No. _____

In The

Supreme Court of the United States

James Synnott

Petitioner,

v.

Paul Burgermeister
and Ian Northrup,
et al

Respondents.

On Petition for A Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

APPENDIX
for
PETITION FOR WRIT OF CERTIORARI

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Appendix

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7th Circuit Orders

United States Court of Appeals
For the Seventh Circuit

Nos. 22-1104, 22-1270, 22-1893 & 22-2447

On appeal from
The United States District Court for The
Northern District of Illinois
Case No: 16 C 9098 Judge Kennelly
John Doe v. Sean McCumber, et al
(Synnott v. Burgermeister et al)

[CR55] 01/10/2024 (2024 WL 108784; 2024 U.S. App. LEXIS 858)

NONPRECEDENTIAL DISPOSITION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 January 4, 2024*

Decided January 10, 2024

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 22-1104

JAMES SYNNOTT, *Plaintiff-Appellee,* *v.* PAUL BURGERMEISTER and IAN NORTHRUP, *Defendants-Appellants.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 16 C 9098 Matthew F. Kennelly, *Judge.*

* After the defendants/appellants, Paul Burgermeister and Ian Northrup, appealed the judgment, Synnott cross-appealed other orders from the district court. We consolidated all appeals and later dismissed Synnott's appeals, Nos. 22-1270, 22-1893, and 22-2447, after he did not timely file his appellee/cross-appellant brief. We thus decide the defendants' appeal without a brief by Synnott. Further, we have agreed to decide the case without oral argument because the brief 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).

ORDER

James Synnott sued two police officers, Paul Burgermeister and Ian Northrup, for unlawfully entering his home and using excessive force. A jury awarded Synnott $0 in compensatory damages and $85,000 in punitive damages. Burgermeister and Northrup moved for a new trial or, in the alternative, a remittitur of the punitive damages, and the district court denied their motion. Because a reasonable jury could find that the officers acted with callousness or reckless indifference, and the award was not excessive or otherwise improper, we affirm.

We view the facts in the light most favorable to Synnott, the prevailing party at trial. *Sommerfield v. Knasiak*, 967 F.3d 617, 619 (7th Cir. 2020). In 2016, Synnott and two of his sisters were at his home when a process server arrived. Without speaking to anyone there, the process server phoned 911, and Burgermeister and Northrup, two police officers with the DuPage County Sheriff's Department, came to

Synnott's home. It was undisputed at trial that the officers lacked a warrant, a reason to suspect criminal wrongdoing, and, from the outside of the home, anything to suggest that anyone inside was in danger. Although the officers said that an "open" door at the home concerned them, Synnott testified that the door was closed. The officers entered the home without ringing the doorbell, knocking, or (as one of Synnott's sisters testified) "say[ing] who they were," despite knowing that entering the home in this manner without an emergency is prohibited. *See United States v. Jones*, 208 F.3d 603, 609 (7th Cir. 2000). Once inside, Northrup drew his gun and pointed it at Synnott and his sisters—even though he knew, as he admitted at trial, that "one of the safety rules" was not "to point at anything you're not intending to kill." Synnott presented evidence that Burgermeister, too, aimed his gun at Synnott. This one-sided, armed confrontation inside Synnott's home lasted a half hour.

Synnott sued Burgermeister, Northrup, and others, and the case was tried twice. The first trial occurred after the district court dismissed all of Synnott's claims except for those against Burgermeister and Northrup for unlawful entry and excessive force. *See* 42 U.S.C. § 1983. A jury in 2019 returned a verdict in favor of Synnott, awarding him $100,000 in punitive damages ($30,000 against Burgermeister and $70,000 against Northrup) and $250,000 in compensatory damages. The defendants moved for a new trial or, alternatively, a remittitur of the damages award. The district court granted the motion in part, allowing Synnott either to proceed to a new trial or to accept the award of punitive damages

with a reduced amount of compensatory damages. After Synnott declined the remittitur, the parties proceeded to a second trial only on damages.

The second jury awarded Synnott no compensatory damages but $85,000 in punitive damages ($10,000 against Burgermeister and $75,000 against Northrup), and the defendants once again moved for a new trial or a remittitur of damages. The district court denied this motion. It ruled that the evidence at trial—that the defendants "recklessly disregarded" the "sanctity" of the home and unjustifiably endangered Synnott—supported the award, that Synnott could be awarded punitive damages even without compensatory damages, and that no bias infected the award. The defendants then took this appeal. We review the district court's decision generally for abuse of discretion, but we review de novo its ruling about the constitutional limits on the amount of punitive damages. *Kunz v. DeFelice*, 538 F.3d 667, 678 (7th Cir. 2008).

The appellants first contend that Synnott did not present evidence that they acted with callousness or reckless indifference, the showing required for punitive damages. *Smith v. Wade*, 461 U.S. 30, 51 (1983). But the appellants' argument rests on a view of the evidence in their favor, not Synnott's. When we construe the evidence most favorably to Synnott, as the district court did in rejecting this argument, the jury could find callous or reckless conduct based on the following: Without reason to think that a probable crime or emergency justified a warrantless entry into Synnott's home, the defendants barged in through a closed door without warning and aimed their loaded guns at the family despite knowing that this behavior

was unlawful. Such evidence of callous or reckless indifference to Synnott's rights supports an award of punitive damages. *Hakim v. Safariland, LLC*, 79 F.4th 861, 868 (7th Cir. 2023); *Smith*, 461 U.S. at 51. The district court thus did not abuse its discretion in rejecting this argument.

Next, the appellants make several arguments that the punitive damages were unconstitutionally excessive, citing the guideposts outlined in *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 574–75 (1996). In reviewing this challenge de novo, we agree with the district court that the jury's award comports with *Gore*'s guideposts.

First, appellants argue that $85,000 in punitive damages does not properly reflect the required degree of reprehensibility because Synnott suffered no physical injury and the officers acted out of concern for the family's welfare. But physical injury is just one of five factors relevant to reprehensible conduct. *See State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 419 (2003). Among the other factors (reckless disregard for health or safety, financial vulnerability of the victim, repetition of misconduct, and malice) Synnott supported at least two. First, far from showing genuine concern for the family's welfare, trial evidence shows that Burgermeister and Northrup recklessly disregarded Synnott's health and safety by aiming their loaded guns at him and his family without justification. And the officers showed malice by entering Synnott's home without a warning, warrant, probable cause, or reasonable belief of an emergency, while aware that they were prohibited from doing so. Because all five factors must be absent to render a punitive award suspect, *id.*, the jury

permissibly found the required degree of reprehensibility.

Next, appellants argue that the disparity between the lack of compensatory damages and the punitive damages award is excessive. Although courts usually require only a single-digit ratio between punitive and compensatory damages, that ratio is not mandatory where the compensatory damages are low or the constitutional rights at issue protect dignitary harms. *See Saccameno v. U.S. Bank Nat'l Ass'n*, 943 F.3d 1071, 1088–89 (7th Cir. 2019); *see also Sommerfield*, 967 F.3d at 624 ("Punitive-damages awards, however, are not conditioned upon the presence of compensatory damages."). Further, a higher ratio does not automatically violate due process but merely requires special justification. *Saccameno*, 943 F.3d at 1089. Here, in properly allowing the higher ratio, the district court cited the need to deter through meaningful punitive damages the loss of privacy, the fright, and the peril that an unjustified, armed home invasion can cause.

Appellants further argue that the difference between the damages in this case and comparable cases cannot be explained or justified. We disagree. For one thing, it is not clear that Synnott's award is particularly different: although the appellants cite some older cases (and do not adjust for inflation) where juries awarded lower punitive damages, they also reference awards comparable to Synnott's. *See, e.g., Marshall ex rel. Gossens v. Teske*, 284 F.3d 765, 769 (7th Cir. 2002) ($30,000 in compensatory and $100,000 in punitive damages for false arrest); *Hendrickson v. Cooper*, 589 F.3d 887, 890 (7th Cir.

2009) ($75,000 in compensatory and $125,000 in punitive damages for excessive force). And the potential harm in this case—which we may consider, *see Saccameno*, 943 F.3d at 1088—can explain the upward variation: Northrup's firearm could have accidentally or intentionally discharged, causing greater harm than in cases involving less force. An upward deviation is also appropriate where, as here, the jury reasonably found that the officers' actions were "completely unjustified." *See Hendrickson*, 589 F.3d at 894.

Finally, the appellants contend that the jury's award of damages incorrectly (1) incorporated the harm inflicted on Synnott's sisters, (2) included consideration of Synnott's ongoing child custody dispute, and (3) reflected biases against law enforcement. The appellants did not make the first two arguments in the district court; therefore, they have waived them on appeal. *See Love v. Vanihel*, 73 F.4th 439, 449 (7th Cir. 2023). But we would also reject all three arguments on the merits: the district court admonished the jury to consider only Synnott's injuries, within the context of his unlawful entry and excessive force claims, and to decide the case without bias. We presume that the jurors followed the court's instructions. *See Epic Sys. Corp. v. Tata Consultancy Servs. Ltd.*, 980 F.3d 1117, 1138 (7th Cir. 2020). And Synnott did not inflame anti-law enforcement sentiment by mentioning any contemporaneous news events.

AFFIRMED

[CR54] 10/12/2023 Order

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 – 219 S. Dearborn Street
Chicago Illinois
60604

Office of the Clerk
Phone: (312)435-5850
www.ca7.uscourts.gov

Order

October 12, 2023

Before:

DIANE S. SYKES, *Chief Judge*

Nos. 22-1104, 22-1270, 22-1893 & 22-2447	JAMES SYNNOTT, *Plaintiff-Appellee, Cross - Appellant* *v.* PAUL BURGERMEISTER and IAN NORTHRUP, *Defendants-Appellants, Cross Appellees* And SEAN MCCUMBER, et al., *Defendants - Cross - Appellees*

Originating Case Information:	
District Court No: 1:16-cv-09098 Northern District of Illinois, Eastern Division District Judge Matthew F Kenelly	

The following is before the court: **PLAINTIFF – APPELLEE/CROSS-APPELLANT'S MOTION TO RECALL OFMANDATE AND REINSTATE CASE AND LEAVE TO FILE BRIEF OR ALTERNATIVE STAY**, filed on October 6, 2023, by pro se James Synott.

This court has reviewed the brief, appendices, and motion to seal tendered by James Synnott.

IT IS ORDERED that the motion to recall the mandate in appeal nos. 22-1270, 22-1893 & 22-2447 and for leave to file a brief is **DENIED**. No court action will be taken on the tendered documents.

[CR51] 09/22/2023 Order (2023 WL 7893920; 2023 U.S. App. LEXIS 30836)

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 – 219 S. Dearborn Street
Chicago Illinois
60604

Office of the Clerk
Phone: (312)435-5850
www.ca7.uscourts.gov

September 22, 2023

Before:

DIANE S. SYKES, *Chief Judge*

Nos. 22-1104, 22-1270, 22-1893 & 22-2447	JAMES SYNNOTT, *Plaintiff-Appellee, Cross - Appellant* *v.* PAUL BURGERMEISTER and IAN NORTHRUP, *Defendants-Appellants, Cross Appellees.* and SEAN MCCUMBER, et al., *Defendants - Cross – Appellees.*

Originating Case Information:	
District Court No: 1:16-cv-09098 Northern District of Illinois, Eastern Division District Judge Matthew F Kenelly	

The following is before the court: **MOTION TO FILE BRIEF IN EXCESS PAGES**, filed on September 21, 2023, by the pro se James Synott.

IT IS ORDERED that the motion to file an oversized brief is **DENIED**.

On September 14 and September 20, 2023, this court warned James Synnott that no further extensions of time would be granted and his appeals would be dismissed if he failed to file an opening brief by September 21, 2023. Synnott has not filed a brief that complies with this court's rules. Accordingly,

IT IS FURTHER ORDERED that appeal nos. 22-1270, 22-1893 & 22-2447 are **DISMISSED** for failure to prosecute, and appeal no. 22-1104 will be resolved without a response brief from Synnott.

[CR27] 08/18/2022 Order

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

August 18, 2022

By the Court:

Nos. 22-1104, 22-1270, 22-1893 & 22-2447

JAMES SYNNOTT, *Plaintiff-Appellee, Cross-Appellant* *v.* PAUL BURGERMEISTER and IAN NORTHRUP, *Defendants-Appellants, Cross-Appellees* and SEAN MCCUMBER, et al., *Defendants-Cross-Appellees*	]]]]]]]]]]]]	Appeals from the United States District Court for the Northern District of Illinois, Eastern Division. No. 1:16-cv-9098 Matthew F. Kennelly, *Judge.*

ORDER

The court, on its own motion, orders that these appeals are **CONSOLIDATED** for purposes of briefing and disposition.

The remainder of the briefing schedule is **SUSPENDED** pending a determination of cross-appellant's fee status in Appeal No. 22-2447.

[CR16] 05/19/2022 Order

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

May 19, 2022

By the Court:

Nos. 22-1104, & 22-1270

JAMES SYNNOTT, *Plaintiff-Appellee, Cross-Appellant* *v.* PAUL BURGERMEISTER and IAN NORTHRUP, *Defendants-Appellants, Cross-Appellees* and SEAN MCCUMBER, et al., *Defendants-Cross-Appellees*	]]]]]]]]]]]]]	Appeals from the United States District Court for the Northern District of Illinois, Eastern Division. No. 1:16-cv-9098 Matthew F. Kennelly, *Judge.*

ORDER

The jurisdictional statement in the brief of appellants Paul Burgermeister and Ian Northrup does not comply with Circuit Rule 28(a)(2), which requires that an appellant provide the court with the filing date of papers that relate to appellate jurisdiction. Specifically, appellants fail to provide the date of entry of the Rule 58 judgment. This information must

be provided. See Cir. R. 28(a)(2)(i). Appellants also fail to provide the date they filed the motion for new trial or to alter or amend judgment, and whether the motion is claimed to toll the time to appeal. This information too must be provided. See Cir. R. 28(a)(2)(ii). Accordingly,

IT IS ORDERED that appellants Burgermeister and Northrup file a paper captioned II Amended Jurisdictional Statement" no later than May 26, 2022, that provides the omitted information noted above and otherwise complies with all the requirements of Circuit Rule 28(a).

IT IS FURTHER ORDERED, that the Clerk DISTRIBUTE, along with the briefs in this appeal, copies of this order and appellants' 11 Amended Jurisdictional Statement" to the assigned merits panel.

[CR10] 04/05/2022 Order

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
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60604

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ORDER

April 5, 2022

Before:

DAVID F. HAMILTON, *Circuit Judge*

Nos. 22-1104, & 22-1270,	JAMES SYNNOTT, *Plaintiff-Appellee, Cross - Appellant* *v.* PAUL BURGERMEISTER and IAN NORTHRUP, *Defendants-Appellants, Cross Appellees* and SEAN MCCUMBER, et al., *Defendants - Cross – Appellees.*
Originating Case Information:	

District Court No: 1:16-cv-09098
Northern District of Illinois, Eastern Division
District Judge Matthew F Kenelly

The following are before the court:

1. **MOTION FOR EXTENSION OF TIME TO FILE, & LEAVE TO FILE, DOCKETING STATEMENT; LEAVE FOR TIME TO OBTAIN AN ATTORNEY, AND EXTENSION OF TIME SCHEDULE**, filed on March 23, 2022, by the pro se appellee/cross-appellant.

2. **PLAINTIFF - COUNTER APPELLANT AND RESPONDING APPELLEE'S MOTION TO PROCEED AND FILE UNDER PSEUDONYM & MOTION TO PROTECT SENSITIVE INFORMATION INCLUDING UNDER SEAL**, filed on March 23, 2022, by the pro se appellee/cross-appellant

IT IS ORDERED that the motion for extension of time is **GRANTED** to the extent that the court accepted James Synnott's docketing statement on March 23, 2022. The request to suspend briefing is **DENIED**.

IT IS FURTHER ORDERED that the motion to proceed under a pseudonym and to seal is **DENIED**.

[CR60] 02/13/2024 Order (2024 U.S. App. LEXIS 3401)

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

February 13, 2024

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 22-1104

JAMES SYNNOTT, *Plaintiff-Appellee,* *v.* PAUL BURGERMEISTER and IAN NORTHRUP, *Defendants-Appellants.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 16 C 9098 Matthew F. Kennelly, *Judge.*

O R D E R

Plaintiff-Appellee filed a petition for rehearing and rehearing *en banc* on January 26, 2024. No judge in regular active service has requested a vote on the petition for rehearing *en banc*, and all members of the original panel have voted to deny panel rehearing. The petition for rehearing and rehearing *en banc* is therefore DENIED.*

*Circuit Judge Joshua P. Kolar did not participate in the consideration of this petition.

District Court Orders & Proceedings

In The United States District Court for The Northern District of Illinois
Case No: 16 C 9098 Judge Kennelly
John Doe v. Sean McCumber, et al
(Synnott v. Burgermeister et al)

[DR319] 06/13/2022 (2022 WL 3444961; 2022 U.S. Dist. LEXIS 149602)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

JAMES SYNNOTT,	)	
Plaintiff,	)	
	)	
vs.	)	**Case No.**
	)	**16 C 9098**
PAUL BERGERMEISTER	)	
and IAN NORTHRUP,	)	
Defendants.	)	

ORDER ON PLAINTIFF'S REQUEST FOR COSTS

Plaintiff James Synnott, who prevailed at trial, has moved for recovery of costs. Costs are recoverable by a prevailing party as provided in Federal Rule of Civil Procedure 54(b) and 28 U.S.C. § 1920. The case was tried twice before juries—the second after the Court ordered a new trial on damages when Synnott declined to accept a remittitur of the monetary award from the first trial.

Synnott, who proceeded pro se throughout the pendency of the case, seeks $41,746.77, based on his updated submission filed on March 29, 2020. See dkt. no. 295. Defendants Paul Burgermeister and Ian Northrup object, arguing that: (1) a good deal of what Synnott seeks to recover is not taxable as costs; and

(2) the claimed costs are inadequately described and supported.

Unrecoverable amounts. A good many of the cost items that Synnott claims are non-recoverable and are denied for that reason. These include expenses for his food, parking, and travel (according to defendants, a little over $2,500), for mailing and postage (around $700), for computer equipment, programs, repairs, and related supplies (defendants say this is around $6,500), and other charges (around $850) that he did not attempt to explain in his lengthy submission. Nothing in section 1920 allows recovery of any of these costs. The same is true of the $10,008 sought for a claimed expert, W. Bernet, M.D. No expert witness was called to testify or had a deposition taken, and expert witness fees are not typically recoverable as costs in any event.

Court reporter fees. Defendants argue that Synnott's request for court reporter fees totaling about $12,000 are inadequately documented or supported. That's just plain wrong; Synnott has included invoices that identify the transcripts and services in question and the basis of each of the charges, with one exception as noted below. See dkt. no. 295, ECF pp. 30-34 of 155 (list of transcript/court reporter charges and dates of transcripts), pp. 74-83 (invoices and other documentation of payment from official court reporter), pp. 88-94 (invoices from County Court Reporters). Under Local Rule 54.1(b), the recoverable per-page rate may not exceed the approved Judicial Conference regular-copy rate, which is $3.65 per page. Most of the per-page rates charged to Synnott are below this. Court reporter

appearance fees for depositions are also properly recoverable.

The expenses relating to County Court Reporters are as follows:

4/6/2018	$135	County Court Reporters
4/6/2018	$135	County Court Reporters
4/20/2018	$229.60	County Court Reporters
4/20/2018	$256.80	County Court Reporters
4/21/2018	$135.00	County Court Reporters
4/24/2018	$330.00	County Court Reporters
4/25/2018	**$465.00**	**County Court Reporters**
5/10/2018	$2,136.50	County Court Reporters

All of these amounts are supported by receipts except for the $465 charge in bold type. The supported amounts all cover court reporter fees relating to depositions taken in the case. Synnott has adequately documented all of these except for the $465, and all of these expenses except for that one are recoverable. The total of these amounts is $3,357.90. It was reasonably necessary—given that two trials were held—for Synnott to pay for court reporters for the depositions of key witnesses and to obtain transcripts of the resulting depositions. These costs are properly recoverable.

The list of costs provided by Synnott relating to the official court reporter is as follows (this is copied from Synnott's submission):

Transcripts Date		**$**
	3/27/2018	$136.00
4/22/2019	4/18/19; 2/2/2017; 3/23/2017	$265.35
5/2/2019	3/30/2019; 5/1/19;	

	5/2/2019;	$1,168.15
5/10/2019	5/3/2019 omit 460.55 in bill subs.	$0.00
5/10/2019	rd 5/3/2019; final 4/18/19;	$1,049.15
2/27/2020	2/26/2020	$21.35
9/23/2020	9/10/2020	$131.15
4/13/2021	rd 4/8; 4/9; 4/12; 4/13/2021	$1,331.40
5/5/2021	fd 4/7; 4/8; 4/9; 4/12; 4/13/2021	$3,761.25
2/26/2022		$128.35
Total		$7,992.15

These amounts are all documented with receipts. The receipts reflect that the charge for $1,331.40 was for a "rough draft" of the transcript of the second trial, provided contemporaneously with the trial, and that the $3,761.25 charge is a final transcript of that same trial, at the 14-day rate of $4.25 per page for 885 pages. In terms of recoverable costs, the Court will disallow the "rough draft" expense of $1,331.40 because it was for the same transcript as later order, and will reduce the trial transcript expense by recalculating it at the rate of $3.65 per page for the 885 pages, resulting in a total of $3,230.25—a reduction of $441 from the amount requested. The total reductions of $1,772.40, when subtracted from $7,992.15, result in a net recoverable amount of $6,219.75.

The trial transcript was reasonably necessary for Synnott to prepare post-trial motions; he was trying the case on his own as a pro se litigant. The remaining transcripts were also reasonably

necessary: the Court held a large number of in-court hearings in this case; the transcripts that Synnott ordered cover only some of them; and a good many important rulings were made at these hearings.

The total of recoverable court reporter fees is $9,577.65.

Photocopying and exemplification fees. Based on their review of Synnott's submission, defendants have come up with a total of $3,487.39 in photocopying and related expenses. See dkt. no. 308 at 5. They object that the absence of explanation or receipts make it impossible to determine whether these expenses, or any of them, are actually recoverable. The Seventh Circuit has said, however, that with regard to photocopying costs, a court need not require documentation and support that would make the recovery economically impossible but rather should require only the best breakdown obtainable from retained records. See *Northbrook Excess & Surplus Ins. Co. v. Procter & Gamble Co.*, 924 F.3d 633, 643 (7th Cir. 1991).

At $0.20 per page, Synnott's total would involve something like 17,500 pages. The filings in this case were quite voluminous, but they were not that voluminous, or close to it. The Court will reduce this amount by two-thirds, to $1,162, and will award that amount, which the Court believes will roughly approximate the reasonable expenses for two copies—one for Synnott plus a service copy—of the court filings and other materials he had to serve. This translates to around 5,500 pages worth, which in turn represents two copies of about 2,750 pages of filings and other materials Synnott had to serve.

Filing and court fees; fees for service of process. Synnott is entitled to recover his $400 filing fee, but he has not explained or sufficiently documented payment of the other fees in these categories that he seeks, so those costs are denied.

Post-judgment interest. The parties' materials also include a discussion of the availability of post-judgment interest. Post-judgment interest is included in a judgment by operation of law, see 28 U.S.C. § 1961(a), so a court order adding it is not needed. Defendants say that there should be no interest on punitive damages, but the statute is clear on its face that "[i]nterest shall be allowed on *any money* judgment in a civil case recovered in a district court," id. (emphasis added), and that clear language does not admit of an exception for punitive damages. That aside, defendants argue that because punitive damages aren't intended to compensate, the theory behind recovery of interest doesn't apply. The Court disagrees; post-judgment interest is intended to compensate for the delay in payment of money that, if the judgment had been paid, plaintiff would already have in his hands. This applies irrespective of whether the underlying award is for strictly compensatory damages, for statutory damages, or for punitive damages. In short, post-judgment interest applies to the final judgment in this case just as it would to any other judgment.

Conclusion

The Court grants plaintiff's request for costs in part and taxes costs in the amount of $10,779.65 ($9,577.65 + $1,162 + $400) in favor of plaintiff James Synnott and against defendants Paul

Burgermeister and Ian Northrup, jointly and severally. Plaintiff's request for costs is otherwise overruled.

Date: June 13, 2022

/s/ Mathew F. Kennelly
MATTHEW F. KENNELLY
United States District Judge

[DR307] 04/18/2022 ORDER (2022 WL 1604107; 2022 U.S. Dist. LEXIS 92168)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

JAMES SYNNOTT,	)	
Plaintiff,	)	
	)	
vs.	)	**Case No. 16 C 9098**
	)	
PAUL	)	
BURGERMEISTER,	)	
IAN NORTHRUP,	)	
Defendants.	)	

ORDER ON PENDING MOTIONS

As more fully explained below, the Court denies plaintiff's motion to reconsider [dkt. no. 288]; his motion for leave to supplement his costs submission late [dkt. no. 294]; his motion for leave to file excess pages [dkt. no. 305]; and his "Rule 60 or in alternative Rule 59 motion" [dkt. no. 304]. Plaintiff's supplemental costs submission [dkt. no. 295] is stricken. Defendants' motion to strike [dkt. no. 297] is denied as moot. At this point the only matter that properly remains before the Court is plaintiff's costs submission. Defendants are given until 4/22/2022 to file a response to that submission. That date will not be extended. No reply is authorized unless the Court requests one.

STATEMENT

The Court rules on various pending matters as follows: 1. Plaintiff's motion for leave to supplement his costs submission late [dkt. no. 294] is denied. The Court made it clear in giving plaintiff an extension to 3/15/2022 that he would not get another one, because he had already had more than enough time to muster material supporting his request for taxable costs and had no legitimate basis for a further extension. Plaintiff let the 3/15/2022 final deadline lapse and then, two weeks after the deadline had run, sought to file a late submission. His justification for this is insufficient. The supplemental costs submission [dkt. no. 295] is stricken. Defendants' motion to strike the late submission [dkt. no. 297] is denied as moot. Defendants are given until 4/22/2022 to file a response to plaintiff's original costs submission. This deadline will not be extended. No reply by plaintiff is authorized unless requested by the Court.

2. Plaintiff has also filed a "motion to reconsider" [dkt. no. 288], in which he appears to contend that there no final judgment in this case. The Court disagrees. The judgment entered after the damages retrial disposed of the only claim(s) that remained in the case at that point, all other claims having been dismissed at earlier dates. Plaintiff did not have at that point a "live" request for an injunction as part of his claim for relief, and he did nothing sufficient to preserve such a request at an earlier time. The Court, in ruling on dispositive motions prior to trial, permitted plaintiff's claim against defendants Burgermeister and Northrup to proceed to trial. The DuPage Sheriff remained in the case only as a potential indemnitor under 745 ILCS 10/9-102. This was made clear in the discussions preceding and

during the first trial, in which the Sheriff was identified to the jury as a defendant, but with the following caveat that—to those in the know, including plaintiff and defendants—made it clear that he was a potential indemnitor only: "Although Sheriff Zaruba is a defendant in the case, you will not be called upon to determine his liability, if any. I will make that determination based on the findings you make regarding Mr. Synnott's claims against Mr. Burgermeister and Mr. Northrup." Dkt. no. 119 (Jury Instructions) at 7 (May 3, 2019).

The jury in the first trial awarded plaintiff both compensatory and punitive damages, but the Court vacated the damages award after plaintiff turned down a proposed remittitur. The case was later retried on damages only. This time the jury awarded no compensatory damages but only punitive damages. Because punitive damages are not subject to indemnification under Illinois law, this resolved the potential indemnification liability of the Sheriff. Thus the judgment the Court entered disposed of all the claims that remained in the case at that point. It was a final judgment. The Court denies plaintiff's motion to reconsider [dkt. no. 288].

3. Plaintiff has now filed yet another post-trial motion. His motion for leave to file excess pages is denied [dkt. no. 305] because he has not justified filing a 93-page memorandum, or anything close to it. The Court also denies plaintiff's "Rule 60 or in alternative Rule 59 motion" [dkt. no. 304] seeking a new trial and (yet again, for the umpteenth time) to amend his complaint. As a Rule 59 motion, the motion is untimely, because it was not filed within 28 days of the judgment. As a Rule 60 motion, it lacks merit

because the issues are all issues that should have been raised in a timely Rule 59 motion but were not, see, e.g., *Eyiowuawi v. John H. Stroger, Jr. Hosp. of Cook Cnty.*, 146 F. App'x 57, 59 (7th Cir. 2005), or that were raised in plaintiff's earlier post-trial motion and were overruled on the merits by the Court in its earlier ruling.

The only matter properly before the Court at this point is plaintiff's request for taxable costs. The Court will rule on that after receiving defendants' response.

Date: April 18, 2022

/s/ Matthew F. Kennelly
MATTHEW F. KENNELLY
United States District Judge

[DR280] 01/21/2022 ORDER

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

James Synnott, Plaintiff,	)	Case No. 16 C 9098
v.	)	Judge Kennelly
Paul Burgermeister, et al., Defendants.	)	

ORDER

The Court grants plaintiff James Synnott an extension of time to February 17, 2022 to file a notice of appeal and to file a bill of costs but otherwise denies his motion for extension of time [275].

STATEMENT

Plaintiff's time for appeal was within 30 days from the entry of the December 23, 2021 order denying the post-trial motions in this case, so it expired on January 20, 2022 unless extended. Plaintiff filed a timely motion for extension of time, so the Court extends the deadline for plaintiff to file a notice of appeal until February 17, 2022, as permitted by Federal Rule of Appellate Procedure 4(a)(5). Plaintiff is advised that because he is not imprisoned, his notice of appeal must actually arrive at the Clerk's office by February 17, as the Court understands the law. Under the law, plaintiff should not expect another extension. In addition, the pandemic-related general extensions previously issued by the Chief Judge are not longer

operative and did not apply to notices of appeal in any event.

The Court also extends to February 17, 2022 the time for plaintiff to file a bill of costs but declines to extend the time for filing a motion for attorney's fees because, as a pro se litigant, he cannot recover attorney's fees. Plaintiff's motion also refers to the possibility of one or more motions under Federal Rule of Civil Procedure 60(b) and asks for an extension of time for that as well. The Court denies this request. Under Rule 4(b)(2), a court may not extend the time for filing a motion under Rule 60(b).

Finally, plaintiff suggests there may not be a final order in this case. That is incorrect. The Court disposed of some claims and parties by earlier order and disposed of the remaining claims and parties by the entry of judgment following the trial. No claims remain to be dealt with.

Date: January 21, 2022

/s/ Matthew F. Kennelly
MATTHEW F. KENNELLY
United States District Judge

[DR274] 12/23/2021 ORDER (2021 WL 6091755; 2021 U.S. Dist. LEXIS 244866)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

J. SYNNOTT,	)	
Plaintiff,	)	
	)	
vs.	)	**Case No. 16 C 9098**
	)	
PAUL	)	
BURGERMEISTER,	)	
IAN NORTHRUP, and	)	
SHERIFF OF DUPAGE	)	
COUNTY,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

MATTHEW F. KENNELLY, District Judge:

After rejecting the remittitur of an earlier jury award of compensatory and punitive damages, pro se plaintiff James Synnott proceeded to a second trial limited to the question of damages, and a jury awarded him $85,000 in punitive damages and no compensatory damages. Defendants Paul Burgermeister and Ian Northrup have moved for a new trial under Federal Rule of Civil Procedure 59 or alternatively for remittitur of the punitive damages. For the reasons stated below, the Court denies the motion.

Background

In September 2016, Synnott sued a number of parties based on events arising from his divorce and child custody proceedings. The Court dismissed all of his claims except for certain claims against Burgermeister and Northrup, two DuPage County Sheriff's deputies. Synnott alleged that the deputies had violated the Fourth Amendment when they entered his home on January 2, 2016 after a process server had been unable to serve legal papers on him. He sued the defendants and the Sheriff for damages under 42 U.S.C. § 1983.

The case proceeded to trial in April 2019. The jury held both defendants liable for unlawfully entering Synnott's home and failing to knock and announce their presence. The jury also found that Northrup used excessive force against Synnott by pointing his gun at Synnott without justification. The jury awarded him $250,000 in compensatory damages and punitive damages of $70,000 against Northrup and $30,000 against Burgermeister. Dkt. no. 123.

The Court denied the defendants' motion for entry of judgment in their favor as well as their alternative request to eliminate or reduce the award of punitive damages. On the defendants' motion for new trial, the Court concluded that the evidence did not support a compensatory damages award of $250,000 and ordered a new trial on damages unless Synnott accepted a remittitur of the compensatory damages award to $125,000 (the Court overruled the request for a remittitur of the punitive damages award). Dkt. no. 169. Synnott declined to accept the remittitur, so the case went to a retrial of the issue of compensatory and punitive damages, which took place in April 2021. The jury declined to award

compensatory damages, and it awarded punitive damages of $75,000 against Northrup and $10,000 against Burgermeister. Dkt. no. 252.

Discussion

In their motion for new trial, the defendants argue that a new trial is warranted because the punitive damages award was against the manifest weight of the evidence and that even if not, the award was unconstitutionally excessive. The defendants also cite various other issues in support of their motion. The Court will address each argument in turn. A. New trial on punitive damages The defendants argue that the jury's award of punitive damages was against the manifest weight of the evidence. More specifically, they contend that there was no evidence that they "tried to hurt [Synnott], or that they harbored ill will or spite against him." Defs.' Mot. for New Trial at 3. Accordingly, Burgermeister and Northrup contend that their conduct did not meet the standard for punitive damages.

A jury may award punitive damages in an action under 42 U.S.C. § 1983 "when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." *Smith v. Wade*, 461 U.S. 30, 56 (1983) (emphasis added). A court can order a new trial "if the jury's verdict is against the manifest weight of the evidence." *Venson v. Altamirano*, 749 F.3d 641, 656 (7th Cir. 2014). A verdict is against the manifest weight of the evidence "only if 'no rational jury' could have rendered the verdict." Moore ex rel. Estate of *Grady v. Tuelja*, 546 F.3d 423, 427 (7th Cir. 2008); see

also, e.g., *Marcus & Millichap Inv. Servs. of Chi., Inc. v. Sekulovski*, 639 F.3d 301, 313–14 (7th Cir. 2011). "In passing on a motion for a new trial, the district court has the power to get a general sense of the weight of the evidence, assessing the credibility of the witnesses and the comparative strength of the facts put forth at trial." *Mejia v. Cook County*, 650 F.3d 631, 633 (7th Cir. 2011).

One problem with the defendants' argument is that it disregards that a jury may impose punitive damages when it finds the defendants' conduct to involve reckless or callous indifference to the plaintiff's rights. *Smith*, 461 U.S. at 56. Defendants note that reckless conduct "reflects complete indifference to the person's rights." Defs.' Mot. for New Trial at 3. There is nothing in the least bit inconsistent between a finding of complete indifference to Synnott's rights and the defendants' assertions defending their conduct: they had never previously met Synnott, their actions forced the process server to leave the area, and they did not physically harm Synnott. In other words, Burgermeister and Northrup's support for their argument does not directly address the conduct where they acted with complete indifference.

Moreover, there was ample support in the evidence for Synnott's request for punitive damages. The parties presented conflicting evidence regarding what transpired before and after the deputies entered the home. Synnott and his sisters all testified that the front door to the house was closed and that the deputies entered the house without knocking at the door, ringing the doorbell, announcing who they were, or anyone letting them inside the home. The deputies

gave a different version, but the jury was not required to believe them. The parties likewise presented conflicting evidence regarding the deputies' use of their firearms. Both Synnott and his sister testified that the deputies pointed their guns at him during the encounter. The jury was entitled to believe this testimony even though the deputies rendered a different version of the events.

The bottom line is that the evidence supported a finding that the deputies entered Synnott's home through a closed door for no legally viable reason; were certainly aware that they could not properly enter his home without a warrant or some other proper basis; and that they simply didn't care—in other words, they (at a minimum) recklessly disregarded Synnott's well-established right to the sanctity of his home. Similarly, the evidence supported a finding that, while improperly inside Synnott's home, they pointed weapons at him for no legally proper reason, knowing full well that they did not belong inside the home to begin with and that there was no basis to point a firearm at him. The jury was not required to believe the deputies' contrary versions of the events, as there was nothing inherently incredible about the testimony of Synnott or his sisters. Defendants' motion basically asks the Court to conclude that the jury erred. That, however, is not a proper basis for granting a new trial on manifest-weight grounds. Specifically, a district court "cannot grant a new trial just because it believes the jury got it wrong." *Whitehead v. Bond*, 680 F.3d 919, 928 (7th Cir. 2012). A new trial is not warranted on this basis.

B. Remittitur of punitive damages

Burgermeister and Northrup next argue that the jury's punitive damages award was unconstitutionally excessive. The Due Process Clause of the Fourteenth Amendment imposes limits upon a jury's award of punitive damages. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 416 (2003). The Supreme Court has laid out three guideposts for courts to consider when reviewing whether an award of punitive damages is unconstitutionally excessive: (1) the reprehensibility of the defendant's conduct; (2) the relationship between the amount of punitive damages award and the harm or potential harm suffered by the plaintiff; and (3) the difference between the punitive damages award and the civil penalties authorized or imposed in comparable cases. *BMW of N. Am., Inc., v. Gore*, 517 U.S. 559, 575 (1996).

1. Reprehensibility

The first Gore guidepost is the reprehensibility of the defendant's conduct, which involves consideration of five factors:

> the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident.

State Farm, 538 U.S. at 419. "The existence of any one factor may not always be enough to sustain a punitive damages award, but 'the absence of all of them renders any award suspect.'" *Saccameno v. U.S. Bank*

Nat'l Ass'n, 943 F.3d 1071, 1086 (7th Cir. 2019) (quoting State Farm, 538 U.S. at 419); see also *Sommerfield v. Knasiak*, 967 F.3d 617, 623 (7th Cir. 2020) (discussing how Gore did not establish "a rigid hierarchy of reprehensibility").

The second and fifth factors are most relevant in this case. Put simply, Synnott presented evidence that the defendants acted with "reckless indifference" toward his Fourth Amendment rights. See *E.E.O.C. v. AutoZone, Inc.*, 707 F.3d 824, 839 (7th Cir. 2013) (explaining that "reckless indifference" satisfies the fifth reprehensibility factor). As discussed above, Synnott and his sister both testified that Northrup had his gun out and pointed it at him throughout much of the encounter. Moreover, Synnott's sister testified that the deputies evinced no concern for their well-being. Specifically, she testified that they asked no questions, such as whether the residents were okay or if anyone was hurt, that might have corroborated the deputies' contention that they entered the home to conduct a wellness check. The jury appropriately could find that the deputies' entrance and Northrup's use of excessive force were "completely unjustified" given the circumstances, thereby making their conduct reprehensible. See *Hendrickson v. Cooper*, 589 F.3d 887, 894 (7th Cir. 2009).

