing to "fashion a new due process right out of thin air."¹²⁸ The opinion next explained that although Rule 29(c)'s time requirements may generate additional appeals, that policy concern does not grant the court authority to disregard the Rule.¹²⁹ The majority then focused on the consequential problems of the case.¹³⁰ Justice Scalia noted that if courts allow motions that are one day late, then they might also have to allow motions that are ten days late.¹³¹ Justice Scalia recognized that regardless of the length of the allowed period, some individuals will always file just past the deadline.¹³²

The opinion concluded by responding to some of the dissent's arguments.¹³³ The majority agreed with the dissent's assertion that a district court has the power to prevent the wrongful conviction of an innocent defendant.¹³⁴ However, the majority differed with the dissent regarding the point at which this authority terminates.¹³⁵ The majority asserted that the supervisory power terminates when the time limit in Rule 29 expires.¹³⁶ In contrast, the dissent argued that the supervisory authority extends until sentencing.¹³⁷ Justice Scalia responded to the dissent's concern that the majority opinion violates the mandate of Federal Rule of Criminal Procedure 2, which requires "simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay."¹³⁸ The majority reasoned that negotiable time limits did not ensure simplicity or fairness nor do they eliminate delay.¹³⁹ The opinion examined a series of cases upon which the dissent relied to illustrate that the Rules do not terminate

¹²⁶ *Id.* at 1467-68.

¹²⁷ *Id.* at 1468.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.* (citing *United States v. Locke*, 471 U.S. 84, 101 (1985)).

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.* at 1479.

¹³⁸ *Id.* at 1469 (quoting *FED. R. CRIM. P.* 2).

¹³⁹ *Id.*

pre-existing inherent powers.¹⁴⁰ The majority determined that the cases relied on by the dissent failed to “support the proposition that permissive rules do not eliminate inherent powers.”¹⁴¹

Finally, the Court rejected the significance of *United States v. Sisson*,¹⁴² which the dissent relied on to support the existence of the district court’s “inherent power.”¹⁴³ Justice Scalia claimed that *Sisson* did not address whether a court could grant a *sua sponte* post-verdict judgment of acquittal, but rather addressed whether the judgment being appealed was an acquittal.¹⁴⁴ In the end, the Court was unwilling to confer upon the district courts the discretion to grant untimely motions for judgment of acquittal. Thus, the majority concluded that the district court lacked the authority to grant Carlisle’s motion for judgment of acquittal that was filed one day after the time limit prescribed by Rule 29(c) had expired.¹⁴⁵

B. JUSTICE SOUTER’S CONCURRENCE

Although Justice Souter joined the majority, he wrote a separate concurring opinion to address the extent of a district court’s “inherent authority.”¹⁴⁶ Justice Souter recognized that courts might have an “inherent power” to enter judgments of acquittal; however, he agreed with the majority that this inherent power did not grant the district court the authority to enter a *sua sponte* judgment of acquittal after the jury had returned its verdict.¹⁴⁷ Although Justice Souter noted the possibility of situations in which Congressional interference with a court’s “inherent power” would violate Article III of the United States Constitution, he concluded that Rule 29(c) was not such an interference.¹⁴⁸

C. JUSTICE GINSBURG’S CONCURRENCE

Justice Ginsburg also joined the majority, but wrote a concurring

¹⁴⁰ *Id.* (citing *Link v. Wabash R. Co.*, 370 U.S. 626 (1962) (acknowledging that district courts have historically had the power to dismiss *sua sponte* for lack of prosecution); *United States v. Ohio Power Co.*, 353 U.S. 98 (1957) (involving a district court’s departure from one of its own rules); *Fernandez v. United States*, 81 S. Ct. 642 (1961) (holding that Federal Rule of Criminal Procedure 46(a) did not revoke a district court’s authority to revoke bail in a noncapital case)).

¹⁴¹ *Carlisle*, 116 S. Ct. at 1469.

¹⁴² 399 U.S. 267 (1970).

¹⁴³ *Carlisle*, 116 S. Ct. at 1469-70.

¹⁴⁴ *Id.* at 1470.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* (Souter, J., concurring).

¹⁴⁷ *Id.* (Souter, J., concurring).

