NONPRECEDENTIAL DISPOSITION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 January 27 2025*
Decided February 4, 2025

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

NANCY L. MALDONADO, *Circuit Judge*

No. 24-1122

JUAN ALVARADO-GONZALEZ,
Plaintiff-Appellant,

v.

CHRISTOPHER THOMPSON, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Illinois.

No. 3:19-cv-00493-MAB

Mark A. Beatty,
Magistrate Judge.

O R D E R

Juan Alvarado-Gonzalez, an Illinois prisoner, appeals the judgment entered on a jury verdict against him in his suit under 42 U.S.C. § 1983. Alvarado-Gonzalez alleged that prison officials failed to protect him from physical and sexual assaults by his

* 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).

cellmates, in violation of the Eighth Amendment. Because Alvarado-Gonzalez failed to preserve most of his arguments, and the rest lack merit, we affirm the judgment.

Alvarado-Gonzalez alleges that, while he was incarcerated at Pinckneyville Correctional Center, four different cellmates sexually and physically assaulted him in 2018 and 2019. Alvarado-Gonzalez filed a complaint about one alleged incident pursuant to the Prison Rape Elimination Act, and the prison ultimately found the allegations were unfounded. He filed multiple grievances that also led to no relief.

Alvarado-Gonzalez then sued the warden, two internal affairs officers, three correctional officers, and a grievance counselor for violating his constitutional rights under the Eighth Amendment. *See* 42 U.S.C. § 1983. According to Alvarado-Gonzalez, the correctional officers failed to protect him from the assaults when they housed him with four cellmates "known for violence," knowing that it would create a substantial risk of serious harm. He alleged that the other defendants ignored reports that his cellmates were planning to assault him and ignored, discarded, or failed to properly investigate his grievances about the assaults. After dismissing his first two complaints for failure to state a claim, and observing his difficulty with the English language, the district court recruited counsel for Alvarado-Gonzalez. The defendants answered the second amended complaint filed by counsel, and the parties consented to the jurisdiction of a magistrate judge for all purposes. *See* 28 U.S.C. § 636(c). The case later proceeded to trial, and the jury returned a verdict in favor of all six defendants.

On appeal, Alvarado-Gonzalez (who now represents himself) argues that a new trial is warranted because the jury verdict was against the manifest weight of evidence, the jurors were biased, his counsel was ineffective, and he has new evidence to present.

We cannot meaningfully address many of these arguments because Alvarado-Gonzalez has not provided a full trial transcript, as required by Rule 10 of the Federal Rules of Appellate Procedure. The record includes only the transcript of Alvarado-Gonzalez's testimony. Without a full transcript, we are unable to evaluate the sufficiency of evidence presented at trial or whether the alleged "new" evidence would have changed the trial's outcome, *see Martin v. Actavis Pharma, Inc.*, 71 F.4th 617, 621 (7th Cir. 2023) (review of a motion for new trial based on newly discovered evidence requires consideration of the evidence presented at trial), and therefore cannot meaningfully review Alvarado-Gonzalez's arguments, *see Morisch v. United States*, 653 F.3d 522, 530 (7th Cir. 2011). Nor can we fully consider the arguments about jury bias or counsel's failure to object to the jury's composition, though we make an effort.

We considered notifying Alvarado-Gonzalez that he needed to provide the transcript, and that, under certain circumstances, he could obtain it at court expense. *See* FED. R. APP. P. 10(e)(2). But we have decided that this step is unnecessary. Alvarado-Gonzalez was on notice that ordering the transcript was necessary to his appeal: the district court informed him of this obligation when he appealed, we issued a Transcript Information Sheet at the start of the appeal, and the appellees raised the issue in their brief. Alvarado-Gonzalez had ample time to correct the omission, and we need not afford him another opportunity to comply with the rules. *See Morisch*, 653 F.3d at 530.

This is especially true because a transcript would not save Alvarado-Gonzalez's appeal. He failed to preserve his primary argument—sufficiency of the evidence— in a post-trial motion under Rule 50(b) or Rule 59 of the Federal Rules of Civil Procedure. Without such a motion, we are "powerless" to review a challenge to the sufficiency of the evidence supporting a civil jury verdict. *Unitherm Food Sys., Inc. v. Swift-Eckrich, Inc.*, 546 U.S. 394, 405 (2006); *see also Dupree v. Younger*, 598 U.S. 729, 734–35 (2023). Likewise, with respect to the new evidence referenced for the first time on appeal (unspecified witness testimony), Alvarado-Gonzalez did not move in the district court for a new trial under Rule 59(a) or to reopen the judgment under Rule 60(b)(2) based on newly discovered evidence. And we cannot consider new evidence for the first time on appeal. *See Midwest Fence Corp. v. U.S. Dep't of Transp.*, 840 F.3d 932, 946 (7th Cir. 2016).

Alvarado-Gonzalez also asserts that he was deprived of a jury composed of a fair cross-section of the community. According to Alvarado-Gonzalez, who is Hispanic, the jury was entirely white and racially biased against him. But he forfeited this argument by failing to object to the jury's composition during jury selection. *See United States v. Heron*, 721 F.3d 896, 901–02 (7th Cir. 2013). In any event, litigants are not entitled to a jury composed in whole or in part by members of their own race, *see Batson v. Kentucky*, 476 U.S. 79, 85 (1986), and we cannot infer solely from the racial makeup of the jury that the jurors were biased against him, *see id.* at 97–98; *United States v. Nururdin*, 8 F.3d 1187, 1190 (7th Cir. 1993) (rejecting argument that all-white jury was incapable of impartiality). And we have no evidence that the court or the defense failed to use nondiscriminatory criteria for selecting the jurors. *See Batson*, 476 U.S. at 86–87.

Alvarado-Gonzalez also argues that his recruited trial counsel was ineffective for reasons including the failure to object to the jury's racial composition. But there is no constitutional right to counsel in a civil case, and therefore no constitutional right to the effective assistance of counsel. *Diggs v. Ghosh*, 850 F.3d 905, 911 (7th Cir. 2017).

Therefore, even if Alvarado-Gonzalez's assertions of counsel's deficiency were true, they would not warrant relief from the adverse jury verdict. *Stanciel v. Gramley*, 267 F.3d 575, 581 (7th Cir. 2001).

AFFIRMED