

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30598
Summary Calendar

MARY COLLEEN HOWARD,

Plaintiff-Appellant,

versus

CHARLES C. FOTI, JR.,
Criminal Sheriff, Parish
of Orleans,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
(CA-93-387-J(1))

October 11, 1995
Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Mary Colleen Howard filed suit against Orleans Parish Sheriff Charles C. Foti, Jr. under 42 U.S.C. § 1983 and Louisiana state law, alleging that Sheriff Foti violated her constitutional rights and acted negligently in failing to protect her from an attack by a fellow detainee, and providing inadequate medical

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

care. After a jury trial, the jury returned a verdict that Howard take nothing, and the magistrate judge entered final judgment on the verdict. Howard appeals the final judgment. Finding no error, we affirm.

I. BACKGROUND

A. Procedural Background

On February 2, 1993, Mary Colleen Howard ("Howard") filed suit against Charles C. Foti, Jr. ("Sheriff Foti"), the Criminal Sheriff for the Orleans Parish Prison, in the district court under 42 U.S.C. § 1983 and the First, Fourth, Fifth and Fourteenth Amendments, alleging that Sheriff Foti breached the duty to protect her from foreseeable attacks by another detainee and to provide her with reasonable medical care during her detention in the Orleans Parish Prison in February 1992. The complaint also alleged several claims arising under Louisiana law, including assault, battery, intentional infliction of emotional distress and negligence. The parties consented to a jury trial before a magistrate judge, which began on August 1, 1994. At the close of the evidence, the magistrate judge denied Sheriff Foti's motion for judgment as a matter of law, and the jury returned a verdict in favor of Sheriff Foti on August 3, 1994, finding that he neither acted negligently nor violated Howard's constitutional rights. The magistrate judge entered judgment for Sheriff Foti, dismissing Howard's complaint with prejudice. Howard then filed a FED. R. CIV. P. 50(b) motion for

judgment as a matter of law¹ or, alternatively, a Rule 59 motion for a new trial. The magistrate judge denied both motions. Howard filed a timely notice of appeal and a motion to appeal in forma pauperis, which was granted by this court.

B. Factual Background

Howard was arrested on February 4, 1992 and placed in a holding cell in the Central Lock-Up area of Orleans Parish Prison about 3:00 that afternoon. At approximately 7:00 that evening, Howard, sitting alone in the cell, heard a loud commotion through the metal door, including the sounds of a woman screaming, several male voices yelling, and a scuffle. Howard testified that, suddenly, the door to the holding cell opened, and five male deputies carrying a woman, Debra Mills ("Mills"), entered the room, threw the woman headfirst against the back wall and floor of the cell, ran out of the cell and slammed the door. Howard testified that she has not identified the five deputies, although she remembered that all were black males and one deputy appeared older because he had grey hair around his temples.

When Mills was thrown, she hit her head on the floor and began bleeding from her lip, nose and forehead. Howard testified that Mills appeared very intoxicated; she was slurring her speech, stumbling, and smelled strongly of alcohol. Howard testified that Mills directed her anger toward Howard, yelling at

¹ Although the motion is entitled "Motion to Renew Motion for Judgment as a Matter of Law . . .," the record reveals that Howard did not make a motion for judgment as a matter of law at the close of her case-in-chief, or at the close of all evidence.

her and hitting her. Howard testified that Mills grabbed Howard's hair and slammed her head against the wall. During the struggle, Mills slipped and fell on Howard's left ankle, causing it to crack audibly. Howard testified that the entire altercation lasted approximately ten minutes.

Howard testified that she screamed for help throughout the attack, but no one answered her cries. After the attack, Howard began pounding on the door to get the attention of the deputies. Howard called her husband to tell him about the attack and to get him to notify the prison personnel. Phone records reveal that a call was placed from Howard's cell to her husband's Houston home at 7:16 p.m., and also record a call from her husband's home to the jail at 7:22 p.m.. Howard testified that a few minutes after she called her husband, some male deputies entered the cell, and the older deputy asked Howard what had happened. Howard testified that she told the deputy that she thought her leg was broken. The deputies escorted Mills out of the cell.

