NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted May 19, 2023*
Decided May 23, 2023

Before

DIANE P. WOOD, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-1999

CASSIDY GREEN,
Plaintiff-Appellant,

v.

ALFONSO VALDEZ,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 18-cv-5858

Sharon Johnson Coleman,
Judge.

O R D E R

Cassidy Green lost after a bench trial on his claim that Officer Alfonso Valdez, who was seeking to arrest Green on a warrant for felony drug charges, used excessive force in violation of the Fourth Amendment by applying a Taser. *See* 42 U.S.C. § 1983.

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

The district court did not commit any reversible errors, and the record allowed it to find that, in light of Green's aggressive resistance, the force was reasonable; thus, we affirm.

Near the suit's outset, the district court recruited counsel for Green. But shortly before trial, and after two years of legal representation by counsel, Green moved to dismiss his counsel. The court granted the motion and denied Green's requests for new counsel. Based on Green's pro se filings, the relative simplicity of the case, and because Green had "the benefit of all the work that counsel undertook," the court found that Green could litigate the case himself at trial. The parties later agreed to a bench trial.

At trial, the court heard two versions of the events. According to Green, Valdez approached him while he and his mother were in a car outside his mobile home. (This contradicted Green's deposition testimony in which he said he recalled first seeing Valdez inside his home.) Because Valdez scared him and did not say that he was under arrest, Green ran from Valdez into his home and inside his bathroom. Valdez yelled unintelligibly, chased Green inside his home, kicked down the bathroom door, and used a Taser. This first use knocked Green against the bathtub; he broke a tooth and bled from his mouth. While Green was on the ground, Valdez used the Taser two more times. All three times, Green says, the Taser was in "dart" mode, where its "prongs were deployed" and attached to his body. Green was then handcuffed; medical personnel arrived, removed a Taser prong from his body, and took him to a hospital. He stated that he cooperated with medical personnel and never resisted arrest.

Green wanted to call more witnesses, but he did not present them at trial. He asserted (without evidence) that he had subpoenaed other police officers present at the arrest and a use-of-force expert. In deciding to move ahead without these witnesses, the court reminded Green that he had previously assured the court that he was "ready to go to trial" on the scheduled date, and it explained that expert testimony is not needed to prove excessive force.

Valdez offered a different account of the arrest. He testified that he approached Green to explain that there was a warrant for his arrest. Green opened the car door, started driving in reverse, hit a parked car, and then bolted into his home. Valdez shouted that Green was under arrest and told him to stop. He pursued Green into his home and bathroom. In the bathroom, Valdez saw Green reach with one hand behind the toilet tank. Valdez ordered Green to show his hands; Green refused at first, started to comply, but then again reached for the toilet. Fearing for his safety because he

thought that Green might be grabbing a weapon, Valdez used the Taser (in "dart" mode) on Green, who fell into the bathtub. After a few seconds, Green "lunged" toward Valdez, knocking both men into the toilet; as the two struggled, Valdez used the Taser a second time, but without "darts." Valdez was then able to "regain control" and get on top of Green, who refused to let Valdez cuff his wrists. When other officers arrived, Green resumed "pushing and shoving," prompting Valdez to use his Taser a third time (still without darts). The Taser's prongs were wet—presumably from the toilet's water—and Valdez accidentally "zapp[ed]" both himself and a deputy. The officers finally handcuffed Green as medical personnel arrived.

Valdez also presented deposition testimony from other witnesses. First, Valdez offered the deposition of the deputy who helped arrest Green. The deputy confirmed that the Taser "zapped" him along with Valdez and Green as Green was "squirming around on the floor" in a "wrestling match" with officers. Second, Valdez offered the depositions of the medical professionals who treated Green after he was subdued. One stated that when she arrived at Green's home, Green was combative. She also believed that his mouth started bleeding after she used a bite stick to retrieve something in his mouth; she had not seen any blood from his mouth before using the bite stick. Another testified that Green had superficial abrasions to his shoulder and index finger. Finally, Valdez introduced the deposition testimony of Green's mother, who testified that Green put the car in reverse when he saw Valdez.

The district court found that Valdez's use of force was not excessive. First, it ruled Valdez was credible and Green was not because of Green's "inconsistent" testimony and "inability to remember pertinent facts." Next, the court found that Green actively resisted arrest, first by fleeing and then by struggling and refusing to show his hands or be handcuffed. Third, the court found that Valdez reasonably feared for his safety when Green reached behind the toilet, possibly for a weapon. The court concluded that in these circumstances the use of force was reasonable. Green moved for a new trial, *see* FED. R. CIV. P. 59(a), which the court denied. (Green never appealed the denial of that motion; therefore, we do not consider that ruling. *See* FED. R. APP. P. 4(a)(4)(B)(ii); *White v. U.S. Dep't of Just.*, 16 F.4th 539, 543 (7th Cir. 2021), *cert. denied*, 143 S. Ct. 438 (Nov. 14, 2022).)

On appeal, we review the court's legal conclusions and the mixed questions of law and fact de novo; we review its factual findings for clear error. *See United States v. Caira*, 833 F.3d 803, 806 (7th Cir. 2016). Green first attacks the court's factual findings,

but because these ultimately turn on witness credibility, Green faces a high bar—rulings about credibility "can virtually never amount to clear error." *Gaffney v. Riverboat Servs. of Ind., Inc.*, 451 F.3d 424, 448 (7th Cir. 2006). In this case, the court amply justified its decision to discredit Green's testimony and credit Valdez's: It reasonably observed that Green's trial testimony contradicted his deposition testimony, had gaps, and was contradicted by five witnesses (Valdez, the deputy, two medical personnel, and Green's mother) who corroborated many details. Green replies that the court should have discounted both his deposition testimony (because he did not have counsel) and Valdez's testimony (because he failed to turn on his body camera). Valdez contended that he had been ordered to keep his camera off to protect the identity of undercover agents. But we do not "reweigh" evidence in reviewing a bench trial. *See Whittington v. Indianapolis Motor Speedway Found., Inc.*, 601 F.3d 728, 732 (7th Cir. 2010).

Next, Green contests the legal standard that the court applied to his excessive-force claim, but the court correctly applied the Fourth Amendment's "reasonableness" standard. *Dockery v. Blackburn*, 911 F.3d 458, 464 (7th Cir. 2018) (quoting *Graham v. Connor*, 490 U.S. 386, 395 (1989)). The court rightly asked if, from "the perspective of a reasonable officer on the scene" and in light of the severity of Green's suspected crime, the "threat he posed," and his attempts to resist or evade arrest, the use of force was "objectively reasonable." *Id.* (cleaned up).

Under this standard, the first two uses of the Taser were reasonable. When Valdez tried to arrest Green outside his mobile home on an arrest warrant for felony drug charges, Green fled dangerously by driving in reverse and striking a car. Then, when Valdez cornered him in his bathroom, he reached behind the toilet and twice disobeyed Valdez's command to show his hands. Because Valdez could reasonably fear that Green, who already displayed dangerousness and resistance, might be reaching for a weapon, his first Taser use was justified. *See United States v. Norris*, 640 F.3d 295, 303 (7th Cir. 2011) (use of Taser justified when suspect refused police commands and "his actions suggested an intent to use violence"). Then, after the Taser's first use, Green lunged at Valdez, knocking him into the toilet. Green's continued, violent resistance to arrest rendered the second Taser use objectively reasonable. *See Turner v. City of Champaign*, 979 F.3d 563, 569 (7th Cir. 2020) (citation omitted) ("We have repeatedly upheld officers' use of force in the face of suspects resisting arrest.").

The third Taser use might have been a closer call for the district court, but this use too was objectively reasonable. On the one hand, part of Valdez's testimony could

be read to suggest that, after Valdez had gained some control on top of Green, Green's resistance became passive when he refused to extend his wrists for cuffing. *See Becker v. Elfreich*, 821 F.3d 920, 927 (7th Cir. 2016) (passive resistance requires only minimal force). But Valdez also describes Green as still "pushing and shoving," and the deputy who arrived at that point confirmed that Green was "squirming around on the floor" in a "wrestling match." This evidence of continued active resistance supports the conclusion that Valdez's third Taser use was objectively reasonable. *See Dockery*, 911 F.3d at 467 (citation omitted) (active resistance includes "kicking and flailing").

Finally, Green unpersuasively challenges several discretionary rulings. First, he argues that the court wrongly admitted the deposition testimony of defense witnesses. But Green—either through counsel or personally—stipulated to their admission. *See Pittman ex rel. Hamilton v. County of Madison*, 863 F.3d 734, 736 (7th Cir. 2017) (stipulations generally binding); FED. R. CIV. P. 32 (admissibility of depositions at trial). Second, Green contends that the court violated its own ruling in limine (excluding Green's criminal history) when it allowed Valdez to testify about the warrant for Green's arrest. But as discussed above, that information is relevant to the excessive-force analysis. Third, Green argues that the court should have delayed the trial because some lay witnesses and his expert did not show up. But the court's decision to proceed on schedule, without the witnesses, was reasonable. At pre-trial hearings, Green had told the court that he was ready to put on his case on the scheduled trial date, *see Moffitt v. Ill. State Bd. of Educ.*, 236 F.3d 868, 873 (7th Cir. 2001) (not abuse of discretion to enforce trial date despite plaintiff's absence), he offered no evidence at trial that he had subpoenaed them, *see* FED. R. CIV. P. 45, and expert evidence is not essential in a case like this that turns on credibility. *See United States v. DiSantis*, 565 F.3d 354, 364 (7th Cir. 2009).

Last, Green asserts that the court abused its discretion in failing to recruit new counsel after Green dismissed his first counsel. But a court's decision to recruit counsel once does not entitle a party to counsel throughout the case. *See Wilborn v. Ealey*, 881 F.3d 998, 1008 (7th Cir. 2018). Green responds that he has mental-health issues, but mental illness does not necessarily require recruitment of counsel. *See Perry v. Sims*, 990 F.3d 505, 513 (7th Cir. 2021). Moreover, the district court reasonably followed our instructions in *Pruitt v. Mote*, 503 F.3d 647, 654 (7th Cir. 2007) (en banc), for assessing his request for new counsel: It permissibly found, after a hearing and reviewing Green's recent pro se filings, the benefits of former counsel's work, and the relatively straightforward nature of the case, that Green could adequately represent himself at

trial. Although Green later renewed his request for new counsel, on appeal he does not argue that in his renewed motion he offered additional reasons that might have altered the court's earlier decision.

We have considered the rest of Green's arguments, but none merits discussion. In particular, we need not address Green's contention that his recruited counsel was ineffective, because performance by counsel is not a ground for reversal in a civil suit. *See Diggs v. Ghosh*, 850 F.3d 905, 911 (7th Cir. 2017) (no constitutional right to effective assistance of counsel in civil cases). All pending motions to supplement the record with evidence not presented in the district court are denied.

AFFIRMED