

**UNITED STATES COURT OF APPEALS
For the Fifth Circuit**

No. 94-20395
Summary Calendar

MACK BARNARD YATES,

Plaintiff-Appellant,

VERSUS

BUD WALKER, ET AL.,

Defendants,

C. GODWIN,

Defendant-Appellee.

Appeal from the United States District Court
For the Southern District of Texas
(CA-H-87-3133)

(October 17, 1995)

Before THORNBERRY, JOLLY and BENAVIDES, Circuit Judges.

PER CURIAM:*

Mack Bernard Yates appeals the district court's dismissal of his 42 U.S.C. § 1983 action after a jury verdict in favor of Godwin. We affirm.

BACKGROUND

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

In his § 1983 complaint Yates asserts that, in retaliation for reporting to the warden an alleged threat by a unit nurse to have him killed, Assistant Warden Charles Godwin had him placed in an unsanitary "punishment cell."¹ Following a jury trial, Yates moved for an instructed verdict, which was denied by the district court. After a jury verdict in Godwin's favor, the district court entered judgment that Yates take nothing, and dismissed the complaint on the merits. Yates' motion for new trial was denied. In this appeal he contends the evidence was insufficient to support the jury's verdict and therefore, the district court should have granted his motion for judgment of acquittal or his motion for new trial. In addition he complains of certain evidence admitted at the trial.

¹ We have seen this case before. Yates filed the original complaint in 1987, alleging that prison personnel failed to provide him with medication and removed legal documents from his cell. In addition to the retaliation claim, Yates alleged that prison nurse Patsy Craig threatened to have him killed. According to Yates, Craig often supplied inmates with drugs and sexual favors in exchange for assaulting other prisoners. The district court dismissed the complaint as frivolous, but this Court remanded the cause for a Spears hearing. Yates v. Walker, No. 88-2229 (5th Cir. July 7, 1988). After the district court again denied relief, this Court reversed the court's dismissal as to the retaliation claim against Warden Godwin. Yates v. Walker, No. 91-2677 (5th Cir. January 2, 1991). The instant jury trial followed, with the only remaining issue being the retaliation claim.

DISCUSSION

Yates first argues that because he proved his case by "substantial" evidence the jury's verdict should not be sustained. This Court reviews a challenge to the sufficiency of the evidence supporting a jury's verdict to determine whether reasonable and fair-minded jurors in the exercise of impartial judgment might reach different conclusions. MacArthur v. University of Texas Health Ctr., 45 F.2d 890, 896 (5th Cir. 1995). It is the function of the jury, not of this Court, to weigh conflicting evidence and inferences and determine the credibility of witnesses. *Ibid.*

The jury was instructed to determine whether Godwin had violated Yates' rights to be free from cruel and unusual punishment because of the unsanitary condition of his cell. Convicted prisoners are protected by the Eighth Amendment from exposure to egregious physical conditions that deprive them of basic human needs. Rhodes v. Chapman, 452 U.S. 337, 347, 101 S.Ct. 2392, 2399 (1981). However, in order to be held liable for an Eighth Amendment violation, a prison official must have known of, but disregarded, an excessive risk to inmate health or safety. Farmer v. Brennan, __ U.S. __, 114 S.Ct. 1970, 1979 (1994).

The jury was also instructed to determine whether Godwin had violated Yates' First Amendment rights by moving him to an unsanitary cell in retaliation for filing a grievance against Nurse Craig. Prison officials may not retaliate against or harass an inmate for exercising his right of access to the courts or for complaining of official misconduct. See Gibbs v. King, 779 F.2d 1040, 1046 (5th Cir.), *cert. denied*, 476 U.S. 1117 (1986).

Yates testified at trial that in November of 1986 Godwin, then assistant warden at the Wynne Unit, transferred him to a filthy cell on 2-Row, the "punishment row," which had feces in the toilet and on the bars and wall. He stated he received no response to his complaint of the cell's unsanitary condition, and after he had waited two hours cleaned it himself. Yates admitted he had no personal knowledge that Godwin had chosen that

particular cell in which to house him. He also admitted that he had been housed in administrative segregation (ad-seg) for three to six years prior to the complained of transfer because he had a number of disciplinary infractions, including assaulting an officer. He acknowledged that inmates in segregation are placed in one-man cells and have no commissary or recreational privileges. Yates also admitted he had lost no privileges because he had been moved to 2-Row.

Testifying in behalf of Yates were fellow inmates Synachia McQueen and Chester Haas, who both said they had observed unsanitary conditions on 2-Row, where inmates known for "chunking on officers" and throwing feces in other inmates' cells were housed. Haas characterized Yates' cell as "feces-infested." However, both inmates admitted that they could not see the inside of the cell, but only the front outside wall. McQueen admitted that he had no knowledge of Godwin retaliating against inmates.

Jeffrey Lamb, who was employed on the Wynne Unit in 1986-87, said that sanitary conditions on 2-Row were not very good when he arrived, but that conditions had improved considerably due to new policies instituted by Godwin when he became assistant warden. Godwin provided cleaning supplies to inmates upon request, and employed support service inmates (SSI's) to clean the unit. Warden Charles Bell, captain of ad-seg at the Wynne Unit in 1987, also testified about Godwin's new cleaning policy.

Godwin stated he was in charge of the Wynne Unit's Safety and Sanitation Program in September of 1986, and detailed his cleaning policies. He brought in forty SSI's who were available twenty-four hours a day. Godwin also testified regarding Yates' allegations against Craig, stating he had Yates transferred because of complaints he had received from the nursing staff, and not because Yates had filed a complaint against Craig. Godwin decided Yates was a security risk based on Yates' letter concerning Craig, a sexually suggestive letter Yates had written to Officer Jacquelyn Figueroa Galloway, his assaultive disciplinary record, his aggressive sexual misconduct, and his behavior during an interview

with Godwin regarding the allegation against Craig. Godwin did not order Yates assigned to a particular cell, and denies he knew that Yates' cell was unsanitary.

Based on the above testimony, as well as other evidence admitted at trial, we conclude a reasonable juror could have determined that Yates was moved to 2-Row because he was a security risk, not as retaliation for having filed a complaint against nurse Craig. A reasonable juror could also have found that Yates' cell was not in an unsanitary condition, and that even if it had been, Godwin was not aware of that fact. The jury was free to believe any or all of the evidence, and resolve any existing conflicts in testimony. See MacArthur, 45 F.3d at 896. Our review of the record reveals the district court did not err either by denying Yates' motion for judgment as a matter of law, or his motion for new trial.

Yates also complains that various items of evidence were improperly admitted by the district court. A trial court's evidentiary rulings are reviewed for an abuse of discretion and will be reversed only if they affect a substantial right of a party. Davis v. Odeco, Inc., 18 F.3d 1237, 1247 (5th Cir.), *cert. denied*, 115 S.Ct. 78 (1994); Marcel v. Placid Oil Co., 11 F.3d 563, 566 (5th Cir. 1994).

Yates contends that defendant's exhibit one, grievances filed against him by various female officers, were improperly admitted into evidence by the district court. He argues the records of these grievances were irrelevant and thus, the jury's verdict was not based on relevant evidence. The record indicates that Yates introduced into evidence grievances he had filed against female officers charging them with engaging in sexual misconduct. Investigation of these claims revealed that Yates would masturbate in front of the officers or engage in other misconduct, and then falsely accuse them of sexual misconduct for reporting him. Although the incidents included in defendant's exhibit one occurred after the incident with Craig, they were relevant to show Yates' ongoing pattern of engaging in

sexual misconduct and then making false claims against female officers in retaliation for their charging him with misconduct.

Defendant's exhibits two and five were not objected to and thus any error in their admission was not properly preserved for review.² No plain error resulted from their admission. See Varnado v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991); FED. R. EVID. 103(d). Defendant's exhibit six, an incident report in which Yates was accused of punching a nurse was not introduced into evidence and thus was not considered by the jury. Defendant's exhibit seven, a disciplinary report prepared by Godwin, to which Yates made only a general objection³, was relevant to support Godwin's testimony that he had filed the report because Yates had made false accusations against Craig, and to show Godwin's nonretaliatory motive for moving Yates to a different cell. Yates' additional argument that this document was hearsay is meritless since the report was prepared in the course of regularly conducted business activity, and thus was admissible under the business records exception. FED. R. EVID. 803(6). The district court did not abuse its discretion in admitting this evidence.

CONCLUSION

² Defendant's exhibit 2 was a disciplinary report involving charges made by officer Figueroa which indicated Yates had been found guilty of using vulgar and indecent language. This evidence was relevant to show Yates' continuing pattern of sexual misconduct. Defendant's exhibit five was an incident report regarding Yates' complaint of threats against his life investigated by Owens, which Yates did not object to, and was relevant to impeach Yates' credibility as to the validity of his contention that his life had been threatened and that his cell's condition was unsanitary. Admission of these exhibits did not result in manifest injustice.

³ Fed. R. Evid. 103(a) requires a party to state the specific ground for his objection if the specific ground is not apparent from the context. Because Yates made only a general relevancy objection, admission of the exhibit is reviewed only for plain error resulting in manifest injustice. See United States v. Waldrip, 981 F.2d 799, 804 (5th Cir. 1993). Varnado, 920 F.2d at 321.

Yates presents no grounds for a new trial. Our review of the record reveals the evidence was sufficient to support the jury's verdict in favor of Godwin, and the evidence was not improperly admitted.

AFFIRMED.