

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-40535  
Summary Calendar

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ANDREA HALL,

Plaintiff-Appellant,

versus

LEO BOOTHE, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
For the Western District of Louisiana  
(92 CV 358 (cons. w/92-0374))

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(January 24, 1995)

Before POLITZ, Chief Judge, JONES and BARKSDALE, Circuit Judges.

POLITZ, Chief Judge:\*

Andrea Hall, proceeding *pro se* and *in forma pauperis*, appeals an adverse judgment after a bench trial in his civil rights suit against jail officials. Finding no reversible error, we affirm.

Background

After a jury conviction of two counts of attempted second

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

degree murder, Andrea Hall was held in the Concordia Parish Jail pending sentencing. Two days before his sentencing he stabbed another prisoner in the back of the neck. Sheriff's deputies searched his cell for the weapon. Not satisfied that they had found it,<sup>1</sup> the deputies handcuffed and shackled him so that he would not be able to harm himself or others. The next morning Hall's handcuffs were removed so that he could eat breakfast. Thereafter he vigorously resisted recuffing efforts and disabled his toilet, flooding the cell block. Sheriff's deputies responded, ordering Hall to place his hands through the cell bars to be cuffed; Hall refused. Two deputies entered the cell to subdue him but were repulsed, one suffering a cut to his thumb from a razor blade wielded by Hall. The deputies sprayed mace into the cell but with his mattress and wet rags Hall redirected the mace back into the deputies' faces. Hall finally desisted and was cuffed.

Compelled to remove Hall from his flooded cell, the deputies faced the problem of containing him until his sentencing. They decided to place him in a holding cell, handcuffed and shackled to an air vent. When denied a shower on the morning of his sentencing Hall became very angry, clogged the commode, removed his shackles with a piece of metal concealed in his mouth, and banged the shackles against the cell door, daring the deputies to enter. When mace proved inadequate to quiet Hall, the deputies sent for a fire hose and asked the state trial judge, Leo Boothe, to observe their efforts. The deputies eventually subdued Hall by using the fire

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<sup>1</sup>The weapon turned out to be a pen.

hose and brought him into the courtroom bound and gagged with duct tape, as ordered by Judge Boothe. Even thus restrained, Hall tried verbally to disrupt the sentencing proceedings with a string of profanities.

Hall filed the instant 42 U.S.C. § 1983 action claiming use of excessive force during the foregoing events. The district court dismissed Judge Boothe on grounds of absolute immunity, dismissed Concordia Parish Sheriff Randy Maxwell for failure to obtain service of process, and ruled in favor of the remaining defendants after a bench trial. Hall timely appealed.

#### Analysis

##### 1. Judge Boothe's immunity.

At the threshold Hall contests the dismissal of Judge Boothe, maintaining that the judge is not entitled to immunity because the order to bind and gag him was not a "judicial act." To the contrary, Judge Boothe issued the order to secure dignity and decorum in his courtroom,<sup>2</sup> an essential judicial responsibility. The order was in furtherance of a sentencing proceeding before Judge Boothe, thereby satisfying the jurisdictional prerequisite for judicial immunity.<sup>3</sup> Dismissal of Judge Boothe was proper.

##### 2. Finding of no excessive force.

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<sup>2</sup>See, e.g., **Illinois v. Allen**, 397 U.S. 337 (1970) (approving binding and gagging as a method for securing order in the courtroom in extreme cases).

<sup>3</sup>**Malina v. Gonzalez**, 994 F.2d 1121 (5th Cir. 1993) (a judge has absolute judicial immunity for acts taken within his judicial capacity and jurisdiction).

Hall challenges the district court's finding that the defendants did not exert excessive force, contending that the deputies subjected him to macing and repeated beatings after he had been subdued. The district court discredited his testimony, noting that Hall had made no mention of any beatings to Deputy Lillian Pugh, in whom he otherwise confided after his sentencing, and exhibited no injuries other than eye inflammation associated with mace. We decline to disturb that credibility call.<sup>4</sup> The remaining evidence leads inexorably to the conclusion that the force exerted was applied "in a good faith effort to maintain or restore discipline, . . . [and not] maliciously and sadistically for the . . . purpose of causing harm."<sup>5</sup>

3. Other issues.

Hall maintains that the district court abused its discretion in granting two discovery motions before he had an opportunity to respond. One motion sought to extend the discovery deadline by a few days and the other sought to compel Hall to submit to a deposition. After the ruling Hall filed a response which was totally devoid of merit. Error, if any, was harmless.

Similarly harmless was the exclusion of the testimony of two witnesses proffered by Hall who purportedly would have attested that the deputies had chained other inmates to cell fixtures

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<sup>4</sup>See **Cranberg v. Consumers Union of U.S., Inc.**, 756 F.2d 382 (5th Cir.) (a reviewing court should respect credibility choices made by the fact finder), cert. denied, 474 U.S. 850 (1985).

<sup>5</sup>**Valencia v. Wiggins**, 981 F.2d 1440, 1446 (5th Cir.), cert. denied, 113 S.Ct. 2998 (1993).

without provocation. The deputies admitted to shackling Hall in his cell and chaining him to the air vent in the holding tank; the evidence that such restraints were necessary to preserve jail security was overwhelming.

Finally Hall complains that he did not receive a fair trial because the district judge was biased against him, citing a remark at the start of trial that Hall's reputation preceded him and the judge's ruling that Hall could be questioned about another stabbing at the jail after excluding witnesses who would have testified to prior acts of the deputies. The remark and the rulings do not display a deep-seated predisposition that would render fair judgment unlikely.<sup>6</sup> Evidence of the prior stabbing was admissible to explain the deputies' assessment of Hall's dangerousness. The reference to Hall's reputation related to the extra security measures employed in the courtroom; the judge was entitled to information necessary to maintain courtroom security and to take steps to secure it. Our review of the record persuades beyond peradventure that Hall received a fair trial.

AFFIRMED.

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<sup>6</sup>See **Liteky v. United States**, 114 S.Ct. 1147 (1994) (discussing bias).