¹⁴⁸ *Id.* (Souter, J., concurring).

opinion¹⁴⁹ in order to examine the “one sharply honed exception” to the strict time prescriptions embodied in Rule 29(c) and Rule 45(b).¹⁵⁰ Justice Ginsburg noted that the one exception to the time limits embodied in Rule 29(c) and 45(b) applies to cases where the trial judge gave incorrect information to a party who might otherwise have taken timely action.¹⁵¹ Justice Ginsburg noted, however, that Carlisle did not receive inaccurate information from the trial judge and thus did not fall within this single exception to the Rule 29(c) and 45(b) time provisions.¹⁵² Justice Ginsburg recognized that the Rules require some time restrictions and that the time limitations in Rule 29(c) are not unreasonable.¹⁵³ Finally, Justice Ginsburg observed that the other legal avenues available to Carlisle to challenge the sufficiency of the evidence supporting his conviction help prevent his wrongful incarceration.¹⁵⁴

D. JUSTICE STEVENS' DISSENT

Justice Stevens dissented¹⁵⁵ from the majority opinion because he felt that the real question in this case was not whether a court can grant an untimely motion for judgment of acquittal, but instead whether the court can enter a judgment of acquittal when it believes that the defendant is legally innocent.¹⁵⁶ Justice Stevens agreed that courts cannot grant untimely motions for judgment of acquittal; however, he asserted that Congress did not intend to strip the courts of their authority to protect innocent defendants.¹⁵⁷ Justice Stevens argued that judges are entrusted with the responsibility of ensuring that defendants receive a fair trial, and he reviewed several cases¹⁵⁸ that recognized the court's discretion to notice and correct any error committed in the process of a trial.¹⁵⁹ The dissent reviewed some of the inherent judicial powers used to correct flaws in the legal process.¹⁶⁰

¹⁴⁹ Justices Souter and Breyer joined Justice Ginsburg in her concurrence.

¹⁵⁰ *Carlisle*, 116 S. Ct. at 1471 (Ginsburg, J., concurring).

¹⁵¹ *Id.* (Ginsburg, J., concurring).

¹⁵² *Id.* (Ginsburg, J., concurring).

¹⁵³ *Id.* (Ginsburg, J., concurring).

¹⁵⁴ *Id.* (Ginsburg, J., concurring).

¹⁵⁵ Justice Kennedy joined Justice Stevens in his dissent.

¹⁵⁶ *Carlisle*, 116 S. Ct. at 1471 (Stevens, J., dissenting).

¹⁵⁷ *Id.* (Stevens, J., dissenting).

¹⁵⁸ See *United States v. Morgan*, 307 U.S. 183, 197 (1939) (ordering district court to retain funds until Secretary of Agriculture makes a determination on the reasonableness of rates because justice requires the court to have this basis for its action); *Arkadelphia Co. v. St. Louis Southwestern Ry. Co.*, 249 U.S. 134, 146 (1919) (“It is one of the equitable powers, inherent in every court of justice . . . to correct that which has been wrongfully done by virtue of its process.”) (citing *Northwestern Fuel Co. v. Brock*, 139 U.S. 216, 219 (1891)).

¹⁵⁹ *Carlisle*, 116 S. Ct. at 1471 (Stevens, J., dissenting).

¹⁶⁰ *Id.* at 1472 (Stevens, J., dissenting).

These inherent powers include the authority to order special conferences that will aid in the disposition of a complex case, to stay proceedings to maintain the orderly progress of justice, and to allow inspection of property belonging to third parties.¹⁶¹

Justice Stevens reasoned that if the courts possessed these inherent powers to ensure justice, then courts must maintain the authority to enter a judgment of acquittal *sua sponte* when the courts believe that the government has failed to prove its case.¹⁶² The dissent asserted that courts have historically instructed the jury to find the accused not guilty or set aside the jury's guilty verdict if the evidence is to the contrary.¹⁶³ In cases decided before the Rules went into effect, the trial judge would set aside the verdict and order a new trial.¹⁶⁴ However, once the Rules were adopted, the Supreme Court identified possible double jeopardy problems involved with ordering a new trial.¹⁶⁵ While no pre-Rule cases directly addressed a trial judge's authority to order a judgment of acquittal where the evidence was insufficient to support a conviction, some cases involve the appellate courts entering judgments of acquittal because the evidence was insufficient to support a conviction.¹⁶⁶ Given the double jeopardy concerns in modern times, Justice Stevens asserted that modern judges can "remedy unsupported jury verdicts by entering judgments of acquittal" rather than ordering a new trial.¹⁶⁷ Justice Stevens argued that "[t]he majority offers no principled reason for concluding that this more recent remedy is beyond the power of district courts, even though the prior remedy was not."¹⁶⁸ The dissent concluded that a district court possesses "error-correcting power . . . so long as it retains control of the subject matter and the parties."¹⁶⁹

The dissent then discussed the impact of Federal Rule of Criminal Procedure 29 on Carlisle's case.¹⁷⁰ Justice Stevens agreed with the majority's conclusion that the Petitioner could not file the motion for judgment of acquittal pursuant to Rule 29 on the eighth day; however,

¹⁶¹ *Id.* at 1472 nn.1-2 (Stevens, J., dissenting).

