Linda HOLMES, et al., Plaintiffs–Appellants,

v.

CITY OF MASSILLON, OHIO, et al., Defendants–Appellees.

Nos. 94–3208, 94–3768.

United States Court of Appeals, Sixth Circuit.

Argued Oct. 6, 1995.

Decided March 13, 1996.

Arrestee filed civil rights action in which she alleged that a police officer used excessive force to remove the arrestee's wedding ring after the officer ordered the arrestee to remove all personal property. After the jury returned a verdict for the arrestee, the United States District Court for the Northern District of Ohio, Sam H. Bell, J., granted the officer's motion for a new trial, granted summary judgment for the officer, and imposed sanctions on the arrestee's counsel. Arrestee appealed. The Court of Appeals, Keith, Circuit Judge, held that: (1) testimony by the arrestee that she was denied privacy in her jail cell, that she was detained in her cell while it was sprayed with insecticide, and that she was unjustly and maliciously charged with obstructing justice, which was later changed to disorderly conduct, did not warrant new trial; (2) evidence supported the jury's finding that the officer used excessive force, even if the alleged use of force was not life threatening and did not leave extensive marks; and (3) cross-examination of the officer about the existence of several prior civil suits filed against him for misconduct did not vexatiously or unreasonably multiply the proceedings and, thus, did not warrant the imposition of attorney fees as a sanction.

Vacated in part and reversed and remanded in part.

1. Federal Courts ⇐825.1

Court of Appeals reviews order granting motion for new trial under abuse of discretion standard. Fed.Rules Civ.Proc.Rule 59(a), 28 U.S.C.A.

2. Federal Civil Procedure ⇐2331, 2339, 2345.1

New trial is warranted when jury has reached seriously erroneous result as evidenced by verdict being against weight of evidence, damages being excessive, or trial being unfair to moving party in some fashion such as proceedings having been influenced by prejudice or bias. Fed.Rules Civ.Proc. Rule 59(a), 28 U.S.C.A.

3. Federal Civil Procedure ⇐2334

Testimony by arrestee that she was denied privacy in her jail cell, that she was detained in her cell while it was sprayed with insecticide, and that she was unjustly and maliciously charged with obstructing justice, which was later changed to disorderly conduct, could not have influenced jury to return verdict against police officer on arrestee's excessive force claim and, thus, did not warrant new trial in arrestee's civil rights action; insecticide spraying occurred when officer was no longer on duty, and malicious prosecution and lack of privacy claims were distinct from excessive force claim. Fed.Rules Civ.Proc.Rule 59(a), 28 U.S.C.A.

4. Federal Civil Procedure ⇐2334

Any prejudice incited by irrelevant testimony of arrestee that she was denied privacy in her jail cell, that she was detained in her cell while it was sprayed with insecticide, and that she was unjustly and maliciously charged with obstructing justice, which was later changed to disorderly conduct, would have been cured by limiting instructions and, thus, testimony did not warrant new trial after jury returned verdict against police officer on arrestee's excessive force claim in civil rights action; district court specifically admonished jury to disregard any evidence that did not relate to excessive force or malicious prosecution claims. Fed.Rules Civ.Proc.Rule 59(a), 28 U.S.C.A.

5. Federal Civil Procedure ⇐2331

Although prejudice that affects fairness of proceeding can be grounds for new trial, motion for a new trial should be denied when

"seriously erroneous result" as evidenced by: (1) the verdict being against the weight of the evidence; (2) the damages being excessive; or (3) the trial being unfair to the moving party in some fashion, *i.e.*, the proceedings being influenced by prejudice or bias. *See Montgomery Ward & Co. v. Duncan*, 311 U.S. 243, 251, 61 S.Ct. 189, 194, 85 L.Ed. 147 (1940); *Cygnar v. City of Chicago*, 865 F.2d 827, 835 (7th Cir.1989); *Mallis v. Bankers Trust Co.*, 717 F.2d 683, 691 (2d Cir.1983).

[3] In the instant case, the district judge granted a new trial because he felt that the jury had been prejudiced by evidence that was allowed into the trial but was not related to the excessive force claim. The judge thought that the jury's prejudice had been demonstrated by its verdict—a verdict he felt was not supported by the evidence. Specifically, the judge believed that the jury improperly considered testimony by Holmes that (1) she was denied privacy in her jail cell, (2) she was detained in her cell while it was sprayed with insecticide, and (3) she was unjustly and maliciously charged with obstructing justice—a claim that was later changed to disorderly conduct.

However, there was little chance, given the nature of the claims, that the jury's verdict was affected by Holmes's testimony as to these incidents. For instance, Holmes' statement that she was forced to remain in her cell while it was sprayed with an insecticide would not have prejudiced Fabianich because the jury had been instructed earlier that the insecticide spraying incident did not happen until after Fabianich was off duty.[3] Thus, it would not have been likely that the jury would have held Holmes' allegation of this incident against Fabianich. Moreover, lack of privacy and malicious prosecution claims are distinctly different causes of action than an excessive force allegation and we will not assume, in the absence of evidence to the contrary, that the jury was unable to comprehend this fact. Indeed, in light of the fact that we often presume juries are capable of distinguishing evidence relating to separate defendants in multi-count multi-defendant drug conspiracy cases, it would be disingenuous for us to assume that a jury in this case was unable to distinguish the evidence relating to the different claims. *See, e.g., United States v. Sivils*, 960 F.2d 587, 594 (6th Cir.), *cert. denied*, 506 U.S. 843, 113 S.Ct. 130, 121 L.Ed.2d 84 (1992); *United States v. Gallo*, 763 F.2d 1504, 1526 (6th Cir.1985), *cert. denied*, 474 U.S. 1068, 106 S.Ct. 826, 88 L.Ed.2d 798 (1986) and 475 U.S. 1017, 106 S.Ct. 1200, 89 L.Ed.2d 314 (1986).

[4] Furthermore, even if the irrelevant evidence could have incited prejudice, we find that such prejudice would have been cured by the judge's limiting instructions to the jury. The district judge, at the close of all the evidence, read the jury the following instructions:

> During the course of trial certain issues were removed from the ultimate consideration of the jury. The court will instruct you on the claims and issues remaining. You are not to include in your deliberation any evidence introduced by either party which relates to any claim not specifically before you for consideration. You will receive at the conclusion of this trial and prior to your deliberations a copy of these instructions as well as a number of verdict forms. The verdict form will indicate the claim to be the subject of your verdicts. You must consider those alone and only that evidence relating to them. You shall not consider any claim not before you for decision even though evidence has been offered to support that claim. Nor shall you consider the evidence offered to support a claim not before you unless it is found by you to have bearing on a claim properly the subject of your deliberations as indicated in the course of these instructions.

Jury Instructions at 12. The jury was then given these instructions in writing to aid them in their deliberations.

[5] Although prejudice that affects the fairness of a proceeding can certainly be

3. Moreover, the judge also told the jury that they should only consider events which occurred on September 20, 1987. The insecticide spraying incident did not occur until the morning of September 21, 1987.