[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-10115

D.C. Docket No. 1:16-cv-24687-KMW

EDGARDO LEBRON,

Plaintiff - Appellant,

versus

ROYAL CARIBBEAN CRUISES LTD.,
1050 Caribbean Way
Miami, FL 33132
a Liberian Corporation,

Defendant - Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(June 19, 2020)

Before MARTIN, NEWSOM, and BALDOCK,* Circuit Judges.

BALDOCK, Circuit Judge:

Plaintiff Edgardo Lebron suffered a break of all three ankle bones while ice skating with his daughters aboard the Adventure of the Seas, a cruise ship operated by Defendant Royal Caribbean Cruises, LTD ("Royal Caribbean"). Thereafter, Mr. Lebron sued Royal Caribbean for a single count of negligence. His complaint set forth sixteen alternative theories of negligence. Relevant here, Mr. Lebron alleges: (1) Royal Caribbean's failure to reasonably maintain the ice-skating rink resulted in a gouge in the ice that caused or contributed to his fall; and (2) Royal Caribbean provided him an ice skate that did not lace properly due to a broken lace, which caused or contributed to his injury.

Following discovery and motions practice, the parties proceeded to trial. At the close of Mr. Lebron's case, Royal Caribbean moved for a directed verdict. Royal Caribbean argued that Mr. Lebron failed to prove it had notice of the gouge in the ice or the broken skate lace. The district court took the motion under advisement, and the jury rendered a verdict in Mr. Lebron's favor. The jury found Mr. Lebron was 35% negligent and Royal Caribbean was 65% negligent.

* Honorable Bobby R. Baldock, United States Circuit Judge for the Tenth Circuit, sitting by designation.

Thereafter, the district court granted Royal Caribbean's motion for a directed verdict. Although Mr. Lebron pleaded his theories of negligence in the alternative, the court held that Mr. Lebron had to prove both that (1) Royal Caribbean negligently maintained the ice and (2) Royal Caribbean negligently provided him a skate with a broken lace. And while the court found Mr. Lebron established all the elements of negligence with respect to the broken skate lace, it nevertheless granted a directed verdict for Royal Caribbean because "there was no evidence presented at trial by which a reasonable juror could conclude that [Royal Caribbean] knew or should have known about the gouges in the ice . . . ."

This appeal follows. Mr. Lebron argues the district court erred in requiring him to prove that Royal Caribbean was negligent with respect to both the ice condition *and* the ice skate. Mr. Lebron further contends, even if he had to prove both theories of negligence, he presented sufficient evidence for the jury to infer Royal Caribbean had notice of the gouges in the ice. Finally, Mr. Lebron argues the district court erred in excluding evidence of prior incidents involving defective ice conditions on Royal Caribbean's other ships. Because we conclude Mr. Lebron presented sufficient evidence for a reasonable jury to find Royal Caribbean had notice of the gouges in the ice, we need not reach the other issues. Exercising jurisdiction under 28 U.S.C. § 1291, we reverse and direct the district court to reinstate the jury verdict.

I.

To prevail on a maritime negligence claim, a plaintiff must prove: (1) the defendant had a duty to protect the plaintiff from a particular injury; (2) the defendant breached that duty; (3) the breach actually and proximately caused the plaintiff's injury; and (4) the plaintiff suffered actual harm. *Sorrels v. NCL (Bahamas) LTD.*, 796 F.3d 1275, 1280 (11th Cir. 2015). As a prerequisite to imposing liability, the plaintiff must also prove the defendant had "actual or constructive notice of the unsafe condition." *Keefe v. Bahama Cruise Line, Inc.*, 867 F.2d 1318, 1322 (11th Cir. 1989). "Thus, a cruise-ship operator's liability often 'hinges on whether it knew or should have known about the dangerous condition.'" *D'Antonio v. Royal Caribbean Cruise Line, Ltd.*, 785 F. App'x 794, 797 (11th Cir. 2019) (citing *Guevara v. NCL (Bahamas) Ltd.*, 920 F.3d 710, 720 (11th Cir. 2019)).

In this case, the district court held Mr. Lebron presented sufficient evidence to show negligence with respect to the broken skate lace. The court nevertheless directed a verdict for Royal Caribbean because "there was no evidence presented at trial by which a reasonable juror could conclude that [Royal Caribbean] knew or should have known about the gouges in the ice . . . ." Mr. Lebron argues he presented sufficient evidence to prove Royal Caribbean had constructive notice of

the gouges in the ice, and therefore, the district court erred in entering a directed verdict.

