

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-9034  
Summary Calendar

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ALVIN RAY COOPER,

Plaintiff-Appellant,

versus

D.L. "SONNY" KEESEE, Individually  
and in his Official Capacity as  
Sheriff, ET. AL.,

Defendants,

D.L. KEESEE, Individually and in his  
Official Capacity as Sheriff, ET. AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Texas

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(5:91-CV-289-C)

(January 27, 1995)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:\*

Alvin Ray Cooper (Cooper) appeals from an Order and Judgment of the district court dismissing his civil rights complaint against

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Pursuant to that Rule, the Court has determined that this opinion should not be published.

Lubbock County, Sheriff D. L. "Sonny" Keesee (Keesee) and Jail Administrator Don Addington (Addington). We affirm.

#### FACTS

Alvin Ray Cooper, a Texas prisoner, *pro se* and *in forma pauperis*, commenced this 42 U.S.C. § 1983 action against Keesee, Sheriff of Lubbock County, in his individual and official capacities, Addington, jail administrator of Lubbock County, in his individual and official capacities, Lieutenant Willie Rodriguez, jailor for Lubbock County, in his individual and official capacities, and Lubbock County, alleging that certain conditions of confinement at the Lubbock County Jail, where Cooper was housed first as a pretrial detainee and then as a prisoner, violated his civil rights. The district court dismissed the case in part as barred by the statute of limitations and the remainder without prejudice pursuant to Fed. R. Civ. P. 12(b)(6).

This Court affirmed in part and reversed in part the judgment of the district court, determining that Cooper's complaint stated a claim that his confinement in isolation for 81 days violated his due process rights, and that Cooper's allegation that he was handcuffed and shackled to an iron stool for five to six hours also stated a claim for which relief could be granted.

On remand, the case was assigned to a magistrate judge who issued a report and recommendation to which Cooper filed objections. The district court dismissed Rodriguez from the case without prejudice, determining that no claim for relief had been

stated against him.<sup>1</sup> The district court denied the motion of Keesee and Addington to dismiss for failure to state a claim and refused to grant them qualified immunity.

Cooper filed a Motion for Declaratory Judgment and a Motion for Summary Judgment. The magistrate judge held an evidentiary hearing pursuant to § 636(b)(1)(B) and issued a report and recommendation. Cooper and the defendants filed objections to the report and recommendation. With the exception of certain factual clarifications, the district court adopted the magistrate judge's findings of fact, conclusions of law, and credibility recommendations over Cooper's objections and entered judgment for the defendants, dismissing the complaint with prejudice.<sup>2</sup> The district court adopted the findings of the magistrate judge that Cooper's shackling and assignment to a single-person cell were for safety and security reasons rather than for punishment.

#### SOLITARY CONFINEMENT

Cooper argues that placing him in solitary confinement violated his due process rights and constituted cruel and unusual punishment. He suggests that he is not merely contesting his forced move from one single-person cell to another, but argues that

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<sup>1</sup> As the defendants argue on appeal, and Cooper apparently concedes, Cooper failed to perfect an appeal from the judgment dismissing Rodriguez from the suit, but perfected an appeal only from the subsequent judgment dismissing Keesee and Addington for failure to allege a constitutional violation.

<sup>2</sup> Neither the magistrate judge nor the district court appears to have employed summary judgment standards in evaluating Cooper's claims. Because the district court determined that Cooper failed to raise a constitutional issue, the court denied, at least implicitly, Cooper's summary judgment motion.

he was moved from a single-person cell of "general population" to a single-person cell of "isolation confinement" or "solitary confinement."

The district court found that from October 18, 1989, through January 25, 1990, Cooper served five fourteen-day periods of "disciplinary restriction," each imposed after a disciplinary hearing. Cooper does not argue that the restrictions imposed after the disciplinary hearings were improper. Rather, Cooper's arguments are directed to 32 days, in between disciplinary-restriction periods, when he was housed in a single-person cell, which he refers to as an isolation cell, without the benefit of a prior disciplinary hearing. The magistrate judge rejected Cooper's argument that he was placed in the single-person cell as punishment, noting that the testimony showed that Cooper was a continuing source of problems with the other prisoners and with the jailers. The district court found that placing Cooper in the cell was justified by the legitimate penological interests of jail safety and security.