¹⁶² *Id.* at 1472 (Stevens, J., dissenting).

¹⁶³ *Id.* at 1472-73 (Stevens, J., dissenting) (citing *Wiborg v. United States*, 163 U.S. 632, 659 (1896); *Cady v. United States*, 293 F. 829 (D.C. Cir. 1923); *United States v. Harding*, 26 F. Cas. 131, 136 (E.D. Pa. 1846) (No. 15,301)).

¹⁶⁴ *Carlisle*, 116 S. Ct. at 1473 (Stevens, J., dissenting).

¹⁶⁵ See *United States v. Smith*, 331 U.S. 469, 474 (1947).

¹⁶⁶ *Carlisle*, 116 S. Ct. at 1473 (Stevens, J., dissenting) (citing *Reiner v. United States*, 92 F.2d 823 (9th Cir. 1937); *Cherry v. United States*, 78 F.2d 334 (7th Cir. 1935); *Nosowitz v. United States*, 282 F. 575 (2d Cir. 1922)).

¹⁶⁷ *Carlisle*, 116 S. Ct. at 1474 (Stevens, J., dissenting).

¹⁶⁸ *Id.* (Stevens, J., dissenting).

¹⁶⁹ *Id.* (Stevens, J., dissenting).

¹⁷⁰ *Id.* at 1475 (Stevens, J., dissenting).

Stevens asserted that Rule 29 does not strip the court of its the authority to enter a judgment of acquittal *sua sponte*.¹⁷¹ The dissent argued that the plain language of Rule 29 does not indicate that Congress intended to destroy the lower courts' power to enter a judgment of acquittal *sua sponte* after submission to the jury.¹⁷² The opinion stated, "We do not read the mention in Rule 29(a) of a court granting such a judgment 'on its own motion' before submission to a jury as an elimination of a court's inherent power to grant such a judgment after submission to the jury."¹⁷³ Justice Stevens argued that upholding the judgment of acquittal would not nullify the time limit set up in Rule 29(c) because the time limit would control the defendant, but not the trial judge.¹⁷⁴ The dissent asserted that the absence of the three words "on its own motion" from the third sentence of Rule 29(c) is not adequate reason to believe that Congress intended to strip the district courts of their established power to review *sua sponte* a jury's guilty verdict.¹⁷⁵

The dissent next discussed the significance of the Supreme Court's decision in *United States v. Sisson*,¹⁷⁶ in which a defendant's lawyer moved post-verdict to arrest judgment under Federal Rule of Criminal Procedure 34.¹⁷⁷ The district court claimed to have granted the Rule 34 motion, but the Supreme Court stated that the district court had actually entered a judgment of acquittal, not an arrest of judgment.¹⁷⁸ In *Sisson*, the Court stated that the Rules of Criminal Procedure "expressly allow a federal judge to acquit a criminal defendant after the jury 'returns a guilty verdict.'"¹⁷⁹ Justice Stevens asserted that in *Sisson*, the Court gave its approval to a post-verdict order for judgment of acquittal even though no Rule 29(c) motion was filed.¹⁸⁰ Consequently, Justice Stevens was "mystified" as to why the majority now held that Rule 29(c) deprives district courts of the authority to enter *sua sponte* judgments of acquittal.¹⁸¹

The dissent asserted that Rule 29(c) should not be read to limit lower courts' power to access the sufficiency of the evidence *sua sponte* because such an interpretation runs counter to the Court's interpre-

¹⁷¹ *Id.* (Stevens, J., dissenting).

¹⁷² *Id.* (Stevens, J., dissenting).

¹⁷³ *Id.* (Stevens, J., dissenting) (quoting *Arizona v. Maypenny*, 672 F.2d 761, 764 (9th Cir. 1982)).

¹⁷⁴ *Carlisle*, 116 S. Ct. at 1475-76 (Stevens, J., dissenting).

¹⁷⁵ *Id.* at 1476 (Stevens, J., dissenting).

¹⁷⁶ 399 U.S. 267 (1970).

¹⁷⁷ *Id.* at 276.

¹⁷⁸ *Carlisle*, 116 S. Ct. at 1477 (Stevens, J., dissenting).

¹⁷⁹ *Sisson*, 399 U.S. at 290.

¹⁸⁰ *Carlisle*, 116 S. Ct. at 1477 (Stevens, J., dissenting).

