

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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WILLIE C. SIMPSON,

Plaintiff,

v.

PETER ERICKSEN,

Defendant.  
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ORDER

10-cv-153-bbc

Plaintiff Willie C. Simpson brought a civil suit against defendant Peter Ericksen (and others who were dismissed before final judgment), alleging that defendant had violated plaintiff's rights under the Eighth Amendment by deliberately failing to protect him from harm from other prisoners. Specifically, plaintiff alleged that defendant released plaintiff from segregation, knowing that plaintiff was the subject of threats by members of the Aryan Brotherhood and would be injured by them if he were released to the general population. At trial, defendant put in evidence that plaintiff instigated an attack on several Aryan Brotherhood members sitting at a table in the dining hall. Two guards testified that they saw plaintiff move toward a table at which the other prisoners were sitting and attack them without warning, striking at them repeatedly with socks he had filled with pieces of bricks.

Plaintiff did not deny that he had come to the dining hall with the socks or that he had begun the attack, but argued that the other inmates had taunted and threatened him. However, the guards' evidence did not support a finding that the other inmates even knew that plaintiff had come into the dining room. Plaintiff put in no evidence of any act or omission on the part of defendant Ericksen that exposed plaintiff to any risk of harm. Accordingly, the jury was entitled to find in favor of defendant Ericksen. Judgment was entered in favor of defendant on July 28, 2011.

Now plaintiff has filed a timely motion for judgment as a matter of law under Fed. R. Civ. P. 50(b), contending that the jury's verdict is contrary to the rule of law. In support of his motion, plaintiff raises many of the same points he made at trial, emphasizing as he did at trial, that defendant failed to show that plaintiff's actions were not taken in an effort to defend himself. That argument is foreclosed by the jury's verdict, which is well supported by the evidence.

Plaintiff argues that there is no reliable legal support for defendant's argument that a prison official cannot be held liable for failing to protect a prisoner who initiates attacks on the very people he says are threatening him. He questions the precedential value of the case, Clark v. Johnson, 181 Fed. Appx. 606 (7th Cir. 2006), that this court cited in the order denying defendants' motion for summary judgment. Dkt. #74, at 15-16. Plaintiff notes, that it is an unpublished order of the court of appeals and therefore is not one that be relied

upon. Plaintiff is correct about the lack of precedential value of the case, but the proposition for which it is cited is unremarkable. The case holds only that it is not the fault of a prison official if a prisoner initiates a violent altercation of his own free will and suffers harm as a result. There might be exceptions to this holding, if the prisoner is mentally ill, for instance, or if the resulting harm would not have occurred if prison officials had been in a position to intervene but had refused to act, but plaintiff introduced no evidence to support any exception in his case. He talked at length about the other inmates “dissing” and taunting him, but the two guards on duty when the attack took place testified that they had seen no evidence that the other inmates had even known that plaintiff was sitting behind them, much less turned to say anything to him. They testified that the attack seemed to come as a complete surprise to the others, who had not seen plaintiff come up behind them. The jury was entitled to believe this evidence.

Plaintiff argues that his intent to initiate an attack was not proved by defendant at trial, but it was not defendant’s burden to prove intent. It was plaintiff’s burden to show that he played no role in initiating the attack. He was handicapped in doing that by the undisputed evidence that he came to the dining area armed with two pairs of socks lined with pieces of brick that were tied to a string around his waist.

One additional point deserves mention. Plaintiff seems to think that because the court denied defendants’ motion for summary judgment, it had decided as a matter of law

that defendants could be liable for any injuries plaintiff suffered even if he instigated the fight. If this is what he believes, he is wrong. I denied defendants' motion for summary judgment because the parties were disputing the facts of the attack in question, not because I was rejecting the general proposition that a defendant has no responsibility for failing to protect an inmate who puts himself in danger by initiating a fight with other inmates. What I said was

Because it is disputed whether plaintiff was the aggressor in the August 26, 2011 altercation, defendant cannot rely on the idea that an inmate who instigates a fight cannot later assert a failure to protect claim. The question whether plaintiff was actually the aggressor in this incident is one for trial.

Summ. J. order, dkt. #74, at 16.

In summary, I conclude that plaintiff has no ground on which to argue that he is entitled to judgment in his favor as a matter of law.

#### ORDER

IT IS ORDERED that plaintiff Willie C. Simpson's motion for judgment as a matter

of law under Fed. R. Civ. P. 50(b) is DENIED.

Entered this 8th day of August, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge