

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-5466  
Summary Calendar

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JAMES LEE GREEN,

Plaintiff-Appellant,

v.

UNIDENTIFIED CARSAYDO, Sgt., ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Eastern District of Texas  
(6:93 cv 54)

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(June 30, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.\*

PER CURIAM:

Appellant Green contended that he was subjected to excessive use of force by two Texas prison guards. The magistrate judge tried his case, described in her order, the conflicting versions of events told by each of the witnesses and stated that she could not find that appellant's version was more credible than that of the guards. Consequently, she concluded that appellant had

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

failed to meet his burden of proving his case by a preponderance of the evidence.

In cases such as this, where findings as to the circumstances leading to use of force and the severity of the force applied depend so heavily on the credibility of the various witnesses, we are most reluctant to disturb the district court's credibility assessments. The prisoner was required to show that the officers used force against him not in a good-faith effort to maintain or restore discipline, but maliciously and sadistically to cause him harm. Hudson v. McMillian, \_\_\_\_ U.S. \_\_\_\_, 112 S. Ct. 995, 999 (1992). Factors relevant to the Hudson inquiry include the extent of injuries suffered, the need for application of force, the relationship between the need and the amount of force used, the threat reasonably perceived by the responsible officials, and any efforts made to temper the severity of a forceful response. See Hudson v. McMillian, 962 F.2d 522, 523 (5th Cir. 1992) (on remand). All of these factors are inter-related. While it might have been helpful to this court if the magistrate judge had made findings relevant to each of these factors, given the simplicity of this case, the court's candidly stated finding that the plaintiff had not carried his burden of proof is sufficient. Where the testimony of the parties was "equally balanced," appellant could not show that the officers acted maliciously and sadistically to cause harm.

Further, appellant brought forth no evidence demonstrating that he received constitutionally inadequate medical care following his encounter with these guards.

The judgment of the district court is **AFFIRMED**.