NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-1401

JABREE ROBERTSON,
Appellant

v.

UNITED STATES OF AMERICA

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2:23-cv-02729)
District Judge: Honorable Harvey Bartle III

Submitted Pursuant to Third Circuit LAR 34.1(a)
September 18, 2026

Before: BIBAS, CHUNG, and BOVE, *Circuit Judges*

(Opinion filed November 20, 2026)

OPINION*

PER CURIAM

Jabree Robertson appeals, pro se, from the District Court's judgment, entered after

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

a bench trial, in favor of the United States of America on his assault and battery claim under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b) and 2680(h). For the following reasons, we will affirm.

On March 18, 2020, Robertson was wanted by the Chester Police Department for first-degree murder with a weapon. That morning, a task force of local and federal law enforcement officers, including members of the United States Marshals Violent Crime Fugitive Task Force, arrived at a house in Chester, where Robertson was staying with his girlfriend, to execute an arrest warrant and take him into custody. An adult granted the officers permission to enter the house, and Robertson's girlfriend acknowledged that he was upstairs; however, she would not tell the officers whether he was armed. Robertson, who was 6'4", weighed 200 pounds, and had a violent criminal history, ignored repeated calls to surrender and hid under a bed in an upstairs bedroom. The officers attempted to use a remote camera to locate Robertson upstairs, to no avail. After twenty minutes passed without a response from Robertson, several officers proceeded upstairs, cleared other rooms, evacuated an occupant of another bedroom, and then entered the bedroom in which Robertson was hiding.

Once officers cleared the closets of the room, Officer Clark lifted the bed, finding Robertson lying on his stomach with his hands underneath him. Officer Eckman saw what he believed to be an AR-15 rifle underneath Robertson and announced, "Gun!" (It was later determined to be a paintball gun.). In response, one officer sat on top of Robertson and held down his head, while other officers tried to get his hands out from under him. Because Robertson resisted releasing his hands from underneath him, two

officers delivered compliance strikes to his side, which ultimately allowed them to handcuff him. Robertson was taken downstairs and relinquished to local law enforcement. Later that day, in response to his counsel's request, Robertson was taken to the hospital, where it was determined that he had fractured ribs, abrasions to his face, and an injury to his left wrist.

Robertson filed a counseled complaint against the United States under the FTCA, alleging a claim for assault and battery stemming from the encounter. After a bench trial on liability, the District Court issued findings of fact and conclusions of law, determining that the officers acted reasonably in their use of force and, thus, that the United States was not liable for assault and battery. The District Court entered judgment in favor of the United States, and this timely appeal ensued.

The District Court had jurisdiction under the FTCA pursuant to 28 U.S.C § 1346(b). We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. After a bench trial, we review the District Court's factual findings for clear error, and "give due regard to the trial court's opportunity to judge the witnesses' credibility." *Am. Soc'y for Testing & Materials v. Corrpro Cos.*, 478 F.3d 557, 566 (3d Cir. 2007) (quotation marks and citation omitted). We exercise plenary review over the District Court's conclusions of law. *Kosiba v. Merck & Co.*, 384 F.3d 58, 64 (3d Cir. 2004).

Contrary to Robertson's claim, the District Court applied the proper law. Pennsylvania law governs the assault and battery claim under the FTCA. *See* 28 U.S.C. § 1346(b)(1); *Molzof v. United States*, 502 U.S. 301, 305 (1992) (noting that "the extent of the United States' liability under the FTCA is generally determined by reference to

state law"). "Similar to a Fourth Amendment claim," *Pelzer v. City of Philadelphia*, 656 F. Supp. 2d 517, 539 (E.D. Pa. 2009), a police officer is not liable for assault and battery under Pennsylvania law if he uses reasonable force to make a lawful arrest. *See Renk v. City of Pittsburgh*, 641 A.2d 289, 293 (Pa. 1994).

The District Court also properly considered the following factors in determining whether the use of force was objectively reasonable: "the severity of the crime at issue, whether the suspect[s] pose[s] an immediate threat to the safety of the officers or others, and whether [he] is actively resisting arrest or attempting to evade arrest by flight" as well as "the physical injury to the plaintiff, the possibility that the person[ ] subject to the police action [is] [himself] violent or dangerous, the duration of the action, whether the action takes place in the context of effecting an arrest, the possibility that the suspect may be armed, and the number of persons with whom the police officers must contend at one time." *El v. City of Pittsburgh*, 975 F.3d 327, 336 (3d Cir. 2020) (citations and quotation marks omitted).

