

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 02-1188

Lee Marre Johnson,

Appellant,

v.

J. Fortman; Chris McElroy;
Milton Weaver,

Appellees,

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* Appeal from the United States
* District Court for the Eastern
* District of Arkansas.

* **[UNPUBLISHED]**

Submitted: October 7, 2002
Filed: October 9, 2002

Before LOKEN, BYE, and RILEY, Circuit Judges.

PER CURIAM.

Lee Marre Johnson brought this 42 U.S.C. § 1983 action against West Memphis, Arkansas police officers J. Fortman, Chris McElroy, and Milton Weaver, alleging that they had used excessive force in arresting him. The district court¹ dismissed Fortman before trial because Johnson had failed to serve him and granted Weaver judgment as a matter of law at the close of Johnson's case. The jury returned a verdict for McElroy. On appeal, Johnson argues that the district court erred in

¹The HONORABLE STEPHEN M. REASONER, United States District Judge for the Eastern District of Arkansas.

dismissing Fortman, defendants made inconsistent statements at trial, he received ineffective assistance from his court-appointed attorney, and he was prejudiced by an all-white jury comprised of eight jurors instead of twelve.

The district court did not abuse its discretion in dismissing Fortman for lack of service. See Bullock v. United States, 160 F.3d 441, 442 (8th Cir. 1998) (standard of review). Johnson's claims regarding witness credibility and the importance of documentary evidence were for the jury to consider. See Billingsley v. City of Omaha, 277 F.3d 990, 993 (8th Cir. 2002); United States v. Hill, 249 F.3d 707, 714 (8th Cir. 2001). Eight-member juries are permissible in civil cases. See Fed. R. Civ. P. 48. Johnson's complaint about the racial composition of the jury fails to state a claim, see Batson v. Kentucky, 476 U.S. 79, 85, 96-97 (1986), and he has no constitutional or statutory right to effective assistance of counsel in this civil case, see Taylor v. Dickel, 293 F.3d 427, 431 (8th Cir. 2002). Finally, we decline to consider the arguments raised for the first time in his reply brief. See Neb. State Legislative Bd., United Transp. Union v. Slater, 245 F.3d 656, 658 n.3 (8th Cir. 2001).

The judgment of the district court is affirmed.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.