A corpsman reentered the cell in a few minutes and examined Howard's ankle. The corpsman's medical report noted that Howard had suffered a soft tissue injury to her ankle, and stated that she needed ice and Tylenol that evening, and that she should have the ankle x-rayed the next morning. Howard testified that the corpsman returned with ice but no Tylenol. Howard asked him at this time if Mills was HIV positive, but he answered that he did not know. Throughout the night, Howard asked to see a doctor

approximately every thirty minutes, but she was told that she could not see a doctor until the next day after she was booked.

Howard testified that, about 11:00 p.m. or midnight, Mills was returned to the holding cell to use the bathroom and the telephone. Mills was ordered by a deputy to hug Howard, which she did. Howard testified that another deputy then told her that Mills was HIV positive. Howard recalled that Mills remained in the cell with Howard for a short while, and that they conversed.

Mills testified that she was arrested on February 4, 1992 for public drunkenness at the New Orleans bus station. Mills stated that she remembered being thrown into the holding cell, but went "blank" after that. Mills testified that she had no personal recollection of attacking Howard, and that she believes that if she had done so she would remember. Mills testified that she remembered being escorted back to the holding cell where Howard was located, and that they conversed. Mills stated that Howard told her that she had picked a fight with Howard, had fallen on her and had broken her leg. Mills stated that she did not believe that she had done so, but she apologized to Howard anyway, because Howard obviously believed that the fight had happened. Mills testified that Howard did not act afraid of her when she returned to the holding cell; rather, Howard spoke to Mills very calmly, although she did seem frightened of the deputies.

On February 5, Howard was booked and brought to court for a hearing. Upon her return to Central Lock-Up, she was met by a

doctor, who ordered her to be taken to the Charity Hospital of Louisiana Emergency Room. Howard was taken to Charity at about 10:00 p.m. on February 5. The doctors at Charity determined that her ankle was fractured. They put her ankle in a splint and gave her crutches, but when she returned to Central Lock-Up, the deputies took away her crutches.

Howard further testified that throughout her stay in the Orleans Parish Prison she received inadequate medical care. Howard stated that the prison personnel ignored her sick call requests, forced her to walk on her broken ankle without assistance, and delayed in responding to her requests for medication needed to control her thyroid condition. On February 15, in response to calls from Howard's Houston attorney and a complaint by Nikki Virgil Kaufman, Howard's cellmate, Howard met with Sheriff Foti, who left guidelines with the deputies about her further treatment. Sheriff Foti ordered the deputies to allow Howard to use a wheelchair, take meals in her cell and go to the medical clinic every day. On February 20, Howard was transported to Houston, Texas by a Harris County deputy sheriff and placed in the hospital section of the Harris County Jail. Howard testified that she was released from jail about a week later.

II. DISCUSSION

A. Sufficiency of the Evidence

Howard argues that the evidence does not support the jury's verdict rejecting her Louisiana law negligence claim. At the close of the evidence, Sheriff Foti moved for judgment as a matter of law under FED. R. CIV. PRO. 50(a), but Howard failed to make a Rule 50(a) motion, even though the magistrate judge afforded her attorney an opportunity to do so.² After the jury returned a verdict in favor of Sheriff Foti, Howard filed a "Rule 50(b) Motion for Renewal of Motion for Judgment as a Matter of Law after Trial on the State Court Liability Issues . . . or Alternatively, for a New Trial on All Issues." In this motion, Howard argues that she is entitled to judgment as a matter of law on her claim that Sheriff Foti's employees were negligent in throwing Debra Mills into the holding cell with Howard while Mills was intoxicated. The court denied Howard's motion for judgment as a matter of law and her motion for a new trial.³

² At the close of evidence Mr. Usry, the attorney representing Sheriff Foti, moved for judgment as a matter of law. Following his argument in support of this motion, this exchange took place:

THE COURT: Anything else on your motion?

MR. USRY: That's it, Judge.

THE COURT: All right, Mr. Schumacher [Howard's attorney], your response to that motion? And I might add, too, if you want to make a motion on the judgment as a matter of law, go at it.

MR. CARL SCHUMACHER: Your Honor, I want to be quiet and expedite matters, and I submit it. I think Your Honor has a good grasp of the law.

