

NONPRECEDENTIAL DISPOSITION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

Argued June 6, 2023
Decided June 28, 2023

Before

MICHAEL B. BRENNAN, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-1433

GEORGE VERGARA,
Plaintiff-Appellant,

v.

SCOTT FREY, et al.,
Defendants-Appellees.

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

No. 18-cv-07939

Manish Shah,
Judge.

ORDER

After losing a jury trial on his civil rights claims against two police officers, *see* 42 U.S.C. § 1983, George Vergara moved for a new trial. He argued that the officers (1) improperly withheld documents during discovery and (2) elicited prejudicial testimony at trial about a prior arrest. The district court denied the motion. Because Vergara was not prejudiced by the officers' disclosure of documents and the district court properly admitted evidence at trial, we affirm.

In December 2016, Vergara had a dispute at a tow yard over his car, and two Forest Park, Illinois police officers—Scott Frey and Patrick Clarke—responded to the scene. Vergara (who was 73 at the time of the dispute) testified that he was leaving the tow yard when Frey, without saying anything, grabbed his wrist and knocked him to the ground, causing him to hit his head on the pavement. Vergara said that Frey then punched and kicked him.

The officers presented a different account. Frey testified that Vergara was trespassing and that he grabbed Vergara's left arm to escort him away. When Vergara pulled his arm back and clenched his hand into a fist, Frey said that he again grabbed Vergara's arm. Vergara continued to resist, and the two men wrestled each other to the ground. Frey then felt Vergara tugging at his gun holster, trying to take his service weapon. Frey, concerned for his safety and that of his partner, punched Vergara twice before Clarke pulled Vergara off Frey and handcuffed him.

Paramedics arrived on the scene, treated Vergara's injuries, and took him to a local hospital for closer examination. Later, Vergara was taken to a nearby veterans' hospital, where X-rays showed that he had a fractured rib and a wrist injury. Vergara was not prosecuted for any offenses.

Vergara sued the two officers under § 1983. He asserted that Frey used excessive force against him, that Clarke failed to intervene, and that both officers falsely arrested him. Before trial, Vergara moved to exclude any evidence of his prior criminal history, which he maintained would prejudice the jury. The officers countered that they should be permitted to present evidence that in October 2016—two months before the events at issue—Vergara had injured his wrist while being arrested by police officers for disorderly conduct in Oak Park, Illinois. Because Vergara sought damages for a wrist injury arising out of the December arrest, the officers insisted that the circumstances surrounding the October arrest and wrist injury were relevant to his claim.

At a pretrial conference, the district court granted Vergara's motion in part and denied it in part. The court warned the officers "to be very cautious and narrow" when referring to Vergara's criminal history. But the court added that Vergara's prior interaction with police could be probative evidence depending on how Vergara presented his claim for damages.

At trial, Vergara testified about wrist pain and medical treatment post-dating his December arrest, and so the officers cross-examined Vergara about the wrist injury he

suffered during the October arrest. The officers first asked him whether the doctors compared his December wrist X-ray to an October wrist X-ray, and then whether Vergara had “an interaction” with police in October. At a sidebar, Vergara objected that the court’s ruling on his motion in limine precluded this line of questioning. The court overruled the objection, reiterating that, because Vergara had testified that the officers injured his wrist, they were allowed to elicit testimony about a prior wrist injury. With the court’s permission, the officers’ counsel asked how Vergara was injured during the October arrest. Vergara confirmed that an Oak Park police officer took him to the ground and that the ensuing injury he suffered to his wrist during the October police encounter was to the same wrist he asserted was injured during the December arrest.

The day after he testified, Vergara asked the court to strike his cross-examination testimony about the arrest, given the prejudicial nature of the disclosure of his prior police encounter. The court denied the motion, explaining that the evidence was relevant to suggest that his injury was caused by another incident and not the defendants’ actions.

During a conference later in the trial, Vergara objected to the officers’ proposal to introduce records related to the October incident to refresh the recollection of an Oak Park officer scheduled to testify the following day. The court overruled Vergara’s objection and said it would permit the officers to elicit limited testimony about the possibility that Vergara’s injury had pre-existed the December arrest. The officers could, for instance, ask about the manner in which Vergara was taken to the ground during the October interaction and whether the officer made contact with his wrist. To address Vergara’s concern that evidence of his arrest history would prejudice the jury, the court offered to instruct the jury that it should consider testimony about the October interaction only insofar as it related to his alleged injuries. Vergara, however, balked at the proposal and withdrew any claim arising out his wrist injury; he agreed to stipulate that he did not suffer a wrist injury in December 2016. The court accepted the stipulation, and the Oak Park officer did not testify.

The jury found in favor of the officers in all respects. It found that Frey was not liable for using excessive force, that Clarke was not liable for failing to intervene, and that neither officer was liable for falsely arresting Vergara.

Vergara moved for a new trial and for relief from the judgment under Federal Rules of Civil Procedure 59(a)(1)(A) and 60(b)(3), contending that the officers engaged in misconduct that prevented him from fully presenting his claims at trial. He first

argued that the officers were obligated to specify before trial which discovery materials would be used as exhibits, but they had “hidden” and “buried” the post-incident Oak Park police report and medical records among 1,300 pages of discovery documents. Moreover, he argued, the officers did not identify those materials as exhibits until mid-trial. According to Vergara, the late disclosure of exhibits deprived him of time to investigate the contents of the documents.

Vergara also argued that it was misconduct and fundamentally unfair for the officers to broadcast his prior arrest to the jury during his cross-examination. He asserted that the questioning about his October arrest violated the pretrial ruling that limited references to his criminal history, and that the cross-examination elicited inadmissible character evidence and portrayed him as a bad person.

The court denied Vergara’s motion, finding no evidence of misconduct on the officers’ part and concluding that the jury heard appropriate and relevant evidence. With respect to the allegedly withheld documents, the court explained that the timing and manner of disclosure was not misconduct: Vergara knew after the pretrial conference that the officers intended to probe the extent and circumstances of the October wrist injury, that the court would allow evidence of prior police interaction depending on how he presented his claim for damages, and that medical records documenting the injury would be admissible. Based on this knowledge, the court added, Vergara could have investigated further or could have modified his claim for damages before trial. As for the alleged misconduct during Vergara’s cross-examination, the court explained that the officers’ questioning at trial did not violate any pretrial rulings because the incident was probative with regard to the cause of Vergara’s wrist injury. The court also emphasized that the officers minimized the risk of prejudice by characterizing Vergara’s encounter with Oak Park police merely as an “interaction,” as opposed to an arrest.

On appeal, Vergara challenges the denial of his motion for new trial because the officers committed prejudicial discovery misconduct and the district court wrongly agreed to allow the officers to ask about Vergara’s October wrist injury. We review the denial of motions for a new trial and for relief from the judgment for abuse of discretion. *Venson v. Altamirano*, 749 F.3d 641, 651, 656 (7th Cir. 2014). We also review the district court’s evidentiary rulings for abuse of discretion. *Fields v. City of Chicago*, 981 F.3d 534, 543 (7th Cir. 2020).

As to his first argument, Vergara contends that the untimely and cumbersome manner in which the officers disclosed the Oak Park documents was deliberate misconduct. He also challenges the court's conclusion that he was not prejudiced by the officers' discovery conduct, arguing that he did not have the opportunity to investigate the arrest or injury before trial because he was not charged with a crime (and presumably did not know a police report existed) and the medical records provided lacked necessary information about the incident.

The court did not abuse its discretion by denying Vergara's motion. Granting a new trial is an "extraordinary remedy" only for "exceptional circumstances," where the moving party demonstrates not just that misconduct occurred, but that the misconduct prevented him from fully and fairly litigating his case. *Venson*, 749 F.3d at 651, 653. Regardless of the timing of the disclosures, the court was right to conclude that Vergara was fully capable of investigating and presenting his claims. At the pretrial conference, the officers informed him that they intended to prove that Vergara suffered an earlier wrist injury, and Vergara had access to the records then. Further, Vergara personally knew before trial what had occurred with the police and what injuries he experienced. In fact, Vergara testified at trial about the arrest, his injuries, and his medical treatment. Vergara is not entitled to a new trial because, as the district court explained, he had all the information necessary to conduct further discovery, to plan for trial based upon his personal knowledge, and to present his case at trial. *See Saathoff v. Davis*, 826 F.3d 925, 931–32 (7th Cir. 2016).

Vergara argues, second, that the district court committed evidentiary errors in allowing questioning about the October arrest. He reiterates that the court wrongly allowed testimony about his prior arrest, *see* Fed. R. Evid. 608, and that the testimony invited the jury to infer he was a "troublemaker" or a bad person, *id.* r. 404(b). He relies on *Nelson v. City of Chicago*, in which we explained that prior arrests of a party-witness are generally inadmissible because the probative value is often outweighed by the risk of prejudice. 810 F.3d 1061, 1067 (7th Cir. 2016).

But evidentiary rulings will not warrant a new trial unless they have a "substantial and injurious" influence on the jury verdict, *Fields*, 981 F.3d at 544, and Vergara has not come close to showing that this was the case here. Vergara opened the door to the testimony about his prior arrest and wrist injury when he testified that Frey and Clarke injured his wrist. As the district court repeatedly explained, questions about the October arrest and subsequent wrist injury were relevant to whether the officers injured Vergara's wrist in December. And the court carefully considered the risk of

prejudice, first requiring that the officers' questions at trial be narrowly tailored to the injury at issue and later emphasizing that Vergara's encounter with Oak Park police was characterized merely as an "interaction," and nothing more inflammatory. This was not an abuse of discretion. As for Vergara's reliance on *Nelson*, that case is distinguishable because it concerned the inadmissibility of prior arrests as impeachment evidence, an issue not present here. 810 F.3d at 1068.

AFFIRMED