

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4472
Conference Calendar

ROBERT WELLS,

Plaintiff-Appellant,

versus

JAMES A. LYNAUGH, ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. CA-90-80
- - - - -

March 18, 1993

Before KING, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Robert Wells alleges on appeal that officer Gaston used excessive force on him. Insofar as the brief is a mere repetition of the complaint, it raises no issue for this Court to review. Insofar as the brief could be construed to argue that the evidence was insufficient to support the verdict, the issue is unreviewable because Wells has not provided a trial transcript. Fed. R. App. P. 10(b)(2); United States v. Dunham Concrete Products, Inc., 475 F.2d 1241, 1251 (5th Cir.), cert.

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

denied, 414 U.S. 832 (1973).

We could, at this stage of the appeal, order a transcript if his appellate brief raised arguments that required a transcript to resolve. But the arguments that Wells raises are basically credibility determinations, and an appellate court cannot substitute its credibility determination for that of the jury. Thus, our initial determination that Wells has not shown a need for a transcript continues to be correct.

As the amended complaint did not name officer Hart, Wells's issue about him is not properly before this Court. Jackson v. City of Beaumont Police Dep't, 958 F.2d 616, 618 (5th Cir. 1992).

The appeal is frivolous. See Coghlan v. Starkey, 852 F.2d 806, 811 (5th Cir. 1988). Wells's request for attorney's fees is denied.

AFFIRMED.