[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 22-12673

Non-Argument Calendar

GUSTAVO A. ABELLA,

Plaintiff-Appellant,

versus

TOWN OF MIAMI LAKES,
TOWN OF MIAMI LAKES MAYOR,
Michael Pizzi, Individually and Official Capacity,
MIAMI-DADE COUNTY,

Defendants,

ALEX REY,
Individually and in Official Capacity,
OFFICER JUAN F. RODRIGUEZ,

individually and Official Capacity,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:18-cv-24889-DLG

Before WILSON, BRASHER, and ABUDU, Circuit Judges.

PER CURIAM:

Gustavo Abella appeals the district court's exclusion of part of his testimony and admission of certain email evidence at trial. He also appeals the district court's dismissal of his section 1983 claim against Alex Rey and its denial of his motion for a new trial on the grounds that the verdict was against the weight of the evidence. Because the district court committed no reversible error, we affirm in full.

I.

Abella, a longtime resident of Miami Lakes, Florida, believes that he is a victim of the local government's decade-long conspiracy against him. After other courts awarded significant attorney's fees against him in his previous lawsuits, and after town manager Alex Rey obtained a restraining order prohibiting him from

entering Town Hall, Abella began placing a political sign on his vehicle accusing Rey of corruption. In the instant case, Abella avers that Rey and community officer Juan Rodriguez conspired to deprive him of his First Amendment rights. Abella alleged that he would see Rodriguez drive near him and believed that, on occasion, Rodriguez was waiting for him to exit his apartment or was otherwise blocking his path. On two occasions when their vehicles were next to each other in traffic, Rodriguez held up his body camera as if he were filming Abella. At trial, Rodriguez used his timesheets to corroborate his testimony that he often was not where Abella claimed he was during their alleged encounters. He did admit to holding up his body camera, explaining that when he did so, Abella would "behave" and refrain from making his usual offensive gestures.

Only two of the amended complaint's five counts are relevant to this appeal. In Count II, Abella sued Rodriguez under 42 U.S.C. § 1983 for violating his First Amendment rights when he repeatedly harassed and intimidated Abella in an attempt to remove the sign from his vehicle. Count III likewise asserted a claim under section 1983 against Rey, alleging that he planned to have Abella arrested for campaigning for a political opponent and that he exhibited deliberate indifference to Rodriguez's actions. The district court dismissed Count III against Rey because Abella failed to state a claim for First Amendment retaliation and, in the alternative, because Rey was entitled to qualified immunity. Abella and Rodriguez proceeded to trial on Count II.

At trial, the district court rejected Abella's request that it redact the names of hundreds of prominent people and organizations whom Abella copied to emails accusing Rodriguez of various crimes and misconduct. The district court found evidence of those addressees relevant to Rodriguez's defense that Abella was actually the one harassing him. Additionally, when Abella testified at trial about an interaction between him and another officer, the district court sustained a hearsay objection and prohibited Abella from reciting the officer's remarks. Unlike Abella, that officer was permitted to testify about the conversation.

After a three-day trial, the jury returned a verdict with answers to special interrogatories. They concluded that although Rodriguez did harass Abella, the displayed political sign was not a motivating factor. Accordingly, the jury found in favor of Rodriguez. Abella moved for a new trial. After the district court denied the motion, Abella timely appealed.

II.

First, we will consider Abella's argument that the district court erred in dismissing his claim against Rey for First Amendment retaliation. Rey previously moved to dismiss Abella's appeal against him, arguing that we lacked jurisdiction because the case caption in the notice of appeal did not include Rey's name. We correctly denied the motion because the caption did not imply an intent to limit the scope of the appeal to only Rodriguez. Unlike the appellants in *Osterneck*, who specified only four of five defendants in the title and body of their notice, Abella did not expressly name

the defendants in his notice. *Osterneck v. E.T. Barwick Indus., Inc.*, 825 F.2d 1521, 1524, n.3 (11th Cir. 1987), *aff'd sub nom. Osterneck v. Ernst & Whinney*, 489 U.S. 169 (1989). Although only Rodriguez was identified in the caption, Abella simply used the same caption the district court used in its final judgment and order denying his motion for a new trial. Because a notice "encompasses all orders that, for purposes of appeal, merge into the designated judgment or appealable order," even if the notice does not designate those merged orders, we have jurisdiction to consider the district court's dismissal of the claim against Rey. Fed. R. App. P. 3(c)(4).

We review a district court's order granting a motion to dismiss for failure to state a claim de novo. *Hopper v. Solvay Pharms., Inc.*, 588 F.3d 1318, 1324 (11th Cir. 2009). "We accept the factual allegations in the complaint as true and construe them in the light most favorable to the plaintiff." *Echols v. Lawton*, 913 F.3d 1313, 1319 (11th Cir. 2019).

The district court properly dismissed Count III for failing to state a claim for First Amendment retaliation. Although Abella did engage in protected speech by campaigning for Rey's political opponent, he failed to allege facts that Rey's conduct adversely affected his protected speech or that a causal connection existed between his speech and any retaliatory conduct. *See id.* at 1320. Abella allegedly left the campaign location based on an anonymous second-hand rumor that Rey intended to have him arrested for some unknown reason. The complaint failed to include any allegations of facts that "would likely deter a person of ordinary firmness from

the exercise of First Amendment rights." *Bailey v. Wheeler*, 843 F.3d 473, 481 (11th Cir. 2016). For example, there were no allegations that Rey communicated with Abella in any way before or after Rey arrived at the campaign location, that any law enforcement officers were present, or that Rey could have ordered the police to arrest Abella if he wanted. Accordingly, there was no actual or implied threat of arrest. *See Turner v. Williams*, 65 F.4th 564, 580 (11th Cir. 2023). Because we affirm the district court's dismissal for failing to state a claim, we need not address its secondary finding on qualified immunity.

