

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-6069

BRADLEY MAXWELL,

Plaintiff - Appellant,

v.

SERGEANT BELLAMY; CORRECTIONAL OFFICER W. THOMAS;
CORRECTIONAL OFFICER C. THOMAS,

Defendants - Appellees,

and

HENRY PONTON; CAPTAIN BROWN; LIEUTENANT FLEMING;
LIEUTENANT CARICO; REID HENSLEY, Hearing Officer; C. FRANKS,
Hearing Officer; CORRECTIONAL OFFICER BAKER; CORRECTIONAL
OFFICER PAULEY,

Defendants.

Appeal from the United States District Court for the Western District of Virginia, at
Roanoke. Pamela Meade Sargent, Magistrate Judge. (7:15-cv-00469-PMS)

Submitted: August 31, 2018

Decided: September 12, 2018

Before NIEMEYER, AGEE, and THACKER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Bradley Maxwell, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Bradley Maxwell appeals the district court's order granting partial summary judgment and the final judgment entered after the jury found for defendants in his 42 U.S.C. § 1983 (2012) action. In his complaint Maxwell alleged that while he was incarcerated at Wallens Ridge State Prison ("WRSP") three correctional officers assaulted him during a search of his cell on December 13, 2014. Maxwell asserted claims of excessive force and related claims against Virginia Department of Corrections ("VDOC") and WRSP employees.

The district court granted summary judgment to all Defendants on all claims, except for the excessive force claim against the three correctional officers. Thereafter, the case was transferred to a magistrate judge for trial, and the jury found that the three correctional officers did not use excessive force on December 13, 2014. The magistrate judge entered judgment for these Defendants in accordance with the jury's finding.

Maxwell first challenges the district court's order granting summary judgment in part, contending that the district court erred in denying relief on his supervisory liability claim that Henry Ponton and Lieutenant Fleming were responsible for the excessive force allegedly used by the correctional officers. The jury's verdict in favor of the correctional officers, however, makes the derivative claim of supervisory liability moot, *see Hinkle v. City of Clarksburg, W.Va.*, 81 F.3d 416, 420-21 (4th Cir. 1996) (holding propriety of district court's grant of summary judgment on supervisory liability claims mooted by jury's verdict finding no excessive force), and thus Maxwell cannot show he was prejudiced by dismissal of this claim or the denial of related discovery requests.

Maxwell also appeals from the final judgment entered after his trial. Maxwell contends the magistrate judge erred by denying his motions for discovery and to produce the prison's use of force policy, and by refusing to serve subpoenas on certain trial witnesses.

Our review of the record and Maxwell's arguments reveals no reversible error by the magistrate judge. *See Hill v. Coggins*, 867 F.3d 499, 505 (4th Cir. 2017), *cert. denied*, 138 S. Ct. 1003 (2018) (reviewing discovery rulings for abuse of discretion); *United States v. Cole*, 631 F.3d 146, 153 (4th Cir. 2011) (reviewing evidentiary rulings for abuse of discretion). The magistrate judge properly required Maxwell to pay the applicable witness fees for the witnesses in question, and when Maxwell failed to pay those fees, properly declined to enforce the subpoenas. *See* Fed. R. Civ. P. 45(b); *Malik v. Lavalley*, 994 F.2d 90, 90 (2d Cir. 1993) (finding federal courts not authorized to waive or pay witness fees for *in forma pauperis* litigants and collecting cases).

Accordingly, we affirm the district court's order granting summary judgment in part and the final judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED