

Janet Redfern

From: Robert Roveta [REDACTED]
Sent: Thursday, June 8, 2017 11:06 AM
To: Charles Johnson
Cc: Rob Cardenas; Robert Roveta
Subject: FW: Appeal Brief - UFC 211 (5/12/17)
Attachments: Appeal Brief.pdf

Hi Charles,

I just received your contact information from Jason Debord. He informed me that you will be handling the appeal and I should be communicating with you. Below is the email I sent Jason just a couple days and I wanted to confirm you received it as well. Please confirm receipt.

I look forward to your response, have a great day.

Robert Roveta
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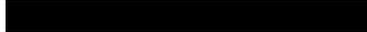
From: Robert Roveta <[REDACTED]>
Date: Wednesday, June 7, 2017 at 9:14 AM
To: <jason.debord@tdlr.texas.gov>
Cc: <james.erickson@tdlr.texas.gov>, <[REDACTED]>, Robert Roveta [REDACTED]
Subject: Appeal Brief - UFC 211 (5/12/17)

Hi Jason,

Attached you will find a formal appeal regarding the "No Contest" decision rendered in the bout between Dustin Poirier and Eddie Alvarez at UFC 211. Please acknowledge receipt of this email.

If you have any additional questions, feel free to reach me on my cell phone anytime. We look forward to your response, have a great day!

Robert Roveta



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APPEAL OF DUSTIN POIRIER

Dear Texas Department of Licensing and Regulation:

This Appeal Brief is submitted on behalf of Dustin Poirier and his Appeal of the "No Contest" Decision rendered in the bout between Dustin Poirier and Eddie Alvarez at UFC 211 on Saturday, May 13, 2017.

Introduction and Overview of Issue

During the 2nd Round of their bout at UFC 211, as Mr. Poirier was working back to his feet, Mr. Alvarez landed 3 illegal knees to the head of Mr. Poirier that were clearly illegal under the unified rules utilized in Texas. Specifically, as Mr. Poirier put a hand and then a knee down, making him a clearly downed opponent under the version of the unified rules in used in Texas, Mr. Alvarez kned him in the head with three consecutive illegal blows. See **Exhibit "A"**. Mr. Poirier was clearly a grounded opponent and the knees, all three, were clearly illegal.

Subsequent to a curious discussion with the Promoter, UFC's Marc Ratner, during which he advises him he warned Mr. Alvarez and importantly admitted that the fight-ending knee was illegal, Herb Dean is then seen/heard asking Mr. Ratner if a No Contest determination sounded "good" to him. See **Exhibit "B"**.

The issue in this case is quite simple and is as follows:

Whether Mr. Alvarez's fight-ending knees to a grounded opponent were illegal?

Mr. Poirier submits that since Mr. Alvarez's fight-ending knees were illegal, Mr. Alvarez should have been Disqualified and the "No-Contest" Decision must be overturned.

Mr. Poirier respectfully requests that the Commission closely scrutinize the Video/Audio footage of the fight, paying close attention to the knees landed while Mr. Poirier was "grounded." Mr. Poirier further respectfully requests the Commission closely analyze and scrutinize the explanation offered by Herb Dean to the Promoter of the Event, and also pay close attention to the crucial admissions of Herb Dean prior to his "No Contest" determination and after the event.

Lastly, Mr. Poirier respectfully requests that the Commission not be influenced by the flawed interpretation of fact or misapplication of law or rules by the Referee, but rather focus on the Rules, which govern its combative sports within its Jurisdiction, as well as the Code, which does the same.

The fatal flaw in Herb Dean's No Contest Decision is based on a misapplied and irrelevant determination that Mr. Alvarez may not have heard Herb Dean's warning or seen Mr. Poirier's knee down. The inquiry in this case begins and ends with the determination of whether Mr. Alvarez's knees were illegal. They were.

