

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-40488  
Summary Calendar

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JIMMY HORACE OAKLEY,

Plaintiff-Appellant,

versus

BOBBY WEAVER, Sheriff, Gregg  
County; MARY STUART RUSSELL,  
Officer, Longview Police Department,  
ALVIN EBERSOLE, Officer, Longview  
Police Department,

Defendants,

MARY STUART RUSSELL, Officer,  
Longview Police Department,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 6:95-CV-936  
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November 2, 1998

Before JOLLY, SMITH, and WIENER, Circuit Judges.

PER CURIAM:\*

Jimmy Horace Oakley, an inmate (# 606677) currently confined in the Texas Department of Criminal Justice, Institutional Division appeals from the dismissal of his 42 U.S.C. § 1983 suit following a bench trial, in which he had alleged that the

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

appellee had used excessive force during Oakley's arrest. Oakley argues that key witnesses' testimony during the bench trial was false and that Officer Russell used excessive force when she sprayed him with pepper spray as he entered the back seat of the patrol car.

We have review the record and the parties' briefs and hold that the magistrate judge did not err in holding that the appellee had not used excessive force during Oakley's arrest. Spann v. Rainey, 987 F.2d 1110, 1115 (5th Cir. 1993); Lozano v. Smith, 718 F.2d 756, 768 (5th Cir. 1983). Accordingly, the judgment of the magistrate judge is AFFIRMED.

AFFIRMED.