IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5262
(Summary Calendar)

JOSEPH WILLIAMS,

Plaintiff-Appellant,

versus

CITY POLICE ABBEVILLE,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
(89-CV-1462)

(March 9, 1994)

Before JOLLY, WIENER and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:[*]

Plaintiff-Appellant Joseph Williams appeals the district court's grant of Defendants-Appellees City of Abbeville's motion for summary judgment, and the court's verdict, following a bench trial, in favor of the remaining defendants in Williams' § 1983

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

civil rights action and related state tort claims. Finding no reversible error, we affirm.

I

FACTS AND PROCEEDINGS

Williams brought the instant civil rights action, alleging a violation of his Fourth Amendment rights under federal law, and asserting a state cause of action in tort under Louisiana Civil Code Article 2315. He named as defendants the City of Abbeville, Louisiana, Chief of Police Jack Baudoin of the Abbeville Police Department, and Officer Dalton Toups and Lieutenant Ken Accord of the Abbeville Police Department.

Williams' claims originate from an incident in which he was arrested after attempting to redeem a forged prescription at a drugstore in Abbeville. The police were observing the store in response to information that someone would be attempting to submit a forged prescription. Following a lengthy high-speed car chase involving several police vehicles and one driven by Williams, he was finally forced to come to a stop by a police roadblock. Officer Toups, who had been in pursuit, drew his gun and several times ordered Williams out of his car. During the ensuing attempt to handcuff Williams, Toups' gun was fired, shattering Williams' wrist.

The district court granted the City's motion to dismiss the action against it. Williams appealed this judgment, but we dismissed the appeal because his claims against Toups were still pending. Williams then added Accord and Baudoin as defendants,

after which Toups, Baudoin and Accord filed motions to dismiss and/or for summary judgment, which motions were denied by the district court. A bench trial was held, at the conclusion of which the district court entered judgment in favor of all remaining defendants. Williams timely appealed.

II

ANALYSIS

A. Contested Admission of Evidence

Williams argues that the district court abused its discretion in allowing the defendants to introduce evidence of the Vermilion Parish grand jury's return of a "no true bill" against Officer Toups for the shooting incident in which Williams was wounded in the wrist. He contends that the admission of such evidence was an abuse of discretion because that evidence was not listed as an exhibit, and because the unfairly prejudicial impact of the evidence outweighed its probative value under Fed. R. Evid. 401 et seq.

Despite Williams' contention that he did not have advance notice of defendant Toups' intention to introduce evidence of the grand jury's finding, the record of a pre-trial conference establishes that Williams received the exhibit only three days after he received the defendants' other exhibits--one week prior to trial. In addition, although Williams objected to its introduction during trial, Williams' counsel had stipulated prior to trial that the grand jury returned a "no true bill" against Officer Toups.

Finally, in light of the discretion accorded to a district

court's decision to admit certain evidence, see Ford v. Sharp, 758 F.2d 1018, 1023 (5th Cir. 1985), and the fact that a relevancy inquiry under Fed. R. Evid. 401 is less significant in a bench trial because there is no danger that a judge, unlike a jury, will be misled by irrelevant or prejudicial evidence, see Gulf States Utilities Co. v. Ecodyne Corp., 635 F.2d 517, 519 (5th Cir. 1981) (holding that probative value-prejudice balancing test under Fed. R. Evid. 403 "has no logical application to bench trials"), there was no abuse of discretion in admitting the grand jury's return of "no true bill" against Toups.

B. Constitutional Violation

Williams also challenges the district court's conclusion that no constitutional violation resulted from Officer Toups' conduct. In a bench trial, the district court's factual findings are reviewed for clear error, and its conclusions of law are reviewed de novo. Odom v. Frank, 3 F.3d 839, 843 (5th Cir. 1993). Claims that law enforcement officers have used excessive force in the course of an arrest should be analyzed under the Fourth Amendment and its "reasonableness" standard. Graham v. Connor, 490 U.S. 386, 395, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989).

The district court employed the tripartite test for analyzing Fourth Amendment excessive force claims outlined by this court in Reese v. Anderson, 926 F.2d 494 (5th Cir. 1991). In Reese, we held that, in order to prevail on a § 1983 excessive force claim, a plaintiff must show: (1) a significant injury; (2) which resulted directly and only from the use of force which was clearly excessive

to the need; and (3) the excessiveness of the force was objectively unreasonable. Reese, 926 F.2d at 500.

