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APPENDIX A

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with
FED. R. APP. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted June 14, 2024*
Decided June 21, 2024

Before

MICHAEL Y. SCUDDER, *Circuit Judge*
AMY J. ST. EVE, *Circuit Judge*
JOSHUA P. KOLAR, *Circuit Judge*

No. 23-3168

JOHN LUGO,
Plaintiff-Appellant,

v.

ALAN BURTON, et al.,

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* We have agreed to decide this case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

Defendants-Appellees.

Appeal from the United States District Court for the Central District of Illinois.

No. 23-cv-01061

Michael M. Mihm, *Judge.*

ORDER

John Lugo sued Woodford County, Illinois, the Woodford County Sheriff's Office, unknown supervisors from the Sheriff's Office, and Deputy Alan Burton under 42 U.S.C. § 1983, alleging that they violated his constitutional rights when Burton responded to a dispute between Lugo and his neighbors about tree trimming. Because on this record no reasonable jury could find that the defendants violated Lugo's constitutional rights, we affirm the judgment.

We construe the record in favor of Lugo, the party opposing summary judgment. *See Arce v. Wexford Health Sources Inc.*, 75 F.4th 673, 678 (7th Cir. 2023). Lugo and his next-door neighbors, Scott and Alena Sturm, had a longstanding feud, the details of which are not relevant to this appeal. *See Lugo v. Sturm,* 2024 IL App (4th) 230279-U. The events underlying this case took place in 2023, when the Sturms hired a tree trimmer to remove branches from a tree on Lugo's property that hung over the Sturms' property. The tree trimmer, who was aware of the feud, requested law enforcement presence at the

Sturms' property on the morning of the trimming.

Burton, a deputy with the Woodford County Sheriff's Office, responded to the request. A recording device on Burton's police car captured his conversations with Lugo, the Sturms, and the tree trimmers. Burton first spoke with the Sturms and the tree trimmer, who informed Burton that Lugo did not want the tree trimmed. Burton told them that they could trim branches that hung over the Sturms' property line, but they would need Lugo's permission to do any work on his property. After Scott Sturm told Burton that Lugo had a pending petition for a protective order against him, Burton offered to discuss the situation with Lugo, who was standing outside of his home.

Burton then spoke to Lugo in his driveway. After Burton explained that the tree trimmer requested Burton's presence, Lugo stated that he would not give the tree trimmer permission to enter his property. Lugo also explained that the precise location of the property line that divided his and the Sturms' properties was an issue in a pending lawsuit. Burton told Lugo that the tree trimmer wanted to anchor himself to the tree on Lugo's property to safely trim the branches that extended over the Sturms' property. Lugo rebuked that request, and Burton acknowledged that the trimmer would not come onto Lugo's property. Burton then returned to the Sturms' property, where he told the Sturms and the tree trimmer that Lugo did not want anyone to enter his property and that doing so would be trespassing. In response, the tree trimmer told Burton that he

intended to cut the branches overhanging the Sturms' property without anchoring himself to the tree on Lugo's property, although doing so would be less safe.

While Burton was talking to the tree trimmer, Lugo got into his car and parked it at the edge of the road in front of the Sturms' property to film the Sturms and the tree trimmer. Burton told Lugo that he could record the tree being trimmed from his own property or further up the street, but he could not remain directly in front of the Sturms' property. Burton explained that Lugo had a pending protective order against Scott Sturm and told Lugo to move several times. Lugo asked Burton whether Burton was giving him a "direct order" to move, and Burton confirmed that he was. Lugo initially resisted Burton's request, stating that he wanted to watch his tree and that he was on public property. Finally, Burton raised his voice and yelled at Lugo to move; Lugo complied. Before leaving, Burton explained to Lugo that allowing him to park right in front of the Sturms' property might provoke a confrontation.

Burton returned to speak with Lugo after Lugo called the Sheriff's Office several times. The tree trimmer was still on the Sturms' property, and a video from Burton's car briefly shows the tree trimmer hanging from the tree while working on the Sturms' side of the property line. The tree trimmer cut at least one branch from the tree, which landed on the Sturms' property, while Burton was present at the scene. Lugo and Burton argued about the earlier encounter, and Lugo reiterated his desire to park in front of the Sturms' residence to film the tree trimming. Lugo also

told Burton that the tree trimmer was "on [his] tree." Lugo then asked whether Burton would arrest him if he parked in the same spot again, and Burton said that he would arrest Lugo for obstruction. Burton explained that Lugo was "playing a game" and seeking to provoke a confrontation with the Sturms. After several minutes, Burton left the scene.

Lugo then sued Woodford County, the Woodford County Sheriff's Office, Burton in his individual and official capacity, and unknown Sheriffs Office supervisors in their individual and official capacities. *See* 42 U.S.C. § 1983. He alleged that Burton "facilitated an unlawful trespass" onto his property and threatened to arrest him in violation of his due process rights and his right to be free from unreasonable searches and seizures under the Fourth, Fifth, and Fourteenth Amendments. He also alleged that the County, Sheriff's Office, and unknown supervisors had a custom, policy, or practice of deliberate indifference to these constitutional violations, *see Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978), and they failed to train Burton.

Burton and the Sheriff's Office moved for summary judgment. The Sheriffs Office also filed a motion to dismiss, which Woodford County joined. The district court entered summary judgment for all of the defendants and struck the motion to dismiss as moot. The court determined that there was no evidence that Burton seized Lugo's person or property or that Burton violated Lugo's procedural or substantive due process rights. And because there was no underlying constitutional violation, the court ruled that Lugo's

Monell claim against the County, Sheriff's Office, and the unknown supervisors could not prevail. The court also dismissed without prejudice a state-law claim against Burton. We review the court's entry of summary judgment de novo. *Arce,* 75 F.4th at 678.

On appeal, Lugo first argues that Burton "facilitated a trespass" when Burton, upon returning to the scene, failed to stop the tree trimmer from crossing onto Lugo's property. To the extent that Lugo argues that Burton unreasonably seized his property in violation of the Fourth Amendment, Lugo must show that there was "some meaningful interference with [his] possessory interests in that property." *Pepper v. Village of Oak Park,* 430 F.3d 805, 809 (7th Cir. 2005) (quoting *Soldal v. Cook County,* 506 U.S. 56, 67 (1992)). But the Fourth Amendment is inapplicable to a seizure "effected by a private individual not acting as an agent of the Government or with the participation or knowledge of any government official." *United States v. Jacobsen,* 466 U.S. 109, 113-14 (1984) (quoting *Walter v. United States,* 447 U.S. 649, 662 (1980) (Blackmun, J., dissenting)).

Even if we determined that the tree on Lugo's property is of the type protected by the Fourth Amendment and that the tree was seized when its branches were cut, *see Pepper,* 430 F.3d at 809 (property seizure must be of type protected by Fourth Amendment), Lugo's argument cannot prevail because he failed to present any evidence that Burton was personally responsible for the seizure, *see Wilson v. Warren County,* 830 F.3d 464, 469 (7th Cir. 2016). During the first encounter, Burton instructed the tree

trimmer not to trespass onto Lugo's property, so he was not personally responsible for any conduct that occurred before he returned to the scene. When Burton returned for approximately five minutes to speak with Lugo, no evidence showed that Burton actively participated in seizing Lugo's property.

Lugo disagrees, arguing that he alerted Burton to the ongoing trespass, and a branch fell from the tree during Burton's second visit to the property. But the tree trimmer previously told Burton that he intended to cut only the branches overhanging the Sturms' property without trespassing onto Lugo's property. And when Burton returned to the scene, the tree trimmer was removing a branch while hanging from the tree on the Sturms' side of the property line. Even if this evidence suggests that Burton should have been aware that the tree trimmers were seizing Lugo's property, mere negligence is insufficient to show that the seizure occurred with Burton's knowledge and consent. *See id.*

This leads to Lugo's next argument that Burton violated his constitutional rights by failing to take additional investigative or enforcement action to stop the trespass. But Lugo's argument is unavailing because he "does not have a constitutional right to have the police investigate his case at all, still less to do so to his level of satisfaction." *See Rossi v. City of Chicago,* 790 F.3d 729, 735 (7th Cir. 2015). Substantive due process "does not require a state to protect citizens from private acts unless the state itself creates the danger." *Wilson,* 830 F.3d at 469 (citing *King ex rel. King v. E. St. Louis Sch. Dist. 189,* 496

F.3d 812, 817 (7th Cir. 2007)). No reasonable jury could find that Burton created the danger that Lugo would be deprived of his property– Burton specifically warned the tree trimmer not to enter Lugo's property without Lugo's permission lest he commit trespass.

Lugo next argues that Burton unreasonably seized his person in violation of the Fourth Amendment. Lugo argues that Burton seized him twice: first, when Burton ordered Lugo to move after Lugo parked in front of the Sturms' home; and second, when Burton returned to the scene and threatened to arrest Lugo if he returned to that spot. To prevail on his Fourth Amendment claim, Lugo must show that a seizure of his person occurred, and the seizure was unreasonable. *Hess v. Garcia,* 72 F.4th 753, 761 (7th Cir. 2023). In a situation like Lugo's where a person has no desire to leave the scene of an encounter with police, "the appropriate inquiry is whether a reasonable person would feel free to decline the officer's request or otherwise terminate the encounter." *Kernats v. O'Sullivan,* 35 F.3d 1171, 1177 (7th Cir. 1994) (quoting *Florida v. Bostick,* 501 U.S. 429, 435-36 (1991)). Evidence of a seizure includes "the threatening presence of several officers, the display of a weapon ..., physical touching of the person ..., or the use of language or tone of voice indicating that compliance with the officer's request might be compelled." *United States v. Mendenhall,* 446 U.S. 544, 554 (1980). According to Lugo, Burton's order to move during the first encounter and threat of arrest during the second encounter are evidence of a seizure.

Lugo's claim that he was unreasonably seized

during the first encounter cannot prevail because Burton did not seize Lugo, and, even if he did, Burton's actions were reasonable. Burton did raise his voice and issue a "direct order" to Lugo during the first encounter, but Burton was the sole officer at the scene, did not display a weapon, and did not touch Lugo. *See id.* After Lugo parked, Burton simply ordered Lugo to leave the area directly in front of the Sturms' home, and he did. We have previously held that such an "expulsion" is not a seizure absent the use of force, threats, or other indicia of coercion. *See Hamilton v. Village of Oak Lawn,* 735 F.3d 967, 971-72 (7th Cir. 2013). Further, we repeatedly have said that an officer who separates parties to a domestic disturbance by ordering one party to leave acted reasonably under the "community caretaking function" regardless of whether his actions constituted a seizure. *See Dix v. Edelman Fin. Servs., LLC,* 978 F.3d 507, 517 (7th Cir. 2020) (quoting *Lunini v. Grayeb,* 184 F. App'x 559, 562 (7th Cir. 2006)). Given Burton's knowledge of the feud between the parties (as supported by Lugo's and the Sturms' statements and the pending protective order filed by Lugo), it was reasonable for Burton to order Lugo to move away from the Sturms' property to avoid the risk that the situation would escalate.

As for the second encounter, Burton did not seize Lugo. Burton told Lugo that he would be arrested if he returned to a specific location in front of the Sturms' house. And such an order, which sought to prevent Lugo from returning to that spot rather than going anywhere else, does not constitute a seizure. *See Abbott v. Sangamon County,* 705 F.3d 706, 720 (7th Cir. 2013) (no seizure where officer's order allows

person to go anywhere in the world except closer to him).

Finally, Lugo argues that the district court erred in granting summary judgment for Woodford County, the Sheriff's Office, and the unknown supervisors. Because Lugo failed to produce evidence that Burton violated his constitutional rights, he cannot prevail on a *Monell* claim based on the same allegations. *See Swanigan v. City of Chicago,* 775 F.3d 953, 962 (7th Cir. 2015) (citing *City of Los Angeles v. Heller,* 475 U.S. 796, 799 (1986)). And Lugo's claim of supervisory liability against the unknown supervisors from the Sheriff's Office fails because he produced no evidence that any supervisors were personally involved in a constitutional violation. *See Gill v. City of Milwaukee,* 850 F.3d 335, 344 (7th Cir. 2017).[1] Therefore, summary judgment was proper.

AFFIRMED

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[1] We note that the district court's grant of summary judgment for the County and the unknown supervisors was sua sponte. Lugo does not assert that this was error, *see Golden Years Homestead, Inc. v. Buckland,* 557 F.3d 457, 461-62 (7th Cir. 2009) (citations omitted) (district court generally must give notice and opportunity to respond before granting summary judgment sua sponte), so any argument along those lines is waived, *see Bradley v. Village of University Park,* 59 F.4th 887, 897 (7th Cir. 2023). In any event, remand would be unnecessary–summary judgment for these defendants was appropriate for the reasons already provided. *See Gabb v. Wexford Health Sources, Inc.,* 945 F.3d 1027, 1034-35 (7th Cir. 2019) (no need to remand when appellant cannot win).

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

JOHN LUGO,
Plaintiff,

v. Case No. 23-cv-01061

WOODFORD COUNTY SHERIFF'S OFFICE; DEPUTY ALAN BURTON, in his individual capacity; WOODFORD COUNTY, ILLIONIS, a unit of local government; UNKNOWN WOODFORD COUNTY SHERIFF'S DEPARTMENT SUPERVISORS, in their individual and official capacities,
Defendants.

ORDER

This matter is now before the Court on Defendants Woodford County Sheriff's Office ("WCSO") and Deputy Alan Burton's ("Deputy Burton") Motion for Summary Judgment, (D. 25), and Defendants WCSO and Woodford County, Illinois' ("Woodford County") Motion to Dismiss (D. 23).[1] The Court has carefully considered the briefs and all the

[1] Citations to the docket are abbreviated as (D. ___).

evidence submitted by the parties and, for the reasons set forth below, GRANTS Defendants' Motion for Summary Judgment and STRIKES Defendants' Motion to Dismiss as MOOT.

I. BACKGROUND[2]

A. Factual Background

This case arises out of an ongoing and acrimonious relationship between two Washburn, Illinois neighbors, Plaintiff John Lugo ("Lugo) and Scott and Alvena Strum ("the Strums"). The Strums live at 214 E. Walnut Street, sharing a property line with Lugo, who lives at 218 E. Walnut Street. Over the years, their grudge has manifested itself through arguments, complaints, lawsuits, and numerous calls to the WCSO leveling a host of allegations of mutual recrimination. For example, in June 2022, the WCSO was contacted after Lugo and Strum got into fight about spraying weed killer in each other's yard. In addition to dragging local law enforcement into their

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[2] Unless otherwise noted, the facts in the following section are taken from the undisputed facts as determined by the Court from the Parties' summary judgment briefing. Facts that are immaterial, unsupported by evidentiary documentation, or fail to comply with Central District of Illinois Local Rule 7.1(D) are excluded. *See Garcia v. Illinois State Police*, 545 F. Supp. 2d 823, 836 (C.D. Ill. 2015) (providing that even *pro se* parties are required to comply with the court's local rules). Accordingly, any claim of a disputed material or immaterial fact that is supported only by argument, and not by evidentiary documentation referenced by specific page to an attached exhibit is deemed an admission of fact. L. R. 7.1(D)(2), (3), and (6).

feud, Lugo has filed several lawsuits in state court against the Strums. One such lawsuit involved a dispute over their property line; in another, Lugo sought a no-stalking, no-contact order against Scott Strum. *See Lugo v. Strum*, No. 22-OP-117 (11th Jud. Cir., Woodford Cnty., Illinois). While Lugo's petition for a no-stalking, no-contact order was still pending against Strum, their grudge brought forth a new incident giving rise to this lawsuit.

In the early morning hours of Sunday, February 5, 2023, a local tree trimmer hired by the Strums to remove branches overhanging their property from one of Lugo's trees, contacted the WCSO because he anticipated an altercation. Specifically, the tree trimmer requested law enforcement's presence at the Strums' home at 8:00 A.M. before attempting to cut overhanging branches stemming from a tree along the property line in Lugo's yard. At that time, WCSO had a policy that covered civil disputes which encouraged officers to "minimiz[e] any potential for violence or criminal acts" while not becoming personally involved. (D. 25-8, "WCSO Policy #428"). The policy provided that WCSO would assist at scenes of civil disputes with the primary goal of safeguarding the persons involved, preventing criminal activity, and maintaining the peace while remaining impartial. *Id.*

WCSO dispatched Deputy Burton to the Strums' home in response to the tree trimmer's request for civil standby. Deputy Burton ultimately had a total of two interactions with the parties that day—one at 8:00 A.M. and another several hours later to speak with Lugo. Defendants have presented two Mobile/Audio

Video ("MAV") recordings that clearly captured the entirety of Deputy Burton's conversations while present at the scene, set forth below. (D. 25-1; D. 25-2).

1. Deputy Burton's First Interaction

Deputy Burton first arrived at the scene at or around 8:00 A.M., wearing his WCSO uniform and driving a marked WCSO vehicle. Both his vehicle and uniform were equipped with MAV recording devices. Specifically, the MAV system included a dash camera in his vehicle and a microphone on his uniform vest. At the time, WSCO had a specific MAV policy that provided guidance on the use of MAV systems. (D. 25-7, "WCSO Policy # 418"). In accordance with WCSO Policy # 418, Deputy Burton's WSCO vehicle camera was in operation, and he manually activated the system's audio portion prior to making field contact. The MAV recordings from the dispute were then automatically uploaded to WCSO's data management system. Deputy Burton could review the recordings, but did not have access to edit, alter, or delete them.

Upon arrival, Deputy Burton had a short conversation with the tree trimmer and Strum that lasted approximately two-and-half minutes. (*See* D. 25-1). The tree trimmer explained that Lugo did not want his tree trimmed, but several branches extended into the powerlines over the Strums' property. Deputy Burton told them they could trim any branches that were on the Strums side of the property line. Deputy Burton also mentioned that he was aware of a feud between the Strums and Lugo; and that they would need Lugo's permission to do any type of work on his

property, which he probably would not let them do. When the tree trimmer asked Deputy Burton if he could tie into Lugo's tree if he did not physically step foot on the property, Deputy Burton said that was a civil matter and to call him back if any problems arose.

At that point, Strum informed Deputy Burton that he was trying to avoid being brought into court because Lugo had a pending petition for a "no stalking, no contact" order against him. Deputy Burton asked if this was Lugo's second petition for a protective order against Strum, or the same petition Lugo had filed a while ago. Strum confirmed that it was the petition Lugo filed in September 2022, with a hearing scheduled the following month. Deputy Burton then offered to go speak with Lugo in an attempt to resolve the issue.

As Deputy Burton walked back into dash camera's range, Lugo came out from behind his house and they spoke on his driveway. Deputy Burton explained that the Strums' tree trimmer contacted WCSO to request a civil standby before trimming branches extending from one of Lugo's trees into the Strums' yard. Lugo told Deputy Burton about their pending lawsuits, and that he would not give them permission to be on his property. When Deputy Burton asked Lugo to locate the property line, Lugo could not give a definitive answer, explaining that the property line was an open issue in a pending lawsuit. Deputy Burton then directed the conversation back to the issue of the overhanging tree branches, and the below conversation followed:

Burton: So what I advised the tree trimmers, in a perfect world it would be nice if you guys would be able to come to a compromise, but it doesn't sound like that is going to happen.

Lugo: Yeah, it's not gonna happen.

Burton: So I am going to tell you exactly what I told the tree trimmers and Scott.... So, the tree limbs that are crossing the property line, they have the right to cut those. Okay?

Lugo: Okay.

Burton: ...You don't want the tree trimmer setting foot on your property to do any work. Is that correct?

Lugo: That is correct.

Burton: Okay. Um, if they need to, and I'm not taking their side, but I have had tree trimmers cut before. So they are going to go up in the tree to do it, these guys don't have a boom.

Lugo: Are they going to cross into my property to do it.

Burton: They would have to for the safety of the guys up in the tree.

Lugo: They're not even licensed. They're not even bonded.

Burton: That is kind of a civil mat...

Lugo: That is what we are trying to prevent. Another civil case is what we are trying to prevent.

Burton: Okay.

Lugo: I'm saying I'm not giving them permission to drive on my property, and now you're saying you are giving them permission to cross over?

Burton: No no, I didn't say that. For them to be able to safely cut these branches they are going to have to be up in a tree on your property.

Lugo: They are not coming on my property at all.

Burton: Okay

Lugo: At all. Period.

Burton: Okay. Fair enough.

(D. 25-1, 5:55–7:24).

Lugo then told Deputy Burton that he was going to park on public property to watch the tree trimmers,

and Burton said "okay, fair enough." Lugo then asked Deputy Burton to get the tree trimmer's identification and license for his civil suit, and Deputy Burton asked him why because the tree trimmers were not going to be able to cut that day. Lugo responded, "their word is garbage," and "they are the textbook definition of a nigger." *Id.* at 7:56–8:02. Their conversation ended shortly thereafter. *See id.* at 8:04–8:17.

Deputy Burton then told Stum that Lugo did not want them on his property, so no tree cutting could likely occur that day. He also warned them that if they proceeded to go onto Lugo's property without his permission, it would be criminal trespass. Deputy Burton then saw Lugo park his vehicle in front of the Strums' home, and Deputy Burton had the following conversation with him:

> **Burton**: Hey John, you can park up the block or you can watch them from your house. You took out a stalking, no contact order on this guy and now you are parking right in front of his house.
>
> **Lugo**: To watch my tree that is going to get cut.
>
> **Burton**: You can watch it from your property, or you can go up the street. I am telling you to move your car right now.
>
> **Lugo**: Are you giving me a direct order to move my car.

Burton: Yes, I am.

Lugo: I have a video camera right here.

Burton: That's fine. I'm mic'd up. I'm on camera. It's all documented. You're taking this guy to court for a stalking order. Right?

Lugo: If he's going to cut my tree I need to vid...

Burton: And then you're parking right in front of his house and you're...

Lugo: This is public property, right?

Burton: I'm telling you to move.

Lugo: Okay, I'm moving.

Burton: Move. Move. Don't need to talk. Move. You can park anywhere on this street up the block or you can go to your property and watch him. You're not going to park in front of his house.

Lugo: Ok, this is public property...

DB: I UNDERSTAND, JOHN! MOVE!

Lugo: I'm moving, I'm moving.

Id. at 10:08–10:53. As Deputy Burton was getting into his vehicle Lugo asked him for the names of his supervisors so that he could call and make a complaint. Deputy Burton provided Lugo their names and told him he can call after 9:00 A.M. Deputy Burton reiterated his position that Lugo parking on the grass in front of the Strums' house would be provoking a confrontation. Lugo briefly attempted to argue this with Deputy Burton, and the conversation quickly concluded. Deputy Burton was present at the scene for approximately eleven-and-a-half minutes total. (*See* D. 25-1).

2. Deputy Burton's Second Interaction

After Deputy Burton left, Lugo made several calls to the WCSO. Because it was a Sunday, Deputy Burton's supervisors were off duty, so Deputy Burton returned a second time to speak with Lugo. Again, the entirety of their conversation was recorded, and went as follows:

> **Burton**: John my dispatcher kept calling saying you were wanting to talk to a supervisor.
>
> **Lugo**: Yeah, you are stopping me from public property, and you threatened to arrest me.
>
> **Burton**: I didn't threaten to arrest you, I told you to move, which I could do.
>
> **Lugo**: Okay.

Burton: Stop talking for a second and I am going to talk, and then I'll let you talk.

Lugo: Okay.

Burton: My perception of the situation is that you are playing a game here. I am not taking their side in whatever past disputes that you have. I don't know anything about it. But from my understanding you took out a stalking, no contact order against your neighbor.

Lugo: That is correct, yes.

Burton: Right. So, you obviously don't want to have contact with them. That means you want them to stay away from you. Right?

Lugo: Exactly. But I want to watch... look look look he's on my tree....

Burton: Okay. John, what this is an example of is you don't like...

Lugo: They ruined my tree already.

Burton: I understand that. But, tell me how you cannot adequately film what he is doing from here, or anywhere along this road that is not on the embankment

directly in front of their house? Explain to me how there is not another location you can film them from.

Lugo: That is where I feel is best.

Burton: I don't, and I am telling you, you cannot park there.

Lugo: And you are going to arrest me if I do?

Burton: If you go back, I am going to arrest you for obstruction. One hundred percent.

Lugo: So, you are going to arrest me for obstruction for parking on public property, that is what you are saying.

Burton: For disobeying what I am telling you to do. Yeah. You're provoking a confrontation.

Lugo: You have to give a lawful order. That's not a lawful order. That's public property.

Burton: Well, you can take me to court over that...

Lugo: I plan to, I plan to.

(D. 25-2).

Deputy Burton again made clear that Lugo was free to videotape the tree trimmer from anywhere else on the street or from his own home, just not parked on the embankment in front of the Strums' house. Before leaving, Deputy Burton also agreed to get the tree trimmer's identification and told Lugo he to submit a Freedom of Information Act ("FOIA") request if they trespassed on his property, or otherwise damaged his tree. He also explained to Lugo that his messages have been passed on to his supervisors, but they are not on duty that day.

Lugo continued to try to argue with Deputy Burton about his right to film the tree trimmers from public property and whether Deputy Burton's order not to park directly in front of the Strums' house was a lawful order. At that point, Deputy Burton said Lugo was playing games because he did not like what he was being told, and in response to being asked again whether he was going to arrest him if he parked there, Deputy Burton said "go over there and find out." This entire interaction lasted approximately five-and-half minutes. *Id.* at 1:20–6:55. Over the next week and half Lugo unsuccessfully attempted to set up a meeting with Deputy Burton's survivors to discuss these interactions.

B. Procedural Background

Making good on his threat, Lugo filed this lawsuit twelve days later against Woodford County, WCSO, Deputy Burton in his individual and official capacity, and Unknown WCSO Supervisors in their individual and official capacities under 42 U.S.C. §

1983. (D. 1). The Amended Complaint alleges generally that the Defendants violated his "property rights, due process rights, and civil rights under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution," by facilitating trespass onto his property over his repeated objections. (D. 10). More specifically, the Amended Complaint includes the following three counts: (1) against Deputy Burton for violating the security and privacy of Lugo's property under the Fourth Amendment of the U.S. Constitution and Art. I, § 6 of the Illinois Constitution by facilitating unlawful trespass and threatening to arrest Lugo; (2) against WCSO and Woodford County under *Monell v. New York City Dep't of Soc. Servs.*, 436 U.S. 658 (1978), (hereinafter the "*Monell* claim"); and (3) against Unknow Supervisors for failure to train and supervise Deputy Burton. *Id.* at pp. 6–12.

In response, WCSO and Deputy Burton filed an Answer (In Part) and Affirmative Defenses, (D. 22), and shortly thereafter filed a Motion for Summary Judgment (D. 25). The Motion for Summary Judgment argues WCSO and Deputy Burton are entitled to judgment as a matter of law because: (1) no constitutional violation occurred; (2) even if one did, Deputy Burton is entitled to qualified immunity; and (3) the WCSO cannot be liable where there is no underlying constitutional violation. *Id.* At or around the same time, WCSO and Woodford County also filed a Motion to Dismiss Counts II and III of the Amended Complaint for failure to state a claim. (D. 23). Both motions have been fully briefed. This Order will first addresses Defendants WCSO and Deputy Burton's Motion for Summary Judgment.

II. LEGAL STANDARD

Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A genuine issue of material fact exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (defining a *genuine* dispute of material fact) (emphasis added). In other words, "[o]nly disputes over facts that might affect the outcome of the suit...will properly preclude the entry of summary judgment." *Id.* "In deciding motions for summary judgment, courts must view the evidence in the light most favorable to the nonmovant, with material factual disputes resolved in the nonmovant's favor. *See Zaya v. Sood*, 836 F.3d 800, 804 (7th Cir. 2016). However, when the parties "tell two difference stories, one of which is blatantly contradicted by the record . . . a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Scott v. Harris*, 550 U.S. 372, 380 (2007).

To survive a movant's properly supported motion for summary judgment, a plaintiff "must show evidence sufficient to establish every element that is essential to its claim and for which it will bear the burden of proof at trial." *Life Plans, Inc. v. Sec. Life of Denver Ins. Co.*, 800 F.3d 343, 349 (7th Cir. 2015) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986)). "When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical

doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986). Rather, the nonmoving party must go beyond the pleadings and produce evidence of a *genuine* issue of *material* fact for trial. *See Anderson*, 477 U.S. at 247–48.

Specifically, "[i]n a § 1983 case, the plaintiff bears the burden of proof on the constitutional deprivation that underlies the claim, and thus must come forward with sufficient evidence to create genuine issues of material fact to avoid summary judgment." *McAllister v. Price*, 615 F.3d 877, 881 (7th Cir. 2010). To meet that burden, the plaintiff must "support the assertion by: (A) citing to particular parts of materials in the record . . .; or (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1). If the plaintiff fails to meet their burden, a court may "grant summary judgment if the motion and supporting materials...show that the movant is entitled to it." Fed. R. Civ. P. 56(e)(3).

III. DISCUSSION

Before addressing the merits of Defendants' motion, the Court will briefly address Lugo's compliance with Local Rule 7.1(D) and Federal Rule of Civil Procedure 56(c). Local Rule 7.1(D)(2)(b)(2)–(3) states that every disputed material and immaterial fact "must be supported by evidentiary documentation referenced by specific page." Local Rule 7.1(D)(6)

cautions that a failure to properly respond to any numbered fact will be deemed an admission of fact. These rules are consistent with the Federal Rules of Civil Procedure, which provide that when a party fails to properly address another party's assertion of fact, as required by Rule 56(c), the court may *inter alia*, "consider the fact undisputed for the purposes of the motion." Fed. R. Civ. P. 56(e)(2).

While Lugo's response complies with the formatting requirements of Local Rule 7.1(D)(2), many of his responses include unsupported facts or ancillary arguments that do not actually dispute Defendants' asserted fact. For example, Defendants' Statement of Fact (each, a "SOF") 2 states that Deputy Burton has held his position with WCSO since January 2021. Lugo's response states this fact is disputed because it "is incomplete and therefore misleading in its description of Burton's law enforcement experience which purportedly formed his basis of knowledge in acting to refuse Plaintiff the right to videotape a trespass onto his property from an advantageous position on [*sic*] located on public property . . . ." (D. 28, p. 7). However, the response does not dispute the Defendants' primary assertion—that Deputy Burton has held position at WCSO since January 2021. The same goes for Defendants' SOF 12, 16, 17, 19, 21-25, 29, 31, 32–34, 36, 39–41, in which Lugo's response either does not refute the fact asserted, refutes the fact by misconstruing the assertion, or misconstrues the evidence to support his assertion. (D. 28, pp. 7–23); (*see also* D. 25-1; D. 25-1). Lugo also repeatedly cites to portions of the record that fail to directly follow the proposition it supports, or only address

inconsequential tangents of the facts it is meant to dispute. Rule 56 of the Federal Rules of Civil Procedure instructs:

> A party asserting that a fact cannot be or is genuinely disputed must support the assertion by . . . citing to particular parts of materials in the record," or "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact . . . . If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may . . . consider the fact undisputed for purposes of the motion[.]

Fed. R. Civ. P. 56(c)(1), (e)(2). Here, Lugo repeatedly makes arguments in his response that are unresponsive, immaterial, and lack evidentiary support. Accordingly, in these instances the Court credits Defendants' versions of facts, that are supported by the evidence. *See Waldridge v. Am. Hoechst Corp.*, 24 F.3d 918 (7th Cir. 1994); Fed. R. Civ. P. 56(c) and (e)(2); L.R. 7.1(D)(6).

A. Deputy Burton's Liability under 42 U.S.C. § 1983

Judging the matter on that basis, it is clear Deputy Burton did not violate Lugo's constitutional rights. To establish a cause of action under § 1983, a

plaintiff must show: (1) that the defendant deprived him of a federal right; and (2) that the defendant was acting under color of state law. *Gomez v. Toledo*, 466 U.S. 635, 640 (1980). As a deputy with the WCSO, it is undisputed that Deputy Burton was acting in his capacity as a state actor during his two interactions with Lugo on February 5, 2023. Therefore, the only remaining issue is whether Lugo has adequately presented proof that Deputy Burton deprived him of his rights under the Fourth and Fourteenth Amendments.

1. Fourth Amendment Claim

The Fourth Amendment, incorporated against the States by the Fourteenth Amendment, provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. Amend. VI; *see also Doe v. Heck*, 327 F.3d 492, 509 (7th Cir. 2003) (internal citation omitted). "Its central requirement is one of reasonableness." *See Texas v. Brown*, 460 U.S. 730, 739 (1983) (internal quotation omitted). Therefore, to state a constitutional violation, Lugo must establish: (1) Deputy Burton's conduct constituted a "seizure" under the Fourth Amendment; and (2) the seizure, if one occurred, was "unreasonable."

A "seizure" of property occurs when "there is some meaningful interferences with an individual's possessory interests in that property." *United States v. Jacobsen*, 466 U.S. 109, 113 (1984). A "seizure" of a person occurs if "a reasonable person does not believe

that he is free to leave." *Heck*, 327 F.3d at 510; *see also United States v. Mendenhall*, 446 U.S. 544, 554 (1980). This requires the plaintiff to show that they were physically touched by the officer or that they yielded a show of authority. *California v. Hodari*, 499 U.S. 625–26 (1991). After carefully examining the record, the Court finds no "seizure" of Lugo's person or property occurred.

First, at no point was Lugo detained, arrested, or issued a citation. Rather, Deputy Burton told Lugo several times he was free to park his car anywhere other than on the embankment in front of the Strums' home because it would needlessly provoke a confrontation, especially considering Lugo' pending petition for a "stalking/no contact" order against Strum. At no point did Deputy Burton attempt, or threaten, to arrest Lugo when he told him to move his vehicle. Furthermore, to the extent Lugo is claiming Deputy Burton's threat of arrest during his second visit amounted to a "seizure," he has failed to show evidence of that injury. Rather, Lugo presented a hypothetical situation to Burton regarding what would happen if he disregarded order not to park on the embankment in front of the Strums' home. At that point, Burton told him he would arrest Lugo for obstruction. However, generally, "the threat of arrest does not violate a constitutional right." *Johnson v. City of Rock Island Illinois*, No. 11-cv-04058, 2014 WL 4473727, at *14 (C.D. Ill. Sept. 11, 2014) (quoting *Dick v. Gainer*, No. 97-C-8790, 1998 WL 214703, at *5 (N.D. Ill. Apr. 23, 1998) ("There is no constitutional right to be free from threats of arrest, an actual civil rights violation must occur before a cause of action arises

under § 1983.").

Second, there is no evidence that Deputy Burton "seized" Lugo's property. In fact, contrary to Lugo's allegations, the evidence shows that Deputy Burton repeatedly told the tree trimmer and Strum that they did not have permission to enter Lugo's property, and that doing so would be trespassing. Deputy Burton also received verbal assurance from Strum that they would stay on his property. There is no evidence that a trespass occurred during Deputy Burton's first visit. It is also undisputed that Lugo *claimed* a trespass occurred when Deputy Burton was there a second time. In support of that claim, Lugo produced a fifteen-second video of a tree branch falling on the Strum's side of the fence while Lugo can be heard speaking to Deputy Burton.[3] No persons can be seen in the video. It is also undisputed at this point that Deputy Burton does not know exactly where the property line is. However, at best, the Court finds the branches falling on the Strums' side of the fence supports the position that they were over the Strums' side of the property line. Furthermore, during this visit Deputy Burton also agreed to get the tree trimmer's information and told Lugo to submit a FOIA request if he believed a trespass occurred and his tree was damaged.

While the Court is required to view the facts in

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[3] The video clip was taken from a camera on Lugo's house that was pointed directly at the Strums' home and the tree in question. (*See* D. 28-3).

the light most favorable to the nonmovant, Lugo's response does not present any evidence or argument that Deputy Burton's actions constituted a Fourth Amendment violation. Rather, Lugo's starts his response discussing the reprehensible racial slur he used to describe his neighbors and the order of protection he was seeking against Strum in state court. Lugo then asserts that arguing with a police officer regarding the validity of an arrest does not commit the crime of obstruction. In sum, his response is unresponsive to Deputy Burton's argument that Lugo's Fourth Amendment rights were not violated.