³ We cannot discern the grounds upon which the district court denied the motion for judgment as a matter of law or the motion for new trial because the transcript of the hearing at

To preserve the right to make a Rule 50(b) renewed motion for judgment as a matter of law (formerly, judgment non obstante verdicto, or notwithstanding the verdict), a party must first move under Rule 50(a) for judgment as a matter of law at the close of all evidence (formerly, for directed verdict). FED. R. CIV. P. 50; McCann v. Texas City Refining, Inc., 984 F.2d 667, 671 (5th Cir. 1993); Vero Group v. ISS-International Serv. Sys., 971 F.2d 1178, 1182 (5th Cir. 1992); Seidman v. American Airlines, Inc., 923 F.2d 1134, 1137 (5th Cir. 1991). It is well-established that the sufficiency of the evidence is not reviewable on appeal unless a motion for judgment as a matter of law was made in the trial court at the conclusion of all the evidence. McCann, 984 F.2d at 671; Seidman, 923 F.2d at 1137. The prerequisite of a motion for judgment as a matter of law before submission to the jury serves two purposes:

it enables the trial court to re-examine the question of evidentiary insufficiency as a matter of law if the jury returns a verdict contrary to the movant, and it alerts the opposing party to the insufficiency before the case is submitted to the jury, thereby affording it an opportunity to cure any defects in proof should the motion have merit.

Seidman, 923 F.2d at 1137.

Although this court has excused technical noncompliance with the requirements of Rule 50(b), it has done so only where the purposes of the rule were satisfied. See, e.g., Davis v. First Nat'l Bank, 976 F.2d 944, 948-49 (5th Cir. 1992) (waiving

which the magistrate judge explained his reasons for denying these motions was not included in the record on this appeal.

requirement of a motion for directed verdict at the close of all the evidence where the defendant moved for directed verdict at the close of the plaintiff's case, and only a few minutes elapsed between that motion and the close of all evidence), cert. denied, 113 S.Ct. 2341 (1993); Jones v. Benefit Trust Life Ins. Co., 800 F.2d 1397, 1401 (5th Cir. 1986) (excusing failure to move for directed verdict when party objected to the court's jury instructions on grounds that there was no evidence to support a particular claim). In the present case, Howard did not at any time prior to submission to the jury move for judgment as a matter of law, nor did she object to jury instructions on the ground of insufficient evidence; thus, the purposes of the rule have not been served, and Howard's failure to move for judgment as a matter of law at the close of all evidence cannot be excused. See Hinojosa v. City of Terrell, Tex., 834 F.2d 1223, 1228 (5th Cir. 1988) (refusing to excuse noncompliance under similar circumstances).

Because Howard did not move for judgment as a matter of law under Rule 50(a), our review of the district court's denial of her Rule 50(b) renewed motion for judgment as a matter of law is narrowly limited to "whether there was any evidence to support the jury's verdict, irrespective of its sufficiency, or whether plain error was committed, which, if not noticed, would result in a manifest miscarriage of justice." Seidman, 923 F.2d at 1138; Hinojosa, 834 F.2d at 1228. Thus, we must determine whether there was any evidence to support the jury's "no" answer to

Interrogatory Number 3--"do you find from a preponderance of the evidence that Sheriff Charles C. Foti, Jr. was unreasonable in placing Debra Mills in the cell with plaintiff?".

When a federal court presides over the resolution of a state law claim, although federal law determines the sufficiency of the evidence, state law governs the type of evidence necessary to support a verdict. Dawson v. Wal-Mart Stores, Inc., 978 F.2d 205, 208 (5th Cir. 1992). Under Louisiana law, to hold penal authorities liable for an injury inflicted upon an inmate by another inmate, the authorities must know or have reason to anticipate that harm will ensue and fail to use reasonable care in preventing the harm. Parker v. State, 282 So. 2d 483, 486 (La.), cert. denied, 414 U.S. 1093 (1973); Brewer v. State, through Dept. of Corrections, 618 So. 2d 991, 992 (La. Ct. App. 1993). Thus, Howard needed to prove by a preponderance of the evidence that the deputies at Central Lock-Up knew or had reason to know that Debra Mills was likely to cause harm to Howard. Conversely, for the jury to find that the deputies acted reasonably in placing Mills in the cell with Howard, there must be evidence to support a finding that the deputies did not have reason to know that Debra Mills would likely harm Howard.

