

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

UNITED STATES OF AMERICA)	
)	
)	Case No. 1:04CR00009
)	
v.)	OPINION AND ORDER
)	
TRADON MARQUEZ DRAYTON,)	By: James P. Jones
)	Chief United States District Judge
Defendant.)	

Tradon Marquez Drayton, Pro se.

The defendant was convicted after a jury trial and thereafter sentenced by this court on June 19, 2006. His appeal is currently pending. He has now filed a pro se Motion for New Trial based on alleged newly-discovered evidence.

This court has jurisdiction to consider his motion, although it cannot be granted until the case is remanded by the court of appeals. Fed. R. Crim. P. 33(b)(1); *United States v. Cronin*, 466 U.S. 648, 667 n.41 (1984).

The motion is without merit. The defendant's alleged new evidence is that he did not fire the gunshot that killed the victim in the case. However, that fact was admitted by the government at trial. The government's case was based on its evidence that the defendant intentionally fired at a rival drug dealer's car, intending to kill the occupants, and that the victim (a passenger in the car) was killed

accidentally by return fire. Thus there is no “new evidence” and the motion will be denied.

For these reasons, it is **ORDERED** that the Motion for New Trial is DENIED.

ENTER: February 11, 2007

/s/ JAMES P. JONES
Chief United States District Judge