Moreover, even if a "seizure" had occurred, that alone is not enough for § 1983 liability; the seizure must also be "unreasonable." *Donovan v. City of Milwaukee*, 17 F.3d 944, 949 (7th Cir. 1994). There is no precise definition for "reasonableness" under the Fourth Amendment, rather "its proper application requires careful attention to the facts and circumstances of each particular case." *Id.* (quoting *Graham v. Connor*, 490 U.S. 386, 396 (1989)). Here, due to the parties' contentious relationship, the tree trimmer requesting a civil standby out of concern that there would be an altercation, and Lugo actively seeking an order of protection against Strum, this Court finds Deputy Burton acted reasonably based on the facts and circumstances of this case. This is further supported by Deputy Burton telling Lugo he was free to videotape the tree branches being trimmed from anywhere else on the street and agreeing to obtain the tree trimmer's information in the event a trespass occurred which resulted in an injury to Lugo.

Based upon this record, the Court finds that no reasonable jury could conclude that Deputy Burton violated Lugo's Fourth Amendment rights on February 5, 2023.

2. Due Process Claim[4]

The Due Process Clause of the Fourteenth Amendment confers both substantive and procedural rights and forbids a state from depriving any person of "life, liberty, or property without due process of law." U.S. Const. amend. XIV, § 1. The Amended Complaint makes a blanket allegation that the Defendants deprived him of his right to due process. While no specific due process allegations are made, the Parties' summary judgment briefing addresses due process. Therefore, the Court will as well.

"Procedural due process requires a two-step analysis." *Porter v. DiBlasio*, 93 F.3d 301, 305 (7th Cir. 1996). "First, we consider whether the plaintiff was deprived of a constitutionally protected interest in life, liberty, or property." *Id.* If so, "we then determine what

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[4] Lugo generally asserts Defendants violated his Fifth Amendment rights but makes no Fifth Amendment violation argument in his response. As a result, this argument is waived. Furthermore, Fifth Amendment due process only applies to federal actors, not the state actors at issue here. *See Jackson v. Byrne*, 738 F.2d 1443, 1446 (7th Cir. 1984) (dismissing a Fifth Amendment due process claim which did allege "action by the federal government, as the Fifth Amendment requires.") Accordingly, Lugo's due process claim is examined under the Fourteenth Amendment.

process was due with respect to that deprivation." *Id.* Essential to Lugo's procedural due process claim is a protected property or liberty interest. *See Minch v. City of Chi.*, 486 F.3d 294, 302 (7th Cir. 2007). Defendants assert Lugo's due process claim fails because he was not deprived of a protected property or liberty interest. (D. 25, p. 13). For his part, Lugo claims Deputy Burton deprived him of his right to stand on public property to film criminal trespass. He also alleges Deputy Burton deprived him of his property interest in his property by initially telling the tree trimmer to call him if Lugo had an issue with him tying into his tree to cut the branches of the Strums' property during his first visit. Then, failing to a conduct a criminal investigation into whether a trespass was occurring during his second visit.

To have a cognizable property interest, "a person clearly must have more than an abstract need or desire for it." *Long Grove Country Club Estates, Inc. v. Vill. of Long Grove*, 693 F. Supp. 640, 653 (N.D. Ill. 1988) (citing *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972)). Instead, Lugo must "have a legitimate claim of entitlement to it." *See id.* "[A] property interest is derived from an independent source such as state statutes or rules granting an entitlement to benefits." *A.C. v. Bd. of Educ. for Cambridge Cmty. Unit Sch. Dist. No. 227*, 2005 WL 3560658, at *2 (C.D. Ill. Dec. 28, 2005) (citing *Gross v. Lopez*, 419 U.S. 565, 572-73 (1975)); *see also Santana v. Cook Cnty Bd. of Review*, 679 F.3d 614, 621 (7th Cir. 2012) (dismissing procedural due process claim where plaintiff did not "point to any statute, regulation, or contract" to establish a constitutionally protected property

interest).

Here, Lugo again is misrepresenting the facts by arguing Deputy Burton gave the tree trimmer permission to trespass on his property. At the beginning of Deputy Burton's first visit the tree trimmer asked him whether he could tie into Lugo's tree if he did not physically step foot on Lugo's property. Deputy Burton declined to give him legal advice, told him that was a civil matter and told him to call him if Lugo had a problem with it. After further conversation Deputy Burton realized it would most likely be a problem and went to speak with Lugo to see if he could resolve it. Lugo then made it clear that he did not want the Strums' tree trimmer on his property for any purposes, and Deputy Burton conveyed this message back to Strum and the tree trimmer. Lugo also cites no authority to support that he has a cognizable property interest in the tree branches that were going into the powerlines over the Strums' property and has provided no evidence that a trespass onto his property occurred while Deputy Burton was present during his second visit. As Lugo has failed to present evidence of a deprivation of a protected property interest, the Court need not address the issue of the adequacy of notice. *See Porter*, 93 F.3d at 305.

Lugo also appears to claim Deputy Burton violated his liberty interests by threatening arrest for Lugo's presence on a "public place." The United States recognizes "the freedom to loiter for innocent purposes is part of the 'liberty' protected by the Due Process Clause of the Fourteenth." *See City of Chi. v. Morales*, 527 U.S. 41, 53 (1999). However, here, Deputy Burton

had a rational justification to believe Lugo was not "loitering" for "innocent purposes." As stated above, Deputy Burton had legitimate concerns that an unnecessary confrontation would occur if Lugo parked on the embankment in front of the Strums' home. Thus, the Court finds that Deputy Burton had a rational justification for ordering Lugo away from Strum's home. Absent evidence of a deprivation of liberty or property interest, Lugo's claim for lack of procedural due process also fails. *See Siebert v. Severino*, 256 F.3d 648, 659 (7th Cir. 2001) (reasoning that the deprivation of a cognizable property or liberty interest is essential to a procedural due process claim).