Burgermeister and Northrup argue that Synnott did not suffer any physical injury, such that the first factor and that ultimately the entire analysis weighs in their favor. To support this position, they point to the lack of compensatory damages, which suggests to them that there was no injury. The problem with this argument is twofold. First, none of the factors in the reprehensibility analysis is

individually dispositive. *Saccameno*, 943 F.3d at 1086. So even if this Court credits defendants' position on the first factor, the second and fifth factors can still tilt the scale in favor of Synnott. Second, there is also the possibility that the jury "preferred to award a single sum under the punitive category rather than apportion between compensatory and punitive damages," which would undermine the contention that Synnott did not suffer any injury. *Timm v. Progressive Steel Treating, Inc.*, 137 F.3d 1008, 1011 (7th Cir. 1998); see also Payne v. Jones, 711 F.3d 85, 102 n.15 (2d Cir. 2013) ("Juries will often award nominal compensatory damages together with a reasonable punitive award where the harm to the particular plaintiff is small but the defendant's conduct is egregious."); *Sommerfield v. City of Chicago*, No. 8 C 3025, 2018 WL 1565601, at *7 (N.D. Ill. Mar. 31, 2018) (discussing the potential of jurors awarding a single sum of damages in the punitive category). Either way, there is sufficient evidence to support a finding of reprehensibility.

2. Ratio

Burgermeister and Northrup next argue that the difference between Synnott's harm and the awarded punitive damages is "beyond significant." Defs.' Mot. for New Trial at 6. The second Gore guidepost examines the relationship between the punitive damages award and the harm suffered by the plaintiff, which most often is analyzed based on the ratio between compensatory and punitive damages awards. State Farm, 538 U.S. at 425. Typically, a single-digit award ratio is constitutional, but this ratio is "flexible," and "[h]igher ratios may be appropriate when there are only small damages."

Saccameno, 943 F.3d at 1088. It is accordingly impossible "to draw a bright line marking the limits of a constitutionally acceptable punitive damages award." Gore, 517 U.S. at 585.

An initial challenge with this guidepost in a case where the jury did not award compensatory damages is that the ratio "is undefined, like any other division by zero." *U.S. ex rel. Pileco, Inc. v. Slurry Sys., Inc.*, 804 F.3d 889, 892 (7th Cir. 2015). Section 1983, however, permits punitive damages in the absence of an award of compensatory damages. *Erwin v. County of Manitowoc*, 872 F.2d 1292, 1299 (7th Cir. 1989); see also *Calhoun v. DeTella*, 319 F.3d 936, 942 (7th Cir. 2003) ("[N]othing prevents an award of punitive damages for constitutional violations when compensatory damages are not available.").

In short, the ratio guidepost is ill-suited for a case like this where the comparative award is zero or nominal. To this point, the Seventh Circuit has explained that a ratio cap "makes sense only when the compensatory damages are large." Lust v. Sealy, Inc., 383 F.3d 580, 591 (7th Cir. 2004). For example, capping a punitive damages award at $100 for a $10 compensatory damages award based on a standardized ratio maximum would undermine the purpose behind punitive damages. Id. Other circuits have recognized this point as well. See Jester v. Hutt, 937 F.3d 233, 242 (3d Cir. 2019); Bryant v. Jeffrey Sand Co., 919 F.3d 520, 528 (8th Cir. 2019); Arizona v. ASARCO LLC, 773 F.3d 1050, 1058 (9th Cir. 2014); Payne, 711 F.3d at 102; *Saunders v. Branch Banking & Tr. Co. of Va.*, 526 F.3d 142, 154 (4th Cir. 2008); *Romanski v. Detroit Entm't, L.L.C.*, 428 F.3d 629, 645 (6th Cir. 2005); *Williams v. Kaufman County*, 352

F.3d 994, 1016 (5th Cir. 2003). At bottom, "ratios are not 'the be-all and end-all in punitive-damages analysis,'" but instead are just one guidepost to consider in assessing the constitutionality of a punitive damages award. *Sommerfield*, 967 F.3d at 624 (quoting *Shea v. Galaxie Lumber & Constr. Co.*, 152 F.3d 729, 736 (7th Cir. 1998)). Turning to the present case, and in light of the considerations just discussed, the Court does not find problematic the jury's award of punitive damages without an award of compensatory damages. Aside from actual harm, the potential harm was substantial: the deputies allegedly entered Synnott's home uninvited and one of them pointed his gun at the home's residents, resulting in a finding of excessive force. See *Gore*, 517 U.S. at 582 (explaining that the ratio guidepost "compares actual and potential damages to the punitive award").

3. Comparable penalties

The third Gore guidepost asks the Court to compare the punitive damages awarded to Synnott with "the civil penalties authorized or imposed in comparable cases." *State Farm*, 538 U.S. at 428. This guidepost is intended in part to provide "fair notice" that a defendant's conduct could merit the punitive award and considers "whether less drastic remedies could be expected" to deter future misconduct. Gore, 517 U.S. at 584. On a broader level, however, as the undersigned judge has previously discussed, "any attempt to compare damages across different cases is 'inherently problematic.'" *Cooper v. City of Chicago*, No. 16 C 3519, 2018 WL 3970141, at *8 (N.D. Ill. Aug. 20, 2018) (quoting Deloughery v. City of Chicago, No. 02 C 2722, 2004 WL 1125897, at *5 (N.D. Ill. May 20,

2004)). This difficulty is particularly acute in section 1983 claims because of their "fact-specific nature," which "results in a dearth of apples to-apples comparisons." *Hardy v. City of Milwaukee*, 88 F. Supp. 3d 852, 883 (E.D. Wis. 2015). Unsurprisingly, few reported cases feature facts exactly like this one, where law enforcement unlawfully entered the plaintiff's home and one officer used excessive force.

Both parties cherry-pick cases to support their respective positions, though only one case similarly features punitive damages stemming from both unlawful entry and excessive force. In Cooper, which was tried before the undersigned judge, the plaintiff prevailed in a jury trial on his claims for unlawful entry, false arrest, excessive force, and malicious prosecution after police officers entered his home based on a noise dispute with his landlord. 2018 WL 3970141, at *1. The jury awarded $125,800 in compensatory damages, and a total of $425,000 in punitive damages, which was divided among the five defendant police officers in amounts ranging from $50,000 to $100,000. Id. The court denied the defendants' motion to amend the award after considering the Gore factors. Id. at *9.

Two additional cases from other circuits provide helpful comparisons. See *Deloughery*, 2004 WL 1125897, at *6 ("[T]here is no hint in the Seventh Circuit's jurisprudence that comparability has a geographic component."). In *Frunz v. City of Tacoma*, 468 F.3d 1141 (9th Cir. 2006), the plaintiff prevailed in a jury trial on her section 1983 claims for unlawful entry and excessive force when police entered the plaintiff's home without a warrant or announcing themselves and handcuffed the plaintiff because she

did not have ID or paperwork showing she owned the home. Id. at 1142 44. The jury awarded $27,000 in compensatory damages and $111,000 in punitive damages against three officers, which was upheld on appeal. Id. at 1144. And in *Gregg v. Ham*, 678 F.3d 333 (4th Cir. 2012), a jury awarded the plaintiff nominal damages and $30,000 in punitive damages on her unlawful entry claim against a bail bondsman. Id. at 338. The district court declined a request for remittitur. Id. at 344.

Considered altogether, these cases indicate that the jury's punitive damages awards against Burgermeister and Synnott align with comparable cases. The punitive damages awarded against Northrup are in line with both Cooper and Frunz, and the punitive damages awarded against Burgermeister are less than the amount in Gregg. Additionally, the Court finds it noteworthy that in this case, a second and entirely new jury awarded roughly the same punitive damages as the first jury: the punitive damages awarded against Burgermeister decreased from $30,000 to $10,000, and the punitive damages awarded against Northrup increased from $70,000 to $75,000. Proper respect for the Seventh Amendment's preservation of the right to submit civil disputes to citizen juries would make it incongruous to displace the findings of two, independent juries in the present circumstances. Deloughery, 2004 WL 1125897, at *5.
***

In sum, the jury could appropriately find that the defendants' conduct was reprehensible, the ratio of punitive to compensatory damages is permissible, and the amount of punitive damages awarded is consistent with other decisions involving comparable

conduct. Having considered the Gore guideposts, the Court concludes that the punitive damages awarded in this case are not unconstitutionally excessive.

C. Punitive damages basis

In their third claim, Burgermeister and Northrup argue the punitive damages award has no rational connection to the evidence. But weighing an award's rational connection to the evidence is a relevant consideration for reviewing an award of compensatory damages, not punitive damages. See *AutoZone, Inc.*, 707 F.3d at 833.

Finally, the defendants raise the specter of juror bias, passion, or prejudice. They describe Synnott's closing argument as "designed to exploit" the jurors because it "referenced the need for police reform" at a time when police reform was at the forefront of the news following the murder of George Floyd. Defs.' Mot. for New Trial at 10. This argument is frivolous. This case was tried in April 2021, over ten months after Floyd's murder. Synnott made no reference to any specific events, and nothing about the facts of this case would have invoked memories of those much earlier, unfortunate events. The jury was expressly instructed to consider only the evidence presented, and it is presumed to have followed that instruction. *United States v. El-Bey*, 873 F.3d 1015, 1022 (7th Cir. 2017). Were the Court to accept this argument, it would provide a basis to nullify virtually any jury verdict against a police officer no matter when rendered, given the frequency of public reporting of apparent police misconduct.

Defendants' argument lacks merit. The defendants' sole cited authority in support of this

contention does not change the calculus either. The defendants suggest that "the extreme amount of an award compared to the actual damage inflicted can be some evidence of bias or prejudice in an appropriate case." *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 42 (1991) (Kennedy, J., concurring). The quoted language, however, comes from a non controlling concurring opinion. That aside, the punitive damages awards in this case cannot rationally be characterized as extreme. And regardless, the Court's decision in State Farm is now the touchstone for assessing the constitutionality of punitive damages, not Pacific Mutual. See *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 501 (2008).

Conclusion

For the reasons stated above, the Court denies Burgermeister and Northrup's motion for new trial [dkt. no. 253].[1]

/s/ Matthew F. Kennelly
MATTHEW F. KENNELLY
United States District Judge

Date: December 23, 2021

[1] The Court notes that Synnott, who is proceeding pro se, will now be able to appeal from the Court's decision vacating the verdict rendered by the jury in the first trial and granting the defendants' motion for a new trial.

[R255] 05/12/2021 Minute Entry

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois –
CM/ECF LIVE, Ver 6.3.3
Eastern Division

James Synnott
Plaintiff,

v.

Sean McCumber, et al.
Defendant.

Case No.: 1:16-cv-09098
Honorable Matthew F. Kennelly

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Wednesday, May 12, 2021:

MINUTE entry before the Honorable Matthew F. Kennelly: Plaintiff is directed to file a written response to defendants' motion for new trial or to alter or amend judgment [253] by 6/4/2021. Defendants are directed to file a reply to the response by 6/18/2021. Plaintiff filed about 10:15 this morning a motion entitled "Plaintiff's R59 motion for supplemental trial and leave to amend complaint." The motion appears to seek a new trial and/or to alter the judgment entered on the jury's verdict on 4/13/2021. For this reason the motion is untimely Under Federal Rule of Civil Procedure 59(b) and (e) any motion seeking a new trial or to alter or amend a judgment "must be filed no later than 28 days after the entry of the judgment." And Federal Rule of Civil Procedure 6(b)(2) prohibits a court from extending the time for filing a motion for new trial; a motion to alter or amend a judgment; or a motion for entry of judgment

as a matter of law. These rules apply to pro se litigants just as they apply to represented litigants. Plaintiff's motion is one day late and is denied for that reason [254]. The Court also notes that the motion is 99 pages long and thus exceeds by 600 percent the District's page limit for legal memoranda; plaintiff did not seek advance leave to file a document that long and the Court would not have granted leave if asked. Finally: to the extent plaintiff's motion seeks leave to amend the complaint and assert new claims or reassert previously dismissed claims the Court denies it as untimely and for the reasons previously discussed in numerous prior rulings. Mailed notice. (mma,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at **www.ilnd.uscourts.gov**.

[DR169] 09/05/2019 ORDER (2019 WL 4201574; 2019 U.S. Dist. LEXIS 151138)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

J. Synnott,	)	
Plaintiff,	)	Case No. 16 C 9098
v.	)	
DuPage Sheriff's	)	
Officer Burgermeister,	)	
et al.,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

MATTHEW F. KENNELLY, District Judge:

Pro se plaintiff James Synnott prevailed at trial against Paul Burgermeister and Ian Northrup, two deputies in the DuPage County Sheriff's Office, on his claims under the Fourth Amendment to the U.S. Constitution and 42 U.S.C. § 1983. The jury found that both Northrup and Burgermeister unlawfully entered Synnott's home without knocking or announcing their presence and that Northrup used excessive force by pointing his gun at Synnott. The jury awarded Synnott $250,000 in compensatory damages and $100,000 in punitive damages. The defendants have moved for judgment as a matter of law or alternatively for a new trial. Synnott, despite obtaining this favorable verdict, has also moved for a new trial.

Background

A. Procedural history

In September 2016, Synnott sued a wide range of individuals and entities, including his ex-wife, her attorneys, Burgermeister, Northrup, the DuPage County Sheriff's Office, and several DuPage County judges. After the Court dismissed his complaint because it was too unintelligible to permit the Court to discern whether there was a basis for federal jurisdiction, he filed an amended complaint alleging that the defendants violated his constitutional rights. The claims primarily involved actions in and around Synnott's divorce and child custody proceedings but also included claims against certain of the defendants arising out of an alleged illegal entry into Synnott's home in connection with an apparent attempt to serve him with legal papers.

The Court dismissed all but three counts of the amended complaint, specifically, those alleging Fourth Amendment violations and related state-law claims against Northrup and Burgermeister regarding the entry into Synnott's home. See dkt. no. 14. Synnott filed a second amended complaint, which the Court dismissed because it failed to rectify the defects in the previous complaints. See dkt. no. 26. The Court gave Synnott a final opportunity to amend, and he filed a third amended complaint that included only the claims against Northrup and Burgermeister. The Court concluded that this version of the complaint was legally sufficient and allowed the case to proceed. See dkt. no. 29.

In January 2019, the Court set dates for the trial and final pretrial conference in April 2019. About one month before the trial was scheduled to begin, Synnott filed a motion for an extension of time to file the final pre-trial order and for a continuance of the

trial date. The Court denied the motion because Synnott had failed to show good cause for the extension. However, the Court permitted the parties to forego filing a full final pretrial order, instead requiring only lists of witnesses, exhibits, and proposed questions for voir dire. See dkt. no. 98. Synnott filed a written motion for reconsideration of the Court's ruling denying the motion for an extension of time, which the Court denied at the final pretrial conference. The case proceeded to trial as scheduled on April 30, 2019.

B. Trial evidence

At trial, Synnott and his sisters, Deborah Synnott and Michelle Davy, testified about the events of January 2, 2016. It was undisputed at trial that Burgermeister and Northrup entered Synnott's house on that date. At the time, Synnott's sisters (to whom the Court will refer by their first names for ease of reference) were present in the home. The parties agree that the deputies entered the house and that a heated conversation or argument ensued. The deputies remained there for approximately half an hour to an hour before leaving. No one was arrested or physically injured during the incident.

Beyond those basic facts, at trial each side offered a different account of what transpired. Synnott, Michelle, and Deborah testified that the front door to the house was closed and that the deputies entered the house without being let in and without knocking at the door, ringing the doorbell, or announcing that they were law enforcement officers. They stated they heard the deputies calling out Synnott's first name as they entered. Although

Michelle did not testify to seeing either deputy point his gun at Synnott, both Synnott and Deborah stated that each deputy drew his weapon. Specifically, they testified that Burgermeister entered the house, went into the attached garage through an open door, and encountered Synnott. According to Synnott and Deborah, Burgermeister pointed his gun at Synnott for a period of time before holstering his weapon and following Synnott back into the house. Synnott and Deborah testified that once Synnott, his sisters, and the deputies were all gathered in or around the den, Northrup pointed his gun at Synnott and interrogated him about his ownership of the house.

Burgermeister and Northrup also testified at trial. They testified that they entered the house because they saw the front door standing open and had reason to believe that the house's occupants might be elderly and in danger. They also stated that before they entered the home, they knocked on the door loudly and announced that they were from the sheriff's office. Burgermeister denied removing his gun from its holster at any point during the incident, but both Burgermeister and Northrup testified that Northrup did take out his gun at some point during the incident.

After trial, the jury found both Northrup and Burgermeister liable for unlawfully entering Synnott's home and failing to knock and announce their presence. The jury also found that Northrup, but not Burgermeister, used excessive force against Synnott. It awarded $250,000 in compensatory damages and $100,000 in punitive damages ($70,000 against Northrup and $30,000 against Burgermeister). The defendants have moved for

judgment as a matter of law or alternatively for a new trial. Synnott has also moved for a new trial. For the reasons explained below, the Court grants the defendants' motion insofar as the defendants seek remittitur of the compensatory damages award but otherwise denies both motions.

Discussion

A. Synnott's motion

Several weeks after the trial concluded, Synnott filed a motion styled as a request "for a supplemental trial and leave to amend complaint." Dkt. no. 131. In that motion, Synnott sought leave to file a fourth amended complaint requesting declaratory and injunctive relief—namely, to have certain Illinois statutes regarding child custody declared unconstitutional and to obtain injunctions to reform the DuPage County law enforcement and judicial systems with respect to child custody decisions. The Court denied the motion, explaining that the case had already been tried and was near its conclusion and that Synnott could not amend his complaint to raise new claims. See dkt. no. 133. The Court later revised that ruling, noting that although Synnott was not permitted to amend his complaint at this very late stage, the portion of his motion seeking a "supplemental trial" could be appropriately construed as a motion for a new trial under Rule 59. See dkt. no. 139.

To the extent Synnott seeks a new trial, he contends that the Court erred by denying his motions for an extension of time and to continue the trial date, limiting his cross-examination of Burgermeister, and failing to permit him to introduce certain evidence of

his damages. Synnott also contends that the defense attorneys engaged in misconduct that deprived him of a fair trial and that the jury's damages award was insufficient to compensate him for the harm he suffered. The Court will address each argument in turn.

1. Denial of motions for extensions of time

Synnott argues that the Court erred in denying his motion to extend time to file the final pretrial order and continue the trial date. He argues that this decision deprived him of the opportunity to fully prepare for trial, including preparing to make appropriate objections and having impeachment evidence ready for cross-examination.

The Court partially accommodated Synnott's request by relieving the parties of the obligation to file a full-blown final pretrial order. But the Court denied the motion to continue the trial date and Synnott's subsequent motion to reconsider that denial. At the final pretrial conference, the Court noted that twenty months had passed since the defendants filed their response to the third amended complaint. In addition, the Court observed that it had set dates for the pretrial conference and the trial on January 16, 2019—leaving Synnott with two and a half months to work on the final pretrial order and three months to prepare for trial. The Court acknowledged that Synnott was proceeding pro se but explained that the scope of the case had become quite narrow—focused entirely on the alleged unlawful entry—after the Court had dismissed most of his claims. Under these circumstances, and especially after the Court largely

excused Synnott's failure to file a final pretrial order, the Court was not and is not persuaded that it was error to deny his motion to push back the trial date. See *Keeton v. Morningstar, Inc.*, 667 F.3d 877, 884 (7th Cir. 2012) ("District courts have considerable discretion to manage their dockets and to require compliance with deadlines.").

In any case, Synnott has not shown that he was prejudiced by the denial of his motion. See *Ruiz-Cortez v. City of Chicago*, 931 F.3d 592, 602 (7th Cir. 2019) (explaining that "a new trial is appropriate" when "errors occurred and the trial was fundamentally unfair as a result"). He overwhelmingly prevailed at trial, with the jury ruling in his favor on all but one claim and awarding him substantial compensatory and punitive damages. And, as the Court repeatedly noted throughout the proceedings, Synnott performed well in representing himself at trial. See Trial Tr. Vol. 2–A, dkt. no. 166, at 42:5–12, 78:19–25; Vol. 3–A, dkt. no. 167, at 271:3–7. Beyond general references to impeachment evidence and objections, he has failed to point to instances in which the denial of his motion to continue the trial date made the proceedings unfair. The Court is therefore not persuaded that this supposed error is a basis on which to grant a new trial.

2. Limitations on cross-examination of Burgermeister

Synnott next argues that the Court improperly restricted his cross-examination of Burgermeister. Synnott examined Burgermeister for about one hour on the second day of the trial. At the end of the day, the Court ruled that Synnott would be allowed only an additional forty-five minutes of cross-examination the

following morning because he had spent nearly all of the first hour questioning Burgermeister on irrelevant topics. The next day, after Synnott had used his remaining time, the Court told Synnott at sidebar that his questioning that morning had largely been "very focused and very good" and granted Synnott more time—an additional twelve minutes. Trial Tr. Vol. 3–A, dkt. no. 167, at 271:2–7.

These rulings were neither erroneous nor an abuse of the Court's discretion. *Cf. Crabtree v. Nat. Steel Corp.*, 261 F.3d 715, 720 (7th Cir. 2001) ("A district court that fixes a period of time for the trial as a whole does not per se commit an abuse of discretion so long as the time limit is flexible enough to accommodate adjustment if it appears during the trial that the court's initial assessment was too restrictive."). The Court restricted the length of Synnott's cross-examination of Burgermeister only after Synnott had spent undue time on irrelevant and cumulative attempts to impeach Burgermeister.[1] After the Court imposed a time limit, the quality of Synnott's questions improved considerably, and the Court granted him additional time in recognition of this.

And despite the time constraints, his cross-examination was detailed and thorough. The Court acted within its discretion in imposing these

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[1] The Court imposed a similar twenty-minute time constraint on the defendants' attorney's cross-examination of Synnott following a stretch of argumentative and inappropriate questioning. See Trial Tr. Vol. 4–A, dkt. no. 168, at 483:21–484:4.

restrictions, and Synnott has not shown that they caused him prejudice.

3. Conduct of the defendants' attorneys

Synnott next contends that he is entitled to a new trial based on the alleged misconduct of the defendants' attorneys. He first argues that the attorneys improperly brought up the issue of his child custody case. The only instance he cites occurred during the cross-examination of his sister Michelle, when the defendants' attorney asked whether she knew of other instances in which sheriff's deputies came to Synnott's home. Davy Testimony, Trial Tr. Vol. 2–A, dkt. no. 166, at 95:7–18. But these questions do not refer to the custody case, and Synnott does not explain what connection, if any, they bear to any excluded evidence. The only other questions the defendants asked about the custody case came after Synnott himself volunteered during cross-examination that he felt he could not seek psychiatric treatment because it would affect the custody court's determination of his parental fitness. After the Court permitted Synnott to clarify this answer on redirect, the defendants' attorney asked a question about the ruling date in his custody case. See Synnott Testimony, Trial Tr. Vol. 4–A, dkt. no. 168, at 507:8. The attorney withdrew the question before Synnott answered, however, and Synnott has not explained how merely posing this question after he himself first testified about the existence of custody proceedings caused him any unfair prejudice. See *Willis v. Lepine*, 687 F.3d 826, 836 (7th Cir. 2012) ("[T]he misconduct of counsel justifies a new trial where that misconduct prejudiced the adverse party.").

Synnott next argues that the defendants' attorneys suborned perjury by asking questions that they knew would elicit false answers. But although he contends that Burgermeister and Northrup were not truthful in their testimony—a contention with which the jury evidently agreed, at least in part—he has not pointed to any evidence that the defendants' attorneys were aware of the falsity such that their questioning would be improper. See, e.g., Model R. Prof. Conduct 3.3(a) (ABA 2018) ("A lawyer shall not knowingly . . . offer evidence that the lawyer knows to be false."). Synnott has therefore failed to show that the alleged misconduct occurred such that he suffered prejudice warranting a new trial. See Willis, 687 F.3d at 836.

4. Damages issues

Finally, Synnott contends that a new trial is warranted because the Court erred in its rulings concerning evidence of damages. He first argues that the Court should have permitted him to introduce evidence that the defendants' Fourth Amendment violations caused him to lose custody of his child by undermining his ability to litigate his child custody proceedings. Synnott made this same argument before trial. At the final pretrial conference, however, Synnott was unable to explain any way in which the defendants' conduct affected the outcome of custody case. See Tr. of Final Pretrial Conf., dkt. no. 164, at 59:23–65:5. Even after this, the Court gave Synnott an additional opportunity to explain the supposed connection, but he was unable to do so in a coherent manner. See Order on Recoverable Damages, dkt. no. 112, at 2-3. And the defendants submitted evidence that by the time the sheriff's deputies came to Synnott's home, the trial court in his custody case had

awarded sole custody to his daughter's mother thirteen months earlier. Moreover, his appeal of that custody order appears to have been dismissed because the trial court had not yet issued an appealable final order, not because Synnott "did anything wrong or missed any deadlines." Id. at 2. Synnott thus did not explain the relevance of this damages evidence such that he should have been permitted to introduce it.

Although the Court excluded testimony that "the defendants' actions had an impact on decisions made in his child custody dispute," id. at 4, at trial Synnott was permitted to testify about the personal impact of the incident on his ability to litigate the custody case. Specifically, during his redirect testimony, the Court prompted him to explain the relationship between his custody case and his decision not to seek psychiatric or other medical treatment. See Synnott Testimony, Trial Tr. Vol. 4–A, dkt. no. 168, at 499:6–22. The Court then prompted Synnott to testify regarding the impact of the incident on his own ability to litigate the case, though not about its effect on the outcome of the case. Id. at 502:15–503:13.

