NONPRECEDENTIAL DISPOSITION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 November 7, 2024*
Decided November 15, 2024

Before

DAVID F. HAMILTON, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 24-1933

JOHN BURKS,
Plaintiff-Appellant,

v.

JASON TATE, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Wisconsin.

No. 20-cv-782-pp

Pamela Pepper,
Chief Judge.

O R D E R

After receiving a call about an ongoing burglary, law-enforcement officers entered John Burks's home through an open door to investigate a possible crime in progress. No one was present, but they discovered a firearm that they retained for safekeeping. Burks sued the officers under 42 U.S.C. § 1983, alleging that they fabricated

* 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).

evidence in order to take the firearm, and that they conducted an unlawful search and seizure. The district court entered summary judgment for the officers on the fabrication claim, and a jury later decided in favor of the defendants on the remaining claim. Because no evidence suggests that the defendants fabricated anything for the purpose of depriving Burks of a liberty interest, and the trial was fair, we affirm.

The record allowed the jury to find the following facts. In December 2019, the Milwaukee Police Department received a call about men removing a television from Burks's home. Burks was not present at the time. Two officers responded to the call. Upon arriving at the scene, they observed a broken window and an open side door. Along with a third officer, they entered and searched the home to investigate evidence of a possible crime, but they did not find anyone inside.

During this investigation, one officer shined his light into a glass cabinet and saw a firearm on the top shelf. Another officer called dispatch to determine if it was stolen. He learned that the serial number matched a stolen firearm of a different gun type, but the firearm that the officer described was not stolen. The officers decided to keep the firearm for safekeeping because they worried that someone could enter the open property and steal it, and they could not tell who owned it as Wisconsin does not have a registry for firearms.

Burks sued these officers under § 1983. As relevant here, he alleged that they "fabricated evidence" by lying to dispatch about the gun in order to seize it, they conducted an unlawful search and seizure of the home, and the City of Milwaukee was liable for failing to train and supervise its officers. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978). The defendants moved for summary judgment, which the district court entered in part. The court dismissed Burks's claims under *Monell* because he did not present evidence that the city failed to train or supervise its officers. It also dismissed Burks's claim that the defendants unlawfully fabricated evidence because the defendants did not use any evidence to deprive Burks of his liberty. The remaining claim about the reasonableness of the search and seizure of the gun went to trial. After hearing evidence about the need to investigate a possible burglary and forced entry, and the accessible gun seized for safekeeping, the jury found for the defendants.

On appeal, Burks first contests summary judgment on his fabrication-of-evidence claim, a decision that we review de novo. *See Marvin v. Holcomb*, 72 F.4th 828, 833 (7th Cir. 2023). Burks maintains that the officers lied to dispatch to deprive him of his Second Amendment right to possess the firearm. A state official may violate a person's

constitutional rights if the officer fabricates evidence in order to deprive the person of liberty. *See Bianchi v. McQueen*, 818 F.3d 309, 319 (7th Cir. 2016). For three reasons, though, the court properly entered summary judgment on this claim. First, the officers did not take the gun based on any "evidence" they gave to dispatch; they permissibly took the gun because its open availability created a safety hazard. *See Sutterfield v. City of Milwaukee*, 751 F.3d 542, 578 (7th Cir. 2014). Second, the gun was not used to deprive Burks of his liberty because it was not used as evidence to convict him. *See Avery v. City of Milwaukee*, 847 F.3d 433, 442 (7th Cir. 2017) (due-process violation does not occur unless the state uses fabricated evidence against defendant to obtain a conviction). Third, because Milwaukee has a process for Burks to retrieve his gun after a temporary seizure, we need not decide whether the Second Amendment would bar its permanent seizure. *See Sutterfield*, 751 F.3d at 572.

Burks next focuses on the trial of his claim that the officers entered his home, searched it, and seized his gun in violation of the Fourth Amendment. He does not argue that the evidence fails to support the jury's verdict. Rather, he maintains that three procedural rulings denied him a fair trial and warrant a new one. We disagree.

He first contends that the district court erred by not permitting him to finish his opening statement. District courts have "considerable discretion in supervising the arguments of counsel, and we will reverse a verdict only where the court has abused that discretion." *Black v. Wrigley*, 997 F.3d 702, 710 (7th Cir. 2021) (citation omitted). No abuse of discretion or reversible error occurred. During Burks's opening statement, the district court called a sidebar to inform him that he had spoken for more than twice the amount of time allotted for opening statements and needed to conclude, which he did. That was a reasonable—even generous—exercise of the court's trial-management duties. No retrial is necessary on this basis. In any event, on appeal Burks does not point to anything that he omitted saying, let alone explain how its omission prejudiced him. Thus no retrial is required.

Second, Burks argues that that the district court improperly denied his request to submit into evidence the deposition testimony of one of the defendants. We will not reverse the district court's evidentiary ruling unless Burks can show that an error affected the outcome of the trial. *See Green v. Junious*, 937 F.3d 1009, 1013 (7th Cir. 2019). And Burks cannot do so. The district court allowed Burks to cross-examine the defendant at trial, where he could have asked the defendant about the subjects covered at the deposition. Burks does not explain why he needed to have the deposition

testimony admitted into evidence in addition to this opportunity for cross examination. Without any showing of prejudice, no reversible error occurred. *See id.*

Lastly, Burks contends that he deserves a new trial because, in his view, a jury instruction regarding the scope of the permissible search of his home in response to the call about an ongoing burglary was flawed. He does not develop this argument other than to insist without elaboration that the jury instruction did not place a "limit" on or "define" the scope of a permissible search. Even if we assume that he preserved this contention in the district court, he cites no authority suggesting that the instruction was improper. Without a developed argument, we have no reason to disturb the judgment. *See* FED. R. APP. P. 28(a)(8); *White v. United States*, 8 F.4th 547, 552 (7th Cir. 2021).

AFFIRMED