We review the district court's entry of a judgment as a matter of law de novo and apply the same standards as the district court. *Bogle v. Orange Cty. Bd. of Cty. Comm'rs*, 162 F.3d 653, 656 (11th Cir. 1998). We consider all the evidence in the light most favorable to the plaintiff to determine whether the evidence is legally sufficient to find for the plaintiff on the claim presented. *Collins v. Marriott Int'l, Inc.*, 749 F.3d 951, 957 (11th Cir. 2014). We will affirm a judgment as a matter of law "only if the facts and inferences 'point so overwhelmingly in favor of the movant . . . that reasonable people could not arrive at a contrary verdict.'" *Bogle*, 162 F.3d at 656 (citing *Richardson v. Leeds Police Dep't*, 71 F.3d 801, 805 (11th Cir. 1995)).

At issue in this case is whether Mr. Lebron presented sufficient evidence for a reasonable jury to infer that Royal Caribbean had actual or constructive notice of the unsafe ice conditions. Actual notice exists when the shipowner knows of the unsafe condition. *Keefe*, 867 F.2d 1322. Constructive notice, on the other hand, exists when "the shipowner *ought to have known* of the peril to its passengers, the hazard having been present for a period of time so lengthy as to invite corrective measures." *Id.* (emphasis added). The district court held Mr. Lebron did not present sufficient evidence to show Royal Caribbean knew or should have known

about the gouges in the ice. From our independent review, the district court erred in so holding.

While the evidence supporting notice of the unsafe ice conditions is by no means overwhelming, it is more than sufficient to support the jury's verdict. To begin, the testimony at trial showed Royal Caribbean was, or at the very least should have been, well aware of the dangers that exist when ice is not properly maintained. Royal Caribbean's expert witness admitted that it is "important to keep the ice surface properly maintained" to "prevent an accident," and Royal Caribbean's ice rink manager conceded it is important to keep the ice clean.

Presumably for this very reason, Royal Caribbean has policies in place to keep the ice clean and smooth. As Royal Caribbean's ice rink manager explained, Royal Caribbean "resurface[s] the ice so to avoid any skate marks," and, after the ice is resurfaced, employees inspect the ice to ensure it is adequately smooth. In addition to daily ice resurfacing, Royal Caribbean performs a "mini melt" resurfacing procedure as necessary and remakes the ice entirely every six months. According to Royal Caribbean's expert, these procedures are designed to keep the ice clean and smooth for skater safety.

Despite Royal Caribbean's apparent knowledge that poorly maintained ice can lead to accident and injury, Mr. Lebron's daughter, Claudia Lebron, testified that the ice had "gouges" and was "flakey" at the time they started skating.

Claudia testified she noticed the gouges and flakiness approximately ten to fifteen minutes before Mr. Lebron fell and sustained his injury. While Claudia admitted on cross examination that she didn't tell any Royal Caribbean employee about the gouges or flakiness, this admission is not fatal to constructive notice. The question is whether Royal Caribbean *should have known*, not whether it actually knew, about the gouges in the ice. *Keefe*, 867 F.2d at 1322. In any event, Claudia's testimony could lead a reasonable jury to infer the gouges in the ice existed for at least ten minutes *before* Mr. Lebron's accident.

Assuming the jury credited Claudia's testimony, as we must, the next question is whether Royal Caribbean should have noticed the gouges in the ten to fifteen minutes leading up to Mr. Lebron's fall. *See Keefe*, 867 F.2d at 1322 (explaining the hazard must be present "for a period of time so lengthy as to invite corrective measures"). To answer this question, we need look no further than testimony from Royal Caribbean employees. Royal Caribbean's corporate representative testified that it is Royal Caribbean's policy to station a crew member near the entrance of the ice rink. Royal Caribbean's chief safety officer, who investigated Mr. Lebron's fall, confirmed there were three employees supervising the ice rink at the time of the incident. And according to Royal Caribbean's ice rink manager, one of these employees was specifically responsible for "watching the ice." This testimony establishes that Royal Caribbean employees were in the

immediate vicinity of the ice and provides a sufficient basis for constructive notice. *See Aponte v. Royal Caribbean Cruise Lines Ltd.*, 739 F. App'x 531, 536 (11th Cir. 2018) (holding where a crewmember in the immediate vicinity of a puddle of soap, a reasonable fact finder could conclude the crewmember knew or should have known about the puddle of soap).

