IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-10036
Summary Calendar

LAWRENCE RAY GRANT,

Plaintiff-Appellant,

v.

RANDY McLEOD, Warden, Texas
Department of Criminal Justice,
Clements Unit, ET AL.,

Defendants,

MICHAEL A. BLANKENSHIP,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
(2:92-CV-288)

(September 12, 1994)

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

Per curiam[1]:

Proceeding *in forma pauperis* (IFP) and *pro se*, Lawrence Ray Grant (Grant) a state prisoner confined within the Texas Department of Criminal Justice - Institutional Division (TDCJ), filed a civil rights action against Warden Randy McLeod and guards Russell Weatherholt and Michael Blankenship. Grant was "taken down" or

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

subdued by defendant Blankenship following an altercation with some other inmates. Grant suffered a broken leg, an abrasion on his wrist and a "knot" on his head, all of which allegedly resulted from defendant's excessive use of force.

The magistrate judge conducted a hearing pursuant to *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985), to develop Grant's allegations. After the hearing, the magistrate judge ordered Blankenship to respond to Grant's complaint and dismissed McLeod and Weatherholt from the case. The parties consented to trial before a magistrate judge pursuant to 28 U.S.C. § 636(c). Following a jury trial, the jury found that a preponderance of the evidence failed to establish that Blankenship violated Grant's constitutional rights. The magistrate judge entered judgment ruling that Grant take nothing and that Blankenship was entitled to his costs in defending the action. Grant filed a motion for new trial which was denied by the magistrate judge. Subsequently, Grant filed an unsigned notice of appeal. There is no rule that a notice of appeal is defective because it is not signed. *See* FED. R. APP. P. 3(c).

Although Grant's notice of appeal is timely and adequate, the record contains no transcript of the jury trial. The record includes a transcript of Grant's *Spears* hearing, and an audio tape which is labeled as Grant's jury trial. Because Grant is challenging the magistrate judge's evidentiary ruling and entry of judgment against him, it was Grant's obligation to include in the record those portions of the transcript relevant to the rulings and

findings in question. Fed. R. App. P. 10(b); *see, Alizadeh v. Safeway Stores, Inc.*, 910 F.2d 234, 237 (5th Cir. 1990). Since there is no transcript, the Court declines to consider Grant's challenge to the propriety of the evidentiary rulings or the jury verdict.

Grant also asserts that the district court improperly denied his request for witnesses, a video tape, and an x-ray. In his reply grief, Grant identifies the witnesses as "ex-inmates Carter and Ellis." He indicates that they were key witnesses and that they could have testified to the "unwanton use of force and wrong doing of the officer." He does not specify whether they observed the use of force or what they would have testified about. Further, without the trial transcript, the Court cannot determine whether their testimony would have been cumulative and properly excluded.

Grant likewise fails to identify the content of the video tape or the x-ray in question, or why he needed them at trial. His brief implies that the x-ray depicted his broken leg. "Although [the Court] liberally construe[s] the briefs of *pro se* appellants, [the Court] also require[s] that arguments must be briefed to be preserved." *Price v. Digital Equip. Corp.*, 846 F.2d 1026, 1028 (5th Cir. 1988) (citations omitted). Issues raised but not argued are ordinarily abandoned. *See, Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993). Because Grant offers no factual or legal support for his argument that he was improperly denied access to the video tape or the x-ray, it will not be considered.

For the foregoing reason, the orders appealed from are AFFIRMED.