

Harold Gage, in his individual and official capacity; Rick Holland, in his individual and official capacity; Josh Chapman, in his individual and official capacity; Richard Conner, in his individual and official capacity; Charles Robbins, in his individual and official capacity; Eric Warzecha, in his individual and official capacity; Tim Srader, in his individual and official capacity,

Defendants,

Wade Porter, in his individual and official capacity; Captain Jones, in his individual and official capacity,

Appellees,

Captain Petray, in his individual and official capacity,

Defendant.

Submitted: August 1, 2011
Filed: August 4, 2011

Before WOLLMAN, SMITH, and GRUENDER, Circuit Judges.

PER CURIAM.

Arkansas inmate Robert Avery appeals the district court's¹ dismissal of his 42 U.S.C. § 1983 action following an evidentiary hearing. Avery, formerly a pretrial detainee at the Benton County Detention Center (BCDC), filed an action against Benton County officials and SWAT team members, and BCDC officers. He claimed as relevant that on January 16, 2007, the SWAT team used excessive force in arresting and interrogating him, and officials had not properly trained and supervised the team; and that on January 18, BCDC officers used excessive force against him, and Captain Hunter Petray had not properly trained and supervised the officers.

Because Avery made a timely jury demand only as to his claim against Petray, we hold that the court did not err in denying him a jury trial on the claims against all other defendants. See Fed. R. Civ. P. 38 (jury demand must be made within 14 days after last pleading directed to issue is served); Shelton v. Consumer Prods. Safety Comm'n, 277 F.3d 998, 1011 (8th Cir. 2002) (where only thing new about amended complaint was addition of party, only that party had right to jury arising out of amended complaint; other parties had already waived right to jury by not making demand after earlier complaint).

Upon careful review, we further hold that the court did not err in granting summary judgment to Petray, see Mason v. Corr. Med. Servs., Inc., 559 F.3d 880, 884-85 (8th Cir. 2009) (de novo standard of review), or in dismissing Avery's remaining claims after an evidentiary hearing, see Hartsfield v. Colburn, 491 F.3d 394, 395-96 (8th Cir. 2007) (where there is no jury demand, evidentiary hearing before magistrate judge "is the equivalent of a bench trial"; appellate court reviews district court's factual findings for clear error and its legal conclusions de novo).

¹The Honorable Jimm Larry Hendren, Chief Judge, United States District Court for the Western District of Arkansas, adopting the report and recommendations of the Honorable James R. Marschewski, United States Magistrate Judge for the Western District of Arkansas.

Accordingly, the judgment is affirmed. See 8th Cir. R. 47B.
