

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13657
Non-Argument Calendar

NICKOLAS L. EWING,

Plaintiff-Appellant,

versus

STEVEN HARDY,

(SO1453) Individually and as an Officer of
the Gwinnett County Sheriff's Office,

DEPUTY JAMES HALL,

(SO1188) Individually and as an Officer of
the Gwinnett County Sheriff's Office,

DEPUTY JEREMY LOPEZ,

(SO1151) Individually and as an Officer of
the Gwinnett County Sheriff's Office,

SERGEANT WILLIAM B. HALL,

(SO1115) Individually and as an Officer of
the Gwinnett County Sheriff's Office,

SERGEANT CHRISTOPHER FUSI,

(SO409) Individually and as an Officer of
the Gwinnett County Sheriff's Office, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:23-cv-01304-MLB

Before ROSENBAUM, GRANT, and LUCK, Circuit Judges.

PER CURIAM:

Gwinnett County Sheriff's Office deputies went to Nickolas Ewing's home one night to serve two outstanding arrest warrants for aggravated stalking and violating felony probation. Ewing was inside, but no one answered the door. After spending nearly an hour knocking and warning Ewing to come out, the deputies entered the house with a K-9. When the K-9 found Ewing in a closet, it bit his ankle and held on until the deputies handcuffed him. As soon as the cuffs were on, Ewing was released from the K-9's grip.

Ewing sued the deputies and the sheriff under 42 U.S.C. section 1983, alleging excessive-force claims against the K-9's handler, failure-to-intervene claims against the other deputies, and supervisory and failure-to-train claims against the sheriff. Because the use of the K-9 was objectively reasonable, the district court granted judgment on the pleadings for the deputies and sheriff. We affirm.

FACTUAL BACKGROUND

After an altercation with his then-wife, Ewing pleaded guilty to aggravated battery, family violence battery, and cruelty to children in the third degree and was sentenced to probation. His then-

25-13657

Opinion of the Court

3

wife later obtained a temporary restraining order against Ewing. Ewing violated this restraining order by contacting her with “the purpose of harassing and intimating” her and violated his probation by failing to report to his probation officer. That earned him two outstanding arrest warrants: one for aggravated stalking and one for violating his probation.

On March 25, 2021, sheriff’s deputies arrived at Ewing’s house to serve the outstanding warrants. Once there, the deputies, who were wearing body cameras, continuously attempted to communicate with Ewing. Every three to five minutes for almost an hour, they loudly announced their presence, knocked on the front door, rang the doorbell, and called Ewing’s phone. The deputies specifically warned that if Ewing did not surrender himself, they would enter the house with a dog. They received no response. Multiple deputies did, however, see a man walking in front of a window whom they believed to be Ewing (the only known occupant of the house).

About forty-five minutes into the deputies’ attempts to arrest Ewing, Deputy Cole arrived with a K-9 named Kimbo. The deputies at the scene told Deputy Cole that they’d tried speaking with Ewing, that he’d failed to surrender himself or even answer the door, that they believed they’d seen him through the window, and that Ewing had previously committed an aggravated battery.

Just before entering the house the deputies again announced that they would force entry if Ewing did not surrender. The deputies then kicked open a door on the side of the house. After kicking

open the door but before crossing the threshold the deputies provided three additional warnings that they were entering the house with a K-9 and that Ewing risked being bitten by a dog if he did not comply.

The deputies then moved through the dimly lit house with Kimbo on a leash. Each time they neared a new room, Deputy Cole loosened Kimbo's leash to allow Kimbo to quickly search the room before the deputies entered. Throughout their search, the deputies continued to loudly warn of their presence and that Ewing could be bitten by a dog if he did not come out. Shortly after entering, the deputies discovered Ewing's roommate, who explained that he was not Ewing, complied with the deputies' instructions, and was brought outside without incident.

The deputies then resumed their search of the house. While searching a bedroom, Kimbo discovered Ewing in a closet accessible through either the bathroom or the adjacent hallway. Kimbo latched onto Ewing's ankle, and the deputies approached and began handcuffing Ewing. While two deputies restrained Ewing, Deputy Cole began releasing Kimbo's grip. Ewing was successfully handcuffed in just over thirty seconds, and Kimbo was unlatched seconds later. The deputies then led Ewing outside, tended to his wounds, and transported him to a hospital.

PROCEDURAL HISTORY

Ewing sued under 42 U.S.C. section 1983, bringing an excessive-force claim against Deputy Cole, failure-to-intervene claims against the other deputies at Ewing's house, and failure-to-train

25-13657

Opinion of the Court

5

and supervisory liability claims against the sheriff. The district court reviewed the body camera footage and granted judgment on the pleadings in favor of the deputies and sheriff.

The district court first ruled that no constitutional violation occurred because both the “decision of *whether* to use K-9 Kimbo” and “*how* Deputy Cole deployed K-9 Kimbo” were objectively reasonable. In doing so, the district court detailed the deputies’ many attempts to peacefully apprehend Ewing and their reasonable belief that Ewing knew about but ignored their orders and that they could ultimately use force to evade arrest. The district court also noted that the deputies quickly restrained Ewing and released Kimbo after the initial bite.