To the extent Lugo is claiming a substantive due process violation, that also fails. The scope of substantive due process is limited, and only "bars certain arbitrary, wrongful government actions regardless of the fairness of the procedure used to implement them." *GEFT Outdoors, LLC v. City of Westfield*, 922 F.3d 357, 368 (7th Cir. 2019). When governmental action does not infringe on a fundamental right, substantive due process requires only that the government's action be rationally related to a legitimate government interest. *Lee v. City of Chi.*, 330 F.3d 456, 467 (7th Cir. 2007). In other words, the government's action only violates a plaintiff's substantive due process rights if it is "utterly lacking a rational justification." *Id.* Furthermore, "[w]hen a substantive due process challenge involves only the deprivation of a property interest, a plaintiff must show either the inadequacy of state law remedies or an independent constitutional violation before the court will even engage in this deferential rational basis

review." *Id.*

Here, Lugo's claim does not implicate a fundamental right, and at best argues a deprivation of property. Thus, Lugo must establish: (1) that state law remedies are inadequate; or (2) that Deputy Burton violated an independent constitutional right. *See id.* As previously discussed, Lugo not only fails to establish a deprivation, but also makes no argument that applicable state law remedies are inadequate. Thus, this claim is waived. *See Steen v. Myers*, 486 F.3d 1017, 1020 (7th Cir. 2007) (holding that the absence of any legal discussion in a party's brief amounts to abandonment of that claim).

The Court also notes that Deputy Burton alternatively argues that he is entitled to the defense of qualified immunity. However, the Court need not address this argument based on its other rulings.

B. No Respondeat Superior Liability Under § 1983

Having found that Deputy Burton did not violate Lugo's constitutional rights, no *Monell* claim against WCSO and Woodford County is permitted. *See City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986) (providing that no *Monell* claim against the municipality was permitted when plaintiff's constitutional rights have not been violated).[5] Even

[5] This issue overlaps with the arguments Defendants WCSO and Woodford County raised in their Motion to Dismiss. (D. 23).

assuming that Deputy Burton had violated Lugo's constitutional rights, a plaintiff may hold a municipality responsible for constitutional torts committed by its employees only where "the tortfeasor inflicts a constitutional injury on the plaintiff in the execution of the government's policy or custom." *Petty v. City of Chicago*, 754 F.3d 416, 424 (7th Cir. 2014).

For municipal liability under § 1983, the constitutional violation must be caused by one of the following: (1) an express municipal policy; (2) a widespread, though unwritten, custom or practice; or (3) a decision by a municipal agent with "final policymaking authority." *Milestone v. City of Monroe*, 665 F.3d 774, 780 (7th Cir. 2011). Here, in addition to providing no evidence that Deputy Burton violated his constitutional rights, Lugo also fails to identify an express municipal policy or provide evidence of a widespread custom or practice that amounts to a constitutional violation. *See Gaston v. Ghosh*, No. 11-6612, 2017 WL 5891042, at *14 (N.D. Ill. Nov. 28, 2017) (noting that plaintiff's allegations as to his own treatment were insufficient to establish a policy) (citing *Shields*, 746 F.3d at 796) (holding that isolated incidents did not add up to a pattern of behavior that would support an inference of a custom or policy); *Steen*, 486 F.3d at 1020 (reasoning that the absence of any legal discussion in a party's brief amounts to abandonment of that claim)).

However, because there is no evidence of an underlying constitutional violation, the Court finds these claims moot and appropriately addressed in this Order.

Similarly, Lugo's claims against the Defendants identified as "Unknown Supervisors" cannot survive. *Doe v. Purdue Univ.*, 928 F.3d 652, 664 (7th Cir. 2019). Officials are accountable for their own acts; they are not vicariously liable for the conduct of subordinates. *See Ashcroft v. Iqbal*, 556 U.S. 662, 667 (2009); *Vance v. Rumsfeld*, 701 F.3d 193, 203-05 (7th Cir. 2012) (en banc). To sue "Unknown Supervisors" in their individual capacity, Lugo must allege that they personally participated in the deprivation, were deliberately reckless as to the misconduct of subordinates, or were aware and condoned, acquiesced, or turned a blind eye to the misconduct. *Sanville v. McCaughtry*, 266 F.3d 724, 740 (7th Cir. 2001). On the other hand, if sued in their official capacity, this is tantamount to a suit against the WCSO for which the pleading requirements under *Monell* are required. *See Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 691-92 (1978). Therefore, for the reasons stated above Lugo's claims against the "Unknown Supervisors" fail.

C. Supplemental Jurisdiction Over Lugo's State Law Claim against Deputy Burton

Finally, the Court declines to exercise its supplemental jurisdiction over Lugo's claim against Deputy Burton pursuant to Art. 1, § 6 of the Illinois Constitution, because the Court is dismissing the claims over which it had original jurisdiction, namely Lugo's § 1983 claims. *See Ross v. Board of Educ. of Twp. High Sch. Dist.* # 211, 486 F.3d 279, 285 (7th Cir. 2007); 28 U.S.C. § 1367(c)(3). "[I]t is the well-established law of this circuit that the usual practice

is to dismiss without prejudice state supplemental claims whenever all federal claims have been dismissed prior to trial." *East-Miller v. Lake Cnty Highway Dep't*, 421 F.3d 558, 564–65 (7th Cir. 2005) (quoting *Groce v. Eli Lilly & Co.*, 193 F.3d 496, 501 (7th Cir. 1999)).

IV. CONCLUSION

Because Plaintiff John Lugo has failed to present facts showing Defendants violated his constitutional rights, this Court finds he cannot maintain a cause of action against them under 28 U.S.C. § 1983. Accordingly, Defendants' [25] Motion for Summary Judgment is GRANTED, and all claims brought pursuant to § 1983 are DISMISSED WITH PREJUDICE. The Court further declines to extend jurisdiction over Plaintiff's state supplemental claim, and it is DISMISSED WITHOUT PREJUDICE. Based this Order resolves all claim brought pursuant to § 1983, Defendants' [23] Motion to Dismiss is stricken as moot. The Clerk of Court is DIRECTED to enter judgment in favor of Defendants and close this case.

Entered this 31st day of October, 2023.

/s/ Michael M. Mihm
Michael M. Mihm
United States District Judge

APPENDIX C

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

July 11, 2024

Before

MICHAEL Y. SCUDDER, *Circuit Judge*
AMY J. ST. EVE, *Circuit Judge*
JOSHUA P. KOLAR, *Circuit Judge*

No. 23-3168

JOHN LUGO,
Plaintiff-Appellant,

v.

ALAN BURTON, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Central District of Illinois.

No. 23-cv-01061

Michael M. Mihm, *Chief Judge.*

ORDER

On consideration of the petition for rehearing filed by plaintiff-appellant on July 3, 2024, all members of the original panel have voted to deny the petition for rehearing.

Accordingly, the petition for rehearing is hereby DENIED.