¹⁸¹ *Id.* (Stevens, J., dissenting).

tive principles.¹⁸² Justice Stevens reviewed several cases in which the Court refused to limit judicial power where procedural rules employed permissive language.¹⁸³ The dissent then examined several cases in which the Court took action not authorized by the Rules because of an "interest in the even-handed administration of justice."¹⁸⁴ Justice Stevens utilized these cases to illustrate that district courts have a power to correct anything that is wrongfully done so long as the court retains jurisdiction over the subject matter and the parties.¹⁸⁵ As a result of this supervisory power which is not explicitly suspended by Rule 29, the dissent argued that the district court maintained the authority to enter a *sua sponte* judgment of acquittal after the expiration of the time-period provided in Rule 29(c).¹⁸⁶

Stevens concluded by examining the practical effects of allowing courts to enter *sua sponte* judgments of acquittal after the expiration of the time period embodied in Rule 29(c).¹⁸⁷ He stated that this result would not burden judges with an extraordinary amount of untimely filed motions.¹⁸⁸ In addition, the opinion considered the possibility that an "Act of God" might preclude an innocent defendant from timely filing his motion for judgment of acquittal.¹⁸⁹ Justice Stevens stated that this possibility requires district courts to retain authority to "avert the conviction of a legally innocent defendant despite the absence of a timely motion."¹⁹⁰

V. ANALYSIS

This note asserts that the Court correctly determined that the Federal Rules of Criminal Procedure do not permit the granting of an untimely motion for judgment of acquittal, but erred when it denied that the lower court possessed an inherent supervisory power to grant an untimely motion. In Part A, this note asserts that the Court correctly found that the Federal Rules of Criminal Procedure prohibit a

¹⁸² *Id.* (Stevens, J., dissenting).

¹⁸³ *Id.* at 1477-78 (Stevens, J., dissenting) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 47 (1991); *Link v. Wabash R.R. Co.*, 370 U.S. 626 (1962)).

¹⁸⁴ *Carlisle*, 116 S. Ct. at 1478 (Stevens, J., dissenting) (citing *United States v. Ohio Power Co.*, 351 U.S. 980 (1956), *rev'd*, 353 U.S. 98 (1957) (vacating sua sponte a previous order denying a petition for rehearing and then granting the previously denied petition); *Fernandez v. United States*, 81 S. Ct. 642, 644 n.7 (1961) (holding that Federal Rule of Criminal Procedure 46(a) did not revoke a district court's long-standing authority to revoke bail in a noncapital case).

¹⁸⁵ *Carlisle*, 116 S. Ct. at 1479 (Stevens, J., dissenting).

¹⁸⁶ *Id.* at 1479-80 (Stevens, J., dissenting).

¹⁸⁷ *Id.* at 1480 (Stevens, J., dissenting).

¹⁸⁸ *Id.* (Stevens, J., dissenting).

¹⁸⁹ *Id.* (Stevens, J., dissenting).

¹⁹⁰ *Id.* (Stevens, J., dissenting).

trial court from granting an untimely motion for judgment of acquittal. In Part B, this note argues that federal district courts possess an inherent supervisory power to ensure that legally innocent defendants are not wrongfully convicted. Finally, in Part C, this note examines the likely impact of this case.

A. THE SUPREME COURT'S INTERPRETATION OF THE FEDERAL RULES OF CRIMINAL PROCEDURE

The Supreme Court correctly held that the Federal Rules of Criminal Procedure prohibit a federal district court from granting a motion for judgment of acquittal filed after the expiration of the time limit embodied in Rule 29(c). Both the majority and dissenters agreed on this interpretation of the Rule.¹⁹¹ Rule 29(c) clearly states that "a motion for judgment of acquittal may be made or renewed within 7 days after the jury is discharged or within such time as the court may fix during the 7-day period."¹⁹² Furthermore, Rule 45(b) allows for occasions when untimely acts will be considered valid.¹⁹³ However, Rule 45(b) explicitly addresses actions taken pursuant to Rule 29.¹⁹⁴ Rule 45(b) states that "the court may not extend the time for taking any action under Rul[e] 29 . . . except to the extent and under the conditions stated in [the Rule]."¹⁹⁵ Rule 29 only allows for extensions which are fixed by the court during the seven-day period in which motions may be made.¹⁹⁶ Rule 29 does not include any conditions that allowed Carlisle to file his motion after the time limit expired.¹⁹⁷ Thus, Rules 29(c) and 45(b) govern the motion for judgment of acquittal submitted by Carlisle. Because the jury verdict was returned on July 13, 1993, and because Rule 45(a)¹⁹⁸ excludes weekends from the time period, the seven-day time limit expired on July 22, 1993. As a result, Carlisle's motion for judgment of acquittal, filed on July 23, 1993, was invalid.

In *United States v. Stevens*,¹⁹⁹ the Tenth Circuit enforced the rigid time limit embodied in Rule 29(c).²⁰⁰ In *Stevens*, the defendant filed his motion for judgment of acquittal outside the seven-day time limit

¹⁹¹ *Id.* at 1464, 1471.

