

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 94-40619
Summary Calendar

GREGORIO SANCHEZ, JR.,

Plaintiff-Appellant,

versus

JAMES A. COLLINS, Director, Texas
Department of Criminal Justice,
Institutional Division, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Eastern District of Texas
(6:92 CV 760)

November 3, 1995

Before POLITZ, Chief Judge, HIGGINBOTHAM and BENAVIDES, Circuit Judges.

PER CURIAM:*

Gregorio Sanchez, Jr., an inmate of the Texas penal system, appeals the dismissal, after a bench trial, of his 42 U.S.C. § 1983 suit claiming excessive force by a prison guard.

We affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Background

Sanchez alleges that James Woodlee, a corrections officer, injured him when the two scuffled while Woodlee was escorting him to another building after conducting a search of his cell. Sanchez filed suit against Woodlee and 29 other defendants. Defendants responded that Woodlee struck Sanchez after Sanchez became agitated and assaulted Woodlee, who then used only the force necessary to subdue Sanchez. Following a consent trial before a magistrate judge,¹ addressing only the excessive force claim, the court dismissed the complaint against Woodlee. Sanchez then voluntarily dismissed his claims against all other defendants and appealed the judgment favorable to Woodlee.

Analysis

We grant Sanchez's motion to correct certain mistakes in his appellate brief.² He now maintains that the magistrate judge erred by not requiring Woodlee to produce photographs of Sanchez taken just after the incident, by excluding a video tape taken at the same time, and by admitting into evidence an unauthenticated copy of an internal affairs report. We review the magistrate judge's decision for an abuse of discretion, reversing only if an improper ruling affected one of Sanchez's substantial rights.³

We find no error regarding the admission into evidence of the internal affairs report; the report was offered by Sanchez. We find no error in the exclusion of the video tape, which was made available to and viewed by Sanchez on the day of trial, because Sanchez rejected the magistrate judge's invitation to offer it into evidence. The record reveals that

¹28 U.S.C. § 636(c).

²We address only those issues discussed in Sanchez's appellate brief; all other issues are deemed abandoned. **Brinkman v. Dallas County Deputy Sheriff Abner**, 813 F.2d 744 (5th Cir. 1987).

³**Marcel v. Placid Oil Co.**, 11 F.3d 563 (5th Cir. 1994).

the sought-after photographs, taken at about the same time as the video tape, were not disclosed by Woodlee because they were not in his possession. Assuming a discovery violation, Sanchez has failed to explain how he was prejudiced by the failure to disclose duplicative evidence probative only of the undisputed fact that he had been injured. We find no abuse of discretion in these rulings.

Sanchez next claims that the incident report prepared by Woodlee has been altered in the record before us. The magistrate judge, however, read the supposedly “altered” section of the incident report into the record when Sanchez offered the report. There is no discrepancy between the transcript and the exhibit as it currently appears in the appellate record.

Sanchez challenges the magistrate judge’s authority to render a final judgment on the ground that the clerk of court never formally notified him of the magistrate judge’s authority to render judgment. Sanchez signed a consent form under 28 U.S.C. § 636(c). This argument has no merit.

Sanchez also contends that the magistrate judge erred in denying his motion for a continuance and further asserts that the magistrate judge “omitted” from the record remarks that Sanchez made at trial about being in handcuffs. Absent some showing of prejudice, either in the trial court or on appeal, these objections cannot result in reversible error.

Finally, Sanchez disputes the trial court’s judgment that Woodlee did not use excessive force. The question the magistrate judge asked was whether Woodlee applied force “in a good faith effort to maintain or restore discipline” or “maliciously and sadistically to cause harm.”⁴ The magistrate judge resolved this question in favor of Woodlee, finding

⁴**Rankin v. Klevenhagen**, 5 F.3d 103, 107 (5th Cir. 1993) (quotations omitted) (citations omitted).

that Sanchez had not presented enough credible evidence to prove his case by a preponderance of the evidence. Our review of the record and the magistrate judge's reasons for judgment disclose no reason to reject the judgment appealed.

AFFIRMED.