



# United States District Court Southern District of Florida

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Re: Case Number: 1:99-cv-00528 Document Number: 315

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 99-528-CIV-LENARD/SIMONTON

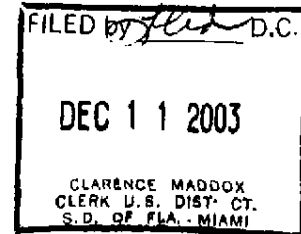
ESTATE OF WINSTON CABELLO,  
et al.,

Plaintiffs,

vs.

ARMANDO FERNANDEZ-LARIOS,

Defendant.



**ORDER DENYING DEFENDANT'S MOTION FOR JUDGMENT AS A MATTER OF LAW, MOTION FOR NEW TRIAL AND MOTION FOR REMITTITUR**

THIS CAUSE is before the Court on a Motion for Judgment as a Matter of Law, Motion for New Trial and Motion for Remittitur (D.E. 312), filed November 10, 2003, by Defendant Armando Fernandez-Larios. Plaintiffs filed a Response on November 25, 2003. (D.E. 313.) No reply has been filed. Having considered the Motion, the Response and the record, the Court finds as follows.

**I. Motion for Judgment as a Matter of Law**

The Court finds that it has previously ruled upon all issues raised by Defendant in his Motion for Judgment as a Matter of Law. Accordingly, the Court adopts its previous rulings and denies the Motion without further discussion. (See Court's Denial of Defendant's Motion for Judgment as a Matter of Law, Trial Trans. at 909-16.)

**II. Motion for New Trial**

Regarding Defendant's Motion for New Trial, Defendant claims that he should be

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granted a new trial because the jury's verdict was against the greater weight of the evidence.

(Mot. at 11.) The Eleventh Circuit has described the standard by which a court should evaluate a motion for new trial, as follows.

A district judge may grant a motion for a new trial if he believes the verdict rendered by the jury was contrary to the great weight of the evidence. "'Although a trial judge cannot weigh the evidence when confronted with a motion [for judgment] notwithstanding the verdict, in a motion for a new trial the judge is free to weigh the evidence.'" The trial court, however, must find the verdict contrary to the great, and not merely the greater, weight of the evidence. The trial judge should view not only that evidence favoring the jury verdict, but evidence in favor of the moving party as well. However, the district judge should not substitute his own credibility choices and inferences for the reasonable credibility choices and inferences made by the jury.

Rosenfield v. Wellington Leisure Products, Inc., 827 F.2d 1493, 1498 (11th Cir. 1987)

(citations omitted).

In denying Defendant's Motion for Judgment as a Matter of Law at trial, the Court considered the evidence presented in a light most favorable to the Plaintiff and found that a reasonable jury could find the defendant liable for the claims as alleged in the Complaint. (Trial Trans. at 910.) The Court explained that although "there is no direct testimony as to the direct involvement of defendant in the killing of Winston Cabello," there was "sufficient circumstantial evidence upon which a reasonable jury could find the defendant liable for the claims as alleged in the complaint." Id. at 911-12.

Now, having weighed the evidence presented at trial, the Court finds that the jury's verdict was not contrary to the great weight of the evidence and denies Defendant's Motion for New Trial.

### III. Motion for Remittitur

Remittitur is appropriate only when a jury's damage award "exceeds the amount established by the evidence." Goldstein v. Manhattan Indus., Inc., 758 F.2d 1435, 1448 (11th Cir. 1985). In the instant case, the jury found Defendant liable for the extrajudicial killing, torture, cruel, inhuman or degrading punishment or treatment of Winston Cabello, as well as crimes against humanity. (D.E. 311.) The jury awarded the Estate of Winston Cabello \$1 million dollars in punitive damages and compensatory damages in the amount of \$1 million dollars on the extrajudicial killing claim and \$1 million dollars on the claim of crimes against humanity. Id. In addition, the jury awarded Winston Cabello's family members \$1 million dollars collectively on their claims of extrajudicial killing. Id.

In his Motion for Remittitur, Defendant argues that the jury's verdict was based upon emotion because there was no testimony of any compensatory damages and no basis for punitive damages.<sup>1</sup> (Mot. at 15.) Plaintiff argues that the jury's verdict is at the low end of awards in comparable cases and should not be subject to remittitur. The Court agrees. See e.g., Tachiona v. Mugabe, 216 F.Supp.2d 262, 279-280 (S.D.N.Y. 2002)(surveying damage awards by U.S. district courts for claims of extrajudicial killing and torture under the ATCA and TVPA and awarding \$2.5 million in compensatory damages and \$5 million in punitive damages each for the murders of three members of the political opposition in Zimbabwe).

In light of the brutality of the acts for which Defendant was found liable, the Court

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<sup>1</sup> In addition, as part of his Motion, Defendant objects to the verdict form which he drafted and proposed. This claim has no merit.

finds that the damages awarded to Plaintiffs by the jury were not excessive and denies Defendant's Motion for Remittitur.

Accordingly, it is

**ORDERED AND ADJUDGED** that the Motion for Judgment as a Matter of Law, Motion for New Trial and Motion for Remittitur (D.E. 312), filed November 10, 2003, by Defendant Armando Fernandez-Larios, is **DENIED**.

**DONE AND ORDERED** in Chambers, at Miami, Florida, this 11 day of December, 2003.

  
**JOAN A. LENARD**  
**UNITED STATES DISTRICT JUDGE**

cc: United States Magistrate Judge Andrea M. Simonton  
All Counsel of Record  
**99-528-CIV-LENARD/SIMONTON**