UNPUBLISHED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION

LAMONT O. DOUGLAS,	)	
	)	
Plaintiff,	)	Case No. 2:01CV70327
	)	
v.	)	**OPINION AND ORDER**
	)	
G. MEADE, ET AL.,	)	By: James P. Jones
	)	United States District Judge
Defendants.	)	

Lamont O. Douglas, Pro Se Plaintiff; Mark R. Davis, Senior Assistant Attorney General of Virginia, for Defendants.

The pro se plaintiff, a state prisoner, has filed a motion for a new trial in this § 1983 case following a jury verdict against him on his claim that he was assaulted by correctional officers. The jury also found in favor of a counterclaim by one of the officers and awarded the officer damages in the amount of $2,000,000. I will deny the plaintiff's motion for a new trial, but I will grant a remittitur of the counterclaim verdict to $250,000.

I

This action was initiated by Lamont O. Douglas, an inmate of Red Onion State Prison in Pound, Virginia, pursuant to 42 U.S.C.A. § 1983 (West 1994 & Supp.

2002), seeking damages for injuries allegedly resulting from violations of his federally-protected rights. One of the defendants, Jack McCarty, filed a counterclaim against Douglas seeking $100,000 damages based on a state law claim of assault and battery. A jury trial was held on January 27, 2003, and the jury returned a verdict in favor of the defendants and McCarty's counterclaim, awarding McCarty $2,000,000 in compensatory damages. On February 5, 2003, Douglas filed a timely Motion for New Trial and Remittitur of Damages and the defendants filed a response on February 21, 2003. The motion is now ripe for decision.[1]

The events in question occurred on August 22, 1999. Correctional Officer McCarty testified that while supervising prisoners as they left their cells and picked up their lunch trays, he had been suddenly attacked by inmate Douglas and stabbed seven times with a metal "shank" or home-made knife. The other correctional officers who are defendants responded to the assault and ordered Douglas to lay on the floor in a prone position. After Douglas complied, McCarty was transported to the prison's medical facility and then taken to a local hospital where he underwent emergency surgery to repair extensive damage to his ribs, chest, arms, and abdomen.

[1] I will dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not significantly aid the decisional process.

After McCarty was removed from the cell block, Douglas was secured in restraints by the remaining defendants and also transported to the prison's medical facility. Douglas alleged that while in transport, he had been threatened, punched, kicked, and shocked numerous times with Ultron electrical shock devices, all without justifiable cause. He also alleged that McCarty had threatened him earlier in the day and that McCarty had assaulted him with a shank, stabbing him in the arm, as he was attempting to get his lunch. Douglas further claimed that he had been acting in self-defense when he had attacked McCarty.

At trial the jury heard evidence from Douglas and two inmate witnesses on his behalf. Douglas testified that McCarty had brandished a weapon and then attacked him and that he was simply defending his own life after being stabbed in the arm by McCarty. The other witnesses for Douglas bolstered this story and also testified as to McCarty's harassment of the plaintiff. All of the named defendants testified at trial and called witnesses to present medical evidence relating to McCarty's injuries and Douglas' condition when he arrived at the medical facility. McCarty denied attacking the defendant or harassing him in any way. The other defendants denied all of the remaining allegations by Douglas and provided testimony that any injuries he had received had been the result of his altercation with McCarty or were minor injuries sustained in the attempt to subdue him. Additionally, the defendants claimed

that the Ultron device had been appropriately used, and only during Douglas' transport after he had refused to comply with their orders.

II

Douglas contends that a new trial ought to be granted because the jury's award of damages to McCarty was excessive; because the defendants failed to provide material requested in discovery that was later introduced as evidence at the trial, thus preventing him from properly presenting his case to the jury; and because the verdict was against the clear weight of the evidence.

The grant or denial of a motion for new trial is entrusted to the sound discretion of the district court. *See Cline v. Wal-Mart Stores, Inc.*, 144 F.3d 294, 305 (4th Cir. 1998). Pursuant to Federal Rule of Civil Procedure 59(a), "it is the duty of the judge to set aside the verdict and grant a new trial, if he is of the opinion that [1] the verdict is against the clear weight of the evidence, or [2] is based upon evidence which is false, or [3] will result in a miscarriage of justice . . . ." *Atlas Food Sys. and Services, Inc. v. Crane National Vendors, Inc.*, 99 F.3d 587, 594 (4th Cir. 1996) (quoting from *Aetna Casualty & Sur. Co. v. Yeatts*, 122 F.2d 350, 352-53 (4th Cir. 1941) (numerals added)). If it is concluded that the jury's award of damages is excessive, the court has the option of ordering a new trial nisi remittitur. *See Cline*, 144 F.3d at 305.

A

Douglas first contends that a new trial must be ordered because the jury's verdict exceeded the counterclaim's ad damnum clause. However, the plaintiff misapprehends the role of the ad damnum in a federal case. "It serves no practical purpose in a contested case since '[t]he propriety of the verdict is tested by the evidence, not the *ad damnum* clause.'" *Dotson v. Ford Motor Co.*, 218 F. Supp. 2d 815, 816 (W.D. Va. 2002) (quoting *Smith v. Brady*, 390 F.2d 176, 177 (4th Cir. 1968)). It is not necessary for a party to specifically claim an amount of general compensatory damages. Even if a specific amount is requested, a jury may still award an amount greater than that demanded in the complaint. *See* 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure*, § 1255, at 371 (2d ed. 1990).

Nevertheless, I find that while the evidence at trial justified the jury awarding compensatory damages, the amount of the award was excessive.

The evidence before the jury that supported McCarty's damage claim is easily summarized. In his evidence in chief, McCarty testified to the extensive injuries he had received from Douglas' attack and provided medical records to document these injuries. Additionally, numerous credible witnesses testified that Douglas had attacked McCarty without provocation or justification and had caused the injuries that

he sustained. Finally, Douglas admitted that he had stabbed the defendant with a metal shank in his upper torso.

When considering a state law claim, the district court "must apply state law standards to determine whether a verdict is excessive." *Steinke v. Beach Bungee, Inc.*, 105 F.3d 192, 197 (4th Cir. 1997). Virginia law is clear in that the

> [c]ircumstances which compel setting aside a jury verdict include a damage award that is so excessive that it shocks the conscience of the court, creating the impression that the jury was influenced by passion, corruption or prejudice; that the jury has misconceived or misunderstood the facts or the law; or the award is so out of proportion to the injuries suffered as to suggest that it is not the product of a fair and impartial decision.

Poulston v. Rock, 467 S.E. 2d 479, 481 (Va. 1996). When provided an opportunity to offer evidence regarding damages, McCarty presented no evidence that he suffered any permanent injury from the assault by Douglas. In addition, there was no evidence that he incurred any medical expenses or lost income, and McCarty expressly disclaimed any mental anguish as a result of the incident. Thus the jury could only consider evidence of the injury itself and any accompanying pain and suffering that directly resulted from the injury.

Under these circumstances, I find that the maximum award permissible under the evidence is $250,000, and I will grant a new trial unless McCarty agrees to a remittitur of the verdict to that amount. There is no indication that the jury's

determination of Douglas' claim was influenced by its excessive verdict, and in accord with *In re Board of County Supervisors*, 143 F.3d 835, 842 (4th Cir. 1998), the new trial may be as to both Douglas' liability and McCarty's damages or limited to the issue of damages alone, at the election of McCarty.

B

Douglas next contends that the jury verdict must be set aside and a new trial ordered because the defendants failed to produce requested documents in discovery that were later introduced at trial. Specifically, the plaintiff refers to a statement that he provided to Special Agent J.E. Scott of the Virginia Department of Corrections, following the attack on McCarty, which was introduced at trial as defendants' exhibit 7. Upon review of the four requests for discovery filed by Douglas (Docs. No. 11, 26, 57, and 68), it is clear that he made no request for the production of any statements made by him.[2] More importantly, Douglas did not object to the introduction of this statement during trial.

