

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3699
Conference Calendar

ROGER MAYWEATHER,

Plaintiff-Appellant,

versus

CHIEF OF POLICE, New Orleans
Police Department, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CA 91-2698 E

- - - - -
(September 21, 1994)

Before KING, SMITH, AND BENAVIDES, Circuit Judges.

PER CURIAM:*

Although Appellant Mayweather states several issues in his brief, his basic contention is that his version of the facts should have been accepted by the district court, i.e., that the district court's findings were clearly erroneous. These findings were that excessive force was not used in arresting him on August 11, 1990, that the officers did not injure him, and that he was not denied medical treatment he needed. To prevail, Mayweather needed to prove that he suffered an injury "which resulted

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

directly and only from the use of force that was clearly excessive to the need, and the excessiveness of that need was objectively unreasonable." Harper v. Harris County, Texas, 21 F.3d 597, 600 (5th Cir. 1994) (citing Johnson v. Morel, 876 F.2d 477, 480 (5th Cir. 1989) (en banc)).

Rule 52(a), Fed. R. Civ. P., provides in part: "Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses." Accordingly, "when a trial judge's finding is based on his decision to credit the testimony of one of two or more witnesses, each of whom has told a coherent and facially plausible story that is not contradicted by extrinsic evidence, that finding, if not internally inconsistent, can virtually never be clear error." Anderson v. City of Bessemer City, 470 U.S. 564, 575, 105 S. Ct. 1504, 84 L. Ed. 2d 518 (1985).

The magistrate judge's findings, adopted by the district court, are based on the officers' testimony as corroborated by Mayweather's medical records. The magistrate judge carefully explained why Mayweather's self-serving testimony was not credible. Accordingly, Mayweather's contention that the district court's findings are clearly erroneous is frivolous.

Mayweather has requested this Court to provide him with a free copy of the trial transcript. To be entitled to the transcript, he would have to show that it was necessary for the presentation of his appellate issues. Harvey v. Andrist, 754 F.2d 569, 571 (5th Cir.), cert. denied, 471 U.S. 1126 (1985).

The magistrate judge's report, the district court's final order, and Mayweather's briefs show that his appeal is frivolous, being without arguable merit. Howard v. King, 707 F.2d. 215, 219-20 (5th Cir. 1983). Therefore, Mayweather's motion for the transcript is DENIED and his appeal is DISMISSED.