

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Case No. 12-10248-EFM
)
 OSAYUWAMEN BAZUAYE,)
)
 Defendant.)
 _____)

MEMORANDUM AND ORDER

This case was called for trial before a jury on April 30, 2013, which returned a verdict of conviction. Defendant now files a Motion to Vacate Judgment, or in the Alternative, for a New Trial (Doc. 32). The Court denies the motion.

Defendant first cites as ground in support of his motion that the indictment was insufficient to charge him with a felony, and instead only charged a misdemeanor. This matter was discussed on the record extensively between the parties and the Court prior to trial. The Court need not restate the arguments, analysis or rulings from that pre-trial conference, but incorporates them here in rejecting this request.

Second, Defendant argues that the jury should have been instructed on a lesser included offense of simple assault. However, the statute charged does not contemplate a lesser included offense.

Third, Defendant asserts that the evidence was insufficient as a matter of law to support the verdict. Having presided at the trial and having heard all the evidence, the Court finds that the evidence was legally sufficient to support the verdict.

Fourth, Defendant contends that there was “more than a reasonable doubt as to whether the witnesses heard the statements they testified to due to the defendant’s strong African ascent (sic) and the surrounding in which the statements were made.” The jury heard Defendant’s accent when he testified, and returned a verdict that the United States had proven Defendant’s guilt beyond a reasonable doubt. The Court sees no basis to disturb this verdict.

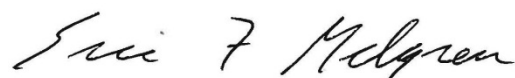
Fifth, Defendant speculates that “the relative short time it took the jury to render a verdict appears to indicate that the jury did not engage in any deliberation whatsoever.” The Court does not find that the jury deliberations were relatively short, nor does this “argument” present a legal basis for granting Defendant’s motion.

Defendant also files a Motion for Judgment of Acquittal (Doc. 33), raising essentially the same grounds. For the same reasons, this Motion is denied.

IT IS ACCORDINGLY ORDERED this 21st day of May, 2013, that Defendant’s Motion to Vacate Judgment or in the Alternative a New Trial (Doc. 32) is hereby **DENIED**.

IT IS FURTHER ORDERED that Defendant’s Motion for a Judgment of Acquittal (Doc. 33) is hereby **DENIED**.

IT IS SO ORDERED.



ERIC F. MELGREN
UNITED STATES DISTRICT JUDGE