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OPINION, U.S. COURT OF APPEALS FOR THE SEVENTH CIRCUIT (JULY 11, 2023)

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BOWE MARVIN,

Plaintiff-Appellant,

v.

DAVID HOLCOMB, ET AL.,

Defendants-Appellees.

No. 22-2757

Appeal from the United States District Court for the Northern District of Indiana, South Bend Division.
No. 3:20-cv-553-MGG — Michael G. Gotsch, Sr., Magistrate Judge.

Argued May 24, 2023
Decided July 11, 2023

Before: SCUDDER, ST. EVE, and KIRSCH, Circuit Judges.

ST. EVE, *Circuit Judge*.

On April 3, 2015, Bowe Marvin's mother called the police to perform a wellness check on her son, who she thought was suicidal. St. Joseph County Sheriff's Deputies David Holcomb, Matthew Corban, and

Christopher Lawson-Rulli arrived at Marvin's home and found his mother in the driveway with a bleeding lip. When she told them that her son had hit her with a chair and caused the bleeding, they approached the house to speak with Marvin himself. In the subsequent altercation, the deputies saw that Marvin had a knife, pulled him from the doorway, and wrestled him to the ground. While he resisted, they tased him twice and struck him several times.

In response, Marvin sued the deputies for unlawful entry and excessive force in violation of the Fourth Amendment. The district court granted summary judgment on some of Marvin's claims, and a jury returned a verdict for the defendants on the remaining claims. We now affirm.

I. Background

A. Factual History

On April 3, 2015, Bowe Marvin was 21 years old and living with his father, Greg. That day, Marvin's mother, Michelle, drove to Greg's house to tell Marvin that he needed to move out and come live with her. This led to a heated argument. Marvin told her he would not leave his father's house and became increasingly agitated. In his anger, he broke her sunglasses, flipped an ashtray, and threw a chair across the room, hitting her in the face and cutting her lip open. Michelle then left the house and called the police from her truck in the drive-way. She asked the police to perform a welfare check on Marvin, as she was worried he might be suicidal. She also told the dispatcher that Marvin regularly carried a box cutter.

When the police arrived, they found Michelle in the car in the driveway. The group included three Sheriff's Deputies: David Holcomb, Matthew Corban, and Christopher Lawson-Rulli. They saw Michelle's split lip and repeatedly asked what had happened to her. She insisted she was fine and asked them to go check on Marvin. The deputies explained that they would not go inside until she told them what had happened to her lip. At that point, Michelle told them that her son had thrown a chair at her. One deputy allegedly said, "I'm taking him down," and all three approached the house.

Deputy Corban knocked on the door and Greg answered. Marvin then came to the door and stood in the doorway. The deputies asked Marvin several times to leave the house, but they did not tell him why they were there, that they had spoken to his mother, or whether he was under arrest. They also repeatedly asked if he had any weapons, and he responded, "What? What do you mean?" Seemingly amidst this discussion of whether Marvin had a weapon, Greg came up behind him and removed a knife from Marvin's back pocket.[1]

Seeing that Greg had removed a knife, Lawson-Rulli and Holcomb grabbed Marvin's hands and pulled him from the house. The parties dispute whether Marvin was inside or outside the doorway when this happened—that is, they dispute whether the deputies had to enter the house to pull him out. Marvin fell to the ground outside and attempted to stand up. Corban wrapped his arms around Marvin's legs, bringing him

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[1] It is undisputed that this knife was a box cutter, which Marvin and his mother have both explained is a common farm tool.

back to the ground. Holcomb tased Marvin once; and when that did not seem to have an effect, he tased him a second time. Simultaneously, the deputies hit him with open hands and closed fists. When Marvin stopped moving, Corban was able to place him in handcuffs, after which he "was compliant." In the district court, Marvin admitted that "[a]t the time the deputies restrained him, [he] was uncooperative but he was not threatening or violent." He claims he suffered a concussion and a broken toe from the encounter.

B. Pretrial Proceedings

Marvin filed this lawsuit on June 10, 2020. He brought claims under 42 U.S.C. § 1983 against all three deputies for unlawful entry and excessive force, in violation of his Fourth Amendment rights. He also brought excessive force claims under Indiana state law. At the close of discovery, the deputies moved for summary judgment on all claims. The district court granted the motion in part and denied it in part.[2]

First, the court dismissed the unlawful entry claims against Corban, because it was undisputed that he had not helped the other deputies pull Marvin from his house. The court also dismissed the excessive force claims against Lawson-Rulli, who was not involved in tasing or hitting Marvin. The district court concluded that without personal involvement in the alleged violations, and absent a showing that the deputies could be vicariously liable as supervisors, these claims against Corban and Lawson-Rulli could not survive.

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[2] The district court also granted summary judgment on claims against the Sheriff's Department, which are not at issue in this appeal.

Next, the court considered Marvin's unlawful entry claims as to Lawson-Rulli and Holcomb. Taking the evidence in the light most favorable to Marvin, the court held that a reasonable jury could find that the deputies entered Marvin's home to arrest him. Furthermore, drawing all reasonable inferences in Marvin's favor, a reasonable person could find that no exigent circumstances justified this warrantless entry because the only weapon Marvin was known to have—his box cutter—had just been taken from him. Accordingly, the court denied summary judgment on the claims of warrantless entry, leaving the issue for trial.

Finally, the court considered the excessive force claim. Because the deputies had probable cause to believe that Marvin had committed a battery against his mother and that he might be suicidal, because he admitted he was resisting arrest, and because he did not respond to the initial use of the taser, the court determined that Corban and Holcomb's use of force was reasonable as a matter of law. With this determination, the court granted summary judgment to Corban and Holcomb on Marvin's excessive force claims, under both § 1983 and Indiana state law.

C. Trial

Marvin's unlawful entry claims against Holcomb and Lawson-Rulli proceeded to a jury trial. At the start of the trial, the district court gave several preliminary jury instructions on the Fourth Amendment without objection. The court first explained that warrantless entries into the home are presumed unreasonable without consent, before giving the following instructions:

> 7. If there is no consent, a warrantless entry is still reasonable when law enforcement

> officers have probable cause for an arrest and "exigent circumstances" exist.
>
> Probable cause . . . for an arrest exists if, at the moment the arrest was made, a reasonable person in Defendants' position would have believed that Plaintiff had committed or was committing a crime. In making this decision, you should consider what Defendants knew and the reasonably trustworthy information Defendants had received.
>
> . . .
>
> Exigent circumstances include emergency situations in which a law enforcement officer has a reasonable and good faith belief that a serious threat to the officer's safety or the safety of others is present. The officer may enter for the purposes of insuring or protecting the officer's wellbeing and the wellbeing of others.
>
> The burden is on the Plaintiff to prove that an entry was unreasonable.
>
> 8. Under the Fourth Amendment, the point where the home begins must be identified by inquiry into reasonable expectations of privacy. A reasonable expectation of privacy exists when (1) the plaintiff exhibits an actual expectation of privacy (subjective) and, (2) the expectation is one that society is prepared to recognize as reasonable (objective).

At the close of evidence, the court discussed the final jury instructions—including the preliminary instructions quoted above, which had already been read

to the jury. At that time, Marvin's counsel objected for the first time to the language of Jury Instruction 8.[3] The district court overruled the objection, and the jury heard these instructions a second time before returning a verdict for the defendants.

II. Analysis

On appeal, Marvin challenges both the jury's decision at trial and the district court's grant of summary judgment. Because the jury's decision informs part of our summary judgment analysis, we begin with the argument for a new trial.

A. Trial and Jury Instructions

Marvin first contends that he deserves a new trial on his unlawful entry claims because the district court erred in giving Jury Instruction 8. "We review challenges to jury instructions de novo. Nevertheless, the district court is afforded substantial discretion with respect to the precise wording of instructions so long as the final result, read as a whole, completely and correctly states the law." *United States v. Chanu*, 40 F.4th 528, 542 (7th Cir. 2022) (cleaned up). "This inquiry requires us to first determine whether an instruction misstates or insufficiently states the law and, if legally improper, then to determine whether the instruction could produce prejudice by . . . confusing or misleading" the jury. *Guzman v. City of Chicago*, 689 F.3d 740, 745 (7th Cir. 2012) (citation omitted).

Marvin argues that the language in Jury Instruction 8—"the point where the home begins must be

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[3] This instruction was number 8 in the preliminary instructions and number 9 in the final instructions.

identified by inquiry into reasonable expectations of privacy"—so misled the jury as to warrant a new trial. We begin, as *Guzman* requires, with the question of whether this instruction accurately states the law. This is not a clear-cut inquiry. On the one hand, Jury Instruction 8 is an almost word-for-word quote from this Court's opinion in *Sparing v. Village of Olympia Fields*:

> The lines [of when intrusion into a home begins] are not so clear, however, because exactly where outside ends and where the home begins is not a point immediately obvious. Splitting fractions of an inch can be a very treacherous endeavor, producing arbitrary results. But we need not pull out our rulers and begin to measure. Under the Fourth Amendment, the point must be identified by inquiry into reasonable expectations of privacy.

266 F.3d 684, 689 (7th Cir. 2001).[4] On the other hand, "more recent Fourth Amendment cases have clarified that the test most often associated with legitimate expectations of privacy . . . supplements, rather than

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[4] Marvin's specific argument was that Jury Instruction 8 was inaccurate or misleading because it failed to take into account our ruling in *United States v. Berkowitz*. In *Berkowitz*, we held that when an arrestee opens the door after police have knocked, he "has not forfeited his privacy interest in the home; he has not relinquished his right to close the door on the unwanted visitors." 927 F.2d 1376, 1387 (7th Cir. 1991). But in *Sparing*, we considered and applied *Berkowitz* in crafting the standard outlined above. 266 F.3d at 689-90. To that end, Marvin's argument is wrong on its face. Nevertheless, we note our concerns with *Sparing* above for consideration at a later date.

displaces, the traditional property-based understanding of the Fourth Amendment." *Byrd v. United States*, 138 S. Ct. 1518, 1526 (2018) (cleaned up); *see also Lange v. California*, 141 S. Ct. 2011, 2018 (2021) (the Fourth Amendment "draws a firm line at the entrance to the house") (cleaned up); *Florida v. Jardines*, 569 U.S. 1, 6 (2013) ("This right would be of little practical value if the State's agents could stand in a home's porch or side garden and trawl for evidence with impunity; the right to retreat would be significantly diminished if the police could enter a man's property to observe his repose from just outside the front window."); *Kyllo v. United States*, 533 U.S. 27, 34 (2001) (expressing concerns with "physical intrusion[s] into . . . constitutionally protected area[s]") (cleaned up). This leaves us skeptical that *Sparing*'s conception of the threshold of the home as a malleable concept remains good law. To the contrary, it seems that the exact physical threshold of the home is highly relevant to the Fourth Amendment inquiry.

But we need not answer that question today. Turning to *Guzman*'s second step, and reading the instructions as a whole, *see Saathoff v. Davis*, 826 F.3d 925, 932 (7th Cir. 2016), we are confident that Jury Instruction 8 was not prejudicial to Marvin. Holcomb and Lawson-Rulli never argued to the jury that Marvin had relinquished any expectation of privacy in his doorway—they argued that exigent circumstances justified warrantless entry *through* that doorway. It is unquestionably an accurate statement of the law that exigent circumstances can justify warrantless entry. *See Lange*, 141 S. Ct. at 2017. And the district court explained as much in Jury Instruction 7. In other words, whether Marvin had relinquished his right to

privacy in the doorway—meaning a warrant would ordinarily be required for entry—was irrelevant. The sole point of Holcomb and Lawson-Rulli's argument was that an exception to that warrant requirement applied.

Because Marvin has failed to show prejudice, there are no grounds to overturn the jury's verdict.

B. Summary Judgment

Marvin's next arguments focus on the district court's grant of summary judgment on two of his claims. "We review [a] summary-judgment order de novo, construing the evidence and drawing inferences in [the nonmovant]'s favor." *Pain Ctr. of SE Ind. LLC v. Origin Healthcare Sols. LLC*, 893 F.3d 454, 459 (7th Cir. 2018) (citation omitted).

1. Use of Force

We now turn to the grant of summary judgment on Marvin's excessive force claims. The district court held that the force used to subdue Marvin was reasonable as a matter of law, foreclosing both his federal and state law excessive force claims.[5] On appeal, Marvin insists that there are genuine issues of material fact regarding the amount of force used and whether it

[5] The Court of Appeals of Indiana has held that the reasonableness analysis for state law excessive force claims is coextensive with reasonableness under the Fourth Amendment. *Brooks v. Anderson Police Dep't*, 975 N.E.2d 395, 399 (Ind. Ct. App. 2012) (analyzing use of force under Ind. Code § 35-41-3-3(b)). Accordingly, the holdings on his Fourth Amendment claims are dispositive as to his state law claims.

was justified.[6] In support, he points to the facts pleaded in his unverified amended complaint. But Marvin appeals a grant of summary judgment. He cannot create a genuine dispute of material fact by relying on allegations; he must point to admissible evidence in the record. *Est. of Perry v. Wenzel*, 872 F.3d 439, 461 (7th Cir. 2017). Because Marvin has failed to carry that burden, we will not disturb the judgment of the district court.

2. Personal Involvement

Finally, Marvin appeals the district court's grant of summary judgment in favor of Corban and Lawson-Rulli for lack of personal involvement in the unlawful entry and use of excessive force, respectively. Marvin contends that this was in error because both men "witnessed," "condoned," and "failed to act to prevent those violations." But without an underlying constitutional or statutory violation, there can be no § 1983 liability. And we have already explained that Marvin has shown no viable reason to overturn the jury's verdict or the district court's holding. Accordingly, this argument, too, must fail.

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[6] He also suggested for the first time at oral argument that the force used was per se excessive because his arrest was unlawful. Arguments raised for the first time at oral argument are forfeited. *Harden v. Marion Cnty. Sheriff's Dep't*, 799 F.3d 857, 863 (7th Cir. 2015). And at any rate, this argument is wrong. Marvin cites *Carlson v. Bukovic*, for this proposition. 621 F.3d 610, 622 n.19 (7th Cir. 2010). But that exact footnote makes clear that excessive force claims are not determined by presence or lack of probable cause. *Id.* They must be considered under the totality of the circumstances, *id.*, exactly as the district court did in this case.

III. Conclusion

In light of the jury's verdict on the unlawful entry claims and Marvin's failure to create a factual dispute regarding his excessive force claims, he has failed to prove that the defendants violated his constitutional rights. The judgment of the district court is

AFFIRMED.

VERDICT, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA (SEPTEMBER 14, 2022)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

BOWE MARVIN,

Plaintiff,

v.

DAVID HOLCOMB, ET AL.,

Defendants.

Cause No. 3:20-CV-553-DRL-MGG

We, the jury, find in favor of Defendants, and against Plaintiff on all claims.

/s/ Seth Barnett
Presiding Juror

Date: September 14, 2022

OPINION AND ORDER, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA (JULY 25, 2022)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

BOWE MARVIN, ET AL.,

Plaintiffs,

v.

DAVID HOLCOMB, ET AL.,

Defendants.

Case No. 3:20-CV-553-MGG

Before: Michael G. GOTSCH, SR.,
United States Magistrate Judge.

OPINION AND ORDER

Plaintiff Bowe Marvin ("Plaintiff" or "Bowe") has sued the Defendants—Officer David Holcomb ("Holcomb"), Corporal Christopher Lawson-Rulli ("Lawson-Rulli"), Patrolman Matthew Corban ("Corban"), and the St. Joseph County Sheriff's Department ("the Department")—for events that occurred at Bowe's home on April 3, 2015. On that date, Holcomb, Lawson-Rulli, and Corban (collectively, "the Defendant officers") were dispatched to Bowe's home in Mishawaka, Indiana, after Bowe's mother,

Michelle Marvin ("Michelle")[1], called 911 and requested that police perform a welfare check on Bowe. The Defendant officers knocked on the door of the home and remained outside while conversing with Bowe as he stood in the doorway. Believing Bowe to be uncooperative and combative during this conversation—especially in response to questions as to whether Bowe had a weapon—Holcomb and Lawson-Rulli subsequently grabbed hold of Bowe. All three then fell to the ground below the doorway. Holcomb and Corban then subjected Bowe to physical force before handcuffing him. Bowe was charged with battery and resisting arrest, but the charges were ultimately dismissed.

Bowe filed the instant action on June 10, 2020. His three count Amended Complaint asserts claims under 42 U.S.C. § 1983, contending that the Defendant officers unlawfully entered his home and used excessive force in violation of the Fourth Amendment. Bowe also alleges state law claims for trespass, battery, and excessive force contending that the Department is vicariously liable for the Defendant officers' actions. [DE 48]. Defendants have moved for summary judgment on all claims.

The undersigned now issues the following opinion and order with jurisdiction conferred by the parties' consent [DE 34, DE 41] and 28 U.S.C. § 636(c). For the reasons stated below, Defendants' motion is granted in part and denied in part. [DE 66].

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[1] As Bowe and his parents all have the same last name, the Court will refer to these individuals by first name for clarity.

I. Facts

The following facts are taken in the light most favorable to Plaintiff and are primarily not in dispute except where noted. For the purposes of this motion, any facts not addressed are taken as undisputed in accordance with Fed. R. Civ. P. 56(e)(2).

On April 3, 2015, Bowe was twenty-one years old and living with his father, Greg Marvin ("Greg") in a farmhouse in Mishawaka, Indiana. Bowe's mother Michelle drove to Greg's home that day to talk to Bowe about moving out of Greg's house and coming to live with her instead. This led to a heated argument between Michelle and Bowe, which culminated in Bowe breaking his mother's sunglasses in two, flipping an ashtray, and throwing a chair. The chair hit Michelle in the face and cut her lip. After that, Michelle left the house and got in her truck, which was parked in the driveway in front of the house. From there, she called 911 and asked the dispatcher for a welfare check on Bowe because she was concerned that Bowe was acting suicidal. During the call, the dispatcher asked if Bowe carried any weapons, to which Michelle responded that Bowe typically carried a box cutter knife in his pocket. Michelle has explained that this kind of knife is typical for living on a farm and indicates she would have related that same information to the dispatcher. [Michelle Dep., DE 69-2 at 18].

Holcomb, Lawson-Rulli, and Corban were contacted by the dispatcher to perform the welfare check. The dispatcher notified the Defendant officers that Bowe was possibly suicidal, and that Bowe typically carried a box cutter. The officers arrived at the home shortly thereafter, first encountering Michelle, who was still sitting outside of the house in her truck. She was

holding a wad of napkins to her lip to stop the bleeding. The officers observed the cut in her lip and asked her about her injury. Michelle initially refused to answer these questions, instead responding by stating "I'm fine. I want you to check on my son" and "I'm fine. I'm worried about my son." [Michelle Dep., DE 67-2 at 8-9; Holcomb Dep., DE 67-3, at 4]. However, after the officers explained that they would not approach the house until Michelle answered them, she explained that she and Bowe had argued, and that Bowe had thrown a chair at her.

The officers then approached the front door to the home. The front door is elevated a few feet above the ground with three wooden steps leading up to it, and the door opens inward. Defendant Corban knocked, and Greg opened the door. Corban indicated that he needed to speak with Bowe. Bowe, overhearing the officer asking for him, walked over. Once Bowe walked over, Greg stepped back behind Bowe.

Bowe and the Defendant officers spoke to one another through the open doorway. Michelle, who was still in her truck outside of the house, observed the interaction and recorded a video on her phone while the Defendant officers and Bowe spoke. [Michelle Dep., DE 69-2 at 21]. As Bowe and the officers conversed, the officers stood on the ground a few feet below the door, with one of them resting his foot on the first step of the stairs that led to the door. [Michelle Photograph, DE 69-10]. Bowe stood in the doorway of the house with one hand resting on the inwardly-opened door, and the other hidden behind the doorframe. [Lawson-Rulli Dep., DE 67-5 at 5; Michelle Photograph, DE 69-10]. A still photograph taken from Michelle's video

also shows Bowe's feet obscured by the doorframe. [DE 69-10].

Bowe's memory of his conversation with the officers is "blurry." [Bowe Dep., DE 67-1 at 10]. Bowe only recalls that the conversation mainly consisted of the officers asking Bowe why they were called, with Bowe responding that he did not know because he was not the one who called them. According to the officers, Bowe failed to directly questions and refused to show both of his hands when asked. The officers also asked Bowe several times to come out of the house to talk, but Bowe declined.

Moreover, when the officers asked Bowe whether he had a weapon, Bowe recalls responding by saying "no." [Bowe Dep., DE 67-1 at 14]. However, the officers indicate that Bowe kept responding to this question by saying "What?" and "What do you mean?" [Holcomb Dep. DE 67-3 at 7-8]. Bowe explained that he "wouldn't have called [the box cutter] a weapon" as it was not used as one, and that he may have subsequently stated "what" or "what do you mean" for this reason. [Bowe Dep., DE 67-1 at 12; 13-14]. According to the officers, however, these responses made Bowe appear "distracted," "sarcastic," "standoffish," and "uncooperative." [Lawson-Rulli Dep., DE 67-5 at 6; Holcomb Dep. DE 67-3 at 7-8]. Moreover, after Bowe failed to directly answer the officers' questions about a weapon, Greg came back up to the doorway, reached into the back pocket of Bowe's pants, and pulled out the box cutter. [Bowe Dep., DE 67-1 at 15]. Holcomb and Lawson-Rulli then looked at one another and, without any verbal exchange, decided to grab hold of Bowe to gain control over him. The officers did not announce that Bowe under arrest prior to grabbing him.

The parties dispute precisely where Bowe was standing when the officers grabbed hold of him. Bowe contends that when his father reached into his pocket and pulled out the box cutter, Bowe turned to his right to look back at this father, moving further into the house. [Bowe Dep., DE 69-1 at 20]. Accordingly, Bowe contends that when Holcomb and Lawson-Rulli reached up and grabbed his hands, his entire body was inside the house. [Bowe Dep., DE 69-1 at 20]. Holcomb, however, contends that Bowe was "still leaning in the doorframe, the threshold of the door" and that Bowe's hand or forearm was out of the threshold such that the officers did not need to cross the threshold of the doorway when they reached up and grabbed Bowe. [Holcomb Dep., DE 67-3 at 9, 11]. Likewise, Lawson-Rulli does not recall that any part of his body crossed the threshold when he grabbed onto Bowe. [Lawson-Rulli Dep., DE 67-5 at 6]. Holcomb does not recall where Bowe's feet were situated when they grabbed Bowe. [Holcomb Dep., DE 67-3 at 9]. Lawson-Rulli recalls that Bowe's feet were in the threshold of the doorway. [Lawson-Rulli Dep., DE 69-4 at 7]. Holcomb's police report prepared later that day describes that the officers pulled Bowe "out of the house" and "from the door." [DE 69-6]. Likewise, Corban's police report prepared later that day similarly describes that the officers pulled Bowe "outside of the home." [DE 69-8]. Lawson-Rulli's report does not indicate Bowe's position. [DE 69-7].

After Holcomb and Lawson-Rulli grabbed Bowe, all three fell to the ground a few feet below the door. After hitting the ground, Bowe started to stand up, but Corban came over and wrapped his arms around Bowe's legs, bringing Bowe back to the ground. Bowe

admits that he cannot remember what the officers said to him after they all hit the ground. [Bowe Dep., DE 67-1 at 23]. According to Holcomb and Corban, after they hit the ground, they commanded Bowe to show his hands and asked him to calm down, but instead Bowe was actively resisting, physically combative, and trying to get away. [Holcomb Dep., DE 67-3 at 14]. The officers also told Bowe that he was resisting. Lawson-Rulli's police report also indicates that he heard Holcomb and Corban telling Bowe to show his hands and to stop resisting. Bowe has stated that "i[t] is possible that they said [he] was resisting." [Bowe Dep. DE 67-1 at 23].

After Bowe failed to show his hands to the officers or otherwise respond to their commands, Holcomb discharged the prongs of his Taser on Bowe. When the Taser did not seem to affect Bowe, Holcomb discharged it again using the "drive stun" technique, placing the Taser directly on Bowe. As the drive stun also did not affect Bowe, Holcomb then used hand strikes on Bowe, ultimately hitting Bowe with one closed hand strike and several open hand strikes. After using the strikes, the officers were able place Bowe in handcuffs, and Bowe became compliant. The officers did not use any other force on Bowe, and they called paramedics to assess Bowe and to remove the taser prongs. Bowe had a concussion and a broken toe.

As a result of this incident, Bowe was charged with battery and resisting arrest, but the charges were later dismissed.

II. Analysis

Summary judgment is appropriate when the "pleadings, the discovery and disclosure materials on

file, and any affidavits show that there is no genuine issue as to any material fact and the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). A "material" fact is one identified by the substantive law as affecting the outcome of the suit. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, (1986). A "genuine issue" exists regarding a material fact when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Id.* To determine whether a genuine issue of material fact exists, the court must review the record, construing all facts in the light most favorable to the nonmoving party and drawing all reasonable inferences in that party's favor. *Heft v. Moore*, 351 F.3d 278, 282 (7th Cir. 2003). Accordingly, the Court's role "is not to sift through the evidence, pondering the nuances and inconsistencies, and decide whom to believe. The court has one task and one task only: to decide, based on the evidence of record, whether there is a material dispute that requires a trial." *Waldridge v. Am. Hoechst Corp.*, 24 F.3d 918, 920 (7th Cir. 1994). Indeed, the court is not "obligated to research and construct legal arguments for parties, especially when they are represented by counsel." *Nelson v. Napolitano*, 657 F.3d 586, 590 (7th Cir. 2011).

To overcome a motion for summary judgment, the nonmoving party cannot rest on the allegations or denials contained in his pleadings. Rather, the nonmoving party must present sufficient evidence to show the existence of each element of his case on which he will bear the burden at trial. *Celotex*, 477

U.S. at 322–23; *Modrowski v. Pigatto*, 712 F.3d 1166, 1168 (7th Cir. 2013). Where a factual record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial. Fed. R. Civ. P. 56(e); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). In other words, "[s]ummary judgment is not a dress rehearsal or practice run; it is the put up or shut up moment in a lawsuit, when a party must show what evidence it has that would convince a trier of fact to accept its version of the events." *Hammel v. Eau Galle Cheese Factory*, 407 F.3d 852, 859 (7th Cir. 2005) (quotations omitted); *see also Goodman v. Nat'l Sec. Agency, Inc.*, 621 F.3d 651, 654 (7th Cir. 2010).

Here, Plaintiff has brought § 1983 claims against the Defendant officers, contending that they entered his home and used excessive force in violation of the Fourth Amendment. Plaintiff also brings state law claims for trespass, battery, and excessive force, contending that the Department is vicariously liable for the officers' actions. Defendants move for summary judgment on all counts.

A. Claims Against the St. Joseph County Sheriff's Department

The Department first moves for summary judgment contending that, as a county police department, it "is not a suable entity." [DE 67 at 10; DE 70 at 5].

Local governmental entities can be liable under § 1983 for unconstitutional policies or customs. *See Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 684 (1978). However, the capacity of a party to sue and be sued, when that party is not an individual or a corporation, is determined by the law of the

state where the court is located. Fed. R. Civ. P. 17(b)(3). As such, a local governmental unit is considered the proper defendant under § 1983 if, under state law, it is the unit responsible for setting the policy or custom at issue. *McMillan v. Monroe Cnty.*, 520 U.S. 781, 785 (1997); *see also Riley v. Lake Cnty.*, No. 2:17 CV 368, 2018 WL 3239732, at *4 (N.D. Ind. July 3, 2018).

Under Indiana law, a "[m]unicipal corporation" is defined as a "unit, . . . or other separate local governmental entity that may sue and be sued." Ind. Code § 36-1-2-10. "Unit" is further defined as a "county, municipality, or township." Ind. Code § 36-1-2-10. Based on this, the Department contends that, as a department within St. Joseph County, it is neither a unit or a separate local government entity that maybe be sued. In support, the Department primarily relies on *Sow v. Fortville Police Dept.*, 636 F.3d 293 (7th Cir. 2011) and *Miller v. St. Joseph Cnty.*, No. 2:11-cv-217, 2014 WL 3740175 (N.D. Ind. July 30, 2014). Plaintiff, however, contends that the Department is considered a separate suable entity under Indiana law, relying on *Hamann v. Starke Cnty.*, No. 3:18-cv-952-PPS-MGG, 2019 WL 1438294, at *3 (N.D. Ind. 2019) and *Frazee v. Dearborn Cnty. Sheriff's Dep't,* No. 416CV00005SEBDML, 2017 WL 4650874, at *11 (S.D. Ind. Oct. 17, 2017).

In *Sow*, the plaintiff sued the Fortville Police Department ("FPD") and one of its officers as well as the McCordsville Police Department ("MPD"), bring claims under 42 U.S.C. §§ 1983, 1985, and 1986, as well as numerous state law claims. *See* 636 F.3d at 293. The court in *Sow* found that the FPD and MPD were not proper parties to the suit, stating "[t]he United States has instructed that local government liability under § 1983 is 'dependent on an analysis of state

law'" and found that, as municipal police departments, the MPD and FPD do not have the capacity to be sued under Indiana statute. 636 F.3d at 300. Moreover, in *Miller*, the plaintiff sued St. Joseph County, the St. Joseph County Sheriff, the Department, and numerous individuals. Regarding the Department, the plaintiff alleged racial discrimination under color of law in violation of 42 U.S.C. § 1983. Considering the plaintiff's § 1983 claims against the Department, the Court found that the Department could not be sued, stating: "[d]efendants contend that no section 1983 claim can be maintained against the St. Joseph County Police Department because it is merely a municipal department and not a suable entity. Defendants are right in this contention." *Id.* at *9.

