In the

United States Court of Appeals

For the Seventh Circuit

No. 19-2720

MICHAEL MEJIA,

Plaintiff-Appellant,

v.

RANDY PFISTER, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court for the
Central District of Illinois.
No. 1:15-cv-1498 — **James E. Shadid**, *Judge*.

ARGUED DECEMBER 11, 2020 — DECIDED FEBRUARY 19, 2021

Before ROVNER, HAMILTON, and SCUDDER, *Circuit Judges*.

SCUDDER, *Circuit Judge*. Illinois inmate Michael Mejia sued correctional officials in federal court challenging his filthy cell conditions and constant hallway lighting that prevented him from sleeping. His primary claim survived dismissal and later summary judgment and proceeded to trial, with the jury returning a defense verdict. Six times along the way Mejia asked the district court to appoint counsel, and each time the court denied the request. Applying the standards we articulated in

APPENDIX A

Pruitt v. Mote, 503 F.3d 647 (7th Cir. 2007) (en banc), the district court observed that Mejia, who had experience with the litigation process from prior cases, demonstrated through his many filings that he understood his burden of proof and was fully capable of assembling evidence and marshaling arguments to support his contention that the conditions of confinement within the Pontiac Correctional Center violated the Eighth Amendment. Seeing no abuse of discretion in the district court's rulings, we affirm.

I

A

Mejia alleged that his living conditions in Pontiac were horrific throughout 2015. He described living in multiple cells—each infested with insects and covered with blood, feces, hair, and dirt—and correctional officers declining his requests for cleaning supplies, telling him to make do with the two ounces of liquid soap he received each week. These unsanitary conditions, Meija continued, caused him to develop red bumps all over his body. And he further contended that Pontiac's hallway lighting was so bright that it left him sleep deprived and in time caused depression and memory loss. Meija made plain in his amended complaint that his regular protests to Pontiac officials, including to defendants Warden Randy Pfister, Assistant Warden Guy Pierce, and Correctional Officer Todd Punke, went ignored. So Mejia turned to federal court for relief.

Mejia filed his initial complaint in December 2015, invoking 42 U.S.C. § 1983 and alleging that the defendants were deliberately indifferent toward the conditions of his confinement in violation of the Eighth Amendment. Accompanying

the complaint was a motion for the recruitment of counsel. The court dismissed Mejia's complaint without prejudice during the screening process required by 28 U.S.C. § 1915A and denied the accompanying request for counsel as moot. Mejia filed an amended complaint, and this time his Eighth Amendment claim survived § 1915A review.

Mejia submitted his second request for counsel on January 3, 2018, more than a year after the close of discovery, two months after the district court denied the defendants' motion for summary judgment, and a few weeks before a final settlement conference. The district court again denied the motion. Applying the framework from our 2007 *en banc* decision in *Pruitt*, the district court underscored that Mejia, following the dismissal of his original complaint, "was able to successfully amend his complaint, obtain needed discovery, and survive summary judgment with two claims." From there the district court observed that the "surviving claims are not complex" and that Mejia, while not having previously represented himself during any trial, did have "extensive litigation experience." Even more, the district court underscored, Mejia "has demonstrated he is capable of describing his living conditions and his complaints about those conditions." The district court further added that Mejia would not find himself unable to present witness testimony at trial, as his inmate witnesses would be able to testify by video.

In the ensuing seven months leading to the August 2018 trial, Mejia renewed his request for counsel four more times. Relying on many of the reasons supporting the earlier denial of Mejia's second motion, the district court denied each additional request. At the final pretrial conference, and as part of denying Mejia's fifth request for counsel, the district court

supplemented its prior reasoning by observing that Mejia—throughout the litigation—"repeatedly demonstrated that he is capable of describing both his living conditions and his efforts to alert Defendants," while also "demonstrat[ing] his understanding of his claims, the issues, and the evidence during the pretrial hearing."

On appeal Mejia challenges at least four of the district court's denials of his requests for counsel.

II

When reviewing the denial of a prisoner's motion to recruit counsel under 28 U.S.C. § 1915(e)(1) we ask whether "the indigent plaintiff made a reasonable attempt to obtain counsel or [has] been effectively precluded from doing so," and, if so, whether "given the difficulty of the case, . . . the plaintiff appear[s] competent to litigate it himself." *Pruitt*, 503 F.3d at 654. All agree Mejia satisfied the first prong by trying on his own to retain counsel. *Pruitt*'s second prong considers "whether the difficulty of the case—factually and legally—exceeds the particular plaintiff's capacity as a layperson to coherently present it to the judge or jury himself." *Id.* at 655. Our review of a denial of a motion to appoint counsel proceeds under the deferential abuse of discretion standard. *Id.* at 658 (citing *Greeno v. Daley*, 414 F.3d 645, 658 (7th Cir. 2005)).

We see no abuse of discretion in any of the rulings Mejia now challenges. With Mejia not contesting the district court's denial of his first request to appoint counsel, we turn to the denial of the second motion. The district court began by invoking the *Pruitt* framework and observing that Mejia had demonstrated not only his understanding of the factual and

legal issues in his case, but also an ability to convey his positions with clarity.

The district court then proceeded to the second half of the *Pruitt* analysis and examined the complexity of Mejia's claims, finding that they fell on the straightforward end of the spectrum. To prevail Mejia needed to establish the unsanitary conditions in his cells, constant hallway lighting that caused sleep deprivation and related mental harms, and the defendants' awareness of and inaction in response to either or both of these alleged conditions. See *McCaa v. Hamilton*, 959 F.3d 842, 846 (7th Cir. 2020).

The district court summarily incorporated and relied on the reasoning from its denial of Mejia's second motion in denying the third, fourth, fifth, and sixth requests for counsel. At the final pretrial conference, and as part of denying Mejia's fifth motion, the district court added to its prior analysis that Mejia had "demonstrated his understanding of his claims, the issues, and the evidence during the pretrial hearing."

The district court's rulings adhered to the *Pruitt* framework and reflected a reasonable exercise of discretion. The district judge had before him a *pro se* inmate who had showed himself at every phase of the litigation to be capable of comprehending and navigating the litigation process, including by avoiding dismissal of his amended complaint, adequately utilizing the discovery process to obtain information from his adversaries, successfully opposing the defendants' motion for summary judgment, and ultimately getting his case to trial. In denying Mejia's requests for counsel, the district court tapped its unique vantage point—its close proximity to all aspects of the pretrial proceedings—by drawing upon its firsthand impressions of Mejia's ability to adequately understand and

prosecute his claims at each step along the road to trial. This iterative yet individualized approach to ruling on each of Mejia's motions aligns with our prescriptions in *Pruitt* and reflects no abuse of discretion by the district court at any step.

In no way do we question that Mejia encountered challenges representing himself. Take, for example, what transpired during discovery. Mejia failed to comply with the district court's scheduling order and submitted only one discovery request, which itself was untimely. But the district court took steps to remedy this failing by granting Mejia's subsequent request (made orally during a status conference) and ordering the defendants to produce any policy documents addressing cell sanitation and cleaning. At another point the district court ordered the defendants to produce any reports concerning the cleanliness or sanitation of each of Mejia's cells.

On another front, Mejia faced the often challenging task of marshaling evidence to prove the defendants acted with a culpable state of mind. But in the circumstances presented here, he showed himself capable of doing so, as he plainly demonstrated through his filings and performance at the pretrial conference that he understood and could present evidence on this element of his claim. And we see nothing in the record showing that his subsequent transfers to different prisons prevented him from gathering the necessary proof. In the end, Mejia needed to show that the defendants knew about the conditions of his confinement and failed to act. See *McCaa*, 959 F.3d at 846. The district court committed no error in finding that Mejia was capable of shouldering this burden.

Mejia also disagrees with how the district court evaluated his ability to represent himself at trial. But such disagreement, absent a "methodological lapse," does not amount to an abuse

of discretion. *Santiago v. Walls*, 599 F.3d 749, 765 (7th Cir. 2010). No such lapse occurred here. The district court correctly observed that Mejia had an extensive litigation history, including with at least one prior case going to trial, albeit with appointed counsel. Mejia had difficulty with the discovery process, but it was well within the judge's discretion to decide to overlook his slips and help him rather than try to recruit counsel. And while Mejia observes that he had never conducted a trial on his own before, that is true for the vast majority of *pro se* litigants. The district court grounded its decision to deny Mejia's request to recruit trial counsel on its observation (during the pretrial conference) of his ability to comprehend and address the facts and issues pertinent to his Eighth Amendment claim. The court's reliance on these factors shows no abuse of discretion.

Nor does the fact that some trial witnesses testified by videoconference change the analysis. To be sure, we have held that the added complexities of conducting a trial by videoconference may in some instances exceed an inmate's capacity. See *Walker v. Price*, 900 F.3d 933 (7th Cir. 2018). But the routine use of videoconference technology to have two inmate witnesses testify does not compare to the difficulties of conducting a full trial remotely—the situation in *Walker*. The district court did not abuse its discretion in denying Mejia's motions despite this additional technical component of the trial.

This conclusion eliminates the need to examine fully the prejudice prong of the *Pruitt* analysis. We note only that the standard for prejudice requires more than just a likelihood that recruited counsel would have performed better than the *pro se* litigant, a benchmark that would nearly always be met. See *Jackson v. Kotter*, 541 F.3d 688, 701 (7th Cir. 2008)

("[S]peculating about how counsel might have done a better job prosecuting the case is neither necessary nor appropriate." (quoting *Johnson v. Doughty*, 433 F.3d 1001, 1008 (7th Cir. 2006))). Instead, to show prejudice Mejia must demonstrate "there is a *reasonable likelihood* that the presence of counsel would have made a difference in the outcome of the litigation." *Pruitt*, 503 F.3d at 659. Our review of the record—especially the paucity of evidence supporting Mejia's allegations of deliberate indifference to his conditions of confinement—leaves us confident that he has not carried his burden here.

III

Michael Mejia encountered litigation challenges all too often faced by *pro se* inmates and understandably asked the district court a few times to appoint counsel. And, for its part, the district court found itself having to make a choice about how best to allocate scarce resources, for it remains the sad reality that "there are too many indigent litigants and too few lawyers willing and able to volunteer for these cases." *Olson v. Morgan*, 750 F.3d 708, 711 (7th Cir. 2014). The district court committed no abuse of discretion in undertaking this difficult and unfortunate calculus here.

We close by thanking the Washington University School of Law Appellate Clinic for representing Mejia on appeal. In addition to the two students who ably briefed this appeal, a third law student, supervised by the Clinic's director, argued the case. The students no doubt realized the personal satisfaction and professional enrichment that comes from *pro bono* service—from using their legal talent to help someone in need. Mejia may not have received what he wished for in the district court, but he should know he was very well represented on appeal.

With these parting observations, we AFFIRM.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

MICHAEL MEJIA, Plaintiff,	)	
vs.	)	No. 15-1498
JOHN BALDWIN, et. al., Defendants	)	

CASE MANAGEMENT ORDER

This cause is before the Court for consideration of Plaintiff's Motion for a New Trial [92] and Defendants' Motion to Strike Plaintiff's motion. [102]

I. BACKGROUND

The Plaintiff, a pro se prisoner, claimed Pontiac Correctional Center Defendants Warden Randy Pfister, Assistant Warden Guy Pierce and Lieutenant Punke violated his Eighth Amendment rights based on his living conditions in different cells from December 2014 to December of 2015. Specifically, Plaintiff alleged his cells: 1) were covered in feces and blood with inadequate cleaning supplies provided; and 2) had the lights on for 24 hours a day depriving Plaintiff of sleep. *See* October 30, 2017 Summary Judgment Order; Final Pretrial Order, [80].

The matter proceeded to a jury trial on August 21, 2018, and the jury returned verdicts in favor of the Defendants. *See* August 21, 2018 Minute Entry; [87]; August 22, 2018 Judgment.

Plaintiff filed his motion for a new trial on September 17, 2018 and the Court specifically directed Defendants to file a response within 14 days. [92]; October 29, 2018

Text Order. Defendants then filed two motions for an extension of time which were both granted. [95, 97]; November 16, 2018 Text Order; December 7, 2018 Text Order.

On December 11, 2018, Plaintiff filed a letter with the Court noting that his motion for a new trial went from page #11 to page #13. [98]. Plaintiff asked the Court to find and add the missing page #12.

> Plaintiff does not explain why he waited months to point out the error in his own filing. The Court only has a copy of the pages currently filed. If Plaintiff believes another page should be included, he must file the additional page within seven days of this order. If Plaintiff fails to correct his filing, the Court will consider the document currently before the Court. December 11, 2018 Text Order.