The fight-ending knee was illegal as well as the two before that. This is an undisputed fact as admitted by Herb Dean. After at least one prior illegal knee, but before the illegal fight-ending knee landed, Herb Dean warned Mr. Alvarez. This is an undisputed fact as admitted by Herb Dean. Despite warning, Mr. Alvarez then intentionally delivered another knee to Mr. Poirier's head. This is an undisputed fact, as captured on video and admitted to by Herb Dean. At the time Mr. Alvarez intentionally delivered a knee to Mr. Poirier's head, Mr. Poirier was a grounded fighter. This is also an undisputed fact as supported by the governing rules and Code.

Herb Dean's sole justification for a "No Contest" determination is that he is not sure Mr. Alvarez heard his warning or saw Mr. Poirier's knee down on the mat. But that is not the crucial issue and is certainly not the rule or law to be applied.

What governs and what is undisputed is that Mr. Alvarez clearly intended to land a knee strike to Mr. Poirier's head. He succeeded in doing so. Unfortunately, for both fighters involved, Mr. Poirier was legally deemed a grounded fighter. The resulting injury was in no way "accidental." As such, a Disqualification was/is warranted.

1. Mr. Poirier Was a Grounded Fighter and the Knees Were Illegal

The basis of Mr. Poirier's appeal includes, but is not limited to the fact that Mr. Poirier was struck repeatedly with illegal knees as a grounded fighter in violation of Texas Administrative Code Section 16.111(s). See **Exhibit "A"**.

Herb Dean acknowledged immediately after the fight, but before the announcement of the decision that the fight-ending knee was illegal. As such, the result should have been declared a Disqualification of Mr. Poirier's opponent rather than a "no-contest." It is further Mr. Poirier's position that the applicable codes did not/do not allow for a "no contest" ruling/determination in the situation involving the aforementioned illegal tactic, which is defined as a foul.

As a preliminary matter, it is important to note that the event was regulated by the Texas Combative Sports commission, which hasn't implemented changes to the unified rules passed in 2016.

Under the new version passed in 2016, the first two knees Mr. Alvarez landed would have been legal with Mr. Poirier using one hand to post while on his feet. The third, however, was universally illegal since Mr. Poirier's knee was on the canvas. The clear illegality of the fight-ending knees warrants a disqualification and since Texas has not implemented changes to the unified rules, all three knees were illegal.

In both versions of the unified rules, an intentional foul that involves a concussive blow to the head and renders a fighter unable to continue results in a disqualification win if the bout hasn't gone past the second round. This is exactly what occurred.

Since Texas has not adopted and/or implemented the changes to the unified rules, all three knees were illegal. After being struck by illegal knees to the head, Mr. Poirier was unable to continue. Under existing Texas rules, codes and law, all three knees were illegal, and therefore a Disqualification of Mr. Alvarez was warranted.

Referee Herb Dean admits that the knees were illegal, yet he deemed them unintentional. The reasoning however is flawed and unsupported by the Texas Code.

First, Mr. Alvarez clearly intended to knee Mr. Poirier in the head. His intent was to land knees to the head. While he may not have been aware that Mr. Poirier was a "grounded fighter" as determined by the governing code and rules, his awareness has no bearing on the issue of intent. He had the intent to land knees to the head of Mr. Poirier. He succeeded in doing so - unfortunately, while Mr. Poirier was grounded - and therefore he should have been disqualified.

Secondly, Mr. Poirier wasn't "accidentally injured." Mr. Alvarez intended to knee Mr. Poirier. He intended to injure him in an effort to win the fight. Mr. Poirier was struck in his head by at least three (3) illegal knees. Neither the knees nor the resulting injury were accidents or accidental.

2. Dean's Determination is Flawed

There can be no argument and/or confusion as to whether the knees were illegal. The rules under which the Texas Commission was operating and the governing code make it clear: the knees were illegal and the referee gave a warning to Mr. Alvarez as such before stopping the fight. If there were any confusion, Herb Dean puts that to rest by admitting the fight-ending knees were illegal.

Referee Herb Dean's analysis and decision was fatally flawed and his post-fight commentary makes this clear.

This is how Herb Dean justified his decision - curiously first by speaking to the Promoter, UFC's Marc Ratner cage-side, a conflict of interest under any objective standard, in a manner, based on what is captured on video and audio, to be Herb Dean seeking the Promotion's blessing in rendering a decision. In fact, Herb Dean is specifically heard/seen seemingly asking for the Promoter, UFC's Marc Ratner to bless his decision of a no-contest: See **Exhibit "B"**.

"What I'm gonna say is that it was accidental...."

"As he dropped, he wasn't sure. I was telling him, but it was loud. I'm not sure if he could have heard, because it's difficult for the fighters to tell if the guy is still ah, been grounded."

"He threw a knee. It was an illegal knee, but I'ma believe it was unintentional, so I'm gonna say it was a no-contest."

"Sound good to you?"

To which, Mr. Ratner responds: *"yes, score it the end of the second round."*

First, why is Herb Dean conferring with the Promoter? Did he feel he needed the Promoter to approve of his decision? Isn't it an inherent conflict of interest for the Promoter to weigh-in on the determination of the outcome of a bout? After all, a No-Contest saves the Promoter money - there are no Win-Bonuses to be paid - whereas a Disqualification costs the Promoter and rewards the winner.

Mr. Poirier through his representative submits that Herb Dean went beyond his authority in first conferring with the Promoter and then instituting his own subjective interpretation of what Mr. Alvarez may have heard and/or seen. What is undisputed is that Mr. Alvarez struck Mr. Poirier with deliberate and intentional knees to his head while he was grounded. He did not accidentally knee Mr. Poirier in the head; he did not unintentionally knee Mr. Poirier in the head. His knees were intentional.

Secondly, Herb Dean acknowledges the knee was illegal; he further acknowledges that he warned Mr. Alvarez ("I was telling him.") But he concludes the illegal knee was unintentional simply because he's not sure if Mr. Alvarez could hear him? That is not the law, those are not the rules, and that is not what is codified and governs the Texas Commission.

Whether Mr. Alvarez saw Mr. Poirier's knees on the ground or whether Mr. Alvarez heard Herb Dean warn him have no bearing on whether the knees were intentional. Again, total non-issues and outside the scope of the governing rules and code. Mr. Alvarez didn't accidentally knee Mr. Poirier in the head. He may claim he was unaware of Mr. Poirier being grounded, but that does not render the knees accidental or unintentional. He intended to knee Mr. Poirier and Herb Dean acknowledges that the knee was illegal.

Here's how Dean characterized the distinction between accidental and intentional in this case:

"There's a lot going on in there, and that's why (referees) give people a little bit of leeway with some of those rules," Dean said. "I reserve 'intentional' for someone acting out of the rules and being a bad guy, and they need to be

disqualified. I don't think (Alvarez) was trying to be a bad person. I think he was trying to fight within the rules – it's just that it's difficult."
See **Exhibit "C"**

To be clear, Mr. Alvarez meant to hit Mr. Poirier in the head with his knee, which is exactly what he did. Knees to the head of a grounded opponent are a foul under the TAC, warranting disqualification, and they are illegal as set forth in the rules under which Texas was operating. Ironically, by his own definition, Mr. Alvarez's knees were intentional - as he was "acting out of the rules." Mr. Alvarez may not be a bad guy and may have been trying to fight within the rules for a period of time, but the second he landed the illegal knees; he was outside the rules and in violation of the rules.

Herb Dean admits that he saw Mr. Poirier's knees down and saw Mr. Alvarez land the knees to Mr. Poirier's head. To Dean, it was "pretty evident."

"I saw the knee was down, I saw him hit him – so it was pretty evident to me," Dean said. " See **Exhibit "C"**.

Further, Herb Dean admits that he would have disqualified him if he believed the knees were intentional. However, he gave Mr. Alvarez a pass because he wasn't sure whether Mr. Alvarez saw that Mr. Poirier's knee was down.

"I would have disqualified him if I believed they were intentional," Dean said. "How I rule I knew that Eddie couldn't see whether (Poirier's) knee was down or not – that's why I ruled it unintentional." See **Exhibit "C"**

Whether Mr. Alvarez could see Mr. Poirier's knee down or not, however, does not change the analysis of the whether he intended to land knees to Mr. Poirier's head. He intended to land knees to Mr. Poirier's head. They were illegal. The resulting injury was not accidental. Dean's analysis is a distortion of the issue and violates the rules and code governing the bout. Furthermore, Herb Dean verbally warned Mr. Alvarez after either the first or the second knee strike to Mr. Poirier's head, further bolstering the position that his strikes were intentional.

Under the most current version of the unified MMA, a fighter is universally considered a grounded opponent if he or she is on one or both knees. But in order to be considered a downed opponent while standing, a fighter needs to have both palms, both fists, or a palm and a fist touching the canvas. The rule was intended to keep fighters from "playing the game" by putting fingers or a single hand on the mat to avoid getting kned to the head.

Under the new unified rules, the first two knees Alvarez landed would have been legal, while the third would have been illegal. At UFC 211, however, the previous rule set was in effect, meaning all three (3) of the knees were illegal.

3. Mr. Alvarez's Knees Were Illegal Per TAC

Section 61.111 of Texas' Administrative Rules of the Texas Department of Licensing and Regulation set forth the rules of the contest.

Knees to the head of a grounded opponent are prohibited. They constitute a foul; they are illegal; and they warrant disqualification.

Mr. Poirier wasn't accidentally fouled; rather, Mr. Alvarez intended to land strikes to the head of Mr. Poirier. He did not accidentally knee Mr. Poirier in the head.

Per the Texas Athletic Code, Mr. Alvarez's knees were "fouls" warranting either a disqualification or point deduction at the discretion of the referee.

TAC 16.111(s) provides in relevant part:

(s) The following tactics are fouls and may result in disqualification or point deduction at the discretion of the referee.

(1) Head butts.

(2) Kicks, punches or any strikes to the groin.

(3) Spitting or biting.

(4) Striking or grabbing the throat area.

(5) Grabbing the trachea.

(6) Kneeing to the head of a grounded opponent.

(7) Kicking to the head of a grounded opponent.

TAC 16.111(s) does not contemplate "intent;" rather, it is a strict-liability analysis. If you knee a grounded opponent to the head, the referee either disqualifies you or deducts points. There is no subjective analysis of whether the offending fighter intended to commit the foul. It's a foul.

As stated above, Herb Dean has admitted he saw Mr. Poirier's knee down and that he saw Mr. Alvarez knee him in the head. Again, it was "pretty evident" to him. Most importantly, Herb Dean admits the fight-ending knees were illegal.

At that point, Herb Dean had the obligation to disqualify Mr. Alvarez and declare Mr. Poirier the winner of the bout.

TAC 16.111(t), governing the determination of the winner of a bout, states as follows:

(t) The determination of the winner shall be as follows:

(1) by submission, either verbally or by tapping two or more times on the mat, ropes, ring corner or the opponents body;

(2) by knockout;

(3) by being down on the map for a ten count;

(4) by the referee disqualifying a contestant through a technical knockout;

(5) by the referee stopping a match based upon a ring physician's advice;

(6) by a contestant's corner stopping the bout;

(7) by the referee disqualifying a contestant for a violation of these rules; or

(8) by the judges decision based upon technique and aggressiveness minus the number of penalties.

Again, there was a clear violation of the rules. Mr. Dean admits observing such. The Code allows the enforcement and disqualification. More importantly, the Code does not contemplate Mr. Alvarez's intent.

4. TAC 16.41(n) is Inapplicable

The anticipated argument in opposition to the present appeal is that Herb Dean deemed the knees unintentional and therefore, he was correct in declaring the bout a "no decision."

Mr. Poirier submits that TAC 16.41(n) is inapplicable and should not serve as a basis or support for Herb Dean's decision.

