

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-3954

VALERIE DANIELS, individually and in her own right and as
parent and/or guardian of Christopher Michael Daniels;
CHRISTOPHER MICHAEL DANIELS, individually

v.

STATE OF DELAWARE, by and through its agents, servants and employees;
RUDOLPH HAWKINS, individually and in his official capacity
as a Delaware Corrections Officer; PAUL HOWARD, individually
and in his official capacity as Warden of Women's
Correctional Institute of Delaware; GRACE MARTIN,
individually and in her official capacity as a Deputy Warden
of the Women's Correctional Institute of Delaware; STANLEY
TAYLOR, JR., individually and in his official capacity as Chief
of The Bureau of Prisons, for the State of Delaware; ROBERT
WATSON, individually and in his official capacity as
Commissioner of Corrections for the State of Delaware;
THOMAS G. BAILOR, individually and in his capacity as
Internal Affairs Officer for the Department of Corrections
for the State of Delaware; JACK SINES, individually and in
his capacity as Internal Affairs Officer for the Department
of Corrections for the State of Delaware; STATE OF DELAWARE
DEPARTMENT OF CORRECTIONS, all individually, jointly and severally

Rudolph Hawkins,

Appellant

On Appeal from the United States District Court
for the District of Delaware
(D.C. Civ. No. 96-00009)
Honorable Joseph J. Farnan, Jr., District Judge

Argued November 7, 2002

BEFORE: MCKEE and GREENBERG, Circuit Judges,
and LIFLAND, District Judge*

(Filed: December 4, 2002)

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OPINION OF THE COURT

GREENBERG, Circuit Judge.

*Honorable John C. Lifland, Senior Judge of the United States District Court for the District of New Jersey, sitting by designation.

Rudolf Hawkins appeals from an order entered on October 1, 2001, denying his post-trial motion for a judgment notwithstanding the verdict, which we treat as seeking a judgment as a matter of law, and for a remittitur of punitive damages. Plaintiff-appellee, Valerie Daniels, an inmate at the Women's Correctional Institute at New Castle, Delaware, where Hawkins was a correctional officer, brought this action against Hawkins and other defendants charging that in or about the week of March 7, 1995, Hawkins, while on duty and within the scope of his employment, forcibly engaged in sexual intercourse with her causing her to become pregnant and then to deliver a male child. Daniels predicated the action on 42 U.S.C. § 1983 and other federal and state law but, after the other defendants obtained summary judgments, the case was tried to a jury only against Hawkins on the section 1983 charge.

At the trial Daniels testified that Hawkins had sexual relations with her but Hawkins testified that he did not do so. Two DNA tests were conducted to determine the paternity of Daniels' child. Daniels, however, had not properly identified an expert witness regarding DNA evidence and thus could not introduce the evidence to show that Hawkins was the child's father. Nevertheless at a pretrial hearing the court ruled that one test could be admitted to demonstrate that when he was "confronted" with the results of the test, which tended to show that he was the father of Daniels' child, "he left his job which is evidence of his liability here on this sexual act." App. at 201. Thus, the court viewed the evidence as admissible to show Hawkins' "state of mind."

In fact, there was evidence at the trial that Hawkins was told that the DNA test

showed that there was a very high possibility that he was the child's father and when confronted with this information, he resigned his position. Hawkins testified that he "only resigned because I was coerced" when he was given the option of being arrested or resigning. App. at 248-49.

In its charge to the jury the district court gave a limiting instruction consistent with its pretrial ruling on the use of the DNA evidence as follows:

During the course of this trial, you heard testimony regarding a DNA test. You are not entitled to consider the results of the DNA test in determining whether the Defendant, Rudolph Hawkins, had sexual relations with the Plaintiff, Valerie Daniels, or whether Mr. Hawkins is the father of Ms. Daniels's child. Rather, you are only to consider the DNA evidence in determining what Mr. Hawkins's state of mind was when he resigned from his employment with the Wilmington Correctional Institute. In other words, you can only consider the DNA evidence when determining why Mr. Hawkins decided to resign.

App. at 135. Thus, it is clear that the court did not want the jury to consider the DNA evidence to establish that Hawkins was the father but to consider it to demonstrate that he was aware that there was evidence that he was the father when making his determination to resign.

The district court submitted the case to the jury with the following substantive instruction:

All individuals have a constitutional right to be free from deliberate and arbitrary use of government power. If you find that the Defendant, Rudolph Hawkins, had sexual relations with the Plaintiff, Valerie Daniels, while Mr. Hawkins was employed at the Wilmington Correctional Institute, and while Ms. Daniels was a prisoner, then you are instructed to conclude that Mr. Hawkins did violate the constitutional rights of Ms. Daniels.

You have heard evidence during the course of this trial regarding whether Ms. Daniels consented to having sexual relations with a prison guard. The issue of whether or not Ms. Daniels consented to having sexual relations is not an issue in this case; if you determine that Mr. Hawkins had sexual relations with Ms. Daniels, you are to conclude that Mr. Hawkins violated Ms. Daniels's constitutional rights.

App. at 136. Accordingly, paternity was not the ultimate issue, though there can be no doubt that if Daniels established that Hawkins was the father of her child she would have proven that he violated her constitutional rights. In fact, the jury found in favor of Hawkins and returned a verdict in her favor for \$25,000 compensatory damages and \$100,000 punitive damages. After the court denied Daniels' post-trial motion he appealed.