As is clear, "[a] motion for new trial should not be granted . . . where the moving party has failed to timely object to the alleged impropriety giving rise to the motion." *Dennis v. General Elec. Corp.*, 762 F.2d 365, 367 (4th Cir. 1985). For this

[2] The rules require pretrial disclosure of non-impeachment exhibits, *see* Fed. R. Civ. P. 26(a)(3), but neither side filed any such disclosure.

reason, and because Douglas can show no prejudice by the fact that the statement was not produced prior to trial, I will deny Douglas' motion for a new trial on this ground.

Douglas also contends that the defendants failed to produce McCarty's medical records from St. Mary's Hospital in discovery, thereby preventing the plaintiff from fully presenting his case to the jury. Douglas made no specific request for such materials in the discovery process and therefore the defendants were not in violation of any discovery request, order, or rule in not providing such documentation.

Although not expressly pleaded as such, I will also treat Douglas' request as a motion for a new trial based on newly discovered evidence under Rule 59. The standard for governing relief on the basis of newly discovered evidence requires that a party demonstrate:

> (1) the evidence is newly discovered since the judgment was entered; (2) due diligence on the part of the movant to discover the new evidence has been exercised; (3) the evidence is not *merely cumulative or impeaching*; (4) the evidence is material; and (5) the evidence is such that is likely to produce a new outcome if the case were retried, or is such that would require the judgment to be amended.

Boryan v. United States, 884 F.2d 767, 771 (4th Cir. 1989) (emphasis added).

Even if I were to accept the plaintiff's contentions that the medical records are material, he discovered the evidence after trial, and he diligently attempted to discover the evidence before trial, I do not believe that the evidence in question was

such that it is likely to have produced a new outcome if the case were to be retried. In fact, these medical records are simply a recitation of McCarty's wounds and the treatment provided to him at St. Mary's Hospital. This evidence is cumulative in that it reiterates the testimony of McCarty and the other medical records introduced at trial. Finally, as admitted by the plaintiff in his motion and his Reply to Defendant's Response, the evidence that he now wishes to introduce would only be used to impeach McCarty's testimony regarding the wounds he received on the day of the attack.

As is clear from *Boryan*, newly discovered evidence that is cumulative or only to be used for impeachment purposes will not be grounds for the ordering of a new trial.

C

Finally, Douglas contends that the jury's verdict is against the weight of the evidence. Douglas presented little evidence—aside from the his own testimony—corroborating his allegations of mistreatment at the hands of the defendants. Additionally, there was significant evidence that the defendants handled the situation in a professional and orderly manner and only inflicted minor injuries on Douglas in accordance with their attempts to restrain and transport him from his cell block to the medical unit. It was also well within the jury's province to resolve the conflicts in the

evidence as to the altercation with McCarty. Accordingly, there was sufficient evidence for the jury to find as it did as to liability and I will not disturb the verdict in that regard.

III

For the foregoing reasons, it is **ORDERED** as follows:

1. The motion for a new trial as to the Counterclaim is conditionally granted, provided that if the counterclaimant Jack McCarty agrees to accept a remittitur of the jury's verdict to $250,000, the motion will be denied;

2. The counterclaimant McCarty must file within ten (10) days of the date of entry of this Opinion and Order his notice of acceptance or rejection of the remittitur, and if rejected, whether he elects a new trial as to the counterclaim on Douglas' liability and McCarty's damages or on the issue of damages alone;

3. The motion for a new trial as to the claims of the plaintiff Douglas is denied; and

4. Upon the counterclaimant's notice as described above, the court will enter such further orders as are necessary under the circumstances.

Enter: April 10, 2003

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United States District Judge