

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10571
Summary Calendar

RONNY LEE FIELDS and
MINNIE FIELDS,

Plaintiffs-Appellants,

versus

DINO GARCIA, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(5:93-CV-135-C)

(June 15, 1995)

Before POLITZ, Chief Judge, JONES and BARKSDALE, Circuit Judges.

POLITZ, Chief Judge:*

Ronny Lee Fields and his mother Minnie Fields appeal an adverse judgment in their civil rights action arising from his arrest. We affirm in part, vacate in part and remand.

Background

Fields' nephew sued Fred Connally, a Seagraves, Texas justice of the peace, for injuries sustained when a soda machine owned by

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

Connally fell on the nephew. Seagraves Mayor Pat McAdoo and police officer Jerry Hill gave depositions in the lawsuit. After the depositions, Hill encountered Fields. The parties' accounts of this episode are in conflict. According to Fields, Hill directed him to pull over and told him he was "tired of all that [B.S.] with Fred Connally;" Fields responded in kind and drove off. According to Hill, Fields stopped of his own volition and threatened to kill him and McAdoo. Hill and McAdoo appeared before a grand jury which indicted Fields for retaliation in violation of Texas Penal Code § 36.06. He was arrested at his home soon after. The arresting officers say Fields refused to submit so they were obliged to use force. Fields, who had sustained chronic back injury in earlier accidents, claims needless brutality. Minnie Fields witnessed the arrest.

The Fields filed suit under 42 U.S.C. § 1983, claiming false arrest and excessive force in violation of the fourth and fourteenth amendments, and appending a state law claim of negligence. The case was tried to a jury. At the close of the evidence the district court entered judgment as a matter of law in favor of all defendants on the false arrest claim and in favor of the City of Seagraves on the excessive force count. The jury returned a verdict in favor of the remaining defendants on the excessive force and negligence claims. The Fields timely appealed.

Analysis

The Fields challenge the trial court's jury charge on the qualified immunity defense to their excessive force claim. The

court instructed:

If you find that the plaintiff has proven his claim, you must then consider the defendants' defense, that they acted in good faith and thus are not liable.

. . .

If, after considering the scope of the discretion and responsibility generally given to police officers in the performance of their duties, and after considering all the circumstances of the case as they would have reasonably appeared at the time, you find from a preponderance of evidence that a defendant had a reasonable and good faith belief that his actions would not violate the plaintiff's constitutional rights, then you cannot find him liable even if the plaintiff's rights were in fact violated as a result of that defendant's good faith action.

The Fields complain that the instruction permitted the jury to find qualified immunity on the basis of subjective good faith when the immunity determination is an objective one -- whether a reasonable law enforcement officer could have believed his conduct to be lawful. We are not persuaded. As we stated in rejecting a similar challenge in **Terrell v. City of San Antonio**,¹ "[t]he instruction at issue required both objective reasonableness and subjective good faith, a standard for immunity even higher than the one [the plaintiff] suggests." The Fields have no grounds for complaint.

The Fields also assign error to the court's refusal to submit the false arrest and negligence claims to the jury and the judgment as a matter of law in favor of the City on the excessive force claim. Viewing the evidence in the light most favorable to the party opposing, we review judgment as a matter of law to determine

¹No. 93-8190 (5th Cir. Jan. 4, 1994) (unpublished).

whether a reasonable jury could find for the nonmovant.² Clearly a reasonable jury could have done so with respect to the false arrest claim. If the jury believed Fields' testimony, it could have found that Hill and McAdoo lied to the grand jury, thereby breaking the causal chain between the indictment and the arrest that otherwise would have insulated them from liability.³ Not so with the negligence claim. The defendants' testimony supported a finding that they used only reasonably necessary force while the Fields' testimony, if credited, would have supported a finding of the intentional application of excessive force. The evidence did not pose a question of negligence for the jury.⁴ Similarly, the record did not contain sufficient evidence of a policy or custom of brutality which would warrant imposition of liability on the City. There is evidence to the contrary -- the City earlier discharged its police chief and another officer in response to excessive force complaints. We remand this case for retrial of the false arrest claim. In so doing, we note that the charge for which Fields was

²**Boeing Co. v. Shipman**, 411 F.2d 365 (5th Cir. 1969) (**en banc**).

³**Taylor v. Gregg**, 36 F.3d 453, 456 (5th Cir. 1994); **Hand v. Gary**, 838 F.2d 1420 (5th Cir. 1988). Hill claims absolute immunity for his grand jury testimony. In this circuit absolute immunity is not available for police testimony before a grand jury because the proceeding lacks the safeguards of a trial. See Moore v. McDonald, 30 F.3d 616 (5th Cir. 1994), citing **Wheeler v. Cosden Oil and Chemical Co.**, 734 F.2d 254 (5th Cir.), modified on other grounds, 744 F.2d 1131 (1984).

⁴Cf. Stachniak v. Hayes, 989 F.2d 914 (7th Cir. 1993) (finding no error in the refusal to give a "mere inadvertence" instruction where the evidence was that the defendant-officer either kicked the plaintiff deliberately or did not kick him at all).

arrested -- retaliation -- had not been tried at the time of the original trial of the civil rights suit. If a conviction occurred in the interim, the false arrest claim may be barred under the holding of **Heck v. Humphrey**.⁵

The judgment of the district court is AFFIRMED in part and VACATED in part, and the case is REMANDED for proceedings consistent herewith.

⁵114 S.Ct. 2364 (1994).