The district court then reviewed Ewing’s remaining claims against the other deputies and sheriff. It explained that each of Ewing’s claims required an underlying constitutional violation to succeed and entered judgment because Ewing failed to allege a violation of a constitutional right.

Ewing appeals the judgment for the deputies and sheriff.

STANDARD OF REVIEW

We review de novo a district court judgment on the pleadings, “accept[ing] the facts alleged in the complaint as true and view[ing] them in the light most favorable to the nonmoving party.” *Cont’l Cas. Co. v. Winder Lab’ys, LLC*, 73 F.4th 934, 940 (11th Cir. 2023) (quoting *Cannon v. City of W. Palm Beach*, 250 F.3d 1299, 1301 (11th Cir. 2001)). “Judgment on the pleadings is appropriate

when ‘there are no material facts in dispute and the moving party is entitled to judgment as a matter of law.’” *Id.*

DISCUSSION

We begin our review with the district court’s judgment for Deputy Cole on Ewing’s excessive-force claim. We then examine the district court’s judgment for the sheriff and other deputies on the failure-to-intervene, failure-to-train, and supervisory liability claims.

Ewing’s Excessive-Force Claim Against Deputy Cole

Ewing’s claim that Deputy Cole used excessive force during the arrest is governed by the Fourth Amendment’s objective reasonableness standard. *Crenshaw v. Lister*, 556 F.3d 1283, 1290 (11th Cir. 2009). “[T]he question is whether the officer’s conduct is objectively reasonable in light of the facts confronting the officer.” *Id.* (quoting *Vinyard v. Wilson*, 311 F.3d 1340, 1347 (11th Cir. 2002)). “The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Graham v. Connor*, 490 U.S. 386, 396 (1989).

“The standard requires us to carefully balance ‘the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing government interests at stake.’” *Jones v. Fransen*, 857 F.3d 843, 853 (11th Cir. 2017) (quoting *Crenshaw*, 556 F.3d at 1290). In doing so, we consider:

25-13657

Opinion of the Court

7

(1) the severity of the crime; (2) whether the individual “poses an immediate threat to the safety of the officers or others”; (3) whether the individual actively resists or tries to evade arrest by flight; (4) the need for force to be applied; (5) the amount of force applied in light of the nature of the need; and (6) the severity of the injury.

Hinson v. Bias, 927 F.3d 1103, 1117 (11th Cir. 2019) (quoting *Crenshaw*, 556 F.3d at 1290). Our review of these factors shows that Deputy Cole did not use excessive force in arresting Ewing.

First, Ewing’s underlying crimes were serious and demonstrated a history of violence and disregard for the law. He battered his then-wife, harassed her in violation of a temporary restraining order, and violated his felony probation. Ewing argues that this factor weighs in his favor because his aggravated-stalking and probation-violation charges were ultimately dropped. But our analysis centers on what a reasonable officer would have known and considered at the time of arrest. *Graham*, 490 U.S. at 396. On March 25, 2021, a reasonable officer would have known that Ewing had been convicted for a violent felony, violated his probation, and was charged with another felony for harassing and intimidating his ex-wife.

Second, a reasonable officer could conclude that Ewing posed an immediate threat. For almost an hour, the deputies tried to obtain Ewing’s surrender—consistently and loudly announcing their presence and the risk of a dog bite, knocking on Ewing’s door,

ringing his doorbell, and calling his phone. The deputies reasonably believed that Ewing was aware of these efforts because multiple deputies thought they saw Ewing walking by a window. Yet the deputies received no response. Given Ewing's persistent non-compliance, the deputies had reason to fear that he would continue to evade arrest, threatening their safety. See *Crenshaw*, 556 F.3d at 1293 (emphasizing that the suspect “up to that point, had shown anything but an intention of surrendering”); *Edwards v. Shanley*, 666 F.3d 1289, 1295 (11th Cir. 2012) (emphasizing that the suspect had not yet surrendered when the dog was deployed). Ewing argues that he posed no threat because he was asleep and unarmed. But, under the circumstances, a reasonable officer would have believed that Ewing was awake and disregarding their orders.

Third, Ewing was evading arrest. The deputies consistently and loudly announced their presence for almost an hour and continued to do so while they searched the house. Despite these efforts, Ewing did not surrender or communicate with the deputies in any way. It was only after Kimbo found Ewing in a closet that he complied.

Fourth, as the Supreme Court has recognized, “the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.” *Graham*, 490 U.S. at 396; *Rodriguez v. Farrell*, 280 F.3d 1341, 1351 (11th Cir. 2002) (“[T]he typical arrest involves some force and injury.”). Deputy Cole needed to use some force to arrest Ewing.

25-13657

Opinion of the Court

9

Fifth, the deputies used a reasonable amount of force in proportion to the need. As noted above, the deputies had reason to believe that Ewing posed a threat to their safety given Ewing's continued failure to comply with their instructions. Kimbo allowed the deputies to safely locate and neutralize any threat as they searched the dark and unfamiliar house. *See Crenshaw*, 556 F.3d at 1293; *Graham*, 490 U.S. at 396. Not only that, but the deputies repeatedly warned Ewing that they were using a dog to assist in the search and that Ewing could avoid being bitten by a dog by surrendering himself.