Initially, this authority appears to directly to support the Department's contention that it is not suable in the instant action. However, first, it is unclear whether this authority—which addresses the ability of a police department to be sued under § 1983—also applies to Plaintiff's instant state law claims. This is because § 1983 "vindicate[s] rights, privileges or immunities that are guaranteed by the U.S. Constitution or a federal statute." *Narducci v. Moore*, 572 F.3d 313, 318-19 (7th Cir. 2009). However, § 1983 does not provide a vehicle for relief for state tort claims. *See Mahoney v. Beacon Health Ventures*, No. 3:19-CV-1130-RLM, 2022 WL 445503, at *6-7 n. 4 (N.D. Ind. Feb. 14, 2022) (citing *Baker v. McCollan*, 443 U.S. 137, 146, 99 S.Ct. 2689, 61 L.Ed.2d 433 (1979)). Here, while Plaintiff has alleged both constitutional violations under § 1983 and state law tort claims, Plaintiff has only alleged that the Department is vicariously liable for the Defendant officers' violations under state

tort law. Accordingly, the Department does not address whether it is still entitled to summary judgment on Plaintiff's state law tort claims if it is not suable under § 1983.

Moreover, this court subsequently has distinguished Defendant's authority, first finding that *Sow* was based upon a suit brought against city police departments rather than a county sheriff's department, and because city police and county sheriff's departments are defined differently under Indiana, a decision regarding a city police department does not mandate the same decision for a county sheriff's department. *Mahoney*, 2022 WL 445503, at *7. This court similarly distinguished *Miller* even though it found that the Department could not be sued, noting that the *Miller* court also based its finding on cases involving a city police department. *Id.*

On reply, the Department further argues that it is not the proper entity for the instant matter based upon state law. The Department states that Indiana statute only establishes duties for the sheriff and not for the department, and that, if the determination is based upon who employs the individual officers, the county, rather than the Department, is the proper entity for the instant action. Arguments raised for the first time in a reply brief are typically considered waived. *White v. United States*, 8 F.4th 547, 552 (7th Cir. 2021) (internal citations omitted). Yet even considering the substance of these arguments, the Department's position is unavailing.

The Department's first argument on reply—that Indiana statute only establishes duties for the sheriff and for the Department—appears to effectively argue that the St. Joseph County Sheriff, rather than the

Department, is the proper entity to be sued. However, suits against a government official in their official capacity are typically considered a suit against that officer's agency or department. *Mahoney*, 2022 WL 445503, at *7 (internal citations omitted). Indeed, this court, finding that the Department is suable, has explicitly stated that "[a] suit against [the St. Joseph County Sheriff] in his official capacity would really be a suit against the St. Joseph County Sheriff Department, which is what [the plaintiff] has brought." *Id.*

Moreover, the Department's second argument contends that if Plaintiff seeks to hold the Department liable under a theory of *respondeat superior* liability based on who employs the Defendant officers, St. Joseph County is the proper entity. In support, the Department points to Indiana Code § 36-2-16-4, which states that the sheriff only has authority to appoint deputies or employees as "authorized by the county fiscal body." While it is true that Department employees are considered county employees, the sheriff assigns their duties and is responsible for their official acts. Ind. Code § 36-8-10-4(a); *see also Vandewalle v. Moffa*, No. 3:07-cv-400 PS, 2009 WL 631244, at *3 (N.D. Ind. Mar. 10, 2009) ("Although officers employed by the sheriff's department are employed by the county, they operate under the control of the county sheriff."). Moreover, the Court's holding in *Hamann*, relied upon by Plaintiff, further refutes the Defendants' position that the county is the property entity to be sued in this context. Specifically, the court in *Hamann* explained that "[a] sheriff's department acts independently of a county board of commissioners and there is no agency relationship. . . . " 2019 WL 1438294, at *3 (internal citations omitted). Indeed, under Indiana law, a sheriff's

department is separately established by the state constitution, and the sheriff is independently elected. Accordingly, the sheriff answers to a county's citizens rather than other county officers. *See* Ind. Const. art. VI, § 2; *Markley v. Walters*, 790 F. Supp. 190, 191 (N.D. Ind. 1992).

As the sheriff is independently elected, assigns sheriff's deputies' duties, and is responsible for the deputies' official acts, the Department is a proper defendant in this action. *Mahoney*, 2022 WL 445503, at *6-7. Indeed, courts have found that an Indiana sheriff's department may be held vicariously liable for torts committed by its employees within the scope of employment, which is what Plaintiff has alleged. *See Frazee*, 2017 WL 4650874, at *11; *see also Harrison Cnty. Sherriff's Dep't v. Ayers*, 70 N.E.3d 414 (Ind. Ct. App. 2017). Accordingly, the Department's motion for summary judgment on the grounds that it is not a suable entity or the proper entity for this action is denied.

B. Plaintiff's § 1983 Claims Against the Defendant Officers

Next, the Defendant officers move for summary judgment on both Plaintiff's § 1983 unlawful entry and excessive force claims, contending that (1) not all the officers were personally involved in each of the events that occurred; (2) the Defendants are entitled to qualified immunity because the undisputed material facts show that the Defendants did not violate Plaintiff's constitutional rights; and (3), even if the facts taken in the light most favorable to Plaintiff do make out a constitutional violation, the Defendant officers are still

entitled to qualified immunity because the constitutional rights at issue were not clearly established.

1. Personal Involvement

Defendants first contend that the undisputed material facts demonstrate that Defendant Corban was not involved in pulling Bowe from the doorway, and Defendant Lawson-Rulli was not involved in any of the acts which Plaintiff contends constitute excessive force. Accordingly, Defendants contend that Defendant Corban is entitled to summary judgment on Plaintiff's unlawful entry claim, and that Defendant Lawson-Rulli is entitled to summary judgment on Plaintiff's excessive force claim.

Plaintiff does not dispute these facts, but instead contends that all Defendant officers played a role in the events at his home, and accordingly, all are directly responsible such that they are subject to § 1983 liability for both claims. Specifically, Plaintiff contends that, although Defendant Lawson-Rulli had no further contact with Plaintiff after he grabbed Plaintiff at the doorway, his act in removing Plaintiff is what made it possible for Defendants Corban and Holcomb to subject Plaintiff to excessive force. Likewise, Plaintiff contends that although Defendant Corban was not involved in initially grabbing Plaintiff, he knew about, facilitated it, and condoned it, relying on *Rasho v. Elyea*, 856 F.3d 469, 478 (7th Cir. 2017).

"[T]he Supreme Court has foreclosed *respondeat superior* liability for section 1983 actions, [so] a plaintiff may hold a government official liable only for his or her own misconduct." *See Kemp v. Fulton Cnty.*, 27 F. 4th 491, 497-98 (7th Cir. 2022). Accordingly, a plaintiff must show a defendant's personal involvement or

participation in the alleged violation, or a defendant's direct responsibility for the alleged violation. *Piggie v. Riggle*, 548 F.Supp.2d 652, 657 (N.D. Ind. 2008); *Starzenski v. City of Elkhart*, 87 F.3d 872, 879 (7th Cir. 1996). Supervisors may be liable for a subordinate's deprivation under § 1983 only if they are personally responsible for it. To show such responsibility, courts have found that a plaintiff must show that "the supervisor . . . 'kn[e]w about the conduct and facilitate[d] it, approve[d] it, condone[d] it, or turn[ed] a blind eye for fear of what they might see.'" *Matthews v. City of East St. Louis*, 675 F.3d 703, 708 (7th Cir. 2012) (citing *Jones v. City of Chicago*, 856 F.2d 985, 992-93 (7th Cir 1988).

Although Plaintiff contends that the Defendant officers should be liable for one another's conduct because they each knew about the others' actions, facilitated it, and condoned it, Plaintiff did not present any facts to show a supervisory relationship between the Defendant officers such that the officers can be personally liable for the others' actions. Moreover, Plaintiff's authority similarly addresses a claim brought against a supervisor. Plaintiff also does not present any facts showing that Defendant Corban was involved in removing Plaintiff in the doorway or that Defendant Lawson-Rulli was involved in the actions constituting excessive force. Accordingly, Defendants are entitled to summary judgment on Plaintiff's unlawful entry claim as it pertains to Defendant Corban as well as summary judgment on Plaintiff's excessive force claim as it pertains to Defendant Lawson-Rulli.

The Court now considers Plaintiff's unlawful entry claim as to Holcomb and Lawson-Rulli and Plaintiff's excessive force claim as to Holcomb and Corban.

2. Constitutional Violations

Plaintiff has brought his unlawful entry and excessive force claims under § 1983, and Defendants have raised a defense of qualified immunity, first contending that the undisputed material facts demonstrate that there was no violation of Plaintiff's constitutional rights.

The doctrine of qualified immunity protects government officials from liability for civil damages when their conduct does not violate a "clearly established" constitutional or statutory right. *McAllister v. Price*, 615 F.3d 877, 881 (7th Cir. 2010). Once a defendant raises a qualified immunity defense, the plaintiff carries the burden of defeating it. *Kiddy-Brown v. Blagojevich*, 408 F.3d 346, 359 (7th Cir. 2005). Evaluating this defense requires the Court must make two inquiries: (1) whether the facts—which the Court views in the light most favorable to Plaintiff—show a violation of a statutory or constitutional right, and (2) whether that right was "clearly established" at the time of the alleged violation. *Williams v. Chicago*, 733 F.3d 749, 758 (7th Cir. 2013). "If *either* inquiry is answered in the negative, the defendant official is entitled to summary judgment." *Gibbs v. Lomas*, 755 F.3d 529, 537 (7th Cir. 2014) (emphasis in original).

The Court is not required to address the prongs in this order; instead, the Court may address the prongs in the order "best suited to the circumstances of the particular case at hand." *McAllister*, 615 F.3d at 881. In this case, however, it makes sense to address the prongs in order, as the second prong applies only to the federal claims, and Plaintiff's state law claims also turn on the lawfulness of the relevant events.

a. Unlawful Entry

Defendants move for summary judgment on Plaintiff's unlawful entry claim, first contending that Defendants Holcomb and Lawson-Rulli's[2] actions in grabbing Plaintiff as he stood in his doorway did not violate Plaintiff's constitutional rights.

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." It protects a person's reasonable expectation of privacy in numerous settings, but individuals inside their homes have heightened protection. *Payton v. New York*, 445 U.S. 573, 585-86 (1980). At the core of the Fourth Amendment is "the right of a man to retreat into his own home and therefore be free from unreasonable governmental intrusion." *Silverman v. United States*, 365 U.S. 505, 511 (1961).

Accordingly, a warrantless arrest in a public place based upon probable cause does not violate the Fourth Amendment, but searches and seizures that occur inside the home without a warrant are presumed unreasonable, even with probable cause, unless the officer obtains consent to enter the home or there are exigent circumstances. *U.S. v. Santana*, 427 U.S. 38, 42 (1976); *see also Sparing v. Village of Olympia Fields*, 266 F.3d 684, 688 (7th Cir. 2001). Exigent circumstances include the need to provide emergency assistance to an injured occupant in a home, to protect an occupant in the home from imminent harm, to extinguish a fire, and to protect the imminent destruction of evidence. *See*

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[2] For purposes of this section, any reference to Defendants or the Defendant officers refers only to Defendants Holcomb and Lawson-Rulli.

Kentucky v. King, 563 U.S. 452, 455 (2011); *see also Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006) (internal citations omitted).

From this, the line seems quite clear: entering a home without a warrant absent consent or exigent circumstances "by even a fraction of an inch [is] too much." *Kyllo v. United States*, 533 U.S. 27, 37 (2001) (internal citations and punctuation omitted). However, courts have previously recognized that "'where outside ends and where the home begins is not a point immediately obvious.'" *Sparing*, 266 F.3d at 689 (internal citations omitted). Moreover, "[s]plitting fractions of an inch can be a very treacherous endeavor, producing arbitrary results." *Id.* Accordingly, when considering whether the existence of probable cause alone is not sufficient for a warrantless entry, this Court need not "pull out our rulers and begin to measure." *Id.* (internal citations omitted). Rather, "the point must be identified by inquiry into reasonable expectations of privacy." *Id.* "A reasonable expectation of privacy is infringed when (1) [an individual] exhibits an actual or subjective expectation of privacy and (2) the expectation is one that society is prepared to recognize as reasonable." *United States v. Mendoza*, 438 F.3d 792, 795 (7th Cir. 2006) (citing *Katz v. United States*, 389 U.S. 347, 361 (1967).

Here, the Defendant officers contend that they did not violate Plaintiff's constitutional rights because, at the time they seized Plaintiff, he was voluntarily standing in his doorway—where Plaintiff had no expectation of privacy, such that it is a public place for purposes of the Fourth Amendment—and the Defendant officers otherwise never entered Plaintiff's home.

In support, the Defendant officers primarily rely on *United States v. Santana*, 427 U.S. at 42.

In *Santana*, law enforcement officers had probable cause to arrest Santana for drug crimes and drove to her house to arrest her. When the officers pulled up, they found her standing in her doorway holding a brown paper bag. *Id.* at 40. Specifically, the officers stated that Santana "was standing directly in her doorway [as] one step forward would have put her outside, one step backward would have put her in the vestibule of her residence." *Id.* at 39 n. 1. The officers exited their vehicle, announced their presence, and began to approach Santana to arrest her. *Id.* at 40. Santana, however, retreated into her house. The police then followed her through the open doorway and arrested her inside her home. *Id.* at 40-41.

The Supreme Court upheld Santana's warrantless arrest inside the home, finding that Santana, who was standing in her doorway when the police pulled up to her home, was in a "public place," as "[s]he was not in an area where she had any expectation of privacy." *Id.*; *see also Katz*, 389 U.S. at 381 ("What a person knowingly exposes to the public, even in his own house or office, is not a subject of Fourth Amendment protection.") The Supreme Court further found that Santana could not "thwart an otherwise proper arrest" by retreating into the privacy of her home. *Id.* at 43.

Based on this, the Defendant officers contend that Bowe, like Santana, was "voluntarily standing in the threshold of [his] home (*i.e.*, in the middle of an open doorway) [which] is outside rather than inside the home for purposes of the Fourth Amendment." [DE 67 at 14, quoting *Santana*, 427 U.S. at 42.] While it is true that both Bowe and Santana were standing

in the doorway when they encountered the police, the similarities end there such that the Court cannot find Defendants are entitled to summary judgment based on the holding of *Santana*.

First, Santana was already standing in her open doorway when the police arrived and began to approach her. Bowe, however, came to the doorway only after the officers knocked on the door and he overheard the officers asking for him. Courts in the Seventh Circuit applying *Santana* have distinguished the privacy expectations implicated when an individual comes to the door in response to a knock. Specifically, the Seventh Circuit in *Sparing v. Village of Olympia Fields* found that a person does not "surrender reasonable expectations of privacy in the home by simply answering a knock at the door." 266 F.3d at 690. Indeed, in *United States v. Berkowitz*, the Seventh Circuit, while discussing *Santana*, observed that "there is a significant different between a person who for no reason voluntarily decides to stand in his open doorway, and a person who merely answers a knock on the door." 927 F.2d 1376, 1388 (7th Cir. 1991). Indeed, the court in *Berkowitz* further stated that a person who "answers the knock and stays within the house is not voluntarily exposing himself 'to public view, speech, hearing, and touch as if [he is] standing completely outside [his] house.'" *Id.* at 1388.

Defendants attempt to distinguish *Sparing* and *Berkowitz*, contending that Bowe was not the one who initially opened the door in response to the officers' knock and that Bowe voluntarily came to the door when he heard the officers ask about him. Defendants also contend that he was fully visible as he stood in the doorway, and Bowe did not attempt to shut the

door on the officers. However, the Court cannot find that these distinctions show that Defendants are entitled to judgment as a matter of law.

First, while Bowe knew that law enforcement officers were at the door when he walked over, the Court cannot find that Bowe was "*for no reason* voluntarily . . . stand[ing] in his open doorway" when he encountered the officers, as he only came to the door because he heard the officers asking for him. *Berkowitz*, 927 F.2d at 1388 (emphasis added). And while it may be true that no facts show that Bowe attempted to close the door, in *Berkowitz*, the court addressed this issue, stating that when an individual responds to a knock, he "has not relinquished his right to close the door on the unwanted visitors." *Berkowitz*, 927 F.2d at 1387.[3]

Further, in *Kentucky v. King*, the Supreme Court stated that when law enforcement officers knock on a door without a warrant, they can do no more than any other private citizen. *See* 563 U.S. 452, 469 (2011). Indeed, an occupant has no obligation to answer the door or speak to an officer who knocks on a door under such circumstances. *Id.* Accordingly, *King* also provided that, if an occupant does choose to open the door and speak to the officers, the occupant may still decline to answer any questions or refuse to allow the officers to enter the premises. *Id.*

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[3] Moreover, the evidence does not show whether Bowe would have had the opportunity to close the door, as the Defendant officers did not tell Bowe he was under arrest before reaching for him, and the Defendant officers never verbalized their intent to grab hold of Bowe before reaching for him.

The Defendant officers also contend that the way that Bowe was standing and leaning in the doorway put him outside such that when the officers grabbed hold of him, neither officer crossed into the threshold of the home. Bowe, however, contends that the officers grabbed hold of him when his entire body was inside the house, as he had just turned back further into his home to look at his father after his father removed the box cutter knife from Bowe's back pocket. A still photograph of the encounter shows Bowe standing in the door with his feet obscured behind the doorframe, with one hand resting on the door opened inward oand the resting on the edge of the doorframe. [DE 69-10]. The police officers' reports also describe that Bowe was pulled outside or out of the house.

Accordingly, there remains a dispute as to whether—and how much—the Defendant officers crossed the threshold of Bowe's home when they seized him, and whether this violated Bowe's reasonable expectation of privacy based on the circumstances that brought him to the doorway in the first instance. Defendants contend that other evidence contradicts Bowe's statements. However, this Court's role is "not to sift through the evidence, pondering the nuances and inconsistencies, and decide whom to believe." *Waldridge*, 24 F.3d at 920. Rather, this Court must construe all facts in the light most favorable to Plaintiff and draw all reasonable inferences in Plaintiff's favor. The facts, in the light most reasonable to Plaintiff, show that he only came to the front door after the Defendant officers knocked, he remained inside his home, that he declined to leave his home several times, and that, at the time he was seized by the Defendant Officers, he had turned further into the house and had

not been told he was under arrest. Based on these facts, a reasonable jury could find that Bowe was within his home and retained a reasonable expectation of privacy such that the Defendants' actions violated the Fourth Amendment. *See Flores v. Lackage*, 938 F.Supp.2d 759, 767, 773 (N.D. Ill. 2013) (granting a plaintiff's motion for summary judgment on his unlawful entry claim after a defendant officer had "reached through the doorway threshold" prior to telling plaintiff he was under arrest, when the plaintiff stood "at all times within the threshold of an outer door. . . . ")

In their reply, Defendants contend that exigent circumstances justified any unlawful entry, stating that courts in this circuit have found "exigent circumstances justifying warrantless entry where police officers fear a gun may be fired at them or others within a dwelling." *United States v. Barnett*, No. 19-CR-30036-NJR-1, 2020 WL 3962266, at *3 (S.D. Ill. July 13, 2020) (internal citation omitted). However, arguments raised for the first time on reply are deemed waived. *Wonsey v. City of Chicago*, 940 F.3d 394, 398 (7th Cir. 2019); *see also Reis v. Robbins*, No. 14-cv-00063, 2015 WL 846526, at *2 (S.D. Ind. Feb. 26, 2015) ("Reply briefs are for replying, not raising new arguments or arguments that could have been advanced in the opening brief.") Even considering this argument, however, it is unavailing. Here, the undisputed material facts demonstrate that the Defendant officers knew that Bowe carried a box cutter, which was removed from Bowe's pocket before the officers reached for Bowe. Without more, the Court cannot find that the undisputed material facts show exigent circumstances justifying a warrantless entry.

b. Excessive Force

Defendants also move for summary judgment on Plaintiff's excessive force claim, first contending that the undisputed material facts demonstrate that the Defendant officers'[4] use of force was reasonable under the circumstances. Specifically, the Defendants contend that Bowe's noncompliance required the officers to escalate their use of force to gain compliance over Bowe, as law enforcement must "graduate their response to meet the demands of the circumstances confronting them." *Smith v. Ball State University*, 295 F.3d 763, 770 (7th Cir.2002). Plaintiff contends that, because the Defendant officers unlawfully entered his home when they grabbed him from the doorway in the first place, they were not justified in using any force against him.

Excessive force claims are evaluated under the Fourth Amendment's reasonableness standard based on the totality of the circumstances. *See Acevedo v. Canterbury*, 457 F.3d 721, 724 (7th Cir. 2006). "Determining whether force used to effect a particular seizure is reasonable requires balancing of the individual's Fourth Amendment interests against the relevant government interests." *County of Los Angeles Calif. v. Mendez*, 137 S.Ct. 1539, 1546 (2017). Accordingly, courts consider three factors when making this inquiry: (1) the severity of the crime at issue; (2) whether the suspect poses an immediate threat to the safety of officers or others; and (3) whether the suspect is actively resisting arrest by flight. *Graham v. Connor*, 490 U.S. 386, 396 (1989). Officers often must make

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[4] For purposes of this section, any reference to Defendants or the Defendant Officers refers to Defendants Holcomb and Corban.

split-second decisions regarding the amount of force necessary in a specific situation. *See id.* at 396-97. Furthermore, courts must consider the facts "from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.* at 396. Before such an analysis can occur, the Court must determine that the facts giving rise to a claim of excessive force are undisputed. If there are sufficient undisputed facts to establish that the officer acted reasonably under the circumstances, then the court should resolve the issue a matter of law. *Dawson v. Brown*, 803 F.3d 829, 833 (7th Cir. 2013).

Turning to the facts, Defendants contend that the material facts relevant to Plaintiff's excessive force claim are undisputed. After the Defendant officers arrived at the home, they spoke first to Michelle, who continued to express concern about Bowe's mental wellbeing and who told them that Bowe had thrown a chair at her. After Lawson-Rulli and Holcomb grabbed Bowe as he stood at the door, all three of them fell and landed on the ground below. After hitting the ground, Bowe started to stand up, but Defendant Corban grabbed his legs and brought him back to the ground. The officers contend that, after they grabbed Bowe, they were telling Bowe to show his hands, to calm down, and that he was resisting, but Bowe failed to comply and continued to be physically combative. Bowe concedes that he cannot remember what the officers were saying once they were all on the ground and that "it's possible they said I was resisting." Accordingly, when Bowe failed to respond, Holcomb deployed his Taser prongs and the drive stun. When Bowe failed to comply with the officers' commands and continued to be combative, Defendant Holcomb esca-

lated the amount of force, using open and closed hand strikes on Bowe. After using the strikes on Bowe, the officers were able to handcuff Bowe, and he was compliant. At that point, the officers did not use any additional force.

Plaintiff does not dispute these facts. Instead, Plaintiff, without citation to legal authority, contends that the officer's initial seizure was unlawful, so they were not entitled to use any force. Such perfunctory and undeveloped arguments, without citation to supporting legal authority, are considered waived. *See M.G. Skinner & Assocs. Ins. Agency v. Norman-Spencer Agency*, 845 F.3d 313, 321 (7th Cir. 2017). Even considering this argument, however, the Court has found the opposite: "it is well established that the lawfulness of a temporary detention and the lawfulness of an officer's use of force are separate questions subject to different legal tests[,]" as "the legal enquiries are conceptually distinct." *Haze v. Kubicek*, 880 F.3d 946, 950 (7th Cir. 2018), citing *County of Los Angeles v. Mendez*, 137 S.Ct. 1539, 1547-48 (2017) (stating excessive force claims arising from the same occurrence as other Fourth Amendment claims should be analyzed separately). Indeed, "the lawfulness of an arrest is irrelevant to an excessive force analysis." *Sebright v. City of Rockford*, 585 Fed.Appx. 905, 907 (7th Cir. Nov. 24, 2014); *see also Carlson v. Bukovic*, 621 F.3d 610, 622 n.19 (7th Cir. 2010) (finding that a "seizure without probable cause is conceptually different from a seizure that employs excessive force; both are unreasonable, but for different reasons"). Without more from Plaintiff to support his contention, the Court cannot find that an unlawful entry makes any use of force thereafter *per se* unreasonable.

Accordingly, even viewing the undisputed facts in light most favorable to Bowe, the facts show that the officers had probable cause that Bowe had committed battery against Michelle when he threw a chair at her, that he may be suicidal, that he was resisting and evasive, that he acting as though he was attempting to get away, and that he failed to respond to the officers' commands and graduated use of force. The facts further show that the Defendant officers graduated their use of force based upon Bowe's noncompliance with commands and physically combative behavior. Bowe admits that the officers may have told him that he was resisting them. Therefore, viewing the facts from the perspective of an officer on the scene, and without more from Plaintiff, the Defendants have shown that there is no genuine dispute of material fact and that they are entitled to judgment as a matter of law. Accordingly, Defendants' motion for summary judgment as to Plaintiff's excessive force claim should be granted.

3. Whether the Right was "Clearly Established"

The Court now considers the second prong of the qualified immunity analysis: whether the right was clearly established at the time the alleged violation occurred. *See Williams*, 733 F.3d at 758. To be clearly established, a right must be "'sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful; but it is to say that in the light of pre-existing law the unlawfulness must be apparent.'" *Miller v.*

Jones, 444 F.3d 929, 934 (7th Cir. 2006) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)).

Once a qualified immunity defense is raised, it is the plaintiff's burden to defeat it. *Alexander v. Milwaukee*, 474 F.3d 437, 443-44 (7th Cir. 2007). Thus, a plaintiff "must identify a case that put[s] [the officers] on notice that [their] specific conduct was unlawful." *Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4, 8, 211 L. Ed. 2d 164 (2021). "This does not necessarily require the plaintiff to find a factually indistinguishable case on point, but if there is no such case, then he needs to offer a different explanation for why the constitutional violation is obvious." *Moss v. Martin*, 614 F.3d 707, 712 (7th Cir. 2010).

a. Excessive Force

If the Court does not find that the facts make out a constitutional violation, then the issue of qualified immunity need not be further addressed. *Los Angeles County v. Rettele*, 550 U.S. 609, 616 (2007). Regarding Plaintiff's excessive force claim, the Court has found that the undisputed material facts do not make out a constitutional violation, so the Court is not required to address the second prong on this claim.[5]

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[5] Nevertheless, even if the facts did make out a constitutional violation for Plaintiff's excessive force claim, Plaintiff failed to meet his burden to defeat Defendants' qualified immunity defense. Plaintiff contends that Defendants are not entitled to qualified immunity because Indiana has recognized an exception to the rule that citizens cannot resist an unlawful arrest, pointing to *Adkisson v. State*, 728 N.E.2d 175, 178 (Ind. Ct. App. 2000). It is true that the court in *Adkisson* explained that "where the arrest is attempted by means of a forceful and unlawful entry into a citizen's home, such entry represents the use of excessive force and the arrest cannot be considered peaceable." However, the Indiana

b. Unlawful Entry

Regarding Plaintiff's unlawful entry claim, the Court has already found that the facts taken in the light most favorable to Plaintiff show that a reasonable jury could find that the Defendant officers violated Plaintiff's privacy rights under the Fourth Amendment when they pulled him from the doorway. Accordingly, the Court now considers whether such a right was "clearly established" on April 3, 2015. *See Williams*, 733 F.3d at 758.

Here, the Defendant Officers contend that they are entitled to qualified immunity because where "the threshold of a home ends and privacy begins is difficult to discern" and that there was "no pre-existing law which would have informed [the officers] that engaging with Plaintiff at the threshold of his open front door would have been a violation of his privacy to invoke the Fourth Amendment protection." [DE 67 at 22]. Plaintiff, however, argues that Seventh Circuit authority in *Sparing* (decided in 2001) and *Berkowitz* (decided in 1991) put the Defendant officers on notice that Plaintiff retained a reasonable expectation of privacy when he responded to a knock at the door when no arrest

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Supreme Court has since held that "the right to reasonably resist an unlawful police entry into a home is no longer recognized under Indiana law." *Barnes v. State*, 946 N.E.2d 572, 577 (Ind. 2011); *see also Ocasio v. Turner*, 19 F. Supp. 3d 841, 850 n. 6 (N.D. Ind. 2014). In response to *Barnes*, the Indiana General Assembly amended Indiana Code § 35-41-3-2(i) to provide that "[a] person is justified in using reasonable force . . . if the person reasonably believes the force is necessary to: . . . prevent or terminate [an] unlawful entry of or attack on the person's dwelling . . . " Plaintiff does not address this distinction nor does he explain how Plaintiff's actions in resisting *after* he was pulled from his doorway still fall under Indiana Code § 35-41-3-2(i).

had been announced. Plaintiff also points to *Kentucky v. King* (decided in 2011). Indeed, *Sparing* and *Berkowitz* explain that an officers' warrantless entry into a home violated the Fourth Amendment after an occupant comes to the doorway in response to an officers' knock when no arrest is announced, but remains inside their home and does not consent to the officers' entry. Moreover, in *Kentucky v. King*, the Supreme Court observed that officers without a warrant may do no more than a private citizen can do when they knock on an individual's door.

Indeed, taken together, this Court agrees that the law surrounding Fourth Amendment doorway arrests and interactions was sufficiently defined such that Defendants were on notice regarding the extent of interactions they could have with Plaintiff while engaging with him at the threshold of his open front door during a welfare check. Specifically, applying the rules from *Berkowitz, Sparing*, and *King* to the specific circumstances of the instant matter, reasonable police officers would have known that entry into a home, by grabbing an individual who was standing within his doorway after the officers' knocked on the door, without a warrant, exigent circumstances, or an announced arrest, was ostensibly unreasonable under the Fourth Amendment. *See also Flores*, 938 F.Supp. 2d at 772-773 (finding that an officer was not entitled to qualified immunity based upon *Sparing* and *Berkowitz* when the officer reached through an open outer doorway to grab an individual's hands as the individual stood on the inside of a doorway, prior to telling the individual that he was under arrest).