Howard testified that around 7:00 p.m., on February 4, 1992, she heard a loud commotion outside the holding cell, and five male deputies were required to restrain Debra Mills because she was intoxicated and hostile. Howard also testified that Mills appeared very intoxicated; that she was stumbling, slurring her

words and that she smelled of alcohol. However, Howard's story contained inconsistencies and contradictions to other evidence that might have led the jury to discredit her testimony. First, Howard could not describe the five deputies who threw Mills into the cell beyond remembering that they were black males, and that one was older than the others. Also, although Howard testified that her ankle was injured when Mills physically attacked her, in a statement recorded immediately after the injury Howard reported that Mills fell on her ankle. Howard testified that Mills wore a shirt with rolled-up sleeves that revealed track marks on her arms; however, Mills testified that she wore a long-sleeved denim jacket on the night of her arrest. Although Howard testified that the altercation occurred around 7:00 to 7:15, and that the phone call to her husband listed on the phone records at 7:16 occurred after the fight, Mills's Affidavit of Arrest reports that she was arrested at 7:35 that evening.

Mills testified that she was arrested at the New Orleans bus station for public drunkenness. Mills remembered that she had been thrown in the cell, but testified that she went "blank" and does not remember fighting with Howard. Mills also testified that she believes that if she had attacked Howard, she would have remembered doing so. The jury was entitled to believe Mills's testimony that she would have remembered an altercation if one had occurred.

Lieutenant Maxie Jefferson, the watch commander at Central Lock-Up for the evening shift on February 4, 1992, testified that

an altercation did not occur between two female inmates on that night. She testified that if an altercation had occurred, she would have filed an incident report, and yet there is no incident report. Lieutenant Jefferson stated that she did not remember hearing any screaming or pounding coming from the holding cell. Although Lieutenant Jefferson was impeached with her deposition testimony that a hostile woman was taken into Central Lock-Up on that evening and restrained, she offered as explanation for the inconsistency that in the deposition, she misunderstood the question, so that her answer was meant to explain what procedure would be followed if a hostile female was taken to Central Lock-Up. It is for the jury to decide whether to accept Lieutenant Jefferson's explanation of the inconsistency; this court cannot overturn their decision.

Although the evidence is uncontradicted that Debra Mills was intoxicated when she was placed in the holding cell with Howard, the only evidence that Mills was acting belligerently before entering the holding cell, thereby giving the jail personnel notice that Mills presented a risk of harm to Howard, was Howard's testimony that she heard a commotion outside of the cell immediately before Mills was brought into the cell. Because of the internal inconsistencies in Howard's testimony, and its contradiction on some points by other evidence, the jury could have decided not to credit the truthfulness of Howard's story. "It is the function of the jury as the traditional finder of facts, and not this court, to weigh conflicting evidence and

inferences, and determine the credibility of witnesses." MacArthur v. University of Tex. Health Ctr., Tyler, 45 F.3d 890, 896 (5th Cir. 1995) (citing Boeing v. Shipman, 411 F.2d 365, 374-75 (5th Cir. 1969)(en banc)). Furthermore, Howard's testimony that Mills physically attacked her without provocation was contradicted by the testimony of Lieutenant Jefferson and Mills that they believed that an altercation did not occur. The jury could have decided from this evidence that Mills did not attack Howard or that Howard's ankle was injured in some other way. Having chosen to disbelieve Howard's story about the commotion before Mills was brought into the cell and her altercation with Mills, the jury could have reasonably inferred that, although Mills was intoxicated, she gave no indication to the personnel at Central Lock-Up that she would harm another inmate. Therefore, the jury could have concluded that Sheriff Foti, through his employees, was not unreasonable in placing Debra Mills in the holding cell with Howard. We conclude that there was sufficient evidence to support the jury verdict in favor of Sheriff Foti on Howard's negligence claim under Louisiana law.

B. The Jury Charge

Howard contends that the jury charge and Jury Interrogatory No. 3 misled the jury by failing to instruct the jury that Sheriff Foti could be found negligent under Louisiana law if the jury determined that his employees were negligent.

In determining whether a jury was properly charged as to applicable state law, the court considers the "overall import of the instructions and interrogatories in th[e] case." Mozeke v. International Paper Co., 933 F.2d 1293, 1296 (5th Cir. 1991). We review jury instructions and interrogatories under the abuse of discretion standard. Barton's Disposal Serv., Inc. v. Tiger Corp., 886 F.2d 1430, 1434 (5th Cir. 1989). To complain of erroneous jury instructions, the challenger must first demonstrate that the charge as a whole creates a substantial and ineradicable doubt whether the jury has been properly guided in its deliberations. F.D.I.C. v. Mijalis, 15 F.3d 1314, 1318 (5th Cir. 1994). Second, even if the jury instructions were erroneous, we will not reverse if we determine, based on the entire record, that the challenged instruction could not have affected the outcome of the case. Id.