An appellate court "reverse[s] factual findings, especially credibility findings, only if they are `clearly erroneous.'" *Johnston v. Lucas*, 786 F.2d 1254, 1257 (5th Cir. 1986); FED. R. CIV. P. 52(a). A district court's findings of fact are not clearly erroneous if they are "plausible in light of the record viewed in its entirety[.]" *Anderson v. Bessemer City, N.C.*, 470 U.S. 564, 573-74, 105 S.Ct. 1504, 1511, 84 L.Ed.2d 518 (1985). Moreover, credibility determinations are peculiarly within the province of

the district court when it sits as the trier of fact. *Kendall v. Block*, 821 F.2d 1142, 1146 (5th Cir. 1987). This Court will declare testimony incredible as a matter of law only "when testimony is so unbelievable on its face that it defies physical laws." *United States v. Casteneda*, 951 F.2d 44, 48 (5th Cir. 1992) (internal quotation and citation omitted).

The district court's determination that placing Cooper in the particular single-person cell was for security reasons rather than for disciplinary reasons was not clearly erroneous. "[S]ecurity-related decisions of prison officials are to be reviewed only for reasonableness; if the decisions are rational (an exceedingly undemanding standard), courts are to look no further." *Thorne v. Jones*, 765 F.2d 1270, 1275 (5th Cir. 1985), *cert. denied*, 475 U.S. 1016 (1986). "Prison administrators [are to be] accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *Bell v. Wolfish*, 441 U.S. 520, 547, 99 S.Ct. 1861, 1878, 60 L.Ed.2d 447 (1979). The Court does not substitute its judgment on matters of institutional administration and security for that of the persons trained and charged with running the prison. *Id.* at 548. Cooper's due process rights were not violated by his housing in the single-person cell.

#### CRUEL AND UNUSUAL PUNISHMENT

In the district court, Cooper alleged that he was handcuffed and shackled to a stool in his cell for five to six hours on one

occasion. Construing Cooper's appellate arguments liberally, *Price v. Digital Equip. Corp.*, 846 F.2d 1026, 1028 (5th Cir. 1988), he argues that such treatment constituted cruel and unusual punishment under the Eighth Amendment.

The magistrate judge found that Cooper was handcuffed and shackled for slightly longer than two hours because Cooper refused to stop repeatedly pushing the intercom button in his cell and that Cooper's behavior prevented others from using the emergency intercom system at the jail. The magistrate judge found that Cooper was made as comfortable as possible during the handcuffing and shackling. These findings were not clearly erroneous.

The record shows that Cooper continued to push the intercom button even after officers instructed him numerous times to stop pushing the button. By Cooper's own admission, he continued to push the intercom button after an officer handcuffed him. Thereafter, officers placed a blanket on the floor of the cell, Cooper lay down, and he was shackled. The officer who placed the restraints on Cooper asked Cooper if the restraints were too tight, and Cooper did not say that he was in pain. The record shows that Cooper was counseled on at least three or four prior occasions for excessively using the intercom button, thereby creating a serious safety and security hazard, and that on one prior occasion, Cooper jammed a spoon in the intercom button.

The use of restraint devices for security reasons is "a rational security measure" and does not constitute cruel and unusual punishment "unless great discomfort is occasioned

deliberately as punishment or mindlessly, with indifference to the prisoner's humanity." *Jackson v. Cain*, 864 F.2d 1235, 1243 (5th Cir. 1989). Cooper does not contend that the restraint gear caused him any physical pain or that he required medical attention as a result of the handcuffing and shackling. Cooper's argument that the use of handcuffs and leg restraints constituted cruel and usual punishment fails to establish a violation of the Eighth Amendment.

#### CONCLUSION

For the foregoing reasons, the district court's order dismissing Cooper's complaint with prejudice is AFFIRMED.