

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:04-CR-211-1-BO

UNITED STATES OF AMERICA,)
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 v.)
)
 DAVID A. PASSARO,)
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 Defendant.)
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ORDER

This matter is before the Court on Defendant’s Motion for Judgment of Acquittal, pursuant to Rule 29(c) of the Federal Rules of Criminal Procedure. Defendant petitions the Court to set aside the verdicts of guilty returned by the jury on August 17, 2006, and enter a judgment of acquittal. For the following reasons, Defendant’s Motion is DENIED.

BACKGROUND

At a trial beginning August 7, 2006, the Government alleged that Defendant committed four felony assaults, on suspected terrorist Abdul Wali, during interrogations conducted at the Asadabad Firebase, Afghanistan. The jury convicted Defendant of one count of aggravated assault and three lesser included assault charges.

Testimony by military personnel supported the Government’s allegations that on June 19, 2003, Defendant kicked Abdul Wali in the groin and struck him in the abdomen with a metal flashlight. Evidence showed that Abdul Wali was handcuffed and blindfolded at the time of the beating. Abdul Wali was beaten with such force that he could no longer urinate due to internal

injuries. On June 20, 2003, the beating continued, as Defendant struck Abdul Wali repeatedly with the flashlight. Abdul Wali begged the guards to kill him, and on June 21, 2003, died of unknown causes. For religious reasons, Abdul Wali's family refused an autopsy.

After the conviction, *The News & Observer* reported that one juror stated that "jurors couldn't tell the extent of Wali's injuries, because the Wali family refused an autopsy...[with an autopsy, Defendant] probably would have been convicted on all charges."

ANALYSIS

A Court is to direct acquittal if "if the evidence is insufficient to sustain a conviction." FED. R. CRIM. P. 29. The Court must determine whether the evidence would permit the jury to find the defendant guilty beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *United States v. Sherman*, 412 F.2d 198, 199 (4th Cir. 1970). Viewed in the light most favorable to the government, a jury's verdict must be upheld if there is substantial evidence to support it. *Burks v. United States*, 473 U.S. 1, 17 (1978).


Defendant argues that the verdict should be overturned because the juror's comments to *The News & Observer* revealed that the jury verdict was reached based on passion. Although Abdul Wali's death was presented to the jury, it was not an element of any of the charges against the Defendant. Further, the comment by the juror revealed that the juror's decision was inconsistent with the Court's instructions. It is well established that a juror cannot impeach their own verdict, unless it concerns extraneous outside information that corrupts the process. FED. R. EVID. 606(b). Thus, the Court cannot inquire into the internal process by which the jury reached the verdict. *Tanner v. United States*, 483 U.S. 107, 124 (1987) (noting congressional acceptance of long-standing judicial policy, in enacting Rule 606(b): "permitting an individual to attack a

jury verdict based upon the jury's internal deliberations has long been recognized as unwise by the Supreme Court."'). The Court will not inquire into the internal workings of the jury based on the comment published by *The News & Observer*. The Court notes that it is hardly impermissible, to infer that *more* evidence would have supported a conviction on *more* or *more serious* counts in the indictment.

Defendant maintains that the verdicts are inconsistent. The inconsistency of verdicts are not a proper matter for appellate review. *United States v. Powell*, 469 U.S. 57, 65 (1984). The jury found Defendant guilty of assault with serious bodily injury on the first day, and misdemeanor assaults on both days. The jury easily may have found that based on the strength of the testimony and evidence presented, the first days beatings were better supported than the second days beatings. Substantial evidence supports the jury's findings on each count in this case.

Finally, Defendant argues that no evidence showed Abdul Wali sustained serious bodily injury, and no causal connection could be established between Defendant's conduct and the alleged injury. Evidence presented at trial demonstrated that Abdul Wali, a healthy young man, arrived at the compound, was beaten for two days, and subsequently died. Notably, the absence of an autopsy likely shielded the Defendant from murder charges. The jurors heard evidence from eye witnesses regarding Abdul Wali's brutal beating, his condition after the beating, and expert testimony as to the internal injuries such blows were likely to cause. Despite Defendant's arguments to the contrary, substantial evidence supports the jury's verdict in this case. Thus, the jury's verdict cannot be overturned. Defendant's Motion for Judgment of Acquittal is DENIED.

SO ORDERED, this 25 day of October 2006.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE