UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS

UNITED STATES OF AMERICA, Plaintiff, v. ANTHONY BOEN Defendant.	)	CASE NO. 2:19-CR-20037-TLB

UNITED STATES' RESPONSE IN OPPOSITION TO THE DEFENDANT'S MOTION FOR ACQUITTAL

The United States respectfully asks the Court to deny the defendant's motion for a new trial under Federal Rules of Criminal Procedure 29 and 33, Dkt. 90. After a six-day trial, a federal jury in Fort Smith, Arkansas, convicted the defendant of two counts of willfully depriving pretrial detainees of their constitutional rights while acting under color of law, in violation of 18 U.S.C. § 242. The jury's verdict was supported by testimony from 15 witnesses, including multiple eyewitnesses to each of the assaults charged in the Indictment, as well as documentary evidence that corroborated the witness testimony. Indeed, for each count of conviction, at least one supervisory officer at the defendant's own agency—the Franklin County Sheriff's Office—testified that he witnessed the defendant assault a detainee without justification. The defendant's sole argument in support of his motion for a new trial—that the jury lacked sufficient evidence to find him guilty—ignores both the significant evidence of guilt and the high standard for overturning a jury's verdict after trial. For the reasons set forth below, the motion should be denied.

BACKGROUND

A. Procedural History

A federal grand jury indicted the defendant on November 20, 2019, on three counts of violating 18 U.S.C. § 242 by assaulting pretrial detainees in his custody. Count One alleged that the defendant repeatedly punched a detainee who was handcuffed and shackled in the backseat of a police vehicle; Count Two charged the defendant with slamming a compliant detainee to the ground and pulling his hair during an interrogation; and Count Three alleged that the defendant struck a detainee in the head while he was compliant and shackled to a bench in an area of the Franklin County Jail known as the "shower room." All three counts charged that the defendant's assaults caused bodily injury to his victims. *See* Indictment, Dkt. No. 1. At trial, the Court denied the defendant's Rule 29 motion at the close of the Government's case-in-chief, finding that "for each of Counts, One, Two, and Three [] there is sufficient evidence before the Jury from which a reasonable Jury could find that the government had established and carried its burden beyond a reasonable doubt." Trial Transcript ("Tr.") at 926-97. On August 9, 2021, at the conclusion of the six-day trial, the jury convicted defendant Boen on Counts Two and Three and acquitted him on Count One. Two weeks after the verdict, the defendant filed the instant motion under Federal Rules of Evidence 29 and 33 challenging the sufficiency of the evidence supporting his conviction. *See* Dkt. 90.

B. Evidence Presented at Trial

At trial, the jury heard testimony from 15 witnesses, including multiple eyewitnesses to each of the three assaults charged in the Indictment, as well as documentary evidence corroborating the witness accounts. The evidence supporting the two counts of conviction is summarized below.

1. Count Two – Boen's Assault on Brandon English

The jury found Boen guilty on Count Two of the Indictment, which charged him with assaulting detainee Brandon English while he was sitting calmly in a chair in the detective's office at the Franklin County Jail. At trial, the Government presented testimony from English and from two detectives who corroborated his account. This evidence proved that Boen assaulted English in retaliation because English refused to cooperate with the detectives' investigation into a string of commercial thefts. English testified that officers took him to a windowless office in the jail and placed him in a chair. Inside the room, Boen sat next to English while Detective Travis Ball sat behind a desk. Tr. at 647. English explained that, moments after he sat down, Boen "grabbed me by my chest and slammed me down on the floor," then held English on the ground, cursed at him, and screamed about English's alleged involvement in a series of commercial thefts. *Id*. at 648. English testified that the assault ripped out "a substantial amount of [his] hair," bruised his chest, and caused him to hit his head and back on the hard floor. *Id*. at 649.

Detective Kevin Hutchison, who was leading the Sheriff's Office's investigation into the string of thefts, testified that the defendant assaulted English in apparent retaliation for English's refusal to cooperate with the investigation. After Hutchison made two unfruitful attempts to question English about the thefts, he advised Boen that English had declined to provide useful information during his interviews. Tr. at 606. One or two days later, Boen came to Huchison's office and ordered him "to go get Brandon English for an interview." *Id*. at 606-07. Hutchison testified that he and a corrections officer then escorted English to the detectives' office, where Boen and Ball were waiting. *Id.* at 607. Hutchison confirmed that the office had no windows and no recording equipment. *Id.* at 608. Like English, Hutchison testified that English was

placed in a chair next to Boen, while Ball sat across the room behind a desk. *Id.* at 609. Shortly after Hutchison closed the door to the office, he saw Boen yell at English and "grab ahold of him." *Id*. at 614. Hutchison then saw English's chair fall over backwards onto the floor as Boen grabbed him, leaving English pinned to the ground on his back. Boen kneeled next to English, "grabbed him by the hair," "pok[ed] him in the chest," and told English "to get out of his county, take his thieving elsewhere." *Id*. at 615. Hutchison further testified that, as Boen assaulted English, he angrily called English "a piece of shit." *Id*. Throughout the encounter, English stayed on the ground, "not doing anything." *Id*. at 616. Hutchison testified that he was "shocked" by Boen's unprovoked assault, which was contrary to his training and experience as a law enforcement officer. *Id*. at 616-17. Hutchison observed that Detective Ball—the only other officer in the room—also had a shocked look on his face during Boen's assault. *Id*. at 618.

After the assault, Hutchison saw English "rubbing the right side of his forehead" by "his hairline, which is where I'd seen the Sheriff holding onto his hair." Tr. at 619. When the FBI began investigating the incident several months later, Hutchison recounted that Boen had approached him and said "they don't have anything with Brandon English," and then made suggestive gestures and comments that made Hutchison feel "uncomfortable." *Id*. at 620-21.

Detective Travis Ball likewise testified that Detective Hutchison brought English to his office and placed him in a chair next to Boen. From Ball's vantage point behind his desk, he saw that, as soon as English sat down, "Boen grabbed him by the shirt area [and] went backwards with him to the floor." Tr. at 672. Once English was on the floor, Ball's view was blocked by the front of his desk, but he heard "Boen tell Mr. English that he was tired of his damn thieving and he needed to get the hell out of his county." *Id*. at 673. Ball testified that Boen sounded

"angry" as he "yelled" at English. *Id*. at 674. Like Hutchison, Ball was "shocked" by the assault, and he observed that Hutchison appeared "shocked" as well. *Id*. at 674-75.

In addition to this testimony, the Government introduced documentary evidence of the policies and procedures at the Franklin County Sheriff's Office pertaining to officers' use of force and their conduct during interrogations. To underscore some of the principles in their policy, the Sheriff's Office had posted an "inmate's rights form" in the Franklin County Jail that reminded officers, among other things, that "inmates have a right to be secure from self-incrimination and shall not be subjected to unlawful attempts to obtain statements and/or confessions . . ." Tr. at 690; Gov't Ex. 7. Indeed, Detective Ball testified that this admonition was posted in the jail's booking area as far back as he could remember. *Id*. at 689. The Government also introduced pictures showing the layout of the detective's office and a picture showing marks on English's chest. English testified that his friend took the picture shortly after he was released from jail—several days after the assault—to document the bruising that was still visible where Boen had grabbed English's chest and pinned him to the ground. *See* Tr. at 651; Gov't Ex. 17.

2. Count Three – Boen's Assault on Zachary Greene

The jury also convicted defendant Boen of Count Three of the Indictment, which charged him with striking inmate Zachary Greene in the head while Greene was compliant and shackled to a bench. At the time of the assault, Greene was being held in an area of the jail known as the "shower room," a small holding cell with a shower curtain along one side where inmates were secured by chaining their leg to the bench. Tr. at 830. The evidence proved that Boen assaulted Green twice and caused Green bodily injury. Each assault was witnessed by at least one of Boen's fellow law enforcement officers. The jury also heard from two other officers in the jail

who heard sounds of physical contact at the time of Boen's assault and heard evidence about Boen's attempts to cover up his assault of Green.

Evidence proved that the incident began while Boen was at dinner at the Bricktown Brewery in Fort Smith with Detective Ball, Dispatcher Scout Ingram, and a contractor named Chris Roberson. Multiple witnesses testified that, on the night of the assault, Boen received a call during the dinner informing him that Greene had been involved in an altercation with a trustee inmate at the Franklin County Jail. *See* Tr. at 694, 1009-1010. The dinner group finished their meal and drove back to the jail, which was approximately 45 minutes to an hour away. Tr. 694-97, 1007, 1010. Ball testified that the group did not reach the jail until two and a half or three hours after Boen received the call about the altercation between Greene and the trustee. *Id*. at 697. According to four witnesses, the incident between Greene and the trustee was resolved long before Boen arrived at the jail, and Greene remained shackled to the bench in the shower room. Tr. at 697, 837, 892, 962.

Ball and Ingram testified that, when the dinner group arrived at the jail, Boen, Ball, and Roberson walked to the shower room to see Greene, while Ingram remained in the booking area. Tr. at 697, 1011. Ball explained that they found Greene "lying on his mattress with his head propped up against the metal door," with his leg shackled to a bench. Tr. at 703. Boen and Ball stood in the shower room's doorway, while Roberson remained in the hallway. *Id*. at 705. Boen told Greene that he was giving him an "eviction notice" from Franklin County, then picked up a cup of water and threw it in Greene's face. *Id*. at 706. Greene did not respond. Ball then saw Boen lean into the cell and strike Greene four or five times with a closed first on the right side of Greene's face while yelling angrily at him. *Id*. at 706-08. According to Ball, Greene was "sitting up" during the assault but "he wasn't standing or coming up off the mattress," and was

not a threat to the officers. *Id*. at 708. After the assault, Ball observed that Greene "had some blood around his mouth area." *Id*.

Two officers stationed in the jail's booking and dispatch area at the time of the assault testified that—although the dispatch office was along a different hallway from the shower room––they heard loud physical contact after Boen walked down to see Greene. Dispatcher Dakota Cowens testified that he watched Boen and Roberson walk toward the shower room on monitors in the dispatch office that showed the view from a hallway surveillance camera. Tr. at 838. After Boen reached the shower room, Cowens observed that Roberson stood in the hallway, blocking the view of the camera. *Id*. at 845, 848-49. Cowens then heard a "slapping sound" that he believed was "skin to skin" contact. *Id*. at 838. He testified that the sound was loud enough to hear from inside the dispatch office, even though the office had been soundproofed. *Id*. at 849. Scout Ingram also told the jury that she heard loud physical contact from the dispatch office. After Boen, Ball and Roberson walked down the hallway to the shower room, Ingram heard yelling and a "thud" that caused her to run down the hallway to ask if the group needed assistance. *Id*. at 1017-18. When she arrived at the shower room, Roberson—who Ingram described as Boen's friend—told her to return to the dispatch area because "we've got it handled." *Id*. at 1018.

Patrol Deputy Dalton Miller testified that Boen hit Greene again several minutes later. Miller, who had responded to the jail to investigate the prior incident involving Greene and the trustee inmate, confirmed that Boen arrived at the jail with Ball and a contractor "from Justice Solutions" (Roberson). Tr. at 895. Miller explained that, while he was hanging out in the deputy's room at the jail, Boen entered, singled him out, and led him to the shower room. *Id*. When they arrived at the shower room, Miller explained that Boen "grabbed my sleeve and he

pulled me toward the wall." *Id*. at 896. Miller believed that Boen positioned him to "block any kind of view you would have of the shower room" on the surveillance cameras. *Id*. at 897.[1] After positioning Miller to block the camera, Boen asked him, "Dalton, can I trust you?" *Id*. Miller then saw Boen "lean[] in toward Zach Greene and he hit him approximately three to four times" in the head while Greene was sitting down and shackled to the bench. Tr. at 898. Boen struck Greene "in the face area" with a closed fist while Greene "was just trying to duck and cover in the corner." *Id*. at 898-99. After striking Greene in the face, Boen "spat on Zach Greene." *Id*. at 899. Miller was "disgusted" by the assault and exclaimed to Boen "what are you doing?" *Id*. at 900. Several minutes later, as Miller tried to leave the jail, Boen approached and again asked, "can I trust you?" *Id*. at 901. Miller was so upset by the unprovoked assault that he immediately started looking for a new job and soon left the Franklin County Sheriff's Office to work at a different law enforcement agency. Tr. at 885-886, 907-908.

Ball, Ingram, and Miller each testified that, following the assault on Greene, Boen hosted a party at his house. After Ingram left the party, Boen approached Miller and asked him yet again, "can I trust you?" Tr. at 904. Boen then referenced the assault on Greene in a "cocky" manner and told Miller that he had done "something similar" to Justin Phillips—the victim charged in Count One of the Indictment. *Id*. at 906. Ball likewise testified that he heard Boen brag at the party—in reference to the assault on Greene—that "That's what they elect us to do, is to take care of business." Tr. at 714.

In addition to this testimony, the Government introduced documentary evidence relating to the assault, including pictures showing the shower room, hallway, and the portion of the shower room visible from the surveillance cameras, Gov't Ex. 5(a)–(j); a receipt from the

[1] Miller testified that at the time he was 6'4" tall and weighed 340 pounds. Tr. at 897.

Bricktown Brewery in Fort Smith showing that, on the date of the assault, Roberson had paid a $370 tab at 8:30 p.m., Gov't Ex. 8; and the Franklin County Sheriff's Office use of force policy that was in place at the time of the Greene assault, Gov't Ex. 6. The use of force policy included a provision—written in bold and underlined—that stated: "Under no circumstances will any officer use kicks or blows to the head . . . or any other potentially lethal area of the detainee's body to subdue or restrain any detainee or will any officer use physical force against any detainee who is physically restrained." Gov't Ex. 6; Tr. at 712.

The Government also introduced an audio recording of a portion of a phone call between Boen and Ball that occurred shortly after Boen learned that the FBI was investigating the assault on Greene. Gov't Ex. 9. On the call, Boen reminded Ball that "me, you and Chris [Roberson] were the only witnesses there, right?" and that "there wasn't anything on camera." A few seconds later, Boen reiterated, "nobody was even there when we did that." *Id*. Ball also testified that, on a different occasion, Boen urged him to give false testimony to the grand jury about the Greene assault. Tr. at 716.

Ball testified that he reported Boen's assaults to the FBI approximately three months later. He explained that he struggled with whether to report Boen because he and Boen "were close for a long time," but he reported the assaults after thinking about it "every day." Tr. at 722. Special Agent Ferguson confirmed that Ball reached out to the FBI approximately three months after the assaults. Ferguson noted that, when Ball appeared in person to report the assaults, he was "extremely nervous." Ball's carotid artery was visibly pumping and "his voice grew quiet" when he described what Boen had done. *Id*. at 856.

ARGUMENT

The defendant asks the Court to discard the jury's verdict and grant a new trial based on his preferred assessment of witness credibility. The Court should decline this invitation to usurp the jury's role, as Rule 29 requires Courts to draw all inferences in favor of the verdict and grant a new trial only where *no* rational jury could find the defendant guilty. Rule 33 similarly authorizes a court to grant a new trial only where a court is convinced that doing so is necessary to prevent a miscarriage of justice—authority that should be exercised "sparingly and with caution." *United States v. McClellon*, 578 F.3d 846, 857 (8th Cir. 2009). Neither standard is met here, where the evidence of guilt is overwhelming. Even if the Court were to assess the credibility of witnesses, such an assessment strongly supports the defendant's guilt, as the jury heard consistent and corroborative testimony from multiple eyewitnesses to each of the defendant's assaults.

A. The Defendant Has the Burden of Showing No Rational Trier of Fact Could Have Found the Defendant Guilty or that Reversal is Required to Prevent a Miscarriage of Justice

The defendant's lone argument in support of his Rule 29 and 33 motion is that the jury's guilty verdicts on Counts Two and Three were not supported by sufficient evidence. This argument requires the defendant to carry a high burden. Under Rule 29, courts review challenges to the sufficiency of the evidence "deferentially and affirm if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. Vega*, 676 F.3d 708, 721 (8th Cir. 2012); *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (same). In reviewing the sufficiency of the evidence to support a guilty verdict, courts must view the evidence "in the light most favorable to the verdict and accept as established all reasonable inferences supporting the verdict." *Vega*, 676 F.3d at 721 (citing *United States v. Augustine*, 663 F.3d 367, 373 (8th Cir. 2011)). "[I]t is axiomatic that [courts do] not pass upon

the credibility of witnesses or the weight to be given their testimony" because "[c]redibility determinations are uniquely within the province of the trier of fact, and are entitled to special deference." *United States v. Spight*, 817 F.3d 1099, 1102 (8th Cir. 2016). *See also United States v. Peterson*, 887 U.S. 343, 347 (8th Cir. 2018) (affirming color of law conviction and explaining that, for sufficiency of the evidence challenges, courts "do not pass on the credibility of witnesses or the weight given to their testimony").

Federal Rule of Criminal Procedure 33 allows a court to "vacate any judgment and grant a new trial if the interest of justice so requires." Fed. R. Crim. P. 33(a). When evaluating a motion for a new trial under Rule 33, the Court is not obliged to view the evidence in the light most favorable to the verdict and it is free to weigh the evidence and evaluate for itself the credibility of the witnesses. *United States v. McClellon*, 578 F.3d 846, 857 (8th Cir. 2009). However, the Eighth Circuit has instructed that courts should exercise this authority "sparingly and with caution." *Id*. (citing *United States v. Starr*, 533 F.3d 985, 999 (8th Cir. 2008)). Courts "may grant a new trial under Rule 33 only if the evidence weighs so heavily against the verdict that a miscarriage of justice may have occurred." *McClellon*, 578 F.3d at 857. Indeed, Rule 33 motions are "generally disfavored," and "[u]nless the district court ultimately determines that a miscarriage of justice will occur, the jury's verdict must be allowed to stand." *United States v. Campos*, 306 F.3d 577, 579 (8th Cir. 2002) (reversing district court's grant of Rule 33 motion).

B. The Evidence at Trial Proved the Defendant Guilty of Counts Two and Three Beyond a Reasonable Doubt

The defendant cannot satisfy his high burden here. Both counts of conviction are supported by significant evidence that clearly establishes—as the Court previously found in response to the defendant's directed verdict motion at the close of the Government's case—that a rational jury, drawing inferences in favor of the Government, could find the defendant guilty.

Tr. at 926-27. Nor is reversal required to avoid a "miscarriage of justice," as the evidence proves what the jury found—that the defendant is guilty.

The jury found the same four elements for each count: that defendant Boen (1) acted under color of law; (2) deprived the victim of a right secured or protected by the Constitution or laws of the United States—here, the Fourteenth Amendment right of pretrial detainees to be free from objectively unreasonable force; (3) acted willfully; and (4) caused the victim bodily injury. *See* Jury Instructions, Tr. at 1088-89; *see also United States v. Lanier*, 520 U.S. 259, 264 (1997). The parties stipulated to the color of law element, Tr. at 1089, and the evidence introduced at trial proved the remaining three elements beyond a reasonable doubt for each count.

1. The Evidence Proved the Assault on Brandon English Beyond a Reasonable Doubt

The evidence at trial proved that Boen willfully used objectively unreasonable force on Brandon English by slamming him to the ground and pulling his hair while English was sitting calmly in a chair in the detective's office. The jury heard testimony from English and both detectives who witnessed the assault. All three agreed that Boen grabbed English without provocation and took him to the floor while English was sitting in a chair. English testified that he hit his head on the hard floor and that Boen pulled out "a substantial amount" of his hair, Tr at 649, and he authenticated a photograph showing a mark on his chest where Boen grabbed him and pinned him against the ground. *See* Gov't Ex. 7. Detective Hutchison likewise told the jury that, immediately after the assault, he saw English rubbing the side of his head where Boen had grabbed his hair. Tr. at 619. The willfulness of Boen's assault was proven by Boen's taunts during the assault, evidence that he violated his department's own policies and procedures relating to interrogations, and the reaction of the other trained officers on the scene—both of whom testified that they were "shocked" by Boen's unprovoked assault.

The defendant asks the Court to second-guess the jury's verdict because there was insufficient evidence that Boen acted willfully and that he caused bodily injury. Both arguments ignore the substantial evidence introduced at trial and the standard for reviewing such claims post-conviction.

i. The Defendant Acted Willfully

Boen first argues that Boen did not act willfully because the "evidence establishes only that Brandon English fell over in his chair or at worst that the actions of Sheriff Boen inadvertently caused the chair to fall backwards." Dkt. 90 at 9. This argument ignores the unequivocal testimony from English that, as he sat in a chair, Boen "grabbed me by my chest and slammed me down on the floor." Tr. at 648. Both detectives in the room, Ball and Hutchison, corroborated this account by testifying that they saw Boen approach English while he was sitting in a chair, grab him without provocation, and go with English to the ground. While neither detective could see whether Boen physically threw English to the ground, the jury was entitled to credit English's testimony, particularly in light of the detectives' corroboration that English was sitting calmly at the time Boen grabbed him. Indeed, "[i]t is well established" that even "uncorroborated testimony of a single witness may be sufficient to sustain a conviction." *United States v. Katakis*, 800 F.3d 1017, 1028 (9th Cir. 2015) (citing *United States v. Dodge*, 538 F.2d 770, 783 (8th Cir. 1976)); *see also United States v. Truman*, 688 F.3d 129, 139 (2d Cir. 2012) ("even the testimony of a single accomplice witness is sufficient to sustain a conviction, provided it is not incredible on its face [and] does not defy physical realit[y]").

Boen's willfulness is further apparent from his conduct immediately before and after the assault itself. Hutchison testified that Boen ordered him to "go get Brandon English" after Hutchison had advised Boen that English was not cooperating with a theft investigation. Tr. at

606-07. Both detectives testified that Boen grabbed English almost immediately after English sat down in his chair, not in response to any provocation. After English was on the ground, both detectives testified that Boen angrily yelled and cursed at him. Boen called English a "piece of shit," told him to "take his thieving elsewhere," and screamed that English should get out of "his county"—words that show Boen acted willfully to punish English for his thefts, not for any legitimate reason. Tr. at 615; *see also id*. at 673 (Boen yelled at English "that he was tired of his damn thieving and he needed to get the hell out of his county.").

ii. The Defendant Caused Bodily Injury to Brandon English

The defendant next argues that "[t]here was no evidence that Sheriff Boen caused any bodily injuries to Brandon English." Dkt. 90 at 10. This claim simply ignores the evidence introduced at trial. As described above, English testified that: (1) he hit his head on the hard floor of the detective's office when Boen slammed him to the ground; (2) that Boen grabbed his hair and pulled out "a substantial amount" of hair; and (3) that Boen left a mark on his chest by grabbing him and pinning him to the ground. Hutchison corroborated this account by testifying that he saw that Boen "grabbed [English] by the hair with his left hand and was poking him in the chest with his right hand, telling him to get out of his county . . . ." Tr. at 615. After the assault, Hutchison saw English rubbing his head where Boen "had ahold of his hair or something as if to say it hurt . . . ." *Id*. at 616. The Government also introduced a photograph taken several days after the assault, on which the injury to English's chest was still visible. Gov't Ex. 7. This evidence is clearly sufficient for the jury to conclude that Boen caused a "cut, abrasion, bruise . . . or physical pain," *see* Jury Instructions, Tr. at 1095, and to demonstrate that there was no miscarriage of justice.

2. The Evidence Proved the Assault on Zachary Greene Beyond a Reasonable Doubt

The jury also heard significant evidence that Boen willfully deprived Zachary Greene of his right to be free from objectively unreasonable force and caused him physical injury. Detective Ball and Deputy Miller each testified that they saw Boen strike Greene in the head with a closed fist while Greene was compliant, shackled to a bench, and not a threat, then heard him brag about the assault at a party at his house. Officers Cowens and Ingram corroborated these accounts by testifying that they heard loud physical contact when Boen was with Greene in the shower room. Boen's willfulness was proven by the egregiousness of the unprovoked assaults, Boen's boastful statements, and evidence that Boen knowingly violated his own department's policies and training by striking an inmate in the head while he was restrained. Jurors also heard Boen's recorded statements to Ball that showed his consciousness of guilt, such as reminding Ball that "there wasn't anything on camera" and "nobody was even there when we did that." *Supra* at 5-9.

The defendant's motion does not dispute that striking a compliant, restrained inmate in the head with a closed fist is a willful deprivation of constitutional rights. Rather, the motion argues that no rational jury could have found that the assault occurred because it is "a physical impossibility for the Sheriff to have hit Zacahry [sic] Greene since Sheriff Boen never entered his cell," Dkt. 90 at 6, and because the accounts of Ball and Miller are contradictory because "each says the other wasn't there," *id*. at 5. Boen further argues that there was insufficient proof that Boen inflicted a physical injury. *Id*. at 7-8. These arguments are unavailing.

i. It was Physically Possible for Boen to Assault Greene

The defendant's claim that Boen could not have reached Greene rests on his misleading assertion that "Travis Ball specifically stated that Sheriff Boen never stepped foot inside the room." Dkt. 90 at 6. To the contrary, Ball testified that he wasn't sure whether Boen entered the

shower room when he hit Greene because "I wasn't watching his feet." Tr. at 763. Ball was watching Boen's fists, and he testified that Boen "leaned into the room" to hit Greene. Tr. at 763. Miller likewise testified that Boen "leaned in towards Zach Greene" to strike him in the face. *Id*. at 898. Miller recalled that the shower room was only about four feet deep and a person with a long reach could touch the back wall while standing in the hallway. *Id*. at 909. This testimony was corroborated by pictures showing that the shower room appeared to be an extremely small space. *See* Gov't Ex. 5(h) and 5(i). While the defendant now claims that the jury verdict "ignored the physical facts," Dkt. 90 at 7, no physical or documentary evidence established the precise dimensions of the defendant's reach or the shower room depth, and multiple witnesses testified that it was possible to hit an inmate in the shower room while standing near the room's entrance. Indeed, multiple witnesses testified that they saw the defendant do exactly that. This evidence is more than sufficient to support the jury's verdict and conclude that there was no miscarriage of justice.

ii. The testimony from Ball and Miller was Consistent

The defendant next claims that the jury could not have rationally credited Ball and Miller's testimony because "[e]ach says the other wasn't there" during the assault. Dkt. 90 at 5. This argument misunderstands the evidence, which proved that Boen assaulted Greene two separate times, several minutes apart. Ball witnessed the first assault; Miller witnessed the second.

The defendant's own witness corroborated Ball's testimony about the events leading up to the first assault. Scout Ingram—who acknowledged that she considered Boen a friend—confirmed that Ball attended dinner with her and Boen, returned to the jail with them, and accompanied Boen to the shower room as soon as they arrived at the jail. Tr. at 1007-08, 1010-

11. Following the assault, Ingram acknowledged that she stepped outside to take a phone call and did not know what happened in the shower room in the following minutes. *Id*. at 1018-19. Ball likewise testified that he walked away from the shower room after the first assault and that he and Boen did not leave the jail until at least 30 minutes later. Tr. at 712.

In the 30 minutes after the first assault, witnessed by Ball, Miller witnessed the second assault. After the first assault, the evidence showed that Boen went to the deputy's office to get Miller, take him to the shower room, and position him in front of the shower room entrance to obstruct the view of the surveillance camera—similar to how Roberson obstructed the camera during the first assault.

Miller indicated that he was unaware of the prior assault on Greene. *See* Tr. at 897 ("Q. Had you seen Sheriff Boen go by the shower room earlier that night? A. No sir, I didn't."). Miller testified that he knew Ball and Roberson were present at the jail, but that they were not with Boen at the time he took Miller to the shower room. Tr. at 895.

In short, the evidence showed that Ball and Miller testified about two separate assaults on Greene that occurred several minutes apart. Their testimony is consistent with how the Government presented the case to the jury. *See* Gov't Opening Statement, Tr. 230-31 (stating that Ball witnessed Boen assault Greene "immediately" upon entering the jail, but "this didn't end the incident" because the defendant then assaulted Greene again in front of Miller); Gov't Closing Argument, Tr. 1098 ("Just a few minutes before Dalton Miller got there, Detective Ball saw the defendant bash Zach in the head four or five more times with a closed fist"). Rather than contradict each other, Ball and Miller's accounts of Boen's successive assaults on Greene are strong corroborative evidence of Boen's guilt because they underscore that Boen acted willfully,

to retaliate against Greene for his role in the disturbance at the jail, rather than for any legitimate law enforcement purpose.

iii. Boen's Assault on Greene Caused Bodily Injury

Finally, the defendant asserts that "there was no evidence that Sheriff Boen caused any bodily injuries to Zachary Greene." This argument ignores the definition of bodily injury and the evidence introduced at trial. As the Court instructed the jury, the evidence must prove only that the defendant caused "a cut, abrasion, bruise, burn, or . . . physical pain . . . or any other injury to the body, no matter how temporary." Tr. at 1095. The jury heard testimony from two witnesses, Ball and Miller, who each saw Boen forcefully strike Greene in the head multiple times with a closed fist. These blows were loud enough for two other witnesses, Cowens and Ingram, to hear from the dispatch office—a room with soundproof walls that was located 30-50 feet away. This evidence is more than sufficient for the jury to infer that Boen inflicted physical pain on Greene.

In addition to the clear inference of physical pain, the defendant's motion should be denied for the additional reason that the jury could find that Boen's first assault caused a fresh cut on Greene's mouth. Ball observed that Greene "had some blood around his mouth area" immediately after the assault, Tr. at 708, and Miller likewise saw "lacerations on [Greene's] lip and some minor blood on his nose" several minutes later when Boen led him to the shower room. *Id*. at 897. While other officers saw blood around Greene's mouth following his altercation with the trustee earlier that day, prior to Boen's assaults, *see* Tr. at 955, the fact that several hours elapsed between the trustee altercation and Boen's first assault supports a finding that Boen's strikes to Greene's head caused fresh cuts or reopened old ones. *See* Tr. at 697 (Ball testified that he and Boen did not arrive at the jail until "two and a half, three hours" after Boen received the call about Greene's altercation with the trustee); Gov't Ex. 8 (showing that the tab for Boen

and Ball's dinner was not paid until 8:30 p.m.); Tr. at 962 (Greene's altercation with the trustee occurred "around 6:00" p.m.). Drawing inferences in favor of the verdict, the evidence of visible blood on Greene's face immediately after Boen's assault—several hours after the altercation with the trustee—is an additional factual justification for the jury's determination that Boen inflicted bodily injury and shows that reversal is not required to avoid a miscarriage of justice.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 28, 2021, I filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record in this case.

Respectfully submitted,

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