Royal Caribbean nonetheless argues that the gouges either (1) did not exist for a sufficient period of time to allow for corrective action or (2) were not capable of detection. As to Royal Caribbean's first argument, we must accept as true that the gouges existed for ten to fifteen minutes before Mr. Lebron's accident.[1] Royal Caribbean cites no authority establishing a bright-line, time-based rule with respect to constructive notice, and we are aware of none. *Cf. Perez-Brito v. Williams-Sonoma Stores, Inc.*, 735 F. App'x 668, 670 (11th Cir. 2018) (holding "[a] bright-line, no-liability rule based on time alone does not account for the many ways that employees could receive actual notice and cannot be conclusive of whether a store's conduct is reasonable"). In prior cases, we have concluded a genuine issue of material fact exists as to whether a shipowner "ought to have known of the peril to its passengers" when the unsafe condition existed for between fifteen and twenty

[1] The district court erred in holding, "Nothing in the record indicates for how long the gouges existed." Claudia Lebron testified the gouges existed when she and Mr. Lebron began ice skating, which was ten to fifteen minutes prior to Mr. Lebron's fall.

minutes. *See, e.g.*, *D'Antonio*, 785 F. App'x at 798 (holding video footage that a chair sat in a walkway for 18 minutes is sufficient to provide constructive notice).

Under these circumstances, ten to fifteen minutes was more than sufficient to "invite corrective measures." *Keefe*, 867 F.2d at 1322. Where Claudia Lebron, an inexperienced skater, noticed the gouges, it goes without saying that trained employees responsible for "watching the ice" should notice them as well. This is particularly true where Royal Caribbean's employees are well aware that poorly maintained ice can result in accident and injury. Thus, a factfinder could readily conclude that Royal Caribbean employees should have noticed the gouges in the ice in the ten to fifteen minutes leading up to Mr. Lebron's fall. *See Aponte*, 739 F. App'x at 536 (holding where a crewmember is in the immediate vicinity of the unsafe condition, a factfinder could conclude the crewmember knew or should have known about the dangerous condition).

The fact that Claudia Lebron noticed the gouges also forecloses Royal Caribbean's second argument—that the gouges were not capable of detection. To support its argument, Royal Caribbean cites to *Adams v. Carnival Corp.*, No. 08-22465-CIV, 2009 WL 4907547 (S.D. Fla. Sept. 29, 2009). In *Adams*, the Southern District of Florida held Carnival Cruise Lines was not liable for the collapse of a deck chair where the chair was inspected on the day of the incident and showed no wear and tear, discoloration, cracking, or evidence of defects. *Id.* at *3. This case

presents an entirely different issue—a *visible* gouge in the ice. As explained above, Claudia Lebron, a guest aboard the Adventure of the Seas, noticed the gouges ten to fifteen minutes prior to the accident and injury. Certainly, Royal Caribbean employees who are aware of the dangers of poorly maintained ice should have noticed the same. Far from supporting Royal Caribbean's position, therefore, *Adams* merely highlights the way in which the two cases are materially different from each other.

In sum, the jury was entitled to find Royal Caribbean had constructive notice of the gouge in the ice based on the following evidence presented at trial. First, Royal Caribbean's expert and employee explained it is important to maintain and resurface the ice to prevent accident and injury. This establishes Royal Caribbean's general knowledge of the unsafe condition at issue—gouges in the ice. Next, Claudia Lebron testified that, on the day of the accident, gouges in the ice were readily visible ten to fifteen minutes prior to Mr. Lebron's fall. This establishes that the unsafe condition existed for at least ten minutes and that the condition was detectable by a lay person on or around the ice. Finally, Royal Caribbean employees testified that there were three crewmembers stationed in the immediate vicinity of the ice, one of whom was specifically tasked with "watching the ice." This testimony provides the final inference for constructive notice. "[A] factfinder could conclude that the crewmember knew or should have known" about

the gouge in the ice when the crewmember was "in the immediate vicinity" of the gouge. *See Aponte*, 739 F. App'x at 536.

Based on all of this testimony, we conclude the district court erred in holding Mr. Lebron presented insufficient evidence for a reasonable jury to find Royal Caribbean had constructive notice of the gouges in the ice. Because Mr. Lebron presented sufficient evidence to prevail on both theories of negligence—that Royal Caribbean negligently maintained the ice *and* negligently provided Mr. Lebron a skate with a broken lace—we do not reach the other two issues on appeal.[2]

II.

For the reasons provided herein, the judgment of the district court is reversed. This matter is remanded, and the district court is directed to reinstate the jury verdict.

REVERSED.

[2] Royal Caribbean summarily argues Mr. Lebron presented insufficient evidence to show it had notice of the defective skate lace. The district court rejected this argument in its order granting Royal Caribbean's motion for a directed verdict. Although not fully briefed on appeal, we easily conclude Mr. Lebron presented sufficient evidence for the jury to find Royal Caribbean had notice of the broken skate lace.