¹⁹² FED. R. CRIM. P. 29(c).

¹⁹³ FED. R. CRIM. P. 45(b).

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ FED. R. CRIM. P. 29(c).

¹⁹⁷ *Id.*

¹⁹⁸ FED. R. CRIM. P. 45(a). See also *supra* notes 36-41 and accompanying text for a discussion of Rule 45(a).

¹⁹⁹ 978 F.2d 565 (10th Cir. 1992).

²⁰⁰ *Id.* at 569.

without prior authorization of the court.²⁰¹ As a result, the district court refused to hear the motion claiming that it lacked the necessary jurisdiction.²⁰² On appeal, the Tenth Circuit affirmed the district court's refusal to hear the motion.²⁰³

Carlisle argued that Rule 29(a) allows the court to enter a judgment of acquittal *sua sponte*.²⁰⁴ The Court correctly rejected Carlisle's argument that Rule 29(a) grants district courts the authority to enter judgments of acquittal *sua sponte* after the case has been submitted to the jury.²⁰⁵ Section (a) of Rule 29 is entitled "Motion Before Submission to Jury."²⁰⁶ Thus, it is clear that the drafters of the Rules intended Rule 29(a) to govern situations in which the defendant moves for a judgment of acquittal before the case is submitted to the jury. In addition, the drafters intended Rule 29(a) to address situations in which, after the close of evidence by either side, the court feels the evidence is too weak to sustain a conviction. According to Rule 29(a), at the close of either side's evidence, the court has the authority to enter a judgment of acquittal *sua sponte*.²⁰⁷ In addition to the title of section (a), the text of section (a) also suggests that Rule 29(a) only applies to the period before submission to the jury. The Rule states that the court shall order the entry of the judgment of acquittal "after the evidence on either side is closed . . ." ²⁰⁸ If the drafters intended for courts to be able to enter *sua sponte* judgments of acquittal at any time, as Carlisle suggested, the drafters would have omitted this wording entirely. The Supreme Court has previously held that "no provision should be construed to be entirely redundant."²⁰⁹ Thus, the Court properly acknowledged the significance of language limiting the time in which a court may grant a *sua sponte* judgment of acquittal. The Rule would have been coherent without this phrase regarding timing, so its inclusion indicates that the drafters intended to limit a court's authority to enter *sua sponte* judgments of acquittal to the period before submission to the jury.

²⁰¹ *Id.* at 566.

²⁰² *Id.*

²⁰³ *Id.* at 569.

²⁰⁴ Reply Brief for the Petitioner at 4, *Carlisle v. United States*, 116 S. Ct. 1460 (1996) (No. 94-9247).

²⁰⁵ *Carlisle*, 116 S. Ct. at 1464.

²⁰⁶ FED. R. CRIM. P. 29(a).

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Kungys v. United States*, 485 U.S. 759, 778 (1988).

B. THE SUPREME COURT'S REJECTION OF AN "INHERENT SUPERVISORY POWER"

Although the Court correctly determined that the Rules prohibit a district court from granting an untimely motion for judgment of acquittal, the Court erred when it denied that courts possess an inherent supervisory power to prevent legally innocent defendants from being convicted. The Supreme Court has previously stated that it is "a fundamental value determination of our society that it is far worse to convict an innocent man than to let a guilty man go free."²¹⁰ As a result, courts historically have been entrusted with the responsibility to ensure that no criminal defendant is convicted unless the government has produced sufficient evidence to prove every element of the offense charged.²¹¹ There is no evidence that Congress intended to strip courts of that responsibility with the enactment of the Federal Rules of Criminal Procedure. Furthermore, the purposes of Rule 29(c) would not be frustrated if district courts were permitted to grant *sua sponte* judgments of acquittal because the seven-day time limit would still be applicable for motions made by the defendant. Thus, the Court should have acknowledged that the district court maintained an inherent supervisory power which allowed it to grant Carlisle a judgment of acquittal *sua sponte*.

1. Judge's Duty to Secure a Fair Trial for the Litigants

Courts have long recognized that trial judges are not passive observers of the happenings in their courtrooms. In 1933, Judge Learned Hand stated that a judge "is affirmatively charged with securing a fair trial, and he must intervene *sua sponte* to that end, when necessary."²¹² In *Pingatore v. Montgomery Ward & Co.*,²¹³ the Sixth Circuit reminded district court judges of their duty to supervise the proceedings in their courtrooms.²¹⁴ In *Pingatore*, plaintiff's counsel used curse words, ripped the defendant's exhibits off a blackboard, and placed an empty chair before the jury and asked where the corporation was on that day.²¹⁵ The plaintiff's counsel was attempting to prejudice the jury against Montgomery Ward by suggesting that the large corporation did not care enough about the plaintiff to attend the

²¹⁰ *In re Winship*, 397 U.S. 358, 372 (1970) (Harlan, J., concurring) (examining the rationale for different burdens of proof in criminal and civil trials).