In this case the district court had jurisdiction under 28 U.S.C. §§ 1331, 1343 and 1367 and we have jurisdiction under 28 U.S.C. § 1291. The parties agree that we use an abuse of discretion standard on this appeal as they view the case as involving a weighing process with respect to the admission of the contested DNA evidence under Fed. R. Evid. 403. See, e.g., United States v. Mathis, 264 F.3d 321, 326-27 (3d Cir. 2001). It appears to us, however, that the DNA evidence in the context of the trial here was simply inadmissible and thus the court erred as a matter of law in admitting it. We need not dwell, however, on this point as obviously a court would abuse its discretion if it admitted inadmissible evidence.

We also make another preliminary point. As we have indicated, Hawkins did not move for a new trial in the district court. Rather, he moved for a judgment as a matter of law. App. at 141. Yet in his motion he stated that he was proceeding pursuant to Fed. R.

Civ. P. 59 which deals with new trials rather than Fed. R. Civ. P. 50 which deals with motions for judgment as a matter of law. We have concluded that, in fact, Hawkins is entitled to a new trial but plainly is not entitled to a judgment as a matter of law because quite aside from the disputed DNA evidence there was direct evidence supporting the verdict including Daniels' testimony that Hawkins had nonconsensual sex with her in her cell.

In the circumstances, we will treat Hawkins' post-trial motion as seeking a new trial. We see no prejudice to Daniels in treating it this way, particularly inasmuch as Rule 50 provides that on a renewed motion for judgment after trial if a verdict has been returned the court may order a new trial. Fed. R. Civ. P. 50(b)(1)(B). Moreover, in his brief on this appeal Hawkins seeks "a new trial on liability," Br. of Appellant at 30, and Daniels does not suggest that he is barred procedurally from obtaining that remedy.

On the merits we conclude that we must reverse and remand the case to the district court for a new trial. The district court in denying Hawkins' post-trial motion for a judgment as a matter of law explained that "[t]he trial came down to whether the jury believed [Daniels'] version of the facts or [Hawkins'] version of the facts, and [Hawkins'] state of mind at the time he resigned was of critical importance in assessing the credibility of [Hawkins'] testimony . . . and . . . the jury was instructed accordingly." App. at 6-8.

We agree with the district court that the jury had to decide whether Daniels' testimony that Hawkins had sex with her was true and obviously in making this determination had to consider Hawkins' testimony that he never had sex with her. We are

quite unable to understand, however, how Hawkins' state of mind when he resigned assisted the jury in making this determination. Hawkins knew whether he had had sex with Daniels before he was confronted with the DNA evidence. In fact, the only thing the DNA evidence could show with respect to Hawkins' state of mind was that he knew there was a strong case against him. But that evidence did not in any way when used for that purpose tend to support a finding that Hawkins in fact had sex with Daniels. Therefore the evidence had no "tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." See Fed. R. Evid. 401. Accordingly, as used here the DNA evidence was not relevant and was not admissible.

Daniels correctly points out that courts "regularly admit otherwise inadmissible evidence for a limited purpose," citing United States v. Werme, 939 F.2d 108, 114 (3d Cir. 1991). The problem here, however, is that the DNA evidence was not admissible for the limited purpose to which the court consigned it. Furthermore, we cannot possibly conclude that the admission of the evidence was harmless error as plainly it was highly prejudicial to Hawkins and, indeed, may have been a significant factor that the jury considered in arriving at its result. See Becker v. Arco Chem. Co., 207 F.3d 176, 179 (3d Cir. 2000); McQueeney v. Wilmington Trust Co., 779 F.2d 916, 923-27 (3d Cir. 1985). Thus, we must reverse and order a new trial.

We close our discussion of the DNA evidence, however, with the following observation. We are not suggesting that if at the retrial Daniels lays a proper foundation for

the evidence that the results of DNA testing will be inadmissible. After all, if, as appears to be the case, the DNA testing shows by well over a 99% probability that Hawkins was the father of Daniels' child it is not immediately apparent to us why such proof, considering when the child was born and when Daniels was incarcerated, would not tend to show that he had sex with Daniels in the prison. But we do not decide that issue at this time as it is not before us.

Hawkins also challenges the extent of the punitive damages award against him. It occurred to us that inasmuch as a court of appeals may remand a case for a new trial on only certain issues that it might be possible for us to allow the damage verdict to stand and remand the case for a new trial on liability only. See Childers v. Joseph, 842 F.2d 689, 699 (3d Cir. 1988). If we contemplated ordering such a limited remand we would address Hawkins' appeal on the damages issue. We have determined, however, that we should order a new trial on all issues as we cannot say with certainty that this case meets the exacting criteria for a limited retrial we discussed in Childers. We are encouraged to reach this result by the fact that Daniels does not suggest that if we reverse and order a new trial we should limit the trial to a determination of liability.

For the foregoing reasons we will reverse the order of October 1, 2001, and will remand the matter to the district court for a new trial on all issues. The parties will bear their own costs on this appeal.

TO THE CLERK:

Please file the foregoing not precedential opinion.

/s/ Morton I. Greenberg

Circuit Judge

DATED: December 4, 2002