In Valencia v. Wiggins, 981 F.2d 1440, 1443 n.6 (5th Cir.), cert. denied, 113 S.Ct. 2998 (1993), we held that as to pretrial detainees protected by the Fourth Amendment, "Hudson v. McMillian, ___ U.S. ___, 112 S.Ct. 995, 117 L.Ed.2d 156 (1992), overturned [the] significant injury element." In Bender v. Brumley, 1 F.3d 271, 278 n.7 (5th Cir. 1993), however, we noted that the question whether Hudson overruled the significant injury requirement for claims of excessive force during arrest remains open.[1]

In either event, the shattered wrist suffered by Williams would satisfy the injury requirement--the district court concluded that Williams "obviously sustained a significant injury as a result of this incident." Nevertheless, the district court concluded that, even if we assume that the injury resulted directly and only from a use of force which was clearly excessive to the need at the time, the instant "excessiveness of the force, if any, was not objectively unreasonable" under Reese.

The question whether Toups' actions were objectively reasonable must be examined under the totality of the circumstances, examining in particular whether the suspect posed an immediate threat to the safety of the officers or others and whether the suspect was actively resisting arrest or attempting to evade arrest by flight. Reese, 926 F.2d at 500.

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[1] This issue, presented in Harper v. Harris County, Texas, No. 93-2062, has been scheduled for oral argument before a panel of this court on April 7, 1994.

Williams argues that there was no "physical altercation" between Toups and himself while Toups was attempting to secure Williams; that two other officers were present and available to serve as backup for Toups; that Williams was lying flat on the ground and was not resisting; that the high-speed chase had ended; and that the "drug related crime" cited by the district court was attempted forgery of a prescription--not a crime generally associated with violence. Based on these facts, argues Williams, the actions of Toups in keeping his gun drawn as he attempted to handcuff Williams were objectively unreasonable.

The district court, however, made the following factual findings: that Toups had just experienced a perceived attempt by Williams to run Toups down with Williams' car after Toups had ordered Williams to stop; that Toups had just engaged in a high-speed chase with Williams through a residential area where civilians were likely to be present; and that Toups had several times ordered Williams to spread his arms and lie flat on the ground before Williams finally obeyed. The district court also found that Toups had a duty to protect his own life and the lives of bystanders in the area; that Williams had demonstrated his reluctance to obey orders and his propensity to flee; that the underlying crime was drug-related, and that Toups had no idea whether Williams was under the influence of drugs at the time or whether he was armed; that Williams remained in a position amenable to fleeing again despite Toups' repeated orders for Williams to spread his hands and arms flat on the ground; that it was during

Toups' attempt to force Williams to spread his arms flat that the gun discharged and Williams was injured; and that there were civilians in the area and Williams had already demonstrated his disregard for civilian safety.

The district court found Williams' testimony to be less than credible and therefore chose to believe Toups' version of the events. Toups' testimony clearly supports the district court's factual findings. The only factual finding of the district court which is contested by Williams is the court's conclusion that Williams and Toups were involved in a "physical altercation" when the gun accidentally discharged. This physical altercation, as described by Toups, was his attempt to secure Williams, during which time Williams was squirming and maintaining his hands in a push-up position. Although, as asserted by Williams, this "altercation" did not, in and of itself, constitute a fight justifying the discharge of Toups' firearm, the objective reasonableness of Toups' actions must be measured in light of the totality of the circumstances. Reese, 926 F.2d at 500. Even if we assume that no physical altercation occurred, under the circumstances described by the district court and outlined above, and considering Williams' failure to establish that the factual findings of the district court were clearly erroneous, we agree with the district court's conclusion that, under such circumstances, Toups' failure to holster his weapon as he attempted to secure Williams was not objectively unreasonable. See Reese, 926 F.2d at 500-501.

C. Duty to Train and Supervise

Williams also challenges the district court's conclusion that Chief Baudoin did not violate his constitutional duty to train and supervise Officer Toups. "[T]he inadequacy of police training may serve as the basis for § 1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact." City of Canton, Ohio v. Harris, 489 U.S. 378, 388, 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989).

To succeed on such a claim, a plaintiff must show that: (1) the police chief failed to supervise or train the officers; (2) there was a causal connection between the failure to train or supervise and a violation of the plaintiff's constitutional rights; and (3) such failure to train or supervise amounted to gross negligence or deliberate indifference to the possibility of a constitutional violation. Hinshaw v. Doffer, 785 F.2d 1260, 1263 (5th Cir. 1986); see also Benavides v. County of Wilson, 955 F.2d 968, 972 (5th Cir.), cert. denied, 113 S.Ct. 79 (1992).

Williams contends that the Abbeville Police Department did not have a policy concerning the use of a firearm during handcuffing procedures or chases, that no such policies were promulgated to the police officers, and that there was no effort by Baudoin to train his officers in the use of firearms in such situations. Williams offered the testimony of his expert witness, Richard Turner, who testified that the Abbeville policy, as manifested in the police policy manual, was inadequate, and that there was a causal link between the non-existence of such a policy and the shooting

incident involving Toups and Williams.

