IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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No. 92-3988
Summary Calendar

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BARRON L. MAGEE,

Plaintiff-Appellee,

versus

DIXON CORRECTIONAL INSTITUTE,

Defendant,

TERRY JENKINS and RICHARD WORSHAM,

Defendants-Appellants.

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Appeal from the United States District Court for the Middle District of Louisiana
(CA 87 559 B M2)

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(April 1, 1994)

Before GARWOOD, SMITH and DeMOSS, Circuit Judges.[*]

PER CURIAM:

Defendants-appellants Louisiana Department of Public Safety and Corrections employees Terry Jenkins (Jenkins) and Richard

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[*] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Worsham (Worsham) appeal the bench-trial judgment against them and in favor of plaintiff-appellee Barron L. Magee (Magee) for $3,500 actual damages and $1,500 ($750 each) punitive damages for excessive force used by them against Magee, contrary to the Eighth Amendment, while he was a convict inmate at Louisiana's Dixon Correctional Institute and they were correctional officers there. We affirm.

Magee's suit under 42 U.S.C. § 1983, with pendent state law claims, originally included other defendants and claims, but all claims other than excessive force claims against Jenkins, Worsham, and corrections officer defendant Mark Maples (Maples) in their individual capacities were dismissed prior to trial. After receiving certain exhibits and hearing in person the testimony of Magee, Jenkins, Worsham, Maples, corrections officer defendant John Lawton (claims against whom had been dismissed on motion), and a non-party doctor who reviewed Magee's medical records, the district court found for Magee as against Jenkins and Worsham, but found for Maples, determining that Magee had not established his claim that the violence inflicted against him, which was concededly accomplished outside of Maples' presence, had been instigated or ordered by Maples.

Magee's testimony was that Jenkins and Worsham and a third unidentified corrections officer without any provocation or reason whatsoever hit Magee a few times and knocked him down, and then proceeded to kick him numerous times in the back, sides, ribs, arms, and head, causing injury, among others, to his back, which

continued to trouble him for many months thereafter. Neither Lawton nor Maples were present when this took place. Jenkins and Worsham testified that no such incident ever occurred, and that they never used any force whatever on Magee, nor did they assertedly witness any use of force on Magee.

The district court found that at the time alleged Magee suffered a back injury because of physical force used against him by Jenkins and Worsham, all without any justification for any use of any force whatever. The court awarded "3,500 for back injury" as "compensatory damages" and $750 against Jenkins and Worsham each as punitive damages.

The trial evidence adequately supports these findings, and they are not clearly erroneous. The district court observed the witnesses and made credibility choices.

Appellants complain that the district court did not credit either version of the events, but instead invented a third version, not supported by the record. We reject this contention. The district court did state that "there was exaggeration on both sides" and "I think the plaintiff obviously exaggerated the *nature of his beating*" (emphasis added) and was not "telling the entire truth either." The court also clearly found that plaintiff's back was injured and that that "injury was caused by the manner in which plaintiff was handled by" Jenkins and Worsham, but "I don't think Mr. Maples was involved in *the beating*" (emphasis added). The court obviously found that Magee was beaten by Jenkins and Worsham on the occasion in question, though not *as severely* as he (Magee)

claimed. The court also obviously found that "the beating" was wholly without arguable justification. Magee's testimony fully supports this, even if he did exaggerate the severity of the beating. It is hornbook law that a fact finder need not accept all of a witness's testimony in order to rely on part of it.

Appellants argue that the standard of *Hudson v. McMillian*, 112 S.Ct. 995 (1992), is applicable, but that the court's findings are inadequate to establish liability thereunder. We disagree. Considering the evidence and the findings as a whole, we perceive no fatal deficiency in this respect, particularly in light of the court's statements during closing argument, as follows:

> "So, if we go through the list of things that the Hudson case said you had to prove, . . . there was nothing here to cause any beating because there was no evidence from anybody that the plaintiff reacted or caused anybody to have to use force of any kind.
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> . . .
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> So, we don't need to get into the issue of the need for the application of force, the relationship between the need and amount of force used, and the threat reasonably perceived by the officials, because there was none.
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> . . .
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> And there is no need for me to determine whether force was applied in a good faith effort to maintain and restore discipline, or to maliciously and sadistically cause harm because there was no interchange between the two."[1]

Appellants similarly claim that the evidence does not support

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[1] We also observe that appellants never objected below to the adequacy of the findings and never requested additional findings under Fed. R. Civ. P. 52(b); nor have appellants sought a remand for further findings. They simply seek reversal and rendition in their favor.

the award of punitive damages. We disagree. The wholly unprovoked beating, with no correctional purpose or arguable justification whatever, and with none such even claimed, obviously supports the punitive damages award.

There is absolutely nothing to indicate that the district court, in making its findings or rendering its judgment, or otherwise, applied anything but the correct legal standards.

The findings below are not clearly erroneous, and no error of law is shown. Judgment was properly rendered against Jenkins and Worsham individually on the section 1983SQEighth Amendment excessive force claim. Appellants admit (and appellee agrees) that this conclusion renders irrelevant their arguments about the pendent state law excessive force claims. *See Flowers v. Phelps*, 964 F.2d 400, 401 (5th Cir. 1992).

None of appellants' contentions on appeal demonstrate any reversible error. The judgment below is accordingly

AFFIRMED.