

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 98-30615
Summary Calendar

VERNON L. ORANGE,

Plaintiff-Appellant,

VERSUS

JACK STRAIN, Sheriff of St. Tammany Parish, et al,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
(97-CV-1010-T)

August 2, 1999

Before JOLLY, DAVIS, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Plaintiff-Appellant Vernon L. Orange appeals the district court's grant of summary judgment against him in this case. Orange, now a prisoner at the Louisiana State Penitentiary in Angola, filed this suit alleging violations of his constitutional rights during his incarceration at the St. Tammany Parish Jail. Orange's allegations arise out of a beating he allegedly suffered at the hands of another prisoner and the medical treatment he received for the injuries suffered from this beating.

The magistrate judge hearing this case pursuant to 28 U.S.C.

* Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

§ 636(c) granted summary judgment to the numerous defendants. Orange appeals this grant of summary judgment on a number of grounds. We affirm the judgment of the magistrate judge with the following exception.

Orange alleged in his sworn complaint a "failure to protect" claim against Deputy Casey Cagle, Sr., who was then working at the St. Tammany Parish Jail. In this complaint, Orange stated that he had warned Cagle of an impending physical confrontation with another prisoner. Orange alleged that Cagle then left his post without cause, at which point Orange was attacked by the other prisoner. Cagle, in an affidavit supporting his motion for summary judgment, denied that he left his post during the night in question, but did not dispute or comment on Orange's claim that he had warned Cagle of the impending physical attack by the other prisoner. In Orange's response affidavit, Orange again alleged that Cagle left his post unattended, but did not re-allege that he (Orange) had warned Cagle of the impending attack.

The magistrate judge, in ruling that there was no genuine issue of material fact with respect to Orange's claim against Cagle, emphasized that Orange did not re-allege that he had warned Cagle of the impending attack. However, because Cagle's affidavit did not deny that Orange warned him of the impending attack, the magistrate judge should have considered Orange's allegation of his warning to Cagle contained in his complaint in determining whether summary judgment was appropriate on Orange's failure to protect claim against Cagle. We therefore remand this specific issue for

further proceedings consistent with this opinion. The magistrate judge's judgment is otherwise affirmed.

AFFIRMED in part, VACATED and REMANDED in part.