Based on the testimony of Baudoin and several other police officers, the district court found as a matter of fact that Chief Baudoin required Abbeville police officers to complete training at the local police academy, notified such officers of seminars, and provided in-house training regarding use of force, handcuffing, and use of firearms. The district court also noted that although Baudoin had adopted the policy manual from the previous administration when he assumed office, he had first sent it to the City Attorney and City Council for approval, both of whom approved the manual.

Williams does not contest these findings. Moreover, he did not provide any evidence of prior complaints or incidents implicating the Abbeville Police Department's manual or its use-of-force/handcuffing procedures or policies. As the Supreme Court held in City of Canton: "Only where a municipality's failure to train its employees in a relevant respect evidences a `deliberate indifference' to the rights of its inhabitants can such a shortcoming be thought of as a city `policy or custom' that is actionable under § 1983. City of Canton, 489 U.S. at 389.

The district court noted that Williams' expert pointed out some deficiencies in the police department manual as a general matter, and noted further that the manual was "perhaps not the ideal manual." Even so, those facts do not rise to the level of "deliberate indifference" needed to sustain a § 1983 failure-to-train claim. Baudoin's uncontested testimony supports the district

court's factual findings and demonstrates that his actions in promulgating a police manual and in training his officers did not amount to "deliberate indifference to the rights of persons with whom the police come into contact." City of Canton, 489 U.S. at 388.

D. State Law Claim

Williams also argues that the district court erroneously determined that he was not entitled to any relief under Louisiana state law. Williams brought his action against Toups under La. Civ. Code Art. 2315 for causing Williams to suffer injuries through Toups' intentional or negligent discharge of his firearm. The district court found that Toups acted with the requisite care and in as reasonable a fashion as a reasonably prudent man would under the facts and circumstances of the incident.

Under Louisiana tort law the use of force by a law enforcement officer is a legitimate police function, but such force must be measured against the "reasonable force" standard, which precludes the use of force that is "clearly inappropriate." Kyle v. City of New Orleans, 353 So. 2d 969, 972 (La. 1977); see also La. Code Crim. P. Art. 220. To determine whether the force used by the police officer was reasonable, the court must consider the facts and circumstances of the case. Kyle, 353 So. 2d at 973. A court making such an evaluation must examine the officer's actions against those of an ordinary, prudent, and reasonable person under the same circumstances having the same knowledge as the officer. Id.

The district court made such an evaluation and concluded that Toups' conduct was not negligent. Based on the facts recited above, which were not clearly erroneous, and in light of the conclusion above that Toups' conduct was not objectively unreasonable within the context of a § 1983 action, we affirm the district court's determination that Toups is not liable under state law.

E. Miscellaneous Arguments

Williams also argues that we should reverse the district court's findings in favor of the defendants and sua sponte award damages without a remand. In light of our affirmation of the district court's § 1983 and state tort decisions, however, this argument is moot.

Williams next contends that the district court erroneously granted the City's motion to dismiss his claim under Fed. R. Civ. P. 12(b)(6). When, as here, a district court considers matters outside the pleadings, a motion to dismiss pursuant to Rule 12(b)(6) is treated as a motion for summary judgment. Fed. R. Civ. P. 12(b); Washington v. Allstate Ins. Co., 901 F.2d 1281, 1283-84 (5th Cir. 1990). Here, the district court did not provide factual findings or legal conclusions to support its ruling. Although such findings and conclusions are considered helpful to effective appellate review, they are not required by the Federal Rules. Jot-Em-Down Store (JEDS) Inc. v. Cotter & Co., 651 F.2d 245, 247 (5th Cir. 1981).

In the instant case, the legal standards applicable to

Williams' cause of action against the City for failure to train or supervise were the same as those we applied to his cause of action against Chief Baudoin. See Benavides, 955 F.2d at 972. Also, both causes of action depended on Williams' allegations that the City and Chief Baudoin had a policy that was deficientSQor lacked one that was not deficientSQto the extent that Williams sustained an injury of constitutional magnitude. There may have been genuine issues of material fact involving Williams' failure-to-train claim against the City, thereby rendering the district court's grant of summary judgment suspect. But inasmuch as Williams received a full trial on the merits for his claim against Baudoin, and the factual issues relevant to that claim were resolved against him, any potential error in the district court's earlier grant of summary judgment in favor of the City would be harmless.

For the foregoing reasons, the rulings and judgments of the district court are, in all respects,

AFFIRMED.