NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted June 15, 2023*
Decided June 21, 2023

Before

DIANE S. SYKES, *Chief Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 21-2362

ROBERT K. DECKER,
Plaintiff-Appellant,

v.

EDWIN BAEZ, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Indiana, Terre Haute Division.

No. 2:18-cv-00278-MJD-JMS

Mark J. Dinsmore,
Magistrate Judge.

ORDER

Robert Decker, a federal prisoner, sued several correctional officers alleging excessive use of force and failure to intervene. The magistrate judge, who presided with the parties' consent under 28 U.S.C. § 636(c), entered judgment for the defendants after a jury trial. Decker appeals and asks for a new trial, arguing that several decisions by the magistrate judge caused the jurors to be biased against him. Because the magistrate judge did not abuse his discretion, we affirm.

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* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

In his lawsuit under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), Decker alleged that on September 20, 2017, five officers attacked him while he was waiting in a holding cell at the United States Penitentiary in Terre Haute, Indiana. He asserted that Officer Edwin Baez grabbed him by the throat, threw him against a wall, and punched him in the face, while other officers grabbed and kicked him and failed to stop the assault.

The defendants moved for summary judgment, pointing out that a disciplinary hearing officer had found Decker guilty of attempting to assault the correctional officers during the encounter in the holding cell. They argued that the rule of *Heck v. Humphrey*, 512 U.S. 477 (1994), therefore barred Decker's claims. That rule, as extended in *Edwards v. Balisok*, 520 U.S. 641 (1997), precludes a plaintiff from pursuing a constitutional claim that implies the invalidity of an extant ruling by a prison disciplinary tribunal. *Green v. Junious*, 937 F.3d 1009, 1013 (7th Cir. 2019). The magistrate judge ruled, however, that Decker's excessive-force and failure-to-intervene claims did not necessarily imply that his conviction for attempted assault was invalid. The magistrate judge then recruited counsel for Decker and later recruited a second attorney to assist at trial.

Decker filed several pretrial motions, including two that are relevant to this appeal. First, he asked to attend the trial unshackled and dressed in civilian attire. The defendants objected, citing a declaration from a captain at the Bureau of Prisons who was stationed at the Terre Haute prison complex. This officer attested that allowing Decker to wear civilian clothes posed a security threat and created "an unnecessary and very real risk of escape" because one function of prison uniforms is to distinguish inmates from others. The defendants also argued, citing BOP policy, that because of Decker's security risk, he should be kept in "full restraints," including "hand and leg restraints as well as a Martin chain [fastened around the waist] and a black box [covering the keyhole]." The BOP captain attested that Decker was a high-security and "manipulative inmate with a history of compromising and circumventing communications in an effort to further criminal activity."

The magistrate judge partially granted the motion: Decker was allowed to appear in civilian attire at trial, but his legs and nondominant hand would be shackled. Decker would be seated behind table skirts before the jury entered the room; he would not be required to stand in the presence of the jury; and the jury would be instructed that the shackling had nothing to do with his case.

Decker's other motion asked the magistrate judge to instruct the jurors that they could draw an adverse inference against the defendants for failing to preserve video evidence of the incident. After briefing, the magistrate judge denied the motion, explaining that "any potentially relevant video was destroyed as a matter of course pursuant to the prison's retention policy" before Decker filed suit. Moreover, the magistrate judge ruled, Decker had not met his burden of demonstrating that the defendants had destroyed the video—if one ever existed—in bad faith. *See Rummery v. Ill. Bell Tel. Co.*, 250 F.3d 553, 558 (7th Cir. 2001).

A two-day trial followed, and prior to voir dire, the magistrate instructed the jury on Decker's appearance in restraints:

> You will notice, if you haven't already, that Mr. Decker appears here today in restraints. Mr. Decker is currently an inmate at a correctional facility. The restraints are the policy of the institution and have nothing whatsoever to do with this case, and you should not read anything into the fact that he is restrained during your consideration of this matter.

The jury found for the defendants on all claims. Decker did not move for a new trial or other postjudgment relief.