Plaintiff then filed a motion to compel asking the Court to order the Clerk of the Court to add the missing page. [100]. Once again the Plaintiff was advised the Clerk filed all the pages received. Plaintiff's motion was denied. *See* January 8, 2019 Text Order. However, the Court directed the Clerk to provide Plaintiff with another copy of the motion as received. Plaintiff was advised if he wished to supplement the filing, he must file his addendum on or before January 22, 2019, and no further extension of time would be allowed. *See* January 8, 2019 Text Order.

Defendants filed their third motion for an extension of time to respond to Plaintiff's motion which was again allowed. [101]. Defendants then filed a Motion to Strike Plaintiff's Motion for a New Trial. [102].

Defendants ask the Court to strike Plaintiff's motion because he "failed to comply" with the Court order to supplement his motion. [102, p. 2]. Defendants misstate the Court's previous orders. The Court allowed Plaintiff additional time if he

chose to supplement his motion. Plaintiff chose not to file anything further. Therefore, the motion to strike is denied. [102].

The Court also notes it is not clear whether a page is missing from Plaintiff's motion or the pages were mis-numbered. The argument on page #13 is a continuation of the argument on page #11. However, even if a page is missing, Plaintiff was given several months to correct the error and chose not to file anything further.

Given the amount of time already allowed, the Court will consider the motion for new trial without any additional supplementation by Plaintiff and without any further response by Defendants.

II. MOTION FOR A NEW TRIAL

Plaintiff argues he is entitled to a new trial because the verdict was against the manifest weight of the evidence, he was not treated fairly at trial, the court erred in some rulings, and Plaintiff was not aware he could ask for the jury to be polled after the verdict.

"[T]he district court has the power to get a general sense of the weight of the evidence, assessing the credibility of the witnesses and the comparative strength of the facts put forth at trial." *Mejia v. Cook County, Ill.*, 650 F.3d 631, 633 (7th Cir. 2011). However, "[s]ince the credibility of witnesses is peculiarly for the jury, it is an invasion of the jury's province to grant a new trial merely because the evidence was sharply in conflict." *Whitehead v. Bond*, 680 F.3d 919, 928 (7th Cir. 2012). "The standard for granting a new trial is, thus, relatively high and a motion requesting as much will only be granted 'when the record shows that the jury's verdict resulted in a miscarriage of

justice or where the verdict, on the record, cries out to be overturned or shocks our conscience.'" *G&G Closed Circuit Events, LLC v. Castillo*, 2019 WL 3554228, at *4 (N.D.Ill. Aug. 5, 2019) *quoting Whitehead*, 680 F3d. at 927-28.

"In deciding whether a new trial is appropriate on fairness grounds, the Court must be guided by the principle that 'civil litigants are entitled to a fair trial, not a perfect one,' and 'a new trial will not be ordered unless there was an error that caused some prejudice to the substantial rights of the parties.'" *Reynolds v. Lyerla*, 2019 WL 1254764, at *2 (S.D.Ill. March 19, 2019), *quoting Lemons v. Skidmore*, 985 F.2d 354, 357 (7th Cir. 1993).

Plaintiff first argues the jury's verdict ignored the evidence presented. For instance, Plaintiff says his inmate witnesses testified they observed the same conditions in the cell house. The Defendants admitted the inmates were only given two ounces of liquid soap a week and one towel to clean. Furthermore, the Defendants toured the cell houses and spoke to a variety of inmates. Nonetheless, Plaintiff ignores evidence presented which did not support his claims. For instance, the Defendants testified each cell is thoroughly checked before an inmate is transferred to a new cell. Inmate porters check to make sure everything is working, and check on the conditions of the cell. If a cell has urine, feces, or blood, the cell is cleaned.

Defendants also admit they tour cell houses and if a cell had urine, feces, or blood, it would be noted and cleaned. In addition, while Plaintiff's inmate witnesses testified they had seen some of the conditions described by Plaintiff, they did not testify they observed those conditions in Plaintiff's specific cell. Furthermore, many witnesses

testified gallery lights were left on, but Plaintiff still had control of the light in his individual cell. Ultimately, the jury did not believe Plaintiff's testimony that every cell he occupied over a 12 month period was covered in feces and blood, and variety of prison officials ignored those conditions. The verdict was supported by evidence presented at trial.