²¹¹ See *supra* notes 50-56 and accompanying text.

²¹² *Brown v. Walter*, 62 F.2d 798, 799 (2d Cir. 1933).

²¹³ 419 F.2d 1138 (6th Cir. 1969).

²¹⁴ *Id.* at 1143.

²¹⁵ *Id.*

trial.²¹⁶ On appeal, the Sixth Circuit found that the trial judge should not have tolerated such conduct.²¹⁷ As a result, the court reversed and remanded the case for a new trial on the issue of damages.²¹⁸ Other circuits have acknowledged a trial court's supervisory power as well.²¹⁹

The judge's duty to secure a fair trial is accentuated in a criminal case.²²⁰ Since a defendant's personal liberty and reputation are at stake in a criminal action, the importance of fairness in procedure is enhanced. If an attorney commits an error in a civil action, the client is free to sue the attorney for malpractice in order to recover the lost award. However, in a criminal action, if a defense counsel commits an error, a successful malpractice action will not make the defendant whole. The money damages recovered in a malpractice action will not give the defendant back the time he spent incarcerated because of the attorney's error.²²¹ In addition, a criminal conviction does immeasurable damage to an individual's reputation which cannot be restored with a monetary award. As a result, a trial court judge must utilize his supervisory power to ensure that the defendant is not victimized by the judicial system. This supervisory power should authorize judges to prevent errors and to remedy errors that have already occurred.

2. *Cases where Courts have Taken Action to Protect a Legally Innocent Criminal Defendant*

Courts have historically protected legally innocent criminal defendants from wrongful convictions.²²² Before the adoption of the Federal Rules of Criminal Procedure, appellate courts reversed convictions when a trial court failed to enter a judgment of acquittal when the evidence was insufficient to support a conviction.²²³ In *Ansley v.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.* at 1144.

²¹⁹ See, e.g., *Pappas v. Middle Earth Condominium Ass'n*, 963 F.2d 534, 540 (2d Cir. 1992) (stating that part of a trial court judge's responsibility "is the affirmative obligation to guard against improper trial tactics that might prevent a fair verdict."); *Gonzalez v. Volvo of America Corp.*, 734 F.2d 1221, 1225 (7th Cir. 1984) ("The trial judge does not sit as a passive observer who functions solely when called upon by the parties, but is required instead to assure that each litigant is accorded a fair trial.")

²²⁰ *Crawford v. United States*, 212 U.S. 183, 194 (1908).

²²¹ *Simko v. Blake*, 532 N.W.2d 842, 849 (Mich. 1995) (Levin, J., dissenting). In *Simko*, a legal malpractice case, the dissent found that even though a criminal defendant's conviction was reversed because of attorney error, the criminal defendant still suffered an injury because he was incarcerated for two years.

²²² See *ORFIELD & RHODES*, *supra* note 5, at 508.

²²³ See, e.g., *Nosowitz v. United States*, 282 F. 575, 578-79 (2d Cir. 1922) (reversing a conviction for unlawful manufacture of intoxicating liquors because evidence was too weak to support conviction and trial court should have entered judgment of acquittal).

United States,²²⁴ the Fifth Circuit stated that the question of the sufficiency of the evidence "should be raised by the court of its own motion, if necessary to prevent a miscarriage of justice."²²⁵ Even after the adoption of the Federal Rules of Criminal Procedure, the Eleventh Circuit followed this decision and voiced an unwillingness to elevate the rigid structure of the Rules above justice and fairness:

The rules of criminal procedure, of course, do not demarcate the outer limits of a trial court's authority to vacate a judgment of conviction. Under its inherent supervisory power, a district court may consider an untimely post-trial motion for judgment of acquittal or may grant such a motion sua sponte to correct manifest error when it retains jurisdiction over the case [I]f a district court has jurisdiction over a case, then the interests of justice demand that it review the sufficiency of the evidence for conviction without regard to the technicalities of pleading.²²⁶