During the charge conference, Howard objected to page 10 of the proposed jury charge, which summarized Howard's claims,⁴ because it did not contain an instruction on respondeat superior

⁴ Page 10 of the jury charge provides:

Plaintiff, Mary Colleen Howard, claims damages for injuries allegedly sustained as the result of a deprivation, under color of state law, of rights secured to the plaintiff under the Constitution of the United States. In order to succeed on a claim such as this, plaintiff must prove that a federal constitutional right was violated by a person acting under color of authority provided by the laws of the state of Louisiana.

In addition, plaintiff contends that Sheriff Foti was negligent in placing Debra Mills in the holding cell with her.

in its summary of the negligence claim. The court overruled this objection, reasoning that the concept of respondeat superior was covered elsewhere in the charge, and that Howard's attorney could argue the details of his claim to the jury. Howard also objected that the charge as a whole did not make clear to the jury that an employer or a prison is responsible for the acts of its employees during the course and scope of employment. Howard offered a proposed instruction to be added to page 18 of the charge, which the court accepted over Sheriff Foti's objection. Page 18 of the jury charge as amended instructs that:

Under Louisiana law, Sheriff Foti, and his employees, owed to their prisoner, Mary Colleen Howard, the duty to act as "a reasonable man under similar circumstances would act"; Sheriff Foti's negligence may be predicated on his or his employees' failure to follow the Orleans Parish Criminal Sheriff's Office's own established procedures as contained in the Sheriff's policy manual and post orders provided the failure to follow those procedures exposed plaintiff to a risk of serious harm.

(emphasis added). On appeal, Howard argues that this addition to the charge was not enough to make clear to the jury that a non-negligent employer is liable for the negligence of his employees. Howard argues that because there is no vicarious liability under § 1983, it was important for the court to distinguish between federal and state law regarding Sheriff Foti's liability for the negligence of his employees. We believe that the jury charge does make such a distinction. Page 15 of the charge provides that "a public supervisory official is not liable under federal civil rights law for the acts of his or her employees." Pages 16 and 17 continue to explain the elements of the federal civil

rights claim. Then, page 18, instructing the jury on Howard's negligence claim, begins "Under Louisiana law" Page 18 provides that "Sheriff Foti's negligence may be predicated on his or his employees' failures" Further, page 19 instructs the jury that "in considering the "reasonableness" of the conduct of Sheriff Foti and his employees," the jury may consider the foreseeability of harm to Howard. Read as a whole, we conclude that the jury instructions adequately explain to the jury that Sheriff Foti's negligence could be predicated on the acts of his employees.

At the charge conference, Howard also objected to Jury Interrogatory Number 3 on the grounds that it did not provide for vicarious liability. The court overruled the objection, reasoning that the jury instructions adequately explained to the jury that Sheriff Foti's negligence could be predicated on his own or his employees' acts. Jury Interrogatory Number 3 asked: "Do you find from a preponderance of the evidence that Sheriff Charles C. Foti, Jr. was unreasonable in placing Debra Mills in the cell with plaintiff?". While the addition of the phrase "or his employees" after Sheriff Foti might have reminded the jury of what they had been instructed in the charge--that Sheriff Foti's negligence could be predicated on his employees' acts, we agree with the magistrate judge that the charge as a whole adequately instructed the jury on respondeat superior liability. Even if the interrogatory were erroneous however, we cannot reverse unless we determine, upon review of the entire record, that the

error affected the outcome of the case. In this case, any confusion created by Interrogatory Number 3 could not have affected the outcome, because Howard's attorney effectively explained respondeat superior liability in his closing argument:

What you have in this case is one other thing I want you to understand. Some of you are employers, some of you are employees. Sheriff Foti, in the state case, is an employer. An employer is responsible for his employees' negligence that occur in the course and scope of their employment and cause injury to others. That's called respondeat superior vesting upon the employer the liability for the wrongdoing of his employees. That's Louisiana law.

We conclude that the magistrate judge did not abuse his discretion in preparing the jury charge and interrogatories, or in ruling on objections to the charge.

