

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 99-40384  
Summary Calendar

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GERALD LYNN BOLES,

Plaintiff-Appellant,

versus

TIMOTHY TUCKER, Sergeant

Defendant-Appellee.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 1:95-CV-292  
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June 2, 2000

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

PER CURIAM:\*

Gerald Lynn Boles, Texas prisoner # 604967, appeals following a jury verdict finding no retaliation and no failure to protect by prison sergeant Timothy Tucker. Boles argues 1) that the magistrate judge allowed an all-white jury to be selected in Boles' case; 2) that the magistrate judge should have recused himself for attempting to put a friend on the jury; 3) that the magistrate judge abused his discretion by failing to grant Boles' request for a continuance, by failing to order that Boles' records be brought to court for the trial, and by failing to

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

allow Boles to comment on the assistant attorney general's records at trial; 4) that the magistrate judge failed to give proper jury instructions; and 5) that Tucker failed to call certain witnesses.

We are unable to examine Boles' jury-selection claims because no transcript was filed with Boles' appeal. See Powell v. Estelle, 959 F.2d 22, 26 (5th Cir. 1992). Boles has not shown any prejudice from the magistrate judge's failure to grant a continuance or from the magistrate judge's evidentiary decisions. See Johnston v. Harris County Flood Control Dist., 869 F.2d 1565, 1570 (5th Cir. 1989); see also Petty v. Ideco. Div. of Dresser Indus., Inc., 761 F.2d 1146, 1151 (5th Cir. 1985). Boles does not indicate that he objected to the jury instructions before the jury began its deliberations; nor were the jury instructions improper. See Fed. R. Civ. P. 51. Lastly, Boles does not state what testimony he sought to obtain from the uncalled witnesses.

The judgment of the district court is AFFIRMED. Boles' motions to strike appellee's letter brief, for the appointment of counsel for his appeal, and for the return of documents are DENIED.