

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

v.

Crim. Action No. 1:22-CR-52
(Judge KleeH)

LANCE KURETZA,

Defendant.

MEMORANDUM OPINION AND ORDER DENYING MOTION FOR
JUDGMENT OF ACQUITTAL PURSUANT TO FED. R. CRIM. P. 29

Pending before the Court is a motion for judgment of acquittal pursuant to Rule 29(a) of the Federal Rules of Criminal Procedure. For the following reasons, the motion is **DENIED**. ECF No. 82.

I. Background

A federal grand jury returned an Indictment against Defendant Lance Kuretza ("Kuretza") on August 17, 2022, alleging two counts. Count 1 - Deprivation of Rights under Color of Law in violation of 18 U.S.C. § 242, charges that

[o]n or about January 20, 2018 in Monongalia County, within the Northern District of West Virginia, **LANCE KURETZA**, then a Deputy Sheriff with the Monongalia County Sheriff's Office, while acting under color of law, willfully deprived Q.G., a person known to the Grand Jury, of his right, secured by the Fourth Amendment to the United States

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Constitution, to be free from unreasonable seizures, by punching and elbowing Q.G. in the face, striking Q.G. and spraying Q.G. with pepper spray after Q.G. was handcuffed, and kneeling Q.G. while escorting him. The offense included the use of a dangerous weapon and resulted in bodily injury to Q.G.

Count 2 - Destruction, Alteration, and Falsification of Records
in violation of 18 U.S.C. § 1519, charges that

[o]n or about January 21, 2018 in Monongalia County, within the Northern District of West Virginia, **LANCE KURETZA**, in relation to and in contemplation of a matter within the jurisdiction of the Federal Bureau of Investigation, an agency of the United States, knowingly falsified and made a false entry in a record and document with the intent to impede, obstruct, and influence the investigation and proper administration of that matter. Specifically, **KURETZA** falsified and made a false entry in his Use of Force Report for Call Number 18-0002459 for his use of force against Q.G. by: 1) falsely stating that he sprayed Q.G. with pepper spray before Q.G. was handcuffed, 2) omitting that he sprayed Q.G. with pepper spray after Q.G. was handcuffed, and 3) omitting that he struck Q.G. after Q.G. was handcuffed.

ECF No. 1.

Jury trial began on July 10, 2023, at the Wheeling, West Virginia, point of holding court.¹ On July 13, 2023, Kuretza, by counsel, moved for a judgment of acquittal at the close of the government's evidence pursuant to Rule 29(a) of the Federal

¹ See Miscellaneous Case No. 1:23-MC-34, In Re: Closing Clarksburg Federal Courthouse due to Asbestos Abatement.

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Rules of Criminal Procedure. ECF No. 82. Because there is sufficient evidence for the jury to sustain a conviction, the Court **DENIES** the motion for judgment of acquittal. ECF No. 82.

II. Legal Standard

Rule 29(a) of the Federal Rules of Criminal Procedure provides that “[a]fter the government closes its evidence . . . , the court on the defendant’s motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction.” FED. R. CRIM. P. 29(a). A defendant who challenges the sufficiency of the evidence under Rule 29 faces an “imposing burden.” United States v. Martin, 523 F.3d 281, 288 (4th Cir. 2008) (citing United States v. Beidler, 110 F.3d 1064, 1067 (4th Cir. 1997)). The defendant must establish that “the record demonstrates a lack of evidence from which a jury could find guilt beyond a reasonable doubt.” Id. at 277–78 (citing United States v. Burgos, 94 F.3d 849, 862 (4th Cir. 1996) (en banc)). It is not the Court’s duty to weigh the evidence or assess witness credibility at the Rule 29 stage. United States v. Blank, 659 F. App’x 727, 728 (4th Cir. 2016). When reviewing the sufficiency of the evidence supporting a criminal conviction, courts are “limited to considering whether there is substantial evidence, taking the view most favorable to

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the Government, to support it.” Beidler, 110 F.3d at 1067 (citation and quotation marks omitted).

III. Discussion

a. Count One, violation of 18 U.S.C. § 242

To begin, Count One, Deprivation of Rights under Color of Law pursuant to 18 U.S.C. § 242, states, in relevant part: “Whoever, under color of any law . . . willfully subjects any person in any State . . . to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States” shall be guilty of an offense against the United States. 18 U.S.C. § 242. This count requires the Government to prove beyond a reasonable doubt that Kuretza (1) acted under color of law, (2) deprived the victim, Q.G., the right to be free from unreasonable seizures under the Fourth Amendment to the United States Constitution, (3) acted willfully, and (4) used a dangerous weapon or that Kuretza’s conduct resulted in bodily injury to Q.G. See United States v. Cowden, 822 F.3d 464, 474 (4th Cir. 2018).

