

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-8190  
Summary Calendar

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JASPER HILL,

Plaintiff-Appellant,

VERSUS

TINA SCHOUBROEK, et al.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Texas  
(W-90-CV-155)

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(September 20, 1993)

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:\*

In this prisoner's civil rights action brought pursuant to 42 U.S.C. § 1983, Jasper Hill appeals the dismissal entered as to certain defendants, an adverse jury verdict as to the remaining defendants, and the imposition of sanctions. We affirm on the merits but reverse the imposition of sanctions.

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\* Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

I.

Hill, a Texas prisoner, filed a pro se, in forma pauperis civil rights action against prison officials Sgt. Tima Schoubroek, Philip Williams, Joaquin Guzman, Joseph Bailey, Joe Easley, James Lynaugh, Warden Jack Garner, Assistant Warden Douglas Dretke, Warden Tim West, and John Doe. Hill alleged that certain defendants had engaged in excessive force, without justification or purpose, and had filed a fabricated disciplinary report concerning the incident and that those in authority were responsible for the conduct.

The magistrate judge held a Spears<sup>1</sup> hearing to clarify the issues, at which Hill stated that he was asleep when Williams approached and ordered him to step out of the cell. When Hill, not fully awake, did not respond immediately, Williams called Guzman to assist him. Hill sat at a table in the day room, and Williams read a disciplinary report against him for refusing to work and asked Hill to sign it. Hill noticed another case with his name on it, reached for it, and stated that he would not sign either one. Williams warned Hill that he should not raise his hand again, and Guzman reiterated the warning.

Hill alleged that the officers continued to taunt him as they escorted him to the searcher's desk where Schoubroek was seated. Schoubroek instructed the officers to take Hill to the barber shop because it was unoccupied, and Bailey and Easley joined them. As Hill stepped into the barber shop, an officer believed to be Guzman

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<sup>1</sup> Spears v. McCotter, 766 F.2d 179 (5th Cir. 1985).

grabbed him around the neck from behind, struck him on the left side of his face near his eye, and threw him to the floor. Bailey and Easley joined in the fray, claiming that Hill had struck an officer.

Hill received a medical examination and complained of pain in his lower back and under his left eye and a scrape on his right ankle. Dr. Hurley testified that the medical report indicated that Hill received a physical examination and that there was no visible sign of injury.

Hill filed a grievance against the officers, but no corrective action was taken. The officers filed a disciplinary report, and Hill received a hearing at which he was represented by substitute counsel. Hill alleged that he was deprived of due process because the regulations regarding the investigation of a major disciplinary report were not followed in his case.

At the disciplinary hearing, Hill stated that it was significant that he had never received a disciplinary report in the two and one-half years prior to his transfer to this unit. Moreover, he was incapable of striking anyone with his left hand because he had a permanent disability that prevented him from bending his fingers. The disciplinary committee found Hill guilty of striking an officer and creating a disturbance.

## II.

Following the Spears hearing, the magistrate judge recommended that the district court dismiss as frivolous the claims against

Warner, Dretke, and West<sup>2</sup> and that the complaint be served on Schoubroek, Guzman, Bailey, Easley, and Williams. The district court adopted the recommendations, and the parties consented to proceed before the magistrate judge.

The defendants filed a motion for summary judgment. The magistrate judge found that there were genuine issues of material fact concerning the extent and cause of Hill's alleged injuries and denied the motion. The case proceeded to trial before a jury, which unanimously agreed that the defendants had not deprived Hill of his Eighth Amendment rights.

### III.

#### A.

Hill argues that "this Court should decide in favor of appellant as to defendant Williams and Guzman for their sadistically [sic] `misuse of power.'" The defendants contend that we have no alternative but to affirm the judgment because Hill has failed to provide a transcript.

On several occasions, Hill has filed motions for the production of a transcript. The district court and, subsequently, this court denied his requests because he failed to identify the issues on appeal and to state why the transcript was necessary.

In a letter to the clerk's office, Hill asserted that the transcript was essential to show that (1) the verdict of the jury

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<sup>2</sup> The claims against Lynaugh were later dismissed because Hill had failed to show that Lynaugh was personally involved in the alleged violations.

was contrary to the defendants' testimony, (2) Schoubroek gave false testimony, (3) Hill did not give false testimony in spite of the medical records that showed a previous back injury, and (4) Guzman and Williams gave conflicting testimony. Again, his motion was denied. In his reply brief, Hill contends that he has prepared a statement of the evidence to the best of his ability; however, he once again requests that we order a transcript if one is needed for the proper determination of the issues.

A transcript is not necessary to address Hill's appellate arguments, which, although couched in terms of a challenge to the sufficiency of the evidence to support the verdict, amount to no more than a recitation of the allegations in his complaint and a challenge to the jury's credibility determinations. We will uphold the jury's findings "[w]here the jury could have reached a number of different conclusions, all of which would have sufficient support based on the evidence . . . ." Dawson v. Wal-Mart Stores, 978 F.2d 205, 208 (5th Cir. 1992). There is no merit to this claim.

B.

Hill challenges the district court's imposition of sanctions in the amount of \$100 for giving perjured testimony. He contends that there is no evidence that he had a prior back injury to refute his testimony that he suffered a herniated disc as a result of the use of force.

We review sanctions for abuse of discretion. See Mendoza v.

Lynaugh, 989 F.2d 191, 195 (5th Cir. 1993). The magistrate judge gave the following reasons for imposing monetary sanctions and prohibiting Hill from future civil filings until payment was made:

Having reviewed the testimony and evidence adduced at the trial, the undersigned is persuaded that sanctions should be imposed against the Plaintiff based upon his perjured testimony. During cross examination, Plaintiff denied that he had previously injured his back or that he had previously complained of such an injury. However, the evidence introduced by the Defendants directly contradicted his testimony. Although Plaintiff denied that the signature on the documents introduced by the Defendants was his, the undersigned is convinced that his testimony in that regard was not truthful.

. . . While we remain a bastion for the protection of all persons' constitutional liberties, we will not lightly countenance the use of perjured testimony by any individual, prisoner or otherwise, to buttress an otherwise frivolous action.

The defendants contend that, absent any basis to disturb the district court's determination, we should presume that the record supports the sanctions. This is an incorrect statement of the law. The "appellee bears some responsibility for creating a complete record on appeal." United States v. Coveney, 995 F.2d 578, 587 (5th Cir. 1993). If the defendants seek affirmance of the sanctions, it is their responsibility to inform us of support for their position in the record.

The defendants have not assisted the court by citing to that portion of the record relied upon by the magistrate judge to show perjury. The record contains copies of the exhibits presented at trial, but a thorough inspection of those exhibits does not reveal the document that purportedly supports the imposition of sanctions.

Further, there is no other apparent support for imposing

sanctions. Given that Hill was granted a trial to adjudicate his claims, the magistrate judge's characterization of the action as "otherwise frivolous" is somewhat debatable. Moreover, there is no showing that the magistrate judge previously gave Hill any warning prior to imposing sanctions, and "[t]he imposition of a sanction without a prior warning is generally to be avoided." Mendoza, 989 F.2d at 195 (internal quotation and citation omitted).

The judgment in favor of the defendants is AFFIRMED. The order imposing sanctions is REVERSED.