TAC 16.41 (n), governing accidental injuries, states as follows:

(n) If during the first four rounds a contestant is accidentally injured, and is unable to continue, or is pushed, knocked or falls out of the ring, and is injured by the fall and unable to return, the referee shall declare the bout a no decision. If such injury occurs during later rounds, all completed rounds and the partial round in which the bout is terminated shall be scored and the contestant ahead on points shall be declared the winner by technical decision.

TAC 16.41(n) does not contemplate "intent." It does not use the word intent; nor does it speak of the intentional nature of a tactic or foul. Rather, the section

simply states that if a contestant is accidentally injured and is unable to continue, the referee shall declare the bout a no decision.

Mr. Poirier was not "accidentally injured." This was not akin to an inadvertent eye-poke; rather, Mr. Alvarez intended to land knees to the head of Mr. Poirier. He succeeded in doing so. The resulting injury was not an accident. As such, this section of the code is inapplicable.

5. Public Policy Issue and Collateral Effect

Lastly, there are long-term financial and physical effects that are detrimental to Promoters, Commissions and most, importantly, fighters in the event the rules and codes are not strictly enforced.

Mr. Poirier sustained a documented head-injury (concussion) as a result of the illegal, fight-ending knee delivered by Mr. Alvarez, the long-term effects of which are presently unknown. As a result of the No-Contest decision, Mr. Poirier lost out on a \$65,000 Win Bonus, top 5 ranking in the lightweight division, moving up in his current promotional agreement. "Fight of the Night" bonus, and his record now bares a temporary blemish. His short-term finances are impacted, and his long-term financial opportunities are also potentially greatly jeopardized. His losses are real and appreciated.

Mr. Alvarez, on the other hand, suffered no loss. A No-Contest or Disqualification has no bearing on his short-term finances, and unless Mr. Poirier's Appeal is granted/approved, Mr. Alvarez will experience no ramifications and/or repercussions for his violation the rules.

This Commission has an opportunity to right a wrong and render a decision, which comports and complies with the rules and code governing UFC 211. This Commission has an opportunity to enforce it rules in order to send a message of clarity and consistency to the fight industry. Without enforcement, the industry runs the risk of having fighters violate the rules with no fear of repercussion. If a fighter is allowed to end a fight *via* an illegal tactic and/or foul and simply receive a No Contest, the integrity of the sport, along with its promoters and its governing commissions, will be forever jeopardized. There are rules governing this sport and there are ramifications for violating those rules. There has to be an enforcement of those rules. This Commission has an important opportunity in this case to do just that.

Conclusion

Based on the foregoing, Mr. Poirier respectfully requests that this Commission overturn the "No-Contest" decision to a Disqualification of Mr. Alvarez. Further, Mr. Poirier also requests a Hearing on this matter to further present the issues and argument.

First Knee



**Just Before
Second Knee**



Second Knee



Third Knee



EXHIBIT
A

Conversation Between Promoter and Referee



Referee: “I am going to say it was accidental because he was hitting him with fair blows, than as he dropped, he wasn’t sure. I was telling the, but it was loud, I am not sure if he could have heard because it is difficult for the fighters to tell if the guy is still a, if he has been grounded, because he got hit, his position changed, he threw a knee, it was an illegal knee, but I am going to believe it was an unintentional, and so I am going to say it was a no contest.”

Promotor: “Okay, no contest”

Referee: “Sound good to you?”

Promotor: “Yes, before the end of the 2nd Round”

EXHIBIT
B

Herb Dean's Interview on the MMA Hour May 15, 2017



Direct Quotes from the MMA Hour Interview:

“There’s a lot going on in there, and that’s why (referees) give people a little bit of leeway with some of those rules,”

“I reserve ‘intentional’ for someone acting out of the rules and being a bad guy, and they need to be disqualified. I don’t think (Alvarez) was trying to be a bad person. I think he was trying to fight within the rules – it’s just that it’s difficult.”

“I saw the knee was down, I saw him hit him – so it was pretty evident to me,”

“I would have disqualified him if I believed they were intentional,”

“How I rule, I knew that Eddie couldn’t see whether (Poirier’s) knee was down or not – that’s why I ruled it unintentional.”

EXHIBIT
C