C. Plaintiff's State Law Claims

Plaintiff has also alleged state law tort claims for trespass, battery, and excessive force, contending that the Department is vicariously liable for the Defendant Officers' actions. These claims arise out of the same facts as Plaintiff's § 1983 unlawful entry and excessive force claims. Defendants move for summary judgment on these claims, contending that all three are barred by the Indiana Tort Claims Act ("ITCA").

"A governmental entity's immunity from liability under the ITCA is question of law for the court." *Alexander v. City of S. Bend*, 256 F. Supp. 2d 865, 875 (N.D. Ind. 2003). The ITCA provides that tort claims cannot be brought against government employees or governmental entities in certain enumerated circumstances. Ind. Code 34-13-3-3(a)(1)-(24). One circumstance covered by the ITCA is if a loss results from "[t]he adoption and enforcement of or failure to adopt or enforce: (A) a law (including rules and regulations). . . . " Ind. Code § 34-13-3-3(a)(8).

As an initial matter, when a suit alleges wrongdoing by a government employee for acts he committed within the scope of his employment, the plaintiff is barred from seeking relief personally against the employee. *See* Ind. Code § 34-13-3-5(b). ("A lawsuit alleging that an employee acted within the scope of the employee's employment bars an action by the claimant against the employee personally.") A plaintiff must instead seek relief against the government employer under *respondeat superior*. *Ragnone v. Porter Cnty.*, No. 2:13-CV-164, 2015 WL 5673113, at *11 (N.D. Ind. Sept. 25, 2015). Here, Plaintiff has brought his claims against the Defendant Officers in their individual capacity and states that the officers "acted

at all relevant times . . . in the scope of their employment by St. Joseph County Sheriff's Department." [DE 48 at 2, 4 ¶¶ 7-9; 30]. Accordingly, Plaintiff seeks relief for his state law claims against the Department on a theory of *respondeat superior*.

First, Plaintiff has conceded that his state law trespass claim is barred under the ITCA. *See Snider v. Pekny*, 899 F. Supp. 2d 798, 818 (N.D. Ind. 2012) (stating that a plaintiff "cannot recover under Indiana law for his claims of malicious prosecution, trespass and trespass to chattel . . . ." (internal citations omitted)). However, Plaintiff contends that his battery and excessive force claims are not barred, as courts have found that such claims are not shielded from liability under the enforcement of law provision found in Indiana Code § 34-13-3-3(a)(8). *See Wilson v. Isaacs*, 929 N.E.2d 200, 201 (Ind. 2010); *see also Reiner v. Dandurand*, 33 F.Supp.3d 1018, 1032 (N.D. Ind. 2014) (stating "immunity does not apply to claims of assault, battery, and excessive force.").

However, here, the Court has found that Defendants are entitled to summary judgment on Plaintiff's excessive force claims because Defendant's use of force was reasonable under the circumstances. Moreover, Indiana Code § 35-41-3-3(b) also provides that an officer is "justified in using reasonable force if the officer reasonably believes that the force is necessary to effect a lawful arrest." Accordingly, as the undisputed material facts show that the Defendant officers' use of force was reasonable under the circumstances, and Plaintiff has conceded that his state law trespass claim is barred by the ITCA, the Defendants' motion for summary judgment as to Plaintiff's state law claims is granted.

III. Conclusion

Based on the foregoing, Defendants' Motion for Summary Judgment is GRANTED IN PART and DENIED IN PART [DE 66] as follows:

- DENIED as to St. Joseph County Sheriff's Department's contention that it cannot be sued for Plaintiff's claims;
- GRANTED as to Plaintiff's unlawful entry claim as it pertains to Defendant Corban;
- DENIED as to Plaintiff's unlawful entry claim as it pertains to Defendants Holcomb and Lawson-Rulli;
- GRANTED as to Plaintiff's excessive force claim against Defendants Lawson-Rulli, Holcomb, and Corban; and
- GRANTED as to Plaintiff's state law claims.

Based on the foregoing, Plaintiff's unlawful entry claim against Defendants Holcomb and Lawson-Rulli remain.

SO ORDERED this 25th day of July 2022.

/s/ Michael G. Gotsch, Sr.
United States Magistrate Judge

FINAL JURY INSTRUCTIONS
(SEPTEMBER 14, 2022)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

BOWE MARVIN, ET AL.,

Plaintiffs,

v.

DAVID HOLCOMB, ET AL.,

Defendants.

Case No. 3:20-CV-553-MGG

Before: Michael G. GOTSCH, SR.,
United States Magistrate Judge.

The Court will read the following Jury Instructions, numbered 1 through 33, to the Jury at the conclusion of all the evidence and after the closing argument of parties' counsel, pursuant to Federal Rule of Civil Procedure 51. In addition, the Court will also provide the Jury with Verdict Forms 1 and 2.

Dated this 14th day of September 2022.

/s/ Michael G. Gotsch, Sr.
United States Magistrate Judge

1.

Members of the jury, you have seen and heard all the evidence and arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear, or public opinion to influence you. You should not be influenced by a person's race, color, religion, national ancestry, or gender.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

2.

Plaintiff brings one claim that you must decide: whether Defendants Corporal Christopher Lawson-Rulli or Officer David Holcomb violated Plaintiff's

Fourth Amendment right to be protected from unreasonable entries into his home.

To prove plaintiff's claim, the burden is upon Plaintiff Bowe Marvin to establish by a preponderance of the evidence each of the following elements:

1. Defendants performed acts that operated to deprive Plaintiff of Plaintiff's federal Constitutional rights, as defined and explained in these instructions, by subjecting Plaintiff to an unreasonable entry into Plaintiff's home;
2. Defendants were acting under the color of state law; and
3. Defendants' acts were the proximate cause of damages sustained by Plaintiff.

Because Defendants Corporal Lawson-Rulli and Officer David Holcomb were officials of the St. Joseph County Sheriff's Department at the time of the acts in question, Defendants Corporal Christopher Lawson-Rulli and Officer David Holcomb were acting under color of state law. In other words, the second element is satisfied.

If you find that Plaintiff has proved this by a preponderance of the evidence as to one or more of the Defendants, then you should find for Plaintiff and against that Defendant or those Defendants and go on to consider the damages on this claim.

If, on the other hand, you find that Plaintiff did not prove this by a preponderance of the evidence as to the Defendants, then you should find for the Defendants, and you will not consider the question of damages on this claim.

3.

Defendants are being sued as individuals. Neither the St. Joseph County Sheriff's Department nor St. Joseph County is a party to this lawsuit.

4.

All parties are equal before the law. The Plaintiff and the Defendants are entitled the same fair consideration.

5.

You must give separate consideration to each claim and each party in this case. Although there are two defendants, Corporal Christopher Lawson-Rulli and Officer David Holcomb, it does not follow that if one is liable, the other is also liable.

6.

Plaintiff Bowe Marvin claims that Defendants Christopher Lawson-Rulli and Officer David Holcomb subjected Plaintiff to an unreasonable entry into his home.

The Fourth Amendment to the Constitution of the United States protects every person against "unreasonable" entries, and the right to be free from unreasonable government intrusion into one's own home is at the very core of the Fourth Amendment's protection. Ordinarily, this means that a warrant must be obtained from a judicial officer, such as a judge, before any entry to a home may be made.

Entries into a home without a warrant are presumed unreasonable unless:

(1) the government obtains consent; or

(2) probable cause for an arrest and exigent circumstances justify the entry.

7.

A warrantless entry is reasonable if there is consent. If a person freely and voluntarily invites or consents to an entry, law enforcement officers may reasonably and lawfully enter to the extent of the consent so given without first obtaining a search warrant.

8.

If there is no consent, a warrantless entry is still reasonable when law enforcement officers have probable cause for an arrest and "exigent circumstances" exist.

Probable cause exists for an arrest exists if, at the moment the arrest was made, a reasonable person in Defendants' position would have believed that Plaintiff had committed or was committing a crime. In making this decision, you should consider what Defendants knew and the reasonably trustworthy information Defendants had received.

Probable cause requires more than just a suspicion. But it does not need to be based on evidence that would be sufficient to support a conviction, or even a showing that Defendants' belief was probably right. The fact that the charges against Plaintiff were later dismissed does not by itself mean that there was no probable cause at the time of his arrest.

It is not necessary that Defendants had probable cause to arrest Plaintiff for resisting law enforcement,

so long as Defendants had probable cause to arrest him for some criminal offense. It is not necessary that Defendants had probable cause to arrest Plaintiff for all of the crimes he was charged with, so long as Defendant had probable cause to arrest him for one of those crimes.

Exigent circumstances include emergency situations in which a law enforcement officer has a reasonable and good faith belief that a serious threat to the officer's safety or the safety of others is present. The officer may enter for the purposes of insuring or protecting the officer's wellbeing and the wellbeing of others.

The burden is on the Plaintiff to prove that an entry was unreasonable.

9.

Under the Fourth Amendment, the point where the home begins must be identified by inquiry into reasonable expectations of privacy.

A reasonable expectation of privacy exists when (1) the plaintiff exhibits an actual expectation of privacy (subjective) and, (2) the expectation is one that society is prepared to recognize as reasonable (objective).

10.

While a warrantless entry into a home or dwelling to effect an arrest is presumptively unreasonable under the Fourth Amendment, warrantless arrests in public places are valid. As such, police officers may constitutionally arrest an individual in a public place (*e.g.* outside) without a warrant, if they have probable cause.

11.

When I say a particular party must prove something by "a preponderance of the evidence," or when I use the expression "if you find," or "if you decide," this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

12.

Plaintiff must prove by a preponderance of the evidence that each individual defendant was personally involved in the conduct that Plaintiff complains about. You may not hold any individual defendant liable for what others did or did not do.

13.

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations.

A stipulation is an agreement between both sides that certain facts are true.

14.

The parties have stipulated, or agreed, that certain facts are true. You must treat the following facts as having been proved for the purpose of this case.