Synnott appears to contend that the Court erred in excluding testimony about whether the incident on January 2, 2015 affected the outcome of the child custody proceedings. But his post-trial briefs do not shore up the defect in his previous arguments and written submissions—i.e., his failure to explain how the defendants' Fourth Amendment violations affected the outcome. He primarily argues that the Court was wrong to rely on the order of the trial court in the custody case because that ruling was legally erroneous and unconstitutional. But the Court did not and does not rely on that order for anything more than

the proposition that the course of his custody proceedings bore no apparent causal relationship with the wrongdoing alleged in Synnott's claims in this case. Synnott has not explained why the supposed fact that the order was erroneous precludes the Court from taking its timing into account in determining whether the outcome of the custody case had any relevance on the question of damages arising from the defendants' unlawful entry into Synnott's home.

Synnott also argues that he should have been allowed to introduce evidence— and the Court should have instructed the jury—that DuPage County indemnified Burgermeister and Northrup. This argument lacks merit. Evidence of indemnification is generally inadmissible due to "a fear that it will encourage a jury to inflate its damages award because it knows the government—not the individual defendants—is footing the bill." *Lawson v. Trowbridge*, 153 F.3d 368, 379 (7th Cir. 1998). Synnott contends that the defendants opened the door to this evidence, but he cites only a passing reference in Burgermeister's testimony to the fact that he is now retired, which is a far cry from "pleading poverty" as typically required to open the door to indemnification evidence. See id.

Last, Synnott contends that the jury's compensatory damages award was insufficient given the evidence of the harm he suffered. As the Court will discuss with respect to the defendants' request for remittitur, the $250,000 that the jury awarded him exceeds the amount that is rationally supported by the trial evidence and comparable cases. And to the extent that Synnott objects that the trial did not result in the declaratory and injunctive relief he hopes to obtain,

those arguments are not relevant to his motion for a new trial, which concerns only his claim for damages against Northrup and Burgermeister for violating his Fourth Amendment rights—not the panoply of other claims that the Court has long since dismissed.

For these reasons, the Court denies Synnott's motion for a new trial.

B. Defendants' motion

The defendants have moved for judgment as a matter of law under Rule 50 or alternatively for a new trial under Rule 59. Judgment as a matter of law is appropriate if "a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue." Fed. R. Civ. P. 50(a)(1); *Martin v. Milwaukee County*, 904 F.3d 544, 550 (7th Cir. 2018). The Court may not assess credibility or weigh evidence, and it must "construe the evidence in favor of the party who won before the jury." *Martin*, 904 F.3d at 550.

Under Federal Rule of Civil Procedure 59, the party seeking a new trial must show that the verdict is against the clear weight of the evidence or the trial was unfair to the moving party. *Martinez v. City of Chicago*, 900 F.3d 838, 844 (7th Cir. 2018). "[A] court will set aside a verdict as contrary to the manifest weight of the evidence only if no rational jury could have rendered the verdict." *Whitehead v. Bond*, 680 F.3d 919, 928 (7th Cir. 2012) (alteration in original). In making this determination, the Court "has the power to get a general sense of the weight of the evidence, assessing the credibility of the witnesses

and the comparative strength of the facts put forth at trial." Id.

1. Sufficiency of the evidence of excessive force

The defendants first argue that the jury's finding that Northrup used excessive force was contrary to the evidence and that they are therefore entitled to judgment as a matter of law or a new trial. Specifically, they contend that the evidence did not reasonably support the conclusion that Northrup used his weapon to seize or detain Synnott.

Synnott argues that with respect to the motion for judgment as a matter of law, the defendants forfeited this argument by failing to raise it in a Rule 50 motion before the jury reached its verdict. At the close of evidence, one of the defendants' attorneys stated, "I would like to put on the record, the Rule 50(a) motion, waive argument at this time." Trial Tr., Vol. 4–A, dkt. no. 168, at 520:25–521:2. The Court took the motion under advisement, and the defendants' attorney added, "With respect to all three claims." Id. at 521:4–5. That was the entirety of defendants' motion and argument. At no time did they make any further written or oral arguments in support of their motion.

In general, a party forfeits any arguments it withholds "until its post-trial Rule 50(b) renewed motion for judgment as a matter of law." *Webster v. CDI Ind., LLC*, 917 F.3d 574, 578 (7th Cir. 2019). "Because the Rule 50(b) motion is only a renewal of the preverdict motion, it can be granted only on grounds advanced in the preverdict motion." *Thompson v. Mem'l Hosp. of Carbondale,* 625 F.3d

394, 407 (7th Cir. 2010). Because the defendants did not raise any grounds in their perfunctory pre-verdict Rule 50 motion—and indeed affirmatively declined to make an argument in support of the motion—the arguments in support of the renewed post-trial motion are forfeited.

The defendants rely on *Laborers' Pension Fund v. A & C Environmental, Inc.*, 301 F.3d 768 (7th Cir. 2002), in which the Seventh Circuit held that the plaintiffs had preserved their arguments under Rule 50 even though they did not specifically raise them in the pre-verdict motion. But in A & C Environmental, the court reasoned that in numerous pre-trial briefs the plaintiffs had repeatedly made the same arguments advanced in their motion for judgment as a matter of law, thereby satisfying Rule 50's goal of providing notice to the opposing party of the basis of the motion. Id. at 777. Here, the defendants do not point to any instances prior to the verdict in which they argued that there was insufficient evidence to permit a reasonable jury to find that Northrup used his weapon to seize Synnott. A & C Environmental therefore does not provide a basis to excuse the defendants' failure to timely raise their arguments for judgment as a matter of law.

Even if this argument were not forfeited, neither judgment as a matter of law under Rule 50 nor a new trial under Rule 59 would be appropriate; the evidence reasonably supports the jury's conclusion that Northrup used excessive force. The defendants contend that "the evidence does not support" a finding that a weapon "was used as a means of seizing or detaining an individual." Defs. Reply Br., dkt. no. 159, at 2. But the defendants' own statements at trial belie

this argument. In particular, Burgermeister testified that Northrup had his gun out during the incident, and Northrup testified that Synnott and his sisters were detained and not free to leave. These statements—together with Synnott and his sister Deborah's testimony that Northrup pointed his gun at Synnott during the encounter—reasonably support the jury's conclusion that Northrup seized Synnott by brandishing his weapon.

The defendants also argue that the evidence does not show that Northrup used excessive force as a matter of law. The Seventh Circuit has held, however, that "gun pointing when an individual presents no danger is unreasonable and violates the Fourth Amendment." *Baird v. Renbarger*, 576 F.3d 340, 345 (7th Cir. 2009). The jury could have reasonably concluded that Synnott and his sisters posed no threat to Northrup because, unlike the deputies, they are not physically imposing and were unarmed. The defendants point out that in Baird, the law enforcement officer used a submachine gun while performing search. But this argument misses "the critical point," which is that "police are not entitled to point their guns at citizens when there is no hint of danger." Id. at 346. The jury's verdict on Synnott's excessive force claim thus is not against the manifest weight of the evidence.

2. Inconsistency of the verdict

The defendants next argue that a new trial is warranted because the jury could not have rationally returned verdicts against Northrup but in favor of Burgermeister on the excessive force claim. The Court must attempt to reconcile apparently inconsistent

verdicts, and a new trial is appropriate only if "no rational jury could have brought back the verdicts that were returned." *Deloughery v. City of Chicago*, 422 F.3d 611, 617 (7th Cir. 2005) (internal quotation marks omitted). The Seventh Circuit has explained that "[a]ny plausible explanation for the verdict precludes reversal." *Fox v. Hayes*, 600 F.3d 819, 844 (7th Cir. 2010).

The defendants contend that it was irrational for the jury to conclude that one defendant but not the other violated Synnott's Fourth Amendment rights. They point out that Synnott argued that both defendants pointed their guns at him and relied on the same evidence—his own testimony and that of his sister Deborah—to support those arguments. But although the defendants correctly note that Synnott and Deborah testified that both Northrup and Burgermeister pointed their guns at Synnott, the defendants themselves testified differently. Significantly, both Northrup and Burgermeister admitted that Northrup drew his gun during the incident, whereas Burgermeister denied that he personally did so. See Northrup Testimony, Trial Tr. Vol. 3–B, dkt. no. 167, at 370:12–20 ("I don't deny that my weapon was unholstered."); Burgermeister Testimony, id. at 250:13–20, 251:13–17 ("I did not have my weapon out of my holster.").

The jury could have reasonably concluded that only Northrup used excessive force if it believed Burgermeister's statements that he never unholstered his gun. It is the province of jury "to decide whose testimony to credit." *Whitehead*, 680 F.3d at 927. And to the extent that Burgermeister's testimony partially contradicted the statements of

Synnott and Deborah, it is plausible that the jury credited their testimony with respect only to Northrup's conduct and not Burgermeister's. See *United States v. Hagan*, 913 F.2d 1278, 1281 (7th Cir. 1990) ("[I]t is the exclusive function of the jury to determine the credibility of witnesses, resolve evidentiary conflicts and draw reasonable inferences."); *NLRB v. Gen. Time Corp.*, 650 F.2d 872, 876 (7th Cir. 1981) ("The resolution of conflicts in testimony is peculiarly within the domain of the trier of fact."). This explanation for the jury's verdict finds additional support in the fact that the jury assessed $70,000 in punitive damages against Northrup but only $30,000 against Burgermeister, suggesting that the jury viewed Northrup's conduct as more reprehensible.[2]

In short, the evidence reasonably permitted the jury to find only Northrup liable for excessive force. The defendants are therefore not entitled to a new trial on that basis.

3. Compensatory damages

The defendants next argue that the jury's compensatory damages award of $250,000 is excessive. The Court must consider three factors in determining whether remittitur is appropriate: "whether (1) the award is monstrously excessive; (2) there is no rational connection between the award and the evidence, indicate that it is merely a product of the

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[2] In addition, the jury reasonably could have found that the factual circumstances under which Burgermeister and Northrup brandished their weapons were sufficiently different to call for different outcomes on the excessive force claims against each of them.

jury's fevered imaginings or personal vendettas; and (3) [ ] the award is roughly comparable to awards made in similar cases." *Adams v. City of Chicago*, 798 F.3d 539, 543 (7th Cir. 2015).

At trial, Synnott testified about the mental and emotional consequences of this incident. He stated that the interaction with the deputies had a significant and lasting negative impact on his mood, temperament, and ability to cope with stress. See Synnott Testimony, Trial Tr. Vol. 3–B, dkt. no. 167, at 413:3–15. Although Synnott did not extensively describe his emotional pain, he did testify that he felt humiliated and pathetic in having to recount the details of the incident and the resulting harm. See id. at 412:21–413:2; 415:4–5. The Seventh Circuit has held that the fact that the plaintiff's testimony regarding the emotional impact of an event was somewhat restrained does not make it unreasonable for the jury to find that he suffered serious harm. See *Gracia v. SigmaTron Int'l*, 842 F.3d 1010, 1022–23 (7th Cir. 2016) (explaining that juries "are responsible for evaluating the credibility of witnesses who testify to emotional distress" and that "brevity and self-control in a judicial proceeding need not be interpreted as a weak case").

Both Synnott and the defendants focus on whether the amount of compensatory damages is consistent with awards in other cases. But the relatively few cases the parties cite are of limited use. For example, although the Seventh Circuit has upheld much larger compensatory damages awards in excessive force cases, the plaintiffs in those cases generally suffered significant physical harm and more egregious mistreatment than Synnott. See, e.g.,

Adams, 798 F.3d at 543–44 (upholding multi million-dollar damages awards for two brothers whom the police beat, called racial epithets, and unlawfully detained for as long as 200 days). But even though the cases the parties cite and those the Court has discovered through research are not precisely analogous to this case, the Court must nonetheless consider whether they indicate that the award of $250,000 is excessive. See *Farfaras v. Citizens Bank & Tr. of Chi.*, 433 F.3d 558, 566 (7th Cir. 2006) (explaining that "an exact analogy is not necessary" to compare the appropriateness of damage awards).

Two cases in particular furnish a useful comparison because they involve similar constitutional violations by law enforcement officers that did not result in lasting physical injuries. First, in *Carter v. Chicago Police Officers*, 165 F.3d 1071 (7th Cir. 1998), the plaintiff, a wheelchair user with medical impairments, died after a police officer used excessive force against him. The jury awarded a total of $100,000 in compensatory damages. In upholding the damages award, the Seventh Circuit noted that the jury could have reasonably concluded that the defendant officer did not cause the plaintiff's death and that the compensatory damages award was reasonably related to the plaintiff's pain and suffering during the course of his interaction with the officer. Id. at 1082 ("[I]t cannot be said that the jury's award of damages is inconsistent with either the evidence presented at trial or the jury's determination of

liability."). This award would be the equivalent of about $164,000 in current dollars.[3]

Another case, *Mary Beth G. v. City of Chicago*, 723 F.2d 1263 (7th Cir. 1983), involved strip searches of female detainees in the city's lockup facilities. The plaintiffs testified that they experienced "shock, panic, depression, shame, rage, humiliation, and nightmares, with lasting effects on each woman's life." Id. at 1275. Based on that testimony, the Seventh Circuit upheld damages awards ranging from $25,000 to $60,000—or approximately $63,000–$152,000 in today's dollars.[4] Although the present case did not involve a strip search, *Mary Beth G.* provides a potentially useful point of reference because, as in this case, the plaintiffs suffered Fourth Amendment violations that, though they involved physical contact, resulted solely in mental and emotional harm.

