[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 22-11852

Non-Argument Calendar

HOLLEY JONES,

Plaintiff-Appellant,

versus

ANDREW BARLOW,
CHRISTIAN ROBLES,

Defendants- Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 2:19-cv-00114-JES-NPM

Before NEWSOM, GRANT, and BRASHER, Circuit Judges.

PER CURIAM:

This appeal follows a jury verdict for officers Christian Robles and Andrew Barlow on Holley Jones's excessive force claims against them for tasing him. Jones raises two issues on appeal. First, he contends the district court erred denying his motion for a new trial on the ground that the verdict was against the weight of the evidence. Second, he argues that, although he failed to object at trial, the district court plainly erred by admitting testimony from non-party witnesses that Jones contends were mere legal conclusions. We disagree with both arguments and affirm.

First, the district court did not abuse its discretion by denying Jones's motion for a new trial. A district court properly denies a motion for a new trial when, after independently weighing the evidence, the court concludes that the verdict is not inconsistent with the great weight of the evidence. *Ramsey v. Chrysler First, Inc.*, 861 F.2d 1541, 1544 (11th Cir. 1988). We review the denial of a motion for a new trial for abuse of discretion. *Williams v. Valdosta*, 689 F.2d 964, 974 (11th Cir. 1982). "Deference must be given to the judgment of the trial judge, who observed the witnesses and considered the evidence 'in the context of a living trial.'" *Ramsey*, 861 F.2d at 1544 (quoting *Shows v. Jamison Bedding*, 671 F.2d 927, 930 (5th Cir. 1982)).

Jones contends the verdict for the officers is against the weight of the evidence because video evidence clearly contradicts the officers' testimony that Jones tried to fight them, which they testified was their justification for tasing Jones. Specifically, he argues the officers' use of force was excessive because he did not threaten them. The officers respond that the district court did not abuse its discretion because the video evidence is open to conflicting interpretations; therefore, the officers' testimony does not directly contradict it. Jones chiefly relies on *Scott v. Harris*, 550 U.S. 372 (2007), to support his argument. To be sure, the Supreme Court admonished in *Scott* that courts should not credit one party's version of events that is "blatantly contradicted by the record, so that no reasonable jury could believe it." *Scott*, 550 U.S. at 380. But in *Scott*, the video evidence not only conflicted with the version of events that one party offered. *Id.* at 378-80. The video left no doubt that the party's story was unbelievable. *See id.*

Here, a jury viewed the video evidence roughly 100 times. The jury found for Barlow and Robles. The district court ruled that finding was consistent with the great weight of the evidence. After viewing the video, we agree.

The video from Robles's and Barlow's bodycams is open to interpretation. The video shows that Jones went back inside a 7-Eleven immediately after he complied with the officers' request that he follow them outside. As Jones headed back inside, Barlow followed Jones, telling him to stay outside with the officers. As Jones passed through the 7-Eleven door on his way back into the

store, he turned back toward officer Barlow, putting himself face-to-face with Barlow in the 7-Eleven doorway. As Jones turned toward Barlow, Barlow appears to try to grab his arm to stop him from re-entering the store, but Jones resisted. Then, Jones turned and sprinted toward a patron standing at the 7-Eleven counter. Barlow drew his taser after the doorway encounter and fired it after Jones reached the patron standing at the counter. Eight seconds passed between the time Jones first touched the 7-Eleven door to when Barlow fired his taser.

We cannot conclude that this video evidence directly contradicts the officers' testimony that Barlow tried to fight them. To begin, Jones touched officer Robles several times inside the store before Jones complied with the officers' request that he come outside with them. Jones touched Robles even after Robles instructed Jones not to touch him. Then, Jones assumed a threatening stance toward Barlow in the doorway as the two grabbed at each other. And finally, after resisting the officers' efforts to keep him outside, Jones ran directly at a 7-Eleven patron at the store counter.

Whether an officer's use of force is objectively reasonable depends on, among other things, whether a suspect poses a threat to an officer or someone else. *Stryker v. City of Homewood*, 978 F.3d 769, 773 (11th Cir. 2020). One reasonable interpretation of the video evidence is that Jones was a potential threat to Barlow and the store patron when Barlow tased him. We cannot say the district court abused its discretion by concluding that the jury's verdict for the officers was not against the great weight of the evidence.

Second, Jones argues that the district court plainly erred by admitting—without objection from Jones—witness testimony amounting to legal conclusions. But Jones fails to satisfy the lofty threshold for plain error in a civil case.

Civil plain error "require[s] a greater showing of error than in criminal appeals." *Evans v. Ga. Reg'l Hosp.*, 850 F.3d 1248, 1257 (11th Cir. 2017). "[W]e will only review a waived objection, for plain error, if necessary in the interests of justice." *Id.* Here, Jones does not argue that correction of the purported error is necessary in the interests of justice. Instead, he argues that the testimony's admission impacted the outcome of the district court proceedings. Whether a plain error impacts the outcome of the proceedings is insufficient to find civil plain error. *See United States v. Olano*, 507 U.S. 725, 734 (1993); *United States v. O'Keefe*, 461 F.3d 1338, 1348 n.10 (11th Cir. 2006).

Jones has not established that the admission of this testimony was plain error. One of the purported legal conclusions that Jones challenges is testimony from a non-party witness about whether Barlow reasonably or justifiably used force by tasing Jones. But Jones concedes that he elicited testimony from one of those witnesses—a witness Jones called to testify—about why the witness concluded in a report that Barlow's use of force was justified. Further, Jones elicited testimony from the witness that the conclusion was accurate. With respect to this witness, Jones invited any error relating to the witness's testimony that Barlow's use of force was justified. *See United States v. Parikh*, 858 F.2d 688, 695

(11th Cir. 1988) (holding that a criminal defendant invited any error relating to the admission of statements in a document because the defendant asked a witness about the document's contents). And invited error precludes our review, even for plain error. *See United States v. Frank*, 599 F.3d 1221, 1240 (11th Cir. 2010) (ruling that invited error trumps plain error).

Given that Jones elicited some of the very testimony that he challenges, and that the rest of it is of the same nature, we cannot say that it is a miscarriage of justice to decline to review the admission of any of this testimony. Beyond challenging the testimony that Barlow justifiably tased him, Jones also challenges other witnesses' testimony that Barlow and Robles acted reasonably and that they had reasonable suspicion to stop Jones. This other testimony largely overlaps with the testimony Jones elicited and is cumulative in effect. Even more, the district court admitted into evidence the report about which Jones questioned one of the witnesses. The report stated the force was necessary and justified. Whatever the interests of justice require, they certainly do not require us to review the admission of testimony that mirrors the testimony Jones elicited himself.

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