

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4231

Summary Calendar

EDWARD GARNER ROBERSON,

Plaintiff-Appellant,

versus

PAUL SCOTT,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
(4:92 CV 18)

(January 14, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:*

I

Edward Garner Roberson filed suit under 42 U.S.C. § 1983 against Paul Scott, a deputy for the Denton County Sheriff's Department, alleging violation of his constitutional rights under the Eighth Amendment. After an evidentiary hearing before a magistrate judge, Scott moved for summary judgment on the basis of

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

qualified immunity. The magistrate judge granted Scott's motion. Roberson appeals.

II

We review the facts of the case in the light most favorable to Roberson. King v. Chide, 974 F.2d 653, 655 (5th Cir. 1992). Roberson's complaint arises from an incident that occurred on December 5, 1991. Roberson, a prison inmate, was in a courtroom for the 211th District Court in Houston, Texas on a criminal matter when Deputy Scott ordered him to a holding cell. Scott had earlier deprived Roberson of some legal papers, creating tension between the two. Roberson left the courtroom on Scott's request and proceeded toward the holding cell. When Roberson attempted to enter the cell, Scott began to choke him. As Roberson's hands were cuffed, he had to prop himself up against the door frame to prevent himself from falling. Roberson began yelling. Scott then shoved Roberson, causing Roberson to stumble forward and knock his head into the far wall of the cell. Roberson suggests that Scott's actions stemmed from anger over the incident involving the legal papers.

Roberson remained in the cell for approximately five or ten minutes. Officers then arrived at the cell and returned Roberson to prison. Roberson immediately requested to go to the infirmary, where he reported the incident for the first time. He explained to the medical personnel that Deputy Scott's attack exacerbated an ongoing weakness in his back and he attributed a bump on his head to his impact with the cell wall. The medical services officer who

treated Roberson noted the bump, which was approximately an inch and a half wide, but detected no signs of serious injury. The medical services officer in the infirmary later sent Roberson to the hospital. Although the hospital staff took x-rays of Roberson's head, Roberson does not know what those x-rays showed. Subsequently, Roberson has experienced back pains, dizziness, and frequent headaches.

III

To defeat the defense of qualified of immunity, Roberson has to establish that Scott acted in a manner that a reasonable officer would have understood violated Roberson's rights. Fraire v. Arlington, 957 F.2d 1268, 1273 (5th Cir.), cert. denied, 113 S.Ct. 462 (1992). The inquiry into the reasonableness of Scott's actions leads us to consider the law as it existed at the time of the incident. King v. Chide, 974 F.2d 653, 657 (5th Cir. 1992). The law at that time would have required Roberson to prove four elements to recover on his excessive force claim arising from the Eighth Amendment:

1. a significant injury, which
2. resulted directly and only from the use of force that was clearly excessive to the need, the excessiveness of which was
3. objectively unreasonable, and
4. the action constituted an unnecessary and wanton infliction of pain.

Huquet v. Barnett, 900 F.2d 838, 841 (5th Cir. 1990).

Applying this standard, the magistrate judge found that Roberson failed to raise a genuine issue of material fact as to

whether he suffered a significant injury. The magistrate judge further found that Scott's alleged use of force was not the direct and only cause of Roberson's back pain because Roberson suffered from a pre-existing condition. Finally, the judge concluded that Roberson's later dizziness and back pain would not have been foreseeable to a reasonable officer. She therefore granted Scott's motion for summary judgment on the basis of qualified immunity.

IV

Roberson complained of a head injury. Assuming that Scott launched an unprovoked attack against Roberson, such an injury was a reasonably foreseeable result. The severity of the injury is unclear. The only evidence that controverts Roberson's claim that his head injury was significant came from the medical services officer who treated him. The medical services officer did not detect a serious injury but nevertheless sent Roberson to the hospital when Roberson later complained of dizziness. The officer also surmised that the injury could not have been "of significance" because the hospital would not have returned Roberson to prison if it were. Medical records indicate that the hospital staff diagnosed Roberson as suffering from an acute hematoma and that the staff prescribed ibuprofen for his pain. The medical records also noted that Roberson either had or received "burrow holes," which the medical officer could not explain but guessed would mean the hospital staff "had to drain something."

We have held that the claim of an unprovoked attack on the part of a state actor lowers the standard for assessing the

significance of an injury. Oliver v. Collins, 914 F.2d 56, 59 (5th Cir. 1990). Roberson denied provoking Scott. We have also held that sizable bruises and back pain may qualify as a significant injury. Id. An officer acknowledged the bruise on Roberson's head and the injury prompted the medical services officer to send Roberson to the hospital. The findings of the hospital staff remain unclear. These circumstances give rise to genuine issues of material fact.

We REVERSE the grant of summary judgment on the basis of qualified immunity and REMAND for further proceedings.