The evidence Synnott presented at trial concerning the emotional and mental impact of the

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[3] Using an inflation calculator made available by the U.S. Bureau of Labor Statistics, the Court estimates that when the jury reached its verdict in Carter on May 13, 1996, $100,000 was worth approximately $164,000 at the time of the jury's verdict in this case. See CPI Inflation Calculator, U.S. Bureau of Labor Statistics, https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=100%2C000.00&year1=199605&year2=201905 (last visited Sept. 5, 2019).

[4] This estimate is based on the date on which the Seventh Circuit issued its decision in Mary Beth G. because the Court is unable determine the date the jury made the underlying damages award. See CPI Inflation Calculator, U.S. Bureau of Labor Statistics, https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=60000&year1=198311&year2= 201905 (last visited Sept. 5, 2019).

January 2, 2015 incident does not rationally justify a compensatory damages award exceeding the amounts upheld in *Carter* and *Mary Beth G.* The incident lasted only about forty-five minutes, a significantly shorter interval than the time periods at issue in other cases involving excessive force and unlawful detention. See *Adams*, 798 F.3d at 543–44 (noting that the plaintiffs were wrongfully detained for 204 and 45 days each); *Wells v. City of Chicago*, 896 F. Supp. 2d 725, 740–41 (N.D. Ill. 2012) (Kennelly, J.) (ordering a remittitur of compensatory damages from $1 million to $250,000 for a plaintiff who was unlawfully detained for five hours). And the evidence does not reasonably support a conclusion that Burgermeister's and Northrup's conduct was as objectively egregious as that of the defendant in Carter, who roughly searched the plaintiff—a young man with partial paralysis, cerebral palsy, and serious heart and liver problems who had recently suffered a stroke and used a wheelchair—by holding him against a concrete pillar. See Carter, 165 F.3d at 1074–75. The presence of pain and possible physical injury in to the plaintiff in Carter further distinguishes it from this case. See also *Mason v. City of Chicago*, 641 F. Supp. 2d 726, 731 (N.D. Ill. 2009) (upholding compensatory damages of $625,000 for a plaintiff who suffered a painful orbital fracture and emotional suffering after being beaten by police).

Similarly, the invasiveness of the strip searches in *Mary Beth G.*, which the court described as "demeaning, dehumanizing, humiliating, terrifying, unpleasant, embarrassing, repulsive, signifying degradation and submission," Mary Beth G., 723 F.2d at 1272, renders them objectively more harmful than

the seizure at gunpoint Synnott experienced—though the Court does not intend by this to minimize the emotional impact of the pointing of a firearm. Thus, although the jury reasonably concluded that Synnott suffered serious harm when the deputies unlawfully entered his home and Northrup pointed a gun at him, the evidence of his mental and emotional suffering does not reasonably support an award of $250,000.

Affording the jury's damages award appropriate deference, the Court concludes that $250,000 in compensatory damages is excessive in light of the evidence of the harm Synnott suffered and in comparison with comparable cases. The Court concludes that a compensatory damages award not exceeding $125,000 rationally reflects the evidence adduced at trial. The Court will grant the defendants' motion for a new trial on the issue of damages unless Synnott accepts, within thirty-five days of this order, a reduction of the compensatory damages award to $125,000. The Court notes that if Synnott elects to pursue a new trial, "the jury must be allowed to consider both compensatory and punitive damages." *Beard v. Wexford Health Sources, Inc.*, 900 F.3d 951, 955 (7th Cir. 2018). The Court is giving Synnott more time than it would ordinarily allow to make this decision in order to give him a reasonable amount of time to contact and consult with counsel regarding the decision—something the Court strongly urges him to do.

The Court advises the parties that if Synnott declines to accept this reduced compensatory damages award, the resulting new trial will concern only the issues of compensatory and punitive damages on his claim involving the defendants' unlawful entry into

his home and Northrup's use of excessive force. See id. ("Because compensatory and punitive damages are correlated, they must be considered jointly. But a second jury need not reconsider [the defendants'] liability."). That is, the new trial will not involve any of the claims or defendants that the Court has dismissed from the case, and the Court will not revisit its ruling denying Synnott leave to file his proposed fourth amended complaint. Rather, the subject matter of the new trial will be confined to the question of damages on the unlawful entry claim against both defendants and the excessive force claim against Northrup. Moreover, Synnott will not be permitted to introduce the damages evidence that he contends the Court erroneously excluded, i.e., evidence relating to a supposed connection between the Fourth Amendment violations and the outcome of his child custody dispute. The Court has ruled on each of these issues numerous times and will not entertain further motions to reconsider.[5] The sole purpose of a new trial—should Synnott elect to pursue one rather than accept the reduced compensatory damages award—would be to allow a jury to determine the appropriate amount of damages based on evidence that may properly be presented to the jury, not to broaden Synnott's claims or relitigate any of the Court's prior rulings.

4. Punitive damages

The defendants also argue that the evidence at trial was insufficient to reasonably support the imposition of punitive damages. Alternatively, they

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[5] Synnott may, of course, raise these issues on appeal if he elects to accept the remittitur.

contend that the awards of punitive damages—$70,000 against Northrup and $30,000 against Burgermeister—are excessive.

In an action under 42 U.S.C. § 1983, a jury may assess punitive damages "when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." *Smith v. Wade*, 461 U.S. 30, 56 (1983). To determine whether the amount of punitive damages is appropriate, the Court considers three factors: "(1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damage award, and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases." *Estate of Moreland v. Dieter*, 395 F.3d 747, 756 (7th Cir. 2005) (quoting *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 418 (2003)).

The evidence in this case reasonably supports both the jury's decision to assess punitive damages against Northrup and Burgermeister and the amount of punitive damages it awarded. The jury concluded that Burgermeister and Northrup unlawfully entered Synnott's home and did not knock or announce their presence. Both Burgermeister and Northrup testified that they knew it would be unconstitutional to do so. And the jury could have reasonably found that Northrup was at least recklessly indifferent to Synnott's Fourth Amendment rights in using his gun to effect a seizure of unarmed individuals who posed no apparent threat. This evidence supports a

reasonable inference that Burgermeister and Northrup "trample[d] on the plaintiff's rights, in a fashion that can fairly be called reckless." *Soderbeck v. Burnett County*, 752 F.2d 285, 289 (7th Cir. 1985).

The Court also defers to the jury's determination of the appropriate amount of punitive damages. Its determination regarding the amount of money necessary to punish the defendants and deter others from engaging in similar misconduct "is precisely the sort of judgment peculiarly within the province of the finder of fact." *Merriweather v. Family Dollar Stores of Ind., Inc.*, 103 F.3d 576, 582 (7th Cir. 1996). For the reasons previously stated, the jury reasonably found that the deputies caused Synnott serious mental and emotional harm. And even if the defendants' conduct was not as extreme as that of law enforcement officers in certain other excessive-force cases, the jury could have reasonably concluded that the deputies' entrance into the house and Northrup's use of excessive force were "completely unjustified" under the circumstances, making their conduct reprehensible. See *Hendrickson v. Cooper*, 589 F.3d 887, 894 (7th Cir. 2009). Finally, the award in this case is less than the compensatory damages award—even at the dollar amount to which the Court has granted a remittitur—and thus does not suggest "constitutional impropriety." *J.K.J.*, 928 F.3d at 604 (noting that a ratio between punitive and compensatory damages of less than two-to-one raises no constitutional problem); see also *Estate of Moreland*, 395 F.3d at 757 ("The defendants have not identified a single appellate case questioning the constitutionality of a punitive damages award that is a fraction of the underlying compensatory damages

award. Nor have we."). The Court therefore declines to disturb the jury's award of punitive damages.

Conclusion

For the foregoing reasons, the Court denies the plaintiff's motion for a new trial, which he has styled has a motion for a supplemental trial [dkt. no. 131]. The Court denies the defendants' motion for judgment as a matter of law or a new trial [dkt. no. 128] except to the extent that the defendants seek remittitur of the compensatory damages award. Unless the plaintiff advises the Court on or before October 11, 2019 that he accepts a reduction of the compensatory damages award to $125,000, the Court will grant in part the defendants' motion for a new trial on the issue of compensatory and punitive damages.

/s/ Matthew F. Kennelly
MATTHEW F. KENNELLY
United States District Judge

Date: September 5, 2019

[DR133] 06/05/2019 ORDER

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

J. Synnott,	)	
Plaintiff,	)	Case No: 16 C 9098
v.	)	
	)	Judge: Kennelly
Officer Burgermeister,	)	
et al.,	)	
Defendants.	)	

ORDER

A final judgment was entered in this case on May 3, 2019 (amended on May 7, 2019), and at this point the case remains before the Court only on defendants' post-trial motions following the jury's finding in favor of the plaintiff on his remaining claims that had not been dismissed. Plaintiff has now filed a motion "for supplemental trial" and to amend his complaint. He has offered no viable basis under Rule 60(b) or otherwise to reopen the case and institute new (or formerly dismissed) claims at this point. Plaintiff's motion is denied [131].

/s/ Matthew F. Kennelly
MATTHEW F. KENNELLY
United States District Judge

Date: 6/5/2019

[DR123] 05/07/2019 Docket Entry Jury Verdict

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

James Synnott,
Plaintiff, Case No.: 1:16-cv-09098

v. Honorable Matthew F. Kennelly

Officer Burgermeister, et al.,
Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Tuesday, May 7, 2019:

MINUTE entry [120] before the Honorable Matthew F. Kennelly contained an error and is corrected as follows: Jury trial held on 5/3/2019. Evidence entered. Deliberations began. Jury returns verdict. The Clerk is directed to enter judgment finding in favor of plaintiff and against defendants Paul Burgermeister and Ian Northrup on the first claim, improper entry; in favor of plaintiff and against defendants Paul Burgermeister and Ian Northrup on the second claim, knock and announce; in favor of defendant Paul Burgermeister and against plaintiff on the third claim, excessive force; and in favor of plaintiff and against Ian Northrup on the third claim excessive force. Compensatory damages are awarded in favor of the plaintiff, James Synnott, and against defendants Paul Burgermeister and Ian Northrup in the amount of $250,000.00. Punitive damages are

awarded in favor of the plaintiff, James Synnott, and against defendant Paul Burgermeister in the amount of $30,000.00 and in favor of plaintiff, James Synnott, and against defendant Ian Northrup in the amount of $70,000.00. (Amended Judgment to follow.) Mailed notice.(pjg,)

[DR112] 04/29/2019 ORDER

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

JAMES SYNNOTT, Plaintiff,	)	
vs.	)	**Case No: 16 C 9098**
JAMES BURGERMEISTER, and IAN NORTHRUP, Defendants.	)	

ORDER ON PLAINTIFF'S RECOVERABLE DAMAGES

Plaintiff James Synnott has asserted claims against DuPage County Sheriff's police officers James Burgermeister and Ian Northrup arising from their entry into his home on January 2, 2015. Specifically, he alleges that they wrongfully entered his home and then threatened him, including (perhaps among other things) by pointing guns at him and his sister. Mr. Synnott's complaint, in its various iterations, also included several other claims against judges, lawyers, and others related to his child custody dispute in DuPage County. The Court dismissed those other claims on various grounds, and they are not among the claims that will be going to trial starting on April 30, 2019. Mr. Synnott is proceeding pro se.

In discussing the nature of his damages at the final pretrial conference held on April 18, 2019, Mr. Synnott asked whether he will be permitted to bring up at trial the effect the defendants' Fourth Amendment violations had on him. The Court replied

that in general, the answer is yes, but it then asked what Mr. Synnott intended to claim as his damages caused by the defendants' actions. Mr. Synnott stated, "The problem is what it cost me was my child." When the Court asked how this was so, Mr. Synnott replied, "I wasn't able to do what I needed to do" and "wasn't able to think clearly." The Court asked him to explain the connection between the defendants' alleged actions and what he referred to as the loss of his child, but Mr. Synnott was unable to do so at the final pretrial conference despite repeated attempts by the Court to have him identify the connection. The Court determined to give Mr. Synnott an opportunity to file a written submission explaining the basis for his contention that the defendants' actions impacted his child custody case. Mr. Synnott has done so, and the defendants have filed a response as directed by the Court.

At the final pretrial conference, Mr. Synnott did describe at least part of the relevant sequence of events in response to questions by the Court. Specifically, he said that the state court trial judge's decision regarding the custody of his child had actually been made in October 2013—in other words, about 15 months before the alleged improper entry into his house. The matter was evidently pending on appeal at the time of the January 2015 incident involved in this case. Mr. Synnott's appeal was dismissed (at some point; exactly when is not clear), evidently due to the absence of a properly appealable "final order." Specifically, there is no indication that the appeal was dismissed because Mr. Synnott did anything wrong or missed any deadlines; rather, it was dismissed because the findings needed to make

the order appealable had not been made. Mr. Synnott says that he attempted to secure the appropriate findings but was unsuccessful.

