IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-60135

Summary Calendar

KELLEY A. McFARLAND,

Plaintiff-Appellant,

versus

JAMES A. LYNAUGH, ET AL.,

Defendant,

D. GILMORE AND L. FORD,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(89-CV-142)

(January 9, 1995)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Kelley McFarland, a Texas Department of Criminal Justice inmate, was stabbed by Adrian Miles, a fellow inmate who had been hiding in his cell. McFarland filed a 42 U.S.C. § 1983 suit against the two correctional officers who locked him into his cell that day, the TDCJ director, and other TDCJ employees. The two

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

correctional officers, he alleged, planned the attack with Miles, and the other defendants failed to prevent the attack.

After a Spears hearing,[1] the district court dismissed many of his claims as frivolous, but appointed him counsel to argue his claims that arose out of the stabbing. Aided by counsel, McFarland amended his complaint to allege that defendants were deliberately indifferent to his plight. A jury rejected this claim, the court entered judgment for defendants, and McFarland's counsel withdrew. McFarland now appeals pro se.

1.

On appeal, McFarland challenges seven jurors' fitness to judge his case. However, because he only objected to three of these jurors at trial (4 R. 122-33), we will only review those three claims here. See Dawson v. Wal-Mart Stores, Inc., 978 F.2d 205, 208-09 (5th Cir. 1992).

The first of those three venirepersons, Kim Mobley, was struck by the defense (3 R. 541) and did not serve on the jury. The second juror, Elsie Easley, stated that she had been "raked . . . over the coals pretty good" as a witness in an unrelated case (4 R. 110-11). The district court did not abuse its discretion in ruling that her experience as a witness would not prejudice her views of this case. McFarland also challenges the fitness of the third juror, Gus Griffee, because he stated in voir dire that he was hesitant to reward damages to a convicted criminal and that he had served on a jury that had bullied one juror into joining the

[1]Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985).

majority's view (4 R. 40, 43, 84-85, 91-92). However, his promise to fairly consider an inmate's civil claim and to resist juror bullying justify the district court's decision to seat him. See U.S. v. Munoz, 15 F.3d 395, 397 (5th Cir.), cert. denied, 114 S. Ct. 2149 (1994).

In McFarland's final voir dire challenge, he argues that the district court should have had each venireperson individually answer the questions that his counsel asked them as a group. Yet the Constitution does not require individual questioning. "The test for determining whether a court has adequately questioned prospective jurors regarding bias is whether the means employed to test impartiality have created a reasonable assurance that prejudice would be discovered if present." U.S. v. Greer, 968 F.2d 433, 435 (5th Cir. 1992) (en banc) (affirmance by divided court) (citations and internal quotation marks omitted), cert. denied, 113 S. Ct. 1390 (1993). Because McFarland is not entitled to individual questioning and because he does not show that he was denied a reasonable opposition to explore bias, we see no error.

2.

McFarland next argues that his case was compromised because during pretrial discovery, defendants withheld impeaching evidence contained on the reverse of McFarland's segregation confinement record, called the "201 form."[2] Defendants implicitly concede that they should have provided plaintiff with the reverse of that form,

[2]McFarland mislabels this Brady material, mistakenly relying on Brady v. Maryland, 373 U.S. 83 (1963), which imposes disclosure duties only in criminal cases.

but they explain that "[d]ue to circumstances beyond their control, the back page of one of hundreds of pages of documents was not copied."

Nevertheless, there is no evidence that defendants deliberately suppressed the evidence, and its suppression did not affect the outcome of the case. Defendants admitted at trial that they mistakenly put Miles, McFarland's assailant, into McFarland's cell based on nothing more than Miles's word that that was his cell. They admitted that if they had checked the back of the 201 form, they would have discovered that Miles did not belong in that cell (7 R. 154-55; 8 R. 15). The jury heard defendants admit that they violated TDC rules and regulations by failing to check the back of the form (7 R. 151), but the jury must have concluded that that was an accident, not an act of deliberate indifference. It is hard to see how the introduction of the reverse of the 201 form into evidence would have changed the jury's mind.

3.

Third, McFarland charges defense counsel with two instances of misconduct at trial. First, McFarland contends that defense counsel intentionally concealed evidence of deliberate indifference. Because McFarland's only factual support for this claim is an abbreviated recitation of the docket sheet, we reject this claim.

McFarland's second contention is that defense counsel improperly insinuated that McFarland was a member of a gang and that he had had a sexual relationship with his assailant.

Unfortunately, McFarland does not refer us to any relevant portion of the multivolume trial transcript. We have spotted a reference by defense counsel to McFarland's gang membership in defense's closing argument (17 R. 52). Because McFarland did not object to the reference at the time, that claim is waived. We dismiss the complaint about the sexual liaison as inadequately briefed. See Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993) (requiring even pro se litigants to make "citation to the authorities, statutes and parts of the record relied on.") (emphasis added).

4.

Lastly, McFarland appeals the Spears court's dismissal of his conspiracy claim and of his claims against several prison officials. The Spears court rightly dismissed both. McFarland never articulated specific facts supporting his conspiracy claim, either in his papers to the Spears court or in his testimony at the Spears hearing. Conclusory allegations of conspiracy do not support a § 1983 claim. See Babb v. Dorman, 33 F.3d 472, 476 (5th Cir. 1994).

Nor did the district court err in dismissing McFarland's claims against the supervisory defendants. At the Spears hearing, McFarland conceded that he was suing the supervisory defendants only because of their supervisory responsibilities. Officials sued in their personal capacity cannot be liable under § 1983 on the theory of respondeat superior alone. See Williams v. Luna, 909 F.2d 121, 123 (5th Cir. 1990).

Accordingly, we AFFIRM the verdict below.