III.

Next, we will consider the district court's evidentiary rulings at the Rodriguez trial. We review for an abuse of discretion, affirming the district court unless the ruling rests upon clearly erroneous findings of fact, conclusions of law, or applications of law to fact. *Furcron v. Mail Centers Plus, LLC*, 843 F.3d 1295, 1304 (11th Cir. 2016). We will affirm even if the district court committed an error if that error did not affect the substantial rights of the parties. *Id.* When the effect on the verdict is uncertain, a party fails to show the error affected his substantial rights. *See United States v. Rodriguez*, 398 F.3d 1291, 1299 (11th Cir. 2005).

Abella argues that the district court erred in sustaining a hearsay objection to his testimony about statements another officer made to him, despite permitting the officer to testify at trial about their conversation. Assuming without deciding that the hearsay ruling was incorrect, any such error was harmless because it did

not have a substantial influence on the outcome of the case. *United States v. Frazier*, 387 F.3d 1244, 1266 n.20 (11th Cir. 2004). Abella does not even attempt to argue that the admission of his testimony would have likely changed the verdict. Instead, he contends that "[t]here are any number of legitimate reasons" why he would be able to provide "different details" at trial about the conversation with the officer. But beyond this cursory argument, there is no indication that Abella's substantial rights were affected by the hearsay ruling. Abella's trial counsel barely cross-examined the testifying officer, even though cross-examination is the principal means by which Abella could have tested the truth of the officer's testimony. *United States v. Mastin*, 972 F.3d 1230, 1239 (11th Cir. 2020). The jury also learned that Rodriguez was not even at the scene of the interaction. Moreover, a video recording of the incident confirmed the officer's account. Because there is no indication that the hearsay ruling affected Abella's substantial rights, we affirm the district court's ruling.

Abella also argues that the district court erred in admitting his email complaints without redacting the names of certain recipients because that evidence was not relevant and constituted impermissible character evidence. Although Federal Rule of Evidence 608(b) prohibits extrinsic evidence solely designed to attack a witness's character for truthfulness, it permits evidence to demonstrate bias or undercut a witness's credibility. *United States v. Burnette*, 65 F.4th 591, 606–07 (11th Cir. 2023). We have recognized that the line between evidence used to impeach a witness because he lacks credibility and evidence used to show he tends to lie is

hazy. *Id.* at 607. For this reason, we are reluctant to hold that a district court abuses its discretion when deciding Rule 608(b) issues. *Id.*

Abella sent emails accusing Rodriguez of various crimes to hundreds of prominent members of the government and media, such as former President Trump, FBI offices, local news networks, the New York Times, Sean Hannity, Roger Stone, and Infowars. Evidence of those recipients was relevant to Rodriguez's defense that Abella was the one engaging in harassing behavior. It also arguably demonstrated Abella's lack of credibility and bias as a witness. Because Abella accused Rodriguez of a litany of salacious crimes to prominent members of the government and media, a reasonable jury could infer that Abella was a biased witness with a deep animosity towards him. Because we cannot say that the court abused its discretion, we affirm the district court's decision not to redact the email addresses.

IV.

Abella's final argument on appeal is that the district court erred in denying his motion for a new trial because the jury's second interrogatory answer was against the manifest weight of the evidence. Whether to grant or deny a new trial based on the weight of the evidence "is within the sound discretion of the trial court." *United States v. Martinez*, 763 F.2d 1297, 1312 (11th Cir. 1985). We may only reverse if the trial court clearly abused that discretion, *id.*, which is a "particularly appropriate" standard "where a new trial is denied and the jury's verdict is left undisturbed." *Rosenfield v.*

Wellington Leisure Prods., Inc., 827 F.2d 1493, 1498 (11th Cir. 1987). "The evidence must preponderate heavily against the verdict, such that it would be a miscarriage of justice to let the verdict stand." *Martinez*, 763 F.2d at 1313. We have explained that these motions are disfavored, and courts should grant them only in exceptional cases. *Id.*

The district court did not abuse its discretion in denying the motion for new trial because the jury's verdict was not against the great weight of the evidence. Abella admits in his brief that the case "largely came down to which version of evidence—Mr. Abella's or Rodriguez's—the jury believed." In reviewing a district court's denial of a motion for a new trial, we have a duty to safeguard the role of the jury. *Rabun v. Kimberly-Clark Corp.*, 678 F.2d 1053, 1061 (11th Cir. 1982). It is for the jury, not the court, to weigh conflicting evidence and determine witness credibility. *Yates v. Pinellas Hematology & Oncology, P.A.*, 21 F.4th 1288, 1304 (11th Cir. 2021).

Based on our review of the record, there are many conceivable reasons the jury could have found Rodriguez more credible than Abella. Rodriguez presented evidence that Abella was biased. Abella was unable to pay the judgments for attorney's fees from previous cases and therefore had a financial reason to manufacture the claims. He also had a deep animosity for Rodriguez and accused him of a litany of unrelated crimes to prominent people in the government and media. Abella's demeanor during his testimony at trial also could have undermined his credibility with the jury. He constantly needed his memory refreshed, and the court had to

chastise him dozens of times for failing to answer direct questions. Because the verdict was not against the great weight of the evidence, we affirm the district court's denial of Abella's motion for new trial.

V.

For the foregoing reasons, the district court is **AFFIRMED**.