[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-12677
Non-Argument Calendar

D.C. Docket No. 1:13-cv-00595-WSD

DAN J. BENSON,

Plaintiff - Appellant,

versus

CITY OF ATLANTA,

Defendant,

OFFICER ANDRES FACEMYER,
in his individual capacity,

Defendant - Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

(January 16, 2018)

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Before JULIE CARNES, DUBINA and HULL, Circuit Judges.

PER CURIAM:

I. BACKGROUND

Plaintiff/Appellant, Dan Benson ("Benson"), filed a § 1983 action against defendant/appellee, Officer Andres Facemyer, following Benson's arrest by Officer Facemyer for an alleged violation of Georgia's child molestation statute, O.C.G.A. § 16-6-4(a)(1) (2009). Officer Facemyer asserted a qualified immunity defense, arguing that he had arguable probable cause to initially detain Benson while he further investigated the alleged crime. The district court denied this defense, the case proceeded to trial, and the jury found in favor of Benson and awarded him $472,000 in damages. Officer Facemyer filed a motion to alter or amend the judgment or, in the alternative, for a new trial pursuant to Federal Rule of Civil Procedure 59, and the district court granted the motion, ordering a new trial solely on the issue of damages.

In the meantime, Officer Facemyer appealed the district court's denial of his motion for judgment as a matter of law on the issue of qualified immunity, and Benson filed a cross-appeal. This court affirmed in part, dismissed in part, and remanded the case. *See Benson v. Facemyer*, 657 F. App'x 828, 835 (11th Cir. 2016). More specifically, this court affirmed the district court's qualified immunity ruling as to Officer Facemyer's initial encounter with Benson and

dismissed for lack of jurisdiction Benson's cross-appeal raising the issue of whether Officer Facemyer developed arguable probable cause following Benson's initial arrest. This court also dismissed for lack of jurisdiction Officer Facemyer's appeal from the district court's order granting a new trial on the issue of damages. *See Deas v. PACCAR, Inc.*, 775 F.2d 1498, 1503 (11th Cir. 1985) (stating that the grant of a new trial is an interlocutory order subject to appellate review only if coupled with a grant of a motion for judgment notwithstanding the verdict).

On remand, and after ordering the parties to brief the unresolved qualified immunity question, the district court found that Officer Facemyer did not have arguable probable cause to arrest Benson at any time during the initial encounter or the formal arrest. The district court, in accordance with its ruling granting a new trial on damages, convened a second trial. The district court submitted two questions to the jury: (1) whether Benson proved by a preponderance of the evidence that he suffered damages for emotional pain and mental anguish from the time he was placed in handcuffs until he was formally arrested by Officer Facemyer; and (2) whether Benson proved by a preponderance of the evidence that he suffered damages for emotional pain and mental anguish from the time he was formally arrested by Officer Facemyer until he was indicted one month later. After deliberating, the jury found that Benson met his burden of proof as to damages for

the time he was formally arrested by Officer Facemyer until the date of his indictment, but awarded Benson $0 in damages. Benson appeals the district court's order granting Officer Facemyer's motion for a new trial. After reviewing the record, and reading the parties' briefs, we affirm the district court's order granting a new trial.

II. DISCUSSION

We review for abuse of discretion the district court's order granting a new trial. *Christopher v. Florida*, 449 F.3d 1360, 1365 (11th Cir. 2006). We give deference to "the trial court's first-hand experience of the witnesses, their demeanor and a context of the trial." *MacPherson v. University of Montevallo*, 922 F.2d 766, 777 (11th Cir. 1991) (quoting *Rosenfield v. Wellington Leisure Products, Inc.*, 827 F.2d 1493, 1498 (11th Cir. 1987)). The district court is allowed wide discretion when it grants a new trial not just on evidentiary weight, but on other grounds including improperly admitted evidence, improper jury charge, jury confusion, and prejudice to a party's rights. *J.A. Jones Const. Co. v. Steel Erectors, Inc.*, 901 F.2d 943, 944 (11th Cir. 1990).

We conclude from the record that the district court properly granted the motion for new trial because it correctly recognized that juror confusion denied Officer Facemyer a fair trial. In the first trial, the district court allowed the

introduction of evidence that went beyond the limits of Benson's recoverable damages. In an effort to cure the possible prejudicial effects of this evidence, the district court gave the jury limiting instructions that only further added to the jury's confusion. This confusion led to the excessive damages award to Officer Facemyer. The district court properly invoked its traditional equity power to prevent an injustice to Officer Facemeyer. For the above reasons, we affirm the district court's order.

AFFIRMED.