Plaintiff next disagrees with statements made by Defense counsel in closing arguments. Plaintiff claims counsel argued Plaintiff did not complain during his first stay at Pontiac which Plaintiff claims was an irrelevant time period and designed to make him look untruthful. However, the Court reminded the jury closing arguments were just argument, not evidence.

Plaintiff also argues the Court should not have allowed evidence of his criminal convictions or those of his witnesses. In addition, Defendants should not have been allowed to argue or insinuate Plaintiff and his witnesses were not credible due to their convictions. Finally, Plaintiff argues the jury knew he was incarcerated because correctional officers were sitting nearby.

First, the Court granted in part Plaintiff's motion *in limine* concerning criminal convictions. *See* July 20, 2018 Minute Entry; July 20, 2018 Order. Defendants were only allowed to question witnesses concerning the fact they had a felony conviction, but not the specific name or details regarding the conviction. The Seventh has approved this practice of "sanitizing" a prior felony offense. *See Schmude v. Tricam Indus., Inc.*, 556 F.3d 624, 627 (7th Cir.2009). Second, the Court used the Seventh Circuit Pattern Jury Instruction concerning criminal convictions. Therefore, jurors were specifically advised

they could only consider a prior conviction to determine whether a witness's testimony was credible in whole or in part, and for no other purpose. *See* (Working Jury Instructions, [83]. Crt #14, Seventh. Cir. Pattern Inst. 1.15); (Final Instructions, [84], p. 12).

Finally, it was plainly clear to the jury Plaintiff had been incarcerated since his case involved his treatment in prison and he called incarcerated witnesses who knew Plaintiff in prison. The Court required correctional officers to sit in the vicinity of Plaintiff for courtroom security. However, Plaintiff was not in an obvious prison uniform, and did not appear in shackles before the jury. *See Maus v. Baker*, 641 Fed.Appx. 596, 600 (7th Cir. 2016)(allowing strategically placed security staff near plaintiff during prisoner trial was allowed because "district court has discretion to use reasonable measures to maintain order and safety in the courtroom."). Furthermore, Plaintiff did not raise this issue at trial.

Plaintiff next claims he was not allowed to question the witnesses concerning the Administrative Code, the Court spoke to him in an "aggressive manner," and the Court did not provide an instruction concerning the Defendants' failure to produce safety and sanitation reports. (Plain. Mot., p. 8). The trial transcript belies Plaintiff's claim that he was not allowed to question the witnesses concerning the Administrative Code and in fact the references are too numerous to cite. *See* (Transcript, [99], *i.e.*, p. 39-40, 49-54, 57-58, 62-63). Plaintiff attempted on several occasions to simple read several Administrative Directives, whether relevant to his specific claims or not, into the record.

When Plaintiff makes reference to a specific exchange with the Court, it was outside the presence of the jury when the Court was again attempting to explain to Plaintiff the witness had already acknowledged the Administrative Directives and acknowledged staff had to follow the directives. Nonetheless, Plaintiff had yet to ask any questions about the witness's knowledge of his particular living conditions. *See* (Transcript, [99], p. 82).

Plaintiff next argues the Court should have provided an instruction to the jury regarding Defendant's failure to provide safety and sanitation reports. Plaintiff did not submit a jury instruction on this issue. [72, 77, 79]. More important, the trial transcript demonstrates Plaintiff was able to question the witnesses about the reports, and he mentions the lack of reports in his closing statements. *See* (Transcript, [99], *i.e.*, p. 59, 63-64, 190).

Finally, Plaintiff says he was unaware of his right to poll the jury after the verdict was read. Plaintiff's argument is moot because the record clearly shows the jurors were each polled and each affirmed their verdict. *See* (Transcript, [99], p. 202).

Plaintiff has not demonstrated the verdict was against the manifest weight of the evidence, he has not demonstrated he was treated unfairly at trial, and he has not demonstrated any other basis for granting a new trial.

IT IS THEREFORE ORDERED:

1) Defendants' Motion to Strike Plaintiff's Motion for A New Trial is denied. [102].

2) Plaintiff's Motion for A New Trial is denied. [92].

Entered this 26th day of August, 2019.

s/ James E. Shadid

JAMES E. SHADID
UNITED STATES DISTRICT JUDGE