

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30378
Conference Calendar

MATTHEW JONES, JR.,

Plaintiff-Appellant,

versus

CHARLES C. FOTI, JR., Sheriff,
Orleans Parish, ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CA-92-3570-G
- - - - -
(September 22, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Matthew Jones, Jr., appeals the judgment of the district court dismissing his civil rights action with prejudice. Jones raises five issues on appeal that primarily dispute the district court's findings of fact. Succinctly, he argues that the district court erred in concluding that there was no factual support, either through medical evidence or witness testimony, that the defendants used excessive force in violation of the Eighth Amendment.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

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 court of appeals has neither permission nor prerogative to reappraise the credibility of witnesses." Id. (internal quotation and citation omitted).

At the evidentiary hearing, Jones's iterated the facts as presented in his complaint. Deputy Adams testified that Jones admitted to him that he had made the obscene remark, but Adams denied that Jones had been escorted anywhere, that he had struck Jones, or that he had seen anyone else strike Jones. Corporal Jenkins, Deputy Banks, and Lieutenant Davis substantiated Adams' testimony. Dr. Emile Riley, the Medical Director and custodian of the medical records, stated that, on the day after the alleged incident, Jones complained of pain in the rib area and in his chest. The examination showed neither a fracture nor bruising. Based on Jones's subjective complaint of "either a swelling, tenderness, or pain," medical personnel concluded that he had a contusion of the lower right lateral rib cage and prescribed Motrin for two weeks. Jones returned for a medical examination several times during the next two months with subjective complaints of pain in his right rib cage and the middle of his back as a result of the altercation. The examining physician ordered x-rays of the ribs and spine, and the results were normal.

In light of the medical evidence, the magistrate judge believed the officers' version of the facts, and the district

court agreed. The district court's finding that there was no factual support for Jones's allegations that force had been used is not clearly erroneous. It is not clear whether Jones was a pretrial detainee or had been convicted of a crime at the time of the alleged incident. Given that the district court was not clearly erroneous in determining that there was no factual basis for Jones's claim, it is of no consequence whether the Eighth Amendment's prohibition against cruel and unusual punishment or the Due Process Clause applies. See Rankin v. Klevenhagen, 5 F.3d 103, 106 (5th Cir. 1993).

AFFIRMED.