05-4442 Brewer v. Jones, et al.

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 0.23 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT HTTP://WWW.CA2.USCOURTS.GOV), THE PARTY CITING THE SUMMARY ORDER MUST FILE AND SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED. IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 28th day of March, two thousand seven.

PRESENT:

	HON.	ROBERT D. SAG	CK,	
	HON.	BARRINGTON D	. PARKER,	
	HON.	PETER W. HALI	- ┙ ╷	
		Cir	<u>rcuit Judges</u> .	
JESSE	BREWER,			
Plaintiff-Appellant,				
	-v		0	

05-4442-pr

ANDREW D. JONES, JR.,

Defendant-Appellee.

FOR APPELLANT: Jesse Brewer, <u>pro se</u>, Attica, New York.

26FOR APPELLEE:Daniel J. Chepaitis, Assistant Solicitor27General (Michael S. Belohlavek, on the28brief), for Eliot Spitzer, Attorney General29of the State of New York.

Appeal from a judgment of the United States District Court for the Southern District of New York (P. Kevin Castel, Judge).

4 UPON DUE CONSIDERATION IT IS HEREBY ORDERED, ADJUDGED,
5 AND DECREED that the judgment of the district court be AFFIRMED.
6 Plaintiff-appellant Jesse Brewer, pro se, appeals from

7 a judgment entered after a jury verdict in favor of defendant-8 appellee Andrew Jones in this suit brought under 42 U.S.C. 9 § 1983. We assume the parties' familiarity with the underlying 10 facts and procedural history of the case and the issues on 11 appeal.

12 Brewer argues on appeal that the district court erred under Federal Rules of Evidence 403 and 404 in admitting evidence 13 of a previous lawsuit filed by Brewer. Specifically, Brewer 14 15 argues that the challenged evidence improperly suggested that 16 Brewer had litigious tendencies. We review a district court's 17 evidentiary rulings for an abuse of discretion. See Arlio v. Lively, 474 F.3d 46, 51 (2d Cir. 2007). A trial judge's Rule 403 18 19 rulings are entitled to "considerable deference." Constantino v. Herzog, 203 F.3d 164, 173 (2d Cir. 2000). "Moreover, the 20 21 improper admission of evidence is grounds for reversal only where 22 it affects 'a substantial right' of one of the parties." Id. at 23 174 (quoting Fed. R. Evid. 103(a)).

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We see nothing in the record to suggest that the 1 2 challenged evidence was admitted for an improper purpose or was unduly prejudicial. On the contrary, because the evidence was 3 relevant to show a possible cause of Brewer's injury unrelated to 4 5 the acts of the defendant, the district court correctly concluded 6 that the probative value of the evidence outweighed any 7 possibility of prejudice. Furthermore, the record reflects that 8 the defense scrupulously confined its use of the challenged 9 evidence to the purpose for which it was admitted. Evidence admissible for one purpose is not rendered inadmissible by a 10 11 separate rule which might preclude it. United States v. Abel, 12 469 U.S. 45, 56 (1984).

We also reject Brewer's argument that the district court should have issued a limiting instruction. The omission of such an instruction was not an abuse of discretion because the risk of prejudice to Brewer was not sufficient to require mitigation. Cf. Outley v. City of New York, 837 F.2d 587, 595 & n.6 (2d Cir. 1988).

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1	We have considered all of Brew	er's arguments on appeal			
2	and find them to be without merit. Acco	rdingly, the judgment of			
3	the district court is hereby AFFIRMED.				
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5	FOR T	HE COURT:			
6	Thoma	s Asreen, Acting Clerk			
7					
8	By: _				