In *United States v. Deans*,²²⁷ the Third Circuit also refused to abide by the rigid time limits embodied in the Rules.²²⁸ In *Deans*, a criminal defendant failed to file a notice of appeal within the applicable time period.²²⁹ The court acknowledged that the time limits "had been described as 'mandatory and jurisdictional.'"²³⁰ However, the court found that the defendant learned of his right to appeal more than forty days after his sentencing.²³¹ As a result, the court found that "a strict application of the Federal Rules so as to effectively deny the defendant's right to appeal would create a harsh result."²³² To remedy this injustice, the court adopted a rule which stated that the time limit for filing a notice of appeal does not begin to run until the defendant is notified of his right to appeal.²³³ Thus, the defendant's appeal was found to be valid.²³⁴ *Deans* is an example of a district court disregarding the strict time limits included in the Rules in order to ensure justice is served for an individual defendant. Although *Deans* presented a different factual scenario than *Carlisle*, the decision in *Deans* illustrates that courts do invoke their supervisory power to develop rules which conflict with the Federal Rules of Criminal Procedure. The Supreme Court's refusal to grant certiorari in *Deans*²³⁵ suggests that the Court

²²⁴ 135 F.2d 207 (5th Cir. 1943).

²²⁵ *Id.* at 208.

²²⁶ *United States v. DiBernardo*, 880 F.2d 1216, 1225 n.4 (11th Cir. 1989) (citations omitted).

²²⁷ 436 F.2d 596 (3d Cir. 1971).

²²⁸ *Id.* at 599.

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.*

²³⁵ See *United States v. Deans*, 403 U.S. 911 (1971).

did not find the use of the supervisory power in *Deans* to be so offensive as to warrant consideration.

Given this history of allowing courts to set aside unsubstantiated convictions and given the duty courts have to prevent the wrongful conviction of legally innocent defendants, the district court in Carlisle clearly retained a supervisory power which allowed it to grant Carlisle a judgment of acquittal *sua sponte*.

3. Purposes of Rule 29

The goals of Rule 29 would not be frustrated if trial courts retained the authority to grant motions for judgment of acquittal *sua sponte* after the expiration of the seven-day time limit in Rule 29(c). The advisory committee's note to Rule 29 does not enumerate the reasons behind the adoption of Rule 29(c).²³⁶ However, Justice Stevens suggested several considerations which probably encouraged its adoption.²³⁷ Justice Stevens asserted that Rule 29 aimed to prevent trial judges from reviewing a record after they had forgotten their impressions of the credibility of the witnesses.²³⁸ This supervisory power to grant *sua sponte* judgments of acquittal to avoid injustice applies up until the time of sentencing, because after sentencing, trial court judges no longer have jurisdiction over a case. Judges preside over sentencing hearings shortly after the conclusion of a criminal trial. Thus, it is unlikely that a trial court judge would be forced to reconsider a record with which he was no longer familiar.

Justice Stevens also asserted that the drafters of Rule 29 intended to force defense counsel to act promptly.²³⁹ Even if the Court had said that trial courts retain a supervisory power which allows them to grant *sua sponte* judgments of acquittal until after sentencing, the defendant would still be required to file the motion within the seven-day time limit embodied in Rule 29(c).²⁴⁰ Defense counsel would not rely on the discretion of the district court to enter the judgment of acquittal *sua sponte* because courts would reserve that authority for cases involving great injustice. Thus, defense counsel would still file their motions in a timely fashion. Since allowing courts to grant *sua sponte* judgments of acquittal in cases where justice so required would not frustrate the likely purposes and goals of Rule 29, the Court should have found that district courts retain such authority.

The majority suggested that the drafters intended Rule 29 to alle-

²³⁶ FED. R. CRIM. P. 29(c) advisory committee's note.

²³⁷ *Carlisle v. United States*, 116 S. Ct. 1460, 1475 (1996) (Stevens, J., dissenting).

²³⁸ *Id.* (Stevens, J., dissenting).

²³⁹ *Id.* (Stevens, J., dissenting).

²⁴⁰ *Id.* (Stevens, J., dissenting).

viate concern about the potential for abuse of discretion by trial courts judges.²⁴¹ There is no reason to believe that a judge who had the authority to grant a judgment of acquittal throughout a proceeding and who declined to do so would then enter an unjustifiable judgment of acquittal after the return of the jury verdict. There is always potential for abuse in the judicial system, but fear of abuse should not force the Court to strip judges of their power to ensure fairness and justice. In *Carlisle*, the Court stripped judges of their supervisory authority to prevent injustice resulting from an abuse of discretion; however, in the process, the Court allows injustices which stem from flaws in procedure.

