

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 16-40461

United States Court of Appeals
Fifth Circuit
FILED
August 31, 2017
Lyle W. Cayce
Clerk

MELVIN LEE MOBLEY, III,

Plaintiff - Appellant

v.

MUNIB I. ALISHAH,

Defendant - Appellee

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:15-CV-605

Before DAVIS, GRAVES, and COSTA, Circuit Judges.

PER CURIAM:*

Mobley alleged that Texas correctional officer Munib Alishah used excessive force when escorting him from the infirmary to administrative segregation. Mobley asserted that he had a “psych episode” and that he “momentarily pulled away” while he was handcuffed. He contended that Alishah, in response, snatched and jerked him before choking him, which caused injuries to his neck. The trial court appointed counsel for Mobley, and

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 16-40461

the case proceeded to trial before a magistrate judge. The jury rejected Mobley's claims.

Mobley argues that three errors taint that verdict. First, he says that the restraints that were placed on him during trial prejudiced the jury. Second, he argues that he should have been able to introduce evidence of similar violent episodes in the defendant's work as a correctional officer. Third, he challenges the district court's decision to announce the verdict without the jury in the courtroom.

Having reviewed the trial record and the arguments of the parties, we find no basis for reversing the jury's verdict. The first alleged error was not raised in the trial court and thus the record does not reveal the extent, if any, to which the restraints were visible to the jury. We find no abuse of discretion in the court's Rule 404(b) ruling. And while the criminal rules of procedure require that the jury be present when the verdict is announced, the civil rules do not. *Compare* FED. R. CRIM. P. 31(a), *with* FED R. CIV. P. 48.

AFFIRMED. Mobley's motion to appoint counsel on appeal is **DENIED.**