C. Exclusion of Professor Foster's Expert Testimony

Finally, Howard argues that the district court committed substantial error in ordering Howard's expert witness on prison conditions, Professor Dean Burk Foster, to step down from the stand during his testimony, after he had violated several of the court's instructions. We will not reverse a district court's evidentiary rulings unless they are erroneous and substantial prejudice results. The burden of proving substantial prejudice lies with the party asserting error. Mijalis, 15 F.3d at 1318-19 (5th Cir. 1994).

Professor Foster is an associate professor of criminal justice at the University of Southwestern Louisiana, who qualified as an expert in the field of criminal justice and penal

corrections. Professor Foster was allowed to testify about the proper standards for booking, health-screening, intake, care and custody of pre-trial detainees and how Sheriff Foti's internal standards compared with standards established by external groups. Professor Foster also testified that he was aware of similar lawsuits against or incidents at the Orleans Parish Prison. The court instructed Professor Foster to limit his testimony to incidents that occurred in Central Lock-Up as the only incidents relevant to this case, so Professor Foster testified that he knew of only two incidents in Central Lock-Up--one which occurred in 1983, reported in Calloway v. City of New Orleans, 524 So. 2d 182 (La. Ct. App. 1988), and the complaint of Nikki Virgil Kaufman, a fellow inmate of Howard's who testified for Howard in this case.

During his testimony Professor Foster several times ignored the instructions of the court. For example, Professor Foster was instructed by the court not to refer to a magistrate's report and recommendation in Hamilton v. Morial. Hamilton was a class action proceeding relating to conditions of confinement at the Orleans Parish Prison. In response to Sheriff Foti's motion in limine, the court excluded references to the magistrate's report in Hamilton because it was never adopted by the district court in that case.⁵ Additionally, the court instructed Professor Foster

⁵ Although Howard's brief on appeal implies that the exclusion of the Hamilton report was erroneous, Howard does not present any argument or authorities explaining how or why the district court erred in excluding the Hamilton report, nor does she expressly state the court erred in so ruling. Therefore, whether the Hamilton report was erroneously excluded from evidence is not before this court. See Pan E. Exploration Co. v.

to refrain from giving testimony about proper medical treatment because he was not qualified as a medical expert. Despite the court's instructions, Professor Foster continued to give opinions about what medical care should have been given to Howard. Toward the end of his testimony, Professor Foster again violated the court's prohibition on references to the history of "conscious indifference" as described in the excluded Hamilton report. The court then directed Professor Foster to leave the stand, explaining that Professor Foster had repeatedly ignored his instructions not to refer to the Hamilton report.

The Federal Rules of Evidence "assign to the trial judge the task of insuring that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand." Marcel v. Placid Oil Co., 11 F.3d 563, 567 (5th Cir. 1994) (citing Daubert v. Merrell Dow Pharmaceuticals, Inc., 113 S.Ct. 2786, 2799 (1993)). The trial judge must ensure that expert evidence is reliable and relevant. Marcel, 11 F.3d at 567. The magistrate judge made an effort to exclude only the testimony of Professor Foster that he deemed irrelevant and unreliable. He instructed Professor Foster to limit his testimony to Central Lock-Up, to avoid references to the magistrate's unadopted report in Hamilton, and to refrain from stating medical opinions because he was not qualified as a medical expert. The trial judge only ordered Professor Foster to step down from the witness stand as a last resort after he repeatedly ignored the court's instructions

Hufo Oils, 855 F.2d 1106, 1124 (5th Cir. 1988).

as to the substance of his testimony. A trial judge has the responsibility to conduct an orderly trial. Reese v. Mercury Marine Div. of Brunswick Corp., 793 F.2d 416, 423 (5th Cir. 1986). We cannot find that the magistrate abused his discretion in ordering Professor Foster to step down.

Even if the magistrate judge erred in arresting Professor Foster's testimony, that error did not substantially prejudice Howard. Professor Foster was allowed to testify on the subjects upon which he qualified as an expert--criminal justice and corrections. He testified as to the appropriate standards for treatment of pre-trial detainees in the circumstances of this case. Therefore, we conclude that the magistrate judge did not commit substantial error in directing Howard's expert witness, Professor Foster, to discontinue testifying.

III. CONCLUSION

For the foregoing reasons, we AFFIRM.