1. The Defendant officers were dispatched to the Marvin residence on April 3, 2015, to perform a welfare check on the caller's son who was suicidal and known to carry a knife.

2. When the officers arrived, they observed the Plaintiff's mother, Michelle Marvin, outside the house bleeding from a deep cut on her upper lip.

3. Michelle advised the officers that her son, Bowe Marvin, had hit her with a chair.

4. The officers knocked on the front door of the residence and Plaintiff Bowe Marvin came to the door to speak to the officers.

5. During the conversation with Bowe Marvin, Bowe had one hand hidden from the officers' view.

6. The Defendant officers did not have a search or arrest warrant for Bowe Marvin.

7. Bowe Marvin was arrested for domestic violence battery and resisting arrest. The charges were later dismissed.

15.

Certain things are not to be considered as evidence. I will list them for you:

First, if I told you to disregard any testimony or exhibits or struck any testimony or exhibits from the record, such testimony or exhibits are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, Internet or television reports you may have seen or heard. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections or comments by the lawyers are not evidence. Lawyers have a duty to

object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the lawyers' opening statements and closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

16.

In determining whether any fact has been proved, you should consider all the evidence bearing on the question regardless of who introduced it.

17.

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this "inference." A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

18.

You may have heard the phrases "direct evidence" and "circumstantial evidence." Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a witness who says, "I was outside a minute ago and I saw it raining." Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

19.

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the witness's intelligence;
- the manner of the witness while testifying;
- the witness's age;
- and the reasonableness of the witness's testimony in light of all the evidence in the case.

20.

It is proper for a lawyer to meet with any witness in preparation for trial.

21.

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

22.

I have a duty to caution or warn an attorney or witness who does something that I believe is not in keeping with the rules of evidence or procedure. You are not to draw any inference against the side whom I may caution or warn during the trial.

23.

Any notes you have taken during this trial are only aids to your memory. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

24.

An injury or damage is proximately caused by an act whenever it appears from the evidence in the case that the act played a substantial part in bringing about or actually causing the injury or damage to plaintiff, and that plaintiff's injury or damage was either a

direct result or a reasonably probable consequence of the act or omission.

Plaintiff Bowe Marvin has the burden of proving each and every element of plaintiff's claim by a preponderance of the evidence. If you find plaintiff has not proved any one of the elements by a preponderance of the evidence, you must return a verdict for defendant police officers.

25.

If you decide for the defendants on the question of liability, then you should not consider the question of damages.

26.

If you find in favor of Plaintiff on Plaintiff's claim, then you must determine the amount of money that will fairly compensate Plaintiff for any injury that you find Plaintiff sustained as a direct result of the unlawful entry by Defendants.

Plaintiff must prove his damages by a preponderance of the evidence. Your award must be based on evidence and not speculation or guesswork. This does not mean, however, that compensatory damages are restricted to the actual loss of money; they include both the physical and mental aspects of injury, even if they are not easy to measure.

You should consider the following types of compensatory damages, and no others:

a. The physical pain and suffering that Plaintiff has experienced. No evidence of the dollar value physical or mental and emotional pain and suffering has been or needs to be

introduced. There is no exact standard for setting the damages to be awarded on account of these factors. You are to determine an amount that will fairly compensate the Plaintiff for the injury he has sustained.

b. The reasonable value of medical care and supplies that Plaintiff reasonably needed and actually received.

c. The wages that Plaintiff has lost.

If you return a verdict for Plaintiff, but Plaintiff has failed to prove compensatory damages, then you must award nominal damages of $1.00.

27.

If you find that one or more Defendant Officers is/are liable for damages on Plaintiff's claim(s), you are not to consider attorney's fees for Plaintiff's counsel in this action as part of Plaintiff's damages.

28.

Your award of damages, if any, must be reasonable. In awarding damages, you are to be governed by the evidence.

You may not allow sympathy, bias, or prejudice for one side or the other to have any effect on your verdict.

29.

The fact that I have given you instructions on the measure of damages in this case, or that the attorneys have mentioned damages, should not be taken by you as any indication that I am suggesting the nature or

scope of your verdict. The award of damages is strictly to be determined by the jury after a careful consideration of evidence and my instructions on the law. The instructions concerning damages have been given to assist you in arriving at a fair and reasonable damages award in the event that you should find the plaintiff is entitled to recover damages under the facts of this case and after considering all of my instructions.

30.

Plaintiff made a claim of excessive force regarding the incident on April 3, 2015, but the Court found that, as matter of law, the Plaintiff did not demonstrate that the amount of force used by the Defendants was unreasonable under the circumstances.

The Court has taken judicial notice of this fact, and you must accept this determination as true.

31.

Upon retiring to the jury room, you must select a presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court.

Forms of verdict have been prepared for you.

[Forms of verdict read.]

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your presiding juror will fill in, date, and sign the appropriate form.

32.

I do not anticipate that you will need to communicate with me. If you do need to communicate with me, the only proper way is in writing. The writing must be signed by the presiding juror, or, if he or she is unwilling to do so, by some other juror. The writing should be given to the marshal, who will give it to me. I will respond either in writing or by having you return to the courtroom so that I can respond orally.

[If you do communicate with me, you should not indicate in your note what your numerical division is, if any.]

33.

The verdict must represent the considered judgment of each juror. Your verdict, whether for or against the parties, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of other jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts.

AMENDED COMPLAINT
(MARCH 12, 2021)

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

BOWE MARVIN,

Plaintiff,

v.

ST. JOSEPH COUNTY SHERIFF'S DEPARTMENT, DAVID HOLCOMB, CORPORAL LAWSON-RULLI, and PATROLMAN LAWSON-RULLI

Defendants.

Cause No. 3:20-cv-553 MGG

Plaintiff Bowe Marvin, by counsel respectfully makes his First amended Complaint for Damages and avers as follows:

NATURE OF CASE

1. This lawsuit seeks redress from police officers who illegally invaded his home and subjected him to excessive force.

JURISDICTION

2. Plaintiff brings this action pursuant to 42 U.S.C. § 1983 to redress Defendants' violation of his rights under the Fourth Amendment. Plaintiff also

brings this case pursuant to 42 U.S.C. § 1983 to redress the violations of his rights under the Fourth Amendment. This Court has original subject matter jurisdiction of the federal questions presented pursuant to 28 U.S.C. § 1331 and § 1343.

3. Venue is proper in the South Bend Division because the Defendants reside in this division and the events complained of occurred in this division.

4. Plaintiff timely served a Tort Claim Notice on March 18, 2019.

PARTIES

5. Bowe Marvin is an adult U.S. Citizen who resides in Hamilton County, Indiana.

6. The St. Joseph County Sheriff's Department is a government unit of the State of Indiana located in St. Joseph County, Indiana.

7. David Holcomb is an adult who resides in St. Joseph County, Indiana. He is sued in his individual capacity.

8. Corporal Lawson Rulli is an adult who resides in St. Joseph County, Indiana. He is sued in his individual capacity.

9. Patrolman Corban is an adult who resides in St. Joseph County, Indiana. He is sued in his individual capacity.

FACTS

10. Bowe Marvin ("Bowe") resided at 60223 Dogwood Road in Mishawaka, Indiana when on April 3, 3015 his mother, Michelle Marvin ("Michelle") called the police to request a welfare check on him.

11. The St. Joseph County Sheriff's Department dispatched David Holcomb ("Holcomb"), Corporal Lawson-Rulli ("Lawson-Rulli"), and Patrolman Corban ("Corban") to Bowe's residence.

12. When the officers arrived at the scene they briefly spoke to Michelle, who was sitting in her car in the driveway, and then approached the house.

13. Corban knocked on the door.

14. Bowe answered the knock and stood inside the doorway and asked the officers what they wanted.

15. Soon Bowe's father, Greg Marvin ("Greg") came to the door as well.

16. The officers asked Bowe several questions, which Bowe answered calmly and politely.

17. The officers asked Bowe if he was armed. Bowe, who has a cognitive impairment, did not fully comprehend this question and responded to the question by saying "What do you mean?"

18. Greg therefore reached into Bowe's left pocket and removed a small box cutter knife.

19. The officers then ordered Bowe to step out of his house.

20. The officers did not have a warrant for Bowe's arrest or the search of his house.

21. The officers did not tell Bowe he was under arrest or suspected of any crime.

22. When Bowe did not immediatley step out of his house Holcomb and Lawson-Rulli entered Bowe's house and grabbed onto him.

23. Holcomb and Lawson-Rulli pulled Bowe out of his hose.

24. The door to Bowe's house sits several feet above the ground with wooden steps leading up to it. When Holcomb and Lawson-Rulli pulled Bowe out of the house, all three of them fell out of the house and collapsed onto the ground.

25. After falling onto the ground Bowe stood up. As he did so, Bowe did not attempt to flee or to harm the officers.

26. Nonetheless, Corban tackled Bowe and knocked him back to the ground.

27. Once Bowe was on the ground, Holcomb deployed his Taser weapon and shot Bowe first in the left shoulder and a stun gun in the right shoulder.

28. Holcomb then struck Bowe in the face with his fist, followed by several openhanded strikes, after which Corban placed Bowe in handcuffs.

29. The officers arrested Bowe for battery and resisting arrest. All charges were subsequently dismissed.

30. Holcomb, Corban, and Lawson-Rulli acted at all relevant times under color of Indiana law and in the scope of their employment by the St. Joseph County Sheriff's Department.

31. In the course of the attack Bowe suffered a concussion.

LEGAL CLAIMS

32. The warrantless entry into Bowe's house was an illegal home invasion in violation of the Fourth Amendment.

33. The officers seized Bowe with excessive force, in violation of the Fourth Amendment.

34. The officers' actions constitute trespass, battery, and excessive force in violation of Indiana law, for which the St. Joseph's County Sheriff's Department is vicariously liable.

RELIEF

35. Plaintiff seeks all relief allowable by law, including compensatory and punitive damages, costs, reinstatement, and attorney's fees.

WHEREFORE, Plaintiff prays for judgment against Defendants and for all other appropriate relief.

Respectfully submitted,

/s/ Jeffrey S. McQuary, 16791-49
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