Once Ewing was found, the deputies used only enough force to subdue him. It was reasonable for the deputies to wait until Ewing was successfully restrained before removing Kimbo—which occurred mere seconds after he was handcuffed. *See Crenshaw*, 556 F.3d at 1293 (“This is true regardless of whether [the suspect] was actively resisting arrest at that point . . .”). This is not a case where the dog bite persisted for an unreasonably long time. *Contrast id.*, with *Edwards*, 666 F.3d at 1296 (concluding dog bite lasting five to seven minutes after surrender was unconstitutional), and *Priester v. City of Riviera Beach, Fla.*, 208 F.3d 919, 927 (11th Cir. 2000) (concluding dog bite of compliant suspect lasting two minutes was unconstitutional).

Sixth, the severity of the injury weighs in Ewing's favor. Ewing alleges that he “still suffers from pain and numbness in his ankle.” We view the allegations in his favor, even though, when

told he was going to the hospital for stitches, Ewing responded that he was “fine” and that his “hands hurt more than his [] legs.”

Weighed together, the excessive-force factors show that Deputy Cole did not use excessive force. *See Crenshaw*, 556 F.3d at 1293; *Hinson*, 927 F.3d at 1121. Indeed, only one factor weighs slightly in Ewing’s favor. *See Mobley v. Palm Beach Cnty. Sheriff Dep’t*, 783 F.3d 1347, 1356 (11th Cir. 2015) (suffering even severe injury “alone does not make the use of that amount of force unreasonable”). We agree with the district court that no constitutional violation occurred.

Ewing’s counterarguments are not persuasive. First, Ewing argues that the district court should not have relied on the body camera videos in granting judgment on the pleadings. But a court may consider body camera videos referenced in the complaint where the videos are central to the plaintiff’s claim and the contents are undisputed. *Baker v. City of Madison, Ala.*, 67 F. 4th 1268, 1276 927 (11th Cir. 2000). Ewing does not dispute the videos’ authenticity or relevance but argues instead that the videos fail to demonstrate a complete picture because they lack the “complex planning and preparatory scene” that occurred before his arrest. The videos, however, do present a complete picture of his arrest. The two videos show what happened before, during, and after Ewing’s arrest from multiple angles. One video is two hours long, showing the deputies’ efforts starting an hour before his arrest through his arrival at the hospital. Any additional footage or discovery would make no difference for the analysis. The videos were, therefore,

properly considered. *See Swinford v. Santos*, 121 F.4th 179, 188 (11th Cir. 2024) (noting that the body camera videos “clearly show unedited footage of the event underlying [the plaintiff’s] excessive force claim” even though they did “not show every angle . . . or the hours of footage leading up to his death”).

And second, Ewing contends that the use of force was unconstitutional because the police initiated the encounter and could have mitigated any risks by waiting until the next day to serve the warrants. But “[o]ur task is not to evaluate what the officers could or should have done in hindsight.” *Garczynski v. Bradshaw*, 573 F.3d 1158, 1167 (11th Cir. 2009); *see also Manuel v. City of Atlanta*, 25 F.3d 990, 996–97 (11th Cir. 1994) (“The Fourth Amendment does not require officers to use the least intrusive or even less intrusive alternatives in search and seizure cases.”); *Davis v. Waller*, 44 F.4th 1305, 1316 (11th Cir. 2022) (“There is no precedent in this Circuit which says that the Constitution requires law enforcement officers to use all feasible alternatives to avoid a situation where deadly force can justifiably be used.” (punctuation omitted)). The “sole inquiry” in excessive force cases is whether the deputies’ actions were objectively reasonable in the circumstances of the case. *E.g.*, *Garczynski*, 573 F.3d at 1167. Here, they were.

Ewing’s Failure-to-Intervene Claims Against the Other Deputies and Supervisory Liability and Failure-to-Train Claims Against the Sheriff

Ewing also challenges the district court’s judgment on his failure-to-intervene claims against the other deputies and his supervisory liability and failure-to-train claims against the sheriff. As the

district court explained, these claims require an underlying constitutional violation to succeed. *See Crenshaw*, 556 F.3d at 1294 (failure to intervene); *Am. Fed’n of Lab. & Cong. of Indus. Orgs. v. City of Miami*, 637 F.3d 1178, 1190 (11th Cir. 2011) (supervisory); *Baxter v. Santiago-Miranda*, 121 F.4th 873, 892 (11th Cir. 2024) (failure to train); *Andre v. Clayton Cnty.*, 148 F.4th 1282, 1306 (11th Cir. 2025) (liability against a municipal entity). Because Ewing did not plead a violation of a constitutional right, the district court was right to grant judgment on the pleadings for the other deputies on the scene and the sheriff.

AFFIRMED.¹

¹ Ewing’s motions to correct the opening and reply briefs are GRANTED. We considered the corrected briefs in our review.