On appeal Decker proceeds pro se and argues that the magistrate judge abused his discretion by denying (or partially denying) Decker's pretrial motions concerning shackles and the alleged spoliation of video evidence. He first argues that the sight of his shackles prejudiced the jury against him and that under *Lemons v. Skidmore*, 985 F.2d 354 (7th Cir. 1993), he must have a new trial. *Lemons*, like this case, involved a prisoner's civil suit against correctional officers for allegedly using excessive force. *Id.* at 355. The plaintiff asked to attend his trial unshackled, but the magistrate judge ruled that the state Department of Corrections was "in charge" and deferred to its preference for restraints. *Id.* at 355–56. We reversed because prisoner-plaintiffs are entitled to the "minimum restraints necessary" and delegating the decision to the Department (which, we noted, was hardly impartial) was an abuse of discretion. *Id.* at 359. We also noted that the magistrate judge took no ameliorative steps to reduce prejudice, such as seating the plaintiff before the jury entered, minimizing and hiding his restraints, or giving a curative instruction. *Id.*

We more recently came to the same conclusion in *Maus v. Baker*, 747 F.3d 926 (7th Cir. 2014), another case Decker relies upon. We explained that the sight of a shackled plaintiff was "apt to make jurors think they're dealing with a mad dog" and

that the plaintiff's appearance in prison garb further prejudiced him. *Id.* at 927. We again noted the absence of any actions by the trial judge to minimize the prejudice. *Id.* at 928.

Here, however, the magistrate judge acted within his "wide discretion" to maintain the security of the courtroom. *Lemons*, 985 F.2d at 358. He considered the defendants' particularized evidence about the risks of Decker being unrestrained. And most importantly, in contrast to *Lemons*, he did not turn the decision over to prison officials. Instead, he overruled the BOP's recommendation by limiting Decker's restraints to his legs and nondominant hand. He then took every ameliorative step noted in *Lemons* and *Maus*, including hiding the restraints and giving the jury a curative instruction. He also made his own determination about courtroom security by allowing Decker to attend the trial in civilian attire. Under these circumstances, the magistrate judge did not abuse his discretion.

Decker next argues that the magistrate judge abused his discretion by not instructing the jury on spoliation because the defendants had a duty to preserve video evidence. But even assuming that is true, Decker "must also show destruction in bad faith." *Bracey v. Grondin*, 712 F.3d 1012, 1019 (7th Cir. 2013). He did not. After denying the pretrial motion, the magistrate judge let Decker make an offer of proof at trial, but he still lacked evidence that a video of the incident existed or was destroyed by these defendants in bad faith. He therefore was not entitled to an adverse-inference instruction. *Id.* at 1020.

Decker raises several other arguments for the first time on appeal. He suggests that jurors were biased against him because of (1) their race; (2) their acquaintance with people connected to the BOP; (3) a misleading statement by defense counsel; and (4) the presence of pro law-enforcement protesters outside the courthouse during his trial. But a party who does not object or otherwise raise an issue at trial cannot raise it for the first time on appeal except in extremely rare cases of plain error, which is not present here. *Walker v. Groot*, 867 F.3d 799, 802 (7th Cir. 2017); *see Black v. Wrigley*, 997 F.3d 702, 711–12 (7th Cir. 2021). Decker appears to fault his pro bono lawyers for not objecting to the jury pool and the atmosphere outside the courthouse; to the extent he suggests that they rendered ineffective assistance, however, that is not grounds for reversal in a civil case. *Black*, 997 F.3d at 712–13.

AFFIRMED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

ROBERT K. DECKER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 2:18-cv-00278-MJD-JMS
	)	
EDWIN BAEZ Lt., et al.,	)	
	)	
Defendants.	)	

JUDGMENT

The Court having granted Plaintiff's oral motion to dismiss Defendant Hoffman, and the jury having returned its verdict in favor of the remaining Defendants, judgment is hereby **ENTERED** in favor of Defendants Edwin Baez, Zachariah Hoffman, Benjamin Monnett, Adam Rogers, and Joseph Vest and against Plaintiff Robert K. Decker on all of Plaintiff's claims in this case.

SO ORDERED.

Dated: 13 JUL 2021

Mark J. Dinsmore
United States Magistrate Judge
Southern District of Indiana

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

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