

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**WESLEY WAGNER,**

**Defendant.**

**Case No. 17-40097-01-DDC**

**MEMORANDUM AND ORDER**

Defendant Wesley Wagner has moved to extend the time to file memoranda in support of his Motion for Judgment of Acquittal and Motion for a New Trial. Docs. 78, 79. Defendant already has filed both a Motion for Judgment of Acquittal (Doc. 76) and a Motion for a New Trial (Doc. 77) within 14 days of the verdict in this case (Doc. 73). *See* Fed. R. Crim. P. 33(b)(2) (“Any motion for a new trial grounded on any reason other than newly discovered evidence must be filed within 14 days after the verdict or finding of guilty.”). Defendant asked the court reporter to prepare trial transcripts on a 14-day schedule, and he anticipates receiving those transcripts around October 24, 2018. Defendant requests 30 additional days from the date the transcripts are filed to file his supplemental memoranda for both his Motion for Judgment of Acquittal and Motion for a New Trial.

The court has discretion to extend the time to consider motions for a new trial. *United States v. Smith*, 331 U.S. 469, 475–76 (1947). It also can “extend that time for so long as [it] thinks necessary for proper consideration of the course of the trial.” *Id.* at 476; *see also* Fed. R. Crim. P. 33 advisory committee’s note to 2005 amendment (“Assuming that [Rule 33(b)(2)] was intended to promote finality, there is nothing to prevent the court from granting the defendant a

significant extension of time . . . . The court itself is not required to act on [a timely] motion within any particular time.”). But that does not allow the court to extend the time “indefinitely.” *Smith*, 331 U.S. at 476. Here, the court concludes that a 30-day extension for defendant to file supplemental memoranda to his timely motions falls within the acceptable discretionary window for extending time under Rule 33. The court determines this extension of time will allow it to consider properly the issues defendant plans to raise after reviewing the trial transcript in this case.

For these reasons, the court hereby grants defendant an extension of time, up to and including 30 days from the date the trial transcripts are filed, within which to file his supplemental memoranda for his Motion for Judgment of Acquittal and Motion for a New Trial.

**IT IS THEREFORE ORDERED THAT** defendant’s Motion for Extension of Time to File Supplemental Memorandum in Support of his Motion for Judgment of Acquittal (Doc. 78) and Motion for Extension of Time to File Supplemental Memorandum in Support of his Motion for New Trial (Doc. 79) are granted.

**IT IS SO ORDERED.**

**Dated this 19th day of October, 2018, at Kansas City, Kansas.**

s/ Daniel D. Crabtree  
**Daniel D. Crabtree**  
**United States District Judge**