IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-4339

Summary Calendar

WILLIAM E. LOGAN, JR.,

Plaintiff-Appellant,

versus

DANNY J. LOUVIERE, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
(87-CV-2798)

(February 22, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:[*]

William Logan alleges that officers of the City of Lafayette Police Department illegally arrested him. We affirm the district court's grant of summary judgment against him.

I.

On December 16, 1986, Logan visited his wife, Teresa Parker, at her mobile home. When Logan entered the trailer, he found his

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

wife and police Captain Danny Louviere in the back bedroom. An altercation ensued between Logan and Louviere, who directed Parker to call the police for emergency assistance. Police officers soon arrived and arrested Logan.

As a result of the incident, Logan was charged under city ordinances with the offenses of unlawfully remaining in Parker's residence ("remaining after forbidden") and simple battery on Louviere. He was convicted of these offenses in Lafayette City Court in March of 1987, and the 15th Judicial District Court affirmed. The state's Third Circuit Court of Appeal found deficiencies in Logan's application for certiorari and dismissed it. On November 23, 1987, the City Court sentenced him to pay $57.50 "fine and cost" or to serve ten days in jail.

Logan brought a section 1983 action in 1987 alleging his prosecution was based on false information provided by Louviere and that the City of Lafayette had neither trained its officers adequately before the incident nor disciplined them adequately afterwards. His amended complaint added three city police officers as defendants. He alleged that Officer Antoine Clay used excessive force in arresting him and that Officers James Romero and Paul Stelly failed to adequately investigate the December incident.

II.

We turn first to Logan's claims of wrongful arrest and malicious prosecution. A conviction "conclusively establishe[s] that the arrest was made with probable cause, absent a showing of fraud, perjury, or corrupt means." Howell v. Tanner, 650 F.2d 610,

615 n.6 (5th Cir. Unit B 1981), cert. denied, 456 U.S. 918, 919 (1982); accord Cameron v. Fogarty, 806 F.2d 380, 386-89 (2d Cir. 1986), cert. denied, 481 U.S. 1016 (1987).

The core of Logan's allegations is that the police department did not adequately investigate the possibility that, in addition to Parker's daughter Angel, another child was present in the trailer. He has never stated that this child was in the back of the trailer or on the street where the relevant events occurred. Nor has he taken the child's deposition, although counsel had known about her for several months at the time of the hearing, and Logan had known about her since December 1986. As was the case in Netto v. Amtrak, 863 F.2d 1210 (5th Cir. 1989), Logan "never moved for a continuance or submitted an affidavit [as authorized by Fed. R. Civ. P. 56(f)] showing how . . . discovery could assist him in opposing the motion for summary judgment." Id. at 1215. Accordingly, the district court did not err by granting summary judgment on his claims of illegal arrest and malicious prosecution.

III.

We now turn to Logan's claim of excessive force. He contends that there is a genuine issue of fact whether Officer Antoine Clay used excessive force in arresting him. He fails to clear the hurdle of qualified immunity. See Rankin v. Klevenhagen, 5 F.3d 103, 108-09 (5th Cir. 1993).

In qualified immunity cases involving a claim that excessive force was used by an officer against a pretrial detainee, "[t]he objective reasonableness of [the officer's] conduct must be

measured with reference to the law as it existed at the time of the conduct in question." Valencia v. Wiggins, 981 F.2d 1440, 1448 (5th Cir.), cert. denied, 113 S. Ct. 2998 (1993). In December 1986, when Logan was arrested, the standard relative to officers' use of force on pretrial detainees was as stated in Shillingford v. Holmes, 634 F.2d 263, 265 (5th Cir. Unit A Jan. 1981). See Valencia, 981 F.2d at 1448 & n.42. Shillingford held that "[i]f the state officer's action caused severe injuries, was grossly disproportionate to the need for action under the circumstances, and was inspired by malice rather than merely careless or unwise excess of zeal so that it amounted to an abuse of official power that shocks the conscience, it should be redressed under Section 1983." 634 F.2d at 265. In Pfannstiel v. City of Marion, 918 F.2d 1178 (5th Cir. 1990), the court observed that it "had held that the following injuries could be considered 'severe': partial paralysis from the chest down . . ., multiple bruises and scars to the head and body resulting from a severe beating, and a lacerated forehead." Id. at 1185 (citations omitted). However, the court "had held that the following injuries were not 'severe': slaps to the face that caused no bleeding and did not knock the plaintiff down, and minor bruises on the arm, scrapes on the face, and welts raised by handcuffs." Id. (citations omitted).

The police officer's actions did not go beyond the bounds of qualified immunity. During his scuffle in the trailer, Louviere bit Logan's thumb, after which Logan was examined for 15 to 30 minutes in a hospital emergency room. He missed no work as a

result, took no medication, and had no follow-up medical treatment. After being handcuffed, a police officer made Logan's shoulder hurt by pushing his arm. Logan has never sought medical treatment for his shoulder, nor has he been prevented from engaging in any desired activity as a result. During the search after the arrest, an officer pushed his head onto the car trunk, which he says gave him "a couple of black eyes for about a week," and that his "forehead was a little sore for a day or two." The district court did not err by holding that the defendants were entitled to qualified immunity.

IV.

Logan contends that the district court erred by granting summary judgment to the City of Lafayette, arguing that the police department's failure to adequately train and supervise its officers amounted to gross negligence or deliberate indifference. The inadequacy of police training may serve as the basis for section 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 (1989). The issue "is whether [the] training program is adequate; and if it is not, the question becomes whether such inadequate training can justifiably be said to represent 'city policy.'" Id. at 390. As Logan points to no evidence in the record about the city's training program, relying only on his allegations that an inadequate investigation took place as proof of

inadequate training, the district court did not err in granting summary judgment for the city.

V.

Appellees contend that this Court should award them costs and damages on grounds that Logan's appeal is frivolous. Fed. R. App. P. 38. Logan's appeal is not frivolous because whether the district court erred by granting summary judgment is arguable on its merits. Cf. Lyons v. State, 834 F.2d 493, 496 (5th Cir. 1987).

AFFIRMED