

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-5179

Summary Calendar

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TROY DEWAYNE EVANS,

Plaintiff-Appellant,

versus

KIRBY ROBINSON, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Texas  
(93-CV-3)

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(May 26, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:\*

Troy Dewayne Evans was incarcerated in the Denton County Jail from November 12 to November 24, 1992. He claims that he was deprived of a mattress for the first three days of his confinement and, when this deprivation aggravated longstanding back problems, that various prison officials acted with deliberate indifference to his serious medical needs. He filed suit pursuant to 42 U.S.C. §

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

1983 to vindicate alleged violations of his constitutional rights. After a Spears<sup>1</sup> hearing assessing the viability of Evans' claim and a de novo review, a district court adopted the magistrate judge's recommendation to dismiss with prejudice. Evans appeals.

Evans claims that his back condition became severe on his third day of incarceration, causing him considerable pain, creating numbness in his legs, and rendering him immobile. He asserts that he asked an officer in the Denton County Sheriff's Department, then-Corporal John Brumley, for medical assistance but to no avail. Evans also alleges that he sent requests for medical help through Brumley to Betty Chancellor, a staff person at the jail, and Kirby Robinson, the Denton County Sheriff. According to Evans, Brumley told him, "I've spoke to Betty Chancelor, and she does not want to see you and your are not in need of medical attention." Evans states that he received no response from the sheriff.

At the Spears hearing, the defendants provided documentation indicating that Evans received a mattress, a mattress cover, a uniform, shoes, a towel, a blanket and an inmate handbook on his first day at the Denton County Jail. Evans' medical records indicated that he made a medical complaint on his second day of incarceration and that he received pain reliever. Corporal Karla Sargent, the person the records reported as having treated Evans, did not testify. Cubby Gardner, the chief medical officer at the time of the Spears hearing and a medical officer when the relevant events occurred, testified instead. He inferred from the "absence

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<sup>1</sup> Spears v. McCotter, 766 F.2d 179, 182 (5th Cir. 1985).

of comments" on his colleague's report that "there were no signs indicative of any trauma or any serious nature, and that her plan was to complete this with a dose of over-the-counter medications." When asked whether there were other requests for medical attention in Evans' file Gardner responded, "Not to my knowledge." When asked if he had looked in the file to see if there were other requests, he answered, "I have not looked in the file recently."

Other than the inference Gardner drew from comments his colleague had not made, no witness provided a basis for concluding that Evans' injury was not serious. Brumley claimed to have no recollection of the incidents in question. No one asked him whether Chancellor or Robinson received and refused to address a request from Evans for medical help. Brumley never denied transmitting such requests and neither Chancellor nor Robinson testified. Gardner did not answer squarely whether Evans' file might have contained requests other than the one submitted to the court. It is difficult to determine the grounds for the magistrate judge's conclusion that Evans' claim is without merit.

We REVERSE and REMAND for further proceedings.