Robertson asks us to set aside the District Court's judgment, arguing that it "abused [its] discretion" in determining that the officers used reasonable force against him. Appellant's Br. at 3. Rather than challenge the judgment as against the weight of the evidence, Robertson challenges certain factual findings made by the District Court. In particular, Robertson argues that he was "laying on the ground" not being a threat to "anyone," while emphasizing that no one testified that he "was armed with a weapon in his hands" and that he was never charged with resisting arrest. Appellant's Br. at 5. He further argues that the District Court minimized the severity of his injuries, claiming that

"[t]o break bones and tear lig[a]ments it takes alot (sic) of force which is excessive." *Id.* Robertson also challenges the District Court's finding that he walked down the staircase of the house from the upstairs bedroom, claiming that eyewitnesses watched the officers drag him down the stairs and out of the house. Finally, he claims that the District Court abused its discretion in permitting the officers to testify that he was laying on a paintball gun when there was no DNA or fingerprint evidence and no pictures were taken when the "excessive force took place." *Id.* at 5.

We find no clear error with the District Court's findings. First, it determined that Robertson was not credible to the extent his testimony differed from its findings. Because credibility determinations are "quintessentially the province of the trial court," we reject them only in "rare circumstances," and there is no basis to reject the credibility determination here. *Dardovitch v. Haltzman*, 190 F.3d 125, 140 (3d Cir. 1999). As relevant to this appeal, there is no reason to reject the District Court's decision to discount Robertson's testimony that he became unconscious while he was upstairs and "woke up at the bottom of the stairs," so officers "must have dragged" him down the staircase. Trial Tr. at 13-14. At trial, Robertson did not claim to remember being dragged, and five officers testified that he never lost consciousness and walked down the stairs on his own. To the extent Roberston claims on appeal that there were eyewitnesses who would testify otherwise, he failed to present them at trial.

Next, the fact that the weapon was not in Robertson's hands and he was not charged with resisting arrest does not undermine the District Court's finding that he posed a threat to the officers. As the District Court noted (1) Robertson had a violent

criminal history and was wanted for first-degree murder with a firearm, which had not been recovered; (2) he had a prior conviction for resisting arrest; and (3) he had not turned himself in for the murder nor did he surrender at the house, despite 20 minutes of calls by officers to do so. And his girlfriend refused to say whether he was armed. Given those undisputed facts, the District Court did not clearly err in finding that "[t]he circumstances led to the reasonable conclusion that [Robertson] had the capacity for lethal violence, that he would not comply if confronted, and that he was probably armed." ECF No. 46 at 8.

We also find no clear error with the District Court's conclusion that the use of force was objectively reasonable and lasted no longer than necessary to effectuate the arrest. The fact that the paintball gun was not tested for DNA or photographed during the struggle to arrest Robertson neither precludes nor undermines the officers' testimony regarding the gun. In particular, the officers testified that, when the bed was lifted, Robertson was found lying on his stomach with both his hands and the gun underneath him. To the officers, the gun looked like an AR-15 rifle because only the barrel and fore grip were visible; Officer Eckman announced "gun," prompting the officers to make contact with Robertson to prevent him from using the weapon. One officer jumped on Robertson's back and pushed his head down to prevent him from getting up. Two other officers delivered compliance strikes to Robertson's rib section because he would not release his hands out from under him. Given Robertson's refusal to release his hands, the officers were forced to make "split-second judgments" regarding the use of force to prevent his use of the gun. *Graham*, 490 U.S. at 396-97 ("The calculus of reasonableness

must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation."). Within 45 seconds after the bed was lifted, Robertson was in handcuffs and the use of force ceased.

Finally, we agree with the District Court that Robertson's injuries were consistent with the reasonable use of force. Robertson presented hospital medical records from the day of his arrest which indicate that he had "an injured wrist, 'abrasions' to his face, and fractured ribs." ECF No. 46 at 9; *see also* Trial Tr. at 153-54, 175. As the District Court noted, the medical records stated that the injury to the wrist is "likely a chronic injury." Trial Tr. at 175; ECF No. 46 at 9. The fractured ribs are consistent with the use of compliance strikes in response to Robertson's resistance. And, contrary to his claim on appeal, there was no credible evidence at trial that Robertson had a torn ligament or a concussion, or that the abrasions he suffered were more than a minor injury.

Based on the foregoing, we will affirm the District Court's judgment.[1]

[1] Appellant's "Supplement Extension Petition Brief in Support of Extension of Time" is denied.