C. FUTURE IMPACT OF *CARLISLE V. UNITED STATES*

The Supreme Court's decision in *Carlisle v. United States*²⁴² instructs trial court judges that they cannot consider untimely motions for judgment of acquittal regardless of the accompanying circumstances.²⁴³ Several post-*Carlisle* decisions demonstrate that the lower courts are acting accordingly. In *United States v. Calderon*,²⁴⁴ the defendant filed a motion for judgment of acquittal several months after the expiration of the seven-day time limit.²⁴⁵ Nevertheless, the district court granted the motion.²⁴⁶ The Eleventh Circuit reversed the trial court's order granting the defendant's motion for judgment of acquittal.²⁴⁷ The Eleventh Circuit relied on *Carlisle* to support its assertion that the district court lacked jurisdiction to consider the motion.²⁴⁸

In *United States v. Bordeaux*,²⁴⁹ the Eighth Circuit also followed the Supreme Court's instruction from *Carlisle*.²⁵⁰ In *Bordeaux*, a jury found the defendant guilty of abusive sexual contact by force.²⁵¹ This was the lesser of two crimes submitted to the jury for consideration.²⁵² The defendant failed to file a motion for a new trial within the seven-

²⁴¹ *Id.* at 1464.

²⁴² 116 S. Ct. 1460 (1996).

²⁴³ *Id.* at 1464.

²⁴⁴ 86 F.3d 200 (11th Cir. 1996).

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ *Id.*; see also *United States v. Dumas*, 94 F.3d 286 (7th Cir. 1996) (citing *Carlisle* to support its finding that since defendant's notice of appeal was not untimely because of reliance on a misstatement of the district court, the narrow exception to the Rule's time limit did not apply and thus the appeal was dismissed).

²⁴⁹ 92 F.3d 606 (8th Cir. 1996).

²⁵⁰ *Id.* at 607.

²⁵¹ *Id.*

²⁵² *Id.*

day time limit prescribed by Rule 33.²⁵³ After the verdict was entered and a date for sentencing was set, the government admitted that the jury instruction on the lesser offense “failed to include the essential element of force.”²⁵⁴ As a result, the district court *sua sponte* granted a new trial on the lesser offense.²⁵⁵ Relying on *Carlisle v. United States*, the Eighth Circuit held that the district court lacked the authority to grant the defendant a new trial because the defendant had not filed a motion within the allowable time period.²⁵⁶ Consequently, the Eighth Circuit remanded the case to the district court so that sentence could be imposed for the conviction of the lesser offense.²⁵⁷

United States v. Bordeaux is another example of justice’s subordination to rigid formalism. In *Bordeaux*, the district court judge contemplated the various ways to remedy the erroneous jury instruction.²⁵⁸ The judge acknowledged that if he did not grant a new trial, the defendant would appeal and the appellate court would almost certainly grant a new trial.²⁵⁹ The trial judge granted the new trial so that the defendant would not have to sit in jail for up to a year waiting for the appellate court to order a new trial.²⁶⁰ The district court followed the mandate of Rule 2, which instructs a judge to secure “fairness in administration and the elimination of unjustifiable expense and delay.”²⁶¹

Although the Court’s holding in *Carlisle*²⁶² only addressed the flexibility of time limits under the Federal Rules of Criminal Procedure, lower courts have cited *Carlisle* to explain their strict adherence to other procedural rules. In *United States v. McVeigh*,²⁶³ a district court in Colorado relied on *Carlisle* to prohibit the distribution of audio tapes of court proceedings. The court determined that since the recordings were not made for the purpose of making the official record, Federal Rule of Criminal Procedure 53 prohibited their distribution.²⁶⁴ The court stated that it had no choice but to forbid the distribution of the tapes, because under *Carlisle*, a district court “has no authority to depart from the requirements of the Federal Rules of

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ *Id.* at 608.

²⁵⁸ *Id.* at 607-08 n.2.

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ FED. R. CRIM. P. 2.

²⁶² 116 S. Ct. 1460 (1996).

²⁶³ 931 F. Supp. 753, 755 (D. Colo. 1996).

²⁶⁴ *Id.* at 756.

Criminal Procedure."²⁶⁵ Thus, *Carlisle* is being read by courts to apply to much more than cases involving time limits. *Carlisle* effectively strips district courts of any discretion they once possessed and forces them to follow precisely every Federal Rule of Criminal Procedure regardless of extraordinary circumstances.

VI. CONCLUSION

This Note concludes that the Court correctly determined that the Federal Rules of Criminal Procedure prohibit district courts from granting untimely motions for judgment of acquittal. The text of Rules 29(c) and 45(b) explicitly state that actions taken under Rule 29 must be concluded before the expiration of the relevant time period. However, this Note further concludes that the majority incorrectly determined that district courts do not possess an inherent supervisory power which would allow them to grant a judgment of acquittal *sua sponte* where the evidence was insufficient to warrant a conviction. The majority was so concerned with following the Rules that it lost sight of the fundamental principles of justice and fairness which are central to our legal system.

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²⁶⁵ *Id.* at 755.