UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-8514

RUDY BARRON,

Plaintiff-Appellant,

VERSUS

HARLON COPELAND, Sheriff, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Western District of Texas

(SA-92-CA-884)

(November 30, 1994)

Before JONES and DeMOSS, Circuit Judges, and BUNTON[*], District Judge.

PER CURIAM:[**]

In March 1992, Rudy Barron was transferred to the Bexar County Adult Detention Center (BCADC) to begin serving a fifteen-year term of imprisonment. At that time, Barron suffered from an "inverted knee" that required him to wear a knee brace and take medication.

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[*] District Judge of the Western District of Texas, sitting by designation.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Upon his arrival at the BCADC on March 13, 1992, prison employees removed Barron's knee brace. Barron avers[1] that, without the brace, he experienced significant pain and had difficulty walking. He further avers that he requested on several occasions that he be permitted to see a doctor and that prison officials denied his requests.

Barron further avers that on April 6, 1992, he was visited by Physician's Assistant Carrasco, who examined Barron's knee and prescribed an ace bandage and pain relievers. Barron avers that he informed Carrasco that his knee brace was taken from him upon his arrival at the BCADC and that since then he had experienced significant pain. Barron next avers that on April 9, 1992, he fell down a stairwell, further injuring his knee and exacerbating the pain. He avers that the pain was excruciating and required him to be assisted by other inmates when walking, thereby causing him severe humiliation and depression. He further avers that he made multiple requests in the next several days to see a doctor, all of which were ignored. He avers that on April 13, 1992, Physician's Assistant Carrasco failed to visit him after Carrasco had said he would do so. Barron avers that on April 14, 1992, Carrasco visited Barron and informed him that, because of the condition of his knee, Barron needed to be in a hospital but that Carrasco refused to assist him.

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[1]Because we are reviewing a summary judgment for the defendants, meaning we must view the evidence in a light most favorable to Barron, our recitation of the facts is derived from the affidavit Barron submitted in response to the defendants' motion for summary judgment.

Barron eventually was transferred on April 15, 1992 to the Texas Department of Corrections whereupon medical personnel evaluated his knee. Subsequently, his knee was operated on by surgeons at John Sealy Hospital in Galveston. Barron avers that he had to remain on crutches for an extended period after the surgery. In response to prison officials' claims that Barron missed several medical appointments, Barron avers that he never missed any such appointments and that, in fact, the prison's records are inaccurate and therefore unreliable.

In September 1992, Barron sued Harlon Copeland, sheriff of Bexar County, and Physicians' Assistant Carrasco under 42 U.S.C. § 1983. He alleged that the defendants' failure to provide medical assistance violated his Eighth Amendment right against cruel and unusual punishment. After the district court referred the suit to a magistrate judge, the defendants moved for summary judgment. The magistrate judge recommended that the motion be granted. In July 1993, the district court adopted the magistrate judge's recommendation, finding that no genuine issue of material fact existed as to whether the defendants exhibited deliberate indifference to Barron's medical needs to the extent that such indifference caused Barron substantial harm. Barron now appeals.

We review a summary judgment de novo. Topalian v. Ehrman, 954 F.2d 1125, 1131 (5th Cir. 1992). We therefore view the evidence in a light most favorable to the non-moving party, and if no genuine issue of material fact exists, then we will affirm the summary judgment. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Had

this case gone to trial, Barron would have had to prove through a preponderance of evidence that the defendants' actions, or failure to act, were "sufficiently harmful to evidence deliberate indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97 (1976). The question thus becomes whether, at the summary judgment stage, Barron created a genuine issue of material fact as to whether the defendants manifested the type of indifference described in Estelle. While this case has been on appeal, the Supreme Court in Farmer v. Brennan, 114 S. Ct. 1970 (1994), addressed in considerable detail the content of the phrase "deliberate indifference;" and in reversing and remanding a summary judgment by the district court in favor of prison officials, the Supreme Court stated:

> "Under the test we adopt today, an Eighth Amendment claimant need not show that a prison official acted or failed to act believing that harm actually would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm. ... Whether a prison official had the requisite knowledge of a substantial risk i[s] **a question of fact subject to demonstration in the usual ways**, including inference from circumstantial evince, ... and a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious."

Id. at 1981 (emphasis added).

We find that, with regard to Sheriff Copeland, Barron did not create a genuine issue of material fact. We therefore affirm the district court's summary judgment as to Sheriff Copeland. With regard to Physicians' Assistant Carrasco, however, we find that Barron did create a genuine issue of material fact. In his sworn affidavit, which was before the district court at summary

judgment,[2] Barron avers that Carrasco was aware of the severity of Barron's medical condition and that, in fact, Carrasco had concluded that Barron should be admitted to a hospital but would "do nothing" for Barron. We note that the district court, in granting the defendants' motion for summary judgment, relied on the defendants' version of events. In particular, the court pointed to the defendants' claim that Barron had skipped several medical visits, thereby creating the inference that Barron's condition was not as severe as Barron alleged. The court's reliance on the defendants' summary judgment evidence was improper because, at that stage, the court must defer to the non-moving party's version of events. Willis v. Roche Biomedical Lab., Inc., 21 F.3d 1368, 1371 (5th Cir. 1994). We therefore reverse the district court's summary judgment as to Physicians' Assistant Carrasco only and remand the case for further proceedings.

The judgment of the district court is AFFIRMED in part and REVERSED and REMANDED in part.

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[2]We note that, apparently due to some confusion, Barron's affidavit was not before the magistrate judge when he recommended that the defendants' motion for summary judgment be granted. The affidavit subsequently was found and presented to the district court for its consideration before the court adopted the magistrate judge's recommendation.