Kuretza moved for judgment of acquittal under Rule 29 of the Federal Rules of Criminal Procedure arguing that while the burden is low at this juncture, the Government failed to demonstrate sufficient evidence to sustain a conviction of the

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willfulness element of Count One. Because the Court finds, in the light most favorable to the Government, there is sufficient evidence to sustain a conviction of Count One, the Court denies Kuretza's motion and analyzes each element of Count One in turn.

1. Under Color of Law

The government has presented sufficient evidence for a reasonable jury to find beyond a reasonable doubt that Kuretza acted under color of law. Kuretza has been identified by witnesses as a law enforcement officer for the Monongalia County Sheriff's Office, and that he was working the night shift on the evening of January 20, 2018, to the morning of January 21, 2018. Witness testimony, video and documentary evidence has likewise confirmed Kuretza was the officer who took the call involving Q.G. and others on January 20, 2018, at the Residence Inn. Finally, witness testimony has demonstrated Kuretza was in his law enforcement uniform and announced himself as law enforcement multiple times on body camera footage on the evening of January 20, 2018, as he entered the hotel room in which Q.G. was sleeping. In considering all evidence in the light most favorable to the Government, the Court **DENIES** the motion for judgment of acquittal.

2. Deprivation of Protected Right

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Second, the Government has shown sufficient evidence under the Rule 29 standard that Kuretza deprived the victim, Q.G., of his right protected by the Constitution to be free from the use of unreasonable force by one acting under color of law. "In assessing a claim of excessive force, [the question is] whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them." Lombardo v. City of St. Louis, Missouri, -- U.S. --, 141 S.Ct. 2239, 2241 (2021) (internal quotations and citations omitted). "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." Graham v. Connor, 490 U.S. 386, 396 (1989) (internal citation omitted). Circumstances to consider include "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." Id.

Witness testimony has demonstrated Kuretza used force on Q.G. after he was restrained in handcuffs. Indeed, the Government's evidence has shown within moments of Kuretza entering the locked hotel room of a sleeping Q.G., the force began. Upon Q.G. waking to the pokes and prods of Kuretza, Q.G.

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swats Kuretza with an open hand, Kuretza's body camera is switched off, and somehow Q.G. is on the floor of the hotel room in a prone position, in the narrow hall between the bathroom and bed. Viewing the evidence in the light most favorable to the Government, video evidence and witness testimony showed knee strikes and pepper spray deployment after Officers Mongold, Kuretza, and Coe restrained Q.G. in handcuffs. Law enforcement witnesses have testified that when force was being used on Q.G. while he was handcuffed, they did not use force on Q.G. because they did not believe force was needed at that time. There is sufficient evidence to convict Kuretza because a reasonable jury could find that, based upon the evidence offered in the Government's case in chief, a reasonable officer in his position would find the force used was unreasonable. Lombardo, 141 S.Ct. at 2241; Graham, 490 U.S. at 396. Therefore, Defendant's Motion is **DENIED**.

3. Willfulness

As to Count One, Kuretza's argument for judgment of acquittal was limited to the willfulness element. Still, the government presented sufficient evidence for a reasonable jury to find beyond a reasonable doubt that Kuretza acted willfully.

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Kuretza failed to establish that the record before the jury reveals a lack of evidence from which a jury could find him guilty. United States v. Martin, 523 F.3d 281, 277-78 (4th Cir. 2008). First, the parties' Stipulation No. 1 is evidence of willfulness. Specifically, the stipulation stated that Kuretza was warned by former Sheriff Kisner in 2016 that if knee strikes were delivered while a subject is handcuffed, it would be against Monongalia County Sheriff's Office Use of Force Policy. A reasonable juror could conclude the video evidence depicts Kuretza's willfulness by his knowing violation of the use of force policy by striking, deploying pepper spray, and taunting Q.G. after he was restrained in handcuffs. Likewise, the aftermath of Kuretza's use of force demonstrates Kuretza's willfulness by his refusal to decontaminate Q.G. until at least an hour after pepper spray was used, the discussions regarding an EMS refusal in his attempt to circumvent securing medical attention for a clearly injured Q.G., and the ridiculing of Q.G. at the police station. Defendant's Motion is **DENIED** as to willfulness.

4. Use of Dangerous Weapon or Bodily Injury

The last element of Count One is Defendant's use of a dangerous weapon or that the defendant's conduct resulted in

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bodily injury to Q.G. The Government has likewise satisfied its burden to withstand Kuretza's Rule 29 challenge to this element. While Kuretza argues controlling case law does not categorize pepper spray as a dangerous weapon, there is little dispute that Q.G.'s bodily injuries resulted from Kuretza's conduct. Indeed, in Kuretza's use of force report, he described Q.G.'s injuries and marked the same on Q.G.'s body on the injury report. Camden Boggs, an employee of emergency services, testified to the extent of Q.G.'s injuries on the night in question. Finally, the photographs of Q.G.'s face and witness testimony demonstrate the seriousness of Q.G.'s bodily injuries such that the jury might find the defendant guilty beyond a reasonable doubt. Kuretza's motion is **DENIED**.

b. Count Two, violation of 18 U.S.C. § 1519

Kuretza was also indicted under 18 U.S.C. § 1519, Count Two, which prohibits the falsification of records with intent to impede, obstruct, and influence the investigation and proper administration of a matter within the jurisdiction of the Federal Bureau of Investigation ("FBI"). This crime requires the Government to prove beyond a reasonable doubt each of the following elements: (1) the defendant knowingly falsified a record or document; (2) the defendant, acting in relation to or

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in contemplation of the investigation or proper administration of a matter, intended to impede, obstruct, or influence the investigation or proper administration of that matter; and (3) the matter was within the jurisdiction of an agency of the United States; here, the FBI. 18 U.S.C. § 1519; United States v. Hassler, 922 F.3d 243, 246-47 (4th Cir. 2021).

Kuretza's motion for judgment of acquittal of Count Two is tailored to the first element, knowingly falsifying a record. Because the statute does not penalize omissions, Kuretza argues, the Government failed to show sufficient evidence of his guilt to sustain a conviction. Because the Court finds, in the light most favorable to the Government, there is sufficient evidence to sustain a conviction of Count Two, the Court denies Kuretza's motion and analyzes each element below.

1. Knowingly Falsified a Record

First, the Government must prove the defendant knowingly falsified a record or document. Kuretza focuses on this element and argues the query is whether he lied, and not whether he omitted information from the report. However, the law instructs "[w]hen a person knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record," with the requisite intent to impede a qualifying investigation,

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is guilty of the federal offense. Circuit Courts of Appeals have held that "material omissions of fact can be interpreted as an attempt to 'cover up' or 'conceal' information." United States v. Lanham, 617 F.3d 873, 887 (6th Cir. 2010); see also United States v. Singh, 979 F.3d 697, 721 (9th Cir. 2020) (holding that an omission satisfies the knowing element of a § 1519 crime); accord United States v. Moyer, 674 F.3d 192, 208 (3rd Cir. 2012).

In the light most favorable to the Government, the Court finds that the Government presented sufficient evidence to sustain a conviction on this element. When a reasonable juror compares the video evidence, witness testimony, and Kuretza's use of force report, she could find beyond a reasonable doubt that Kuretza falsified his report. Kuretza's use of force report states he used knee strikes on Q.G. to gain control of his arms before retraining them in handcuffs. By review of video evidence and witness testimony, a reasonable juror could conclude Kuretza used knee strikes on Q.G., after he was handcuffed, in the doorway of Q.G.'s hotel room leading to the hallway. Kuretza omitted use of knee strikes in his use of force report. Similarly, video evidence and witness testimony has demonstrated Kuretza's use of pepper spray on Q.G. after he was restrained by

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handcuffs, but Kuretza only reported his use of pepper spray on Q.G. before he was in handcuffs. Finally, Kuretza marked himself injured on the use of force form but never indicated he was. Kuretza's motion for judgment of acquittal is **DENIED** on this element.

2. Intent to Impede, Obstruct, or Influence

Second, the Government must prove Kuretza intended to impede, obstruct, or influence the investigation. Kuretza argues the Government likewise fails the Rule 29 challenge on this element because there is no evidence that he attempted to influence other officers' reports or talked with anyone about his use of force report before writing his statement.

The Government's evidence in support of this element ties closely with that of element one. A reasonable juror can review all the documentary, video, and testimonial evidence admitted during the Government's case in chief and find Kuretza intended to impede the FBI's investigation by his knowingly false statements; therefore, for the same reasons discussed in Section III.b.2, the Government can sustain a conviction on this element. Kuretza's motion for judgment of acquittal is **DENIED**.

3. Within the Jurisdiction of a Federal Agency

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Finally, with element three undisputed, the Court denies Kuretza's motion. The parties have stipulated in Stipulation No. 2 that the FBI is an agency of the United States and has jurisdiction to investigate allegations of unreasonable force as alleged here.

IV. Conclusion

For all of these reasons, the Court finds the evidence sufficient to sustain a conviction and therefore **DENIES** Kuretza's motion for judgment of acquittal. FED. R. CRIM. P. 29.

It is so **ORDERED**.

The Court **DIRECTS** the Clerk to transmit copies of this Order to counsel of record and all appropriate agencies.

DATED: July 18, 2023



THOMAS S. KLEEH, CHIEF JUDGE
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