Mr. Synnott's written submission made at the Court's direction after the final pretrial conference largely avoids the question of an evidentiary connection between the defendants' actions and impact on his custody case. Rather, Mr. Synnott repeatedly states, in conclusory fashion, that he had a "100% chance" of winning the custody case and that the defendants prevented this. He offers no evidentiary or legal support for this contention. And in making this argument, Mr. Synnott largely relies on his claims of a conspiracy against him involving judges, lawyers, and, evidently, the defendant officers. But his claims of conspiracy (and other wrongs) involving lawyers, judges, etc. have been dismissed and, the Court repeats, will not be part of what is presented to the jury at the April 30 trial in this case. And Mr. Synnott's contentions that the defendant officers were in league with his alleged antagonists are completely unsupported by any evidence, or by anything at all other than Mr. Synnott's speculation. Again, Mr. Synnott will not be permitted to offer such speculation at the trial, as it lacks a proper evidentiary foundation and is irrelevant and also subject to exclusion under Federal Rule of Evidence 403.

In response to Mr. Synnott's submission, defendants provide a copy of a state court order dated October 15, 2013 awarding sole custody to the mother of Mr. Synnott's child, albeit with expanded visitation for him. They also point out that Mr. Synnott made repeated appearances in the state court custody

matter after January 2, 2015, which they argue undermines any contention that the defendants' alleged actions on that date impacted his participation in the custody matter.

Mr. Synnott does say in his written submission to the Court that "[f]ollowing the incident of 1/2/2015 it takes plaintiff, by his own admission, too long to recover from being knocked down to a level which passes as functional." Mr. Synnott is competent to testify regarding the affect that the January 2, 2015 incident had on him, in other words how it affected his emotional well-being. Such testimony is relevant and properly admissible. But his attempt to connect the January 2, 2015 events with an impact on the court proceedings in the custody case and rulings made in that case falls short of the mark. In order for damages to be recoverable for an alleged injury, wrongdoing must be both the cause in fact and the proximate cause of the injury. See, e.g., *Hoffman v. Knoebel*, 894 F.3d 846, 841 (7th Cir. 2018). Proximate cause "requires some direct relation between the injury asserted and the injurious conduct alleged. A link that is too remote, purely contingent, or indirect is insufficient." *Hemi Grp., LLC v. City of New York*, 559 U.S. 1, 9 (2010) (internal quotation marks, citation, and bracketing omitted). Based on Mr. Synnott's proffer of evidence, no reasonable jury could find the required connection between the defendants' alleged actions and an actual impact on the child custody case. For this reason, the Court excludes this theory of damages as well as testimony and argument offered to support it. To be very clear about it, Mr. Synnott will not be permitted to testify or argue to the jury

that the defendants' actions had an impact on decisions made in his child custody dispute.

The Court also notes that Mr. Synnott appears to contend, without support, that defendants' actions on January 2, 2015 somehow prevented him from hiring counsel to sue them. That contention or theory is likewise excluded from the present trial, as there is no admissible evidence to support it.

Finally, a number of Mr. Synnott's recent submissions, including the one he made on the damages questions just discussed, make it apparent that he has not gotten the message from the Court regarding what is and what is not still at issue in this case. To repeat what the Court has already said, the only claims that remain for trial are Mr. Synnott's claims against the defendant officers regarding the January 2, 2015 incident. His claims of conspiracy and wrongdoing by lawyers, judges, private process servers, and others have been dismissed and will not be presented or permitted at the trial. (Mr. Synnott may appeal the dismissal of those claims once there is a final judgment in this case, but that does not permit him to offer those claims at the upcoming trial.) The Court will not hesitate to enforce this and its prior rulings by taking appropriate action during the trial if Mr. Synnott runs afoul of them.

The Court is filing this order but is also e-mailing it to Mr. Synnott and to defense counsel so that they will have it immediately

Date: April 29, 2019

/s/ Matthew F. Kennelly
MATTHEW F. KENNELLY
United States District Judge

[DR109] 04/18/19 Minute Entry

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

James Synnott,
Plaintiff, Case No.: 1:16-cv-09098

v. Honorable Matthew F. Kennelly

Officer Burgermeister, et al.,
Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Thursday, April 18, 2019:

MINUTE entry before the Honorable Matthew F. Kennelly: Final pretrial conference held on 4/18/2019. Plaintiff's motion to reconsider [105] and plaintiff's motion for extension of time are denied for reasons stated in open court. A number of plaintiff's witnesses are stricken for reasons stated in open court. By 5:00 p.m. on 4/23/2019, plaintiff is to provide a written explanation of plaintiff's allegation of the connection between the January 5 incident that is the subject of this lawsuit and his claimed injury to his ability to litigate and prevail in his child custody dispute. Defendant to respond to plaintiff's explanation by 5:00 p.m. on 4/26/2019. Both submissions are to be sent by e-mail to Judge Kennelly as directed in open court, but both should also be filed at some point before the trial begins in order to make a complete record. Mailed notice. (pjg,)

[DR26] 03/23/2017 ORDER

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

J. Synnott,	)	
Plaintiff,	)	Case No: 16 C 9098
v.	)	
DuPage Sheriff's	)	Judge Kennelly
Officer Burgermeister,	)	
et al.,	)	
Defendants.	)	

ORDER

Motion for clarification (22) is granted in part to the extent stated in this order. Plaintiff's second amended complaint is stricken and dismissed. The Court will give plaintiff one final opportunity to comply with the Court's orders, as further explained below. If plaintiff does not file by April 3, 2017 a third amended complaint that complies completely and fully with this order and the Court's previous orders, the Court will enter judgment against plaintiff.

STATEMENT

After the Court dismissed plaintiff James Synnott's original complaint, he filed a pro se amended complaint. Like his first complaint, the amended complaint contained numerous claims, all of which arose out of an ongoing child custody dispute that is pending in state court in DuPage County. He sued the mother of their child; her attorneys; five state court judges; two named DuPage Sheriff's police officers; the Sheriff of DuPage County; and the County. The complaint included 18 numbered counts.

In an order dated January 3, 2017, the Court dismissed all but three of them, specifically, counts 8, 12, and 13. All of these arose from an incident in January 2015 involving a Sheriff's deputy (or perhaps two) who allegedly unlawfully entered his home. The Court thereafter denied Synnott's motion to reconsider.

Because the amended complaint, at that point, largely consisted of allegations that were not germane to the remaining claims, the Court directed Synnott to file a further amended complaint "stating only the remaining claims." Order of Feb. 2, 2017. Synnott then filed a so-called "redacted" amended complaint that essentially contained all sorts of blank paragraphs including only the term "redacted." At a hearing on March 13, 2017, the Court advised Synnott that this was inappropriate because it essentially would leave the remaining defendants guessing at what the complaint included. The Court also attempted to assuage Synnott's concern that by omitting the other allegations, he would be waiving his dismissed claims for purposes of an eventual appeal. Specifically, the Court advised Synnott that he would not be waiving anything for appellate purposes by not restating the claims the Court had dismissed.

Synnott then filed, on March 20, 2017, a second amended complaint. He chose in this version to add back in numerous "redacted" allegations, which are not germane to his remaining claims. These extraneous allegations also make the complaint run afoul of the requirement in Federal Rule of Civil Procedure 8(a)(2), which requires that a complaint include a "short and plain statement" of the plaintiff's

claim. Synnott also included in the second amended complaint a series of what now appear to be unnumbered claims. These allegations were in the amended complaint that the Court dismissed but, because they were unnumbered, did not appear to be separate claims but rather essentially a narrative of problems that Synnott perceives with the state laws governing, and the handling of, the state court custody proceeding. As indicated, Synnott has reinserted these into the second amended complaint—starting with paragraph 38 and continuing through the end of the second amended complaint.

Synnott has also filed a motion seeking clarification. Even though the Court does not believe clarification of its earlier orders is necessary, it nonetheless grants that motion in part. What follows is a clear and specific directive of what may be included in a third amended complaint and what may not be included.

1. Synnott may include in the third amended complaint his allegations and claims relating to the conduct of the Sheriff's police officers on January 2, 2015, as well as a description of the relief (damages or whatever) he seeks in connection with those claims. This includes the allegations against the Sheriff's officers in paragraph 22 of the second amended complaint, as well as the allegations in paragraphs 25 through 29, 32 and 33, 35 and 36. If Synnott wishes to elaborate on what he contends the officers did on January 2, 2015 and thereafter, he may do so, but that is it.

2. The allegations about the incidents in September 2014 contained in 2 paragraphs 19 through 22 are not germane or pertinent to the remaining claims that the Court has allowed to proceed. These allegations are stricken and may not be included in the third amended complaint. The factual allegations set forth in these paragraphs may conceivably turn out to be relevant in prosecuting the claims the Court has allowed to proceed, but that does not mean that they should or may be in the third amended complaint. They have been stricken as surplusage and must be omitted.

3. Synnott may not include in the third amended complaint any blank paragraphs or any statements that say "redacted." All such paragraphs and statements are stricken. Synnott also may not include allegations such as the statement in paragraph 23 of the second amended complaint that "Counts 1-7 were dismissed per 1/3/2017 order." All allegations of this type are likewise stricken. Again, Synnott will not be waiving his eventual right to appeal the dismissed claims or stricken allegations by not including them.

4. Synnott also may not incorporate by reference allegations or counts that were in earlier versions of the complaint. Any and all such allegations are stricken. The third amended complaint must be a self-contained document that does not refer to other filings (that would make it impossible for the defendants to determine what they have to answer).

5. The narrative allegations in paragraphs 1 through 9 of the second amended complaint in which Synnott attempts to explain the importance of his case

are likewise stricken and may not be included in the third amended complaint. Doing so would make that complaint run afoul of the "short and plain statement" requirement. In addition, these narrative allegations in significant part include reference to matters that the Court has dismissed. They are likewise inappropriate in the third amended complaint for that reason.

6. Paragraphs 38 through 64 of the second amended complaint through the end are also stricken and dismissed. To the extent these purport to be separate claims, they constitute an inappropriate attempt to litigate in federal court the ongoing child custody dispute, and they are dismissed for that reason. These allegations may not be included in the third amended complaint.

7. Finally, the prayer for relief starting with the word "Wherefore" on page 16 of the second amended complaint, followed by paragraphs A through E, is also stricken. For the most part, this seeks relief that Synnott may not properly obtain in this case, specifically, relief connected with the state court custody case. Synnott should include a revised prayer for relief in his third amended complaint, but it must be limited to relief that he can properly obtained from the remaining defendants (the Sheriff's deputies, the Sheriff, and the County) arising from the January 2015 incident.

The Court emphasizes to Synnott that the third amended complaint will be his final opportunity to comply with the Court's directives. **Either he will file a complaint that complies—in which event the case will proceed ahead—or he will not—in**

which case the Court will dismiss this action due to his noncompliance with the Court's orders. Because Synnott is getting a chance for a do-over here, he needs to act promptly. **His third amended complaint must be filed with the Clerk by no later than April 3, 2017. The Court will not entertain any requests to extend this deadline.**

/s/ Mathew F. Kennelly
MATHEW F. KENNELLY
United States District Judge

Date: March 23, 2017

[DR303] 02/2/2017 TRANSCRIPT

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

John Doe,	)	
Plaintiff	)	Docket No: 16 C 9098
vs.	)	
	)	
Officer Burgermeister,	)	Chicago, Illinois
et al.,	)	February 2, 2017
Defendants.	)	9:30 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - MOTION BEFORE THE HONORABLE MATTHEW F. KENNELLY

Appearances:

Pro se: MR. JAMES SYNNOTT
25W150 Brandywine Court
Naperville, IL 60540

For the Defendants: DUPAGE COUNTY STATES ATTORNEY'S OFFICE
BY: MR. WILLIAM ROBERTS
503 North County Farm Road
Wheaton, IL 60187
(630) 407-8200

Court Reporter: MS. CAROLYN R. COX CSR, CCR, FCRR
Official Court Reporter
219 S. Dearborn Street,

Suite 2102
Chicago, Illinois 60604
(312) 435-5639

(The following proceedings were had in open court:)

THE CLERK: Case No. 16 C 9098, Doe v. Burgermeister.

THE COURT: Good morning.

MR. SYNNOTT: Good morning, your Honor. James Synnott as John Doe, pro se.

THE COURT: Okay. MR. SYNNOTT: I am here on presentment.

THE COURT: So I got your motion to alter or amend the judgment or for reconsideration. So first of all, in terms of your ability to hire an attorney, you don't need permission from me to hire an attorney. You can always hire an attorney.

MR. SYNNOTT: I just need time, your Honor.

THE COURT: But, you know, I made a ruling dismissing a number of claims and saying that you could proceed on some others. And so largely what this is is a motion to reconsider, and so I am going to walk through it.

First of all, the motion to alter, amend, or to reconsider is denied.

There is no state action here. This is nothing like Edmondson, E-d-m-o-n-d-s-o-n. This is purely a private action. There is no allegation that would make a plausible allegation of conspiracy with a state actor. They're private actors as I said in the order.

The claim under Section 1985 of Title 42, the law is what it is. I mean, if I was writing it from the beginning before the Supreme Court had decided all of these things, I might have decided it a different way, but that's not the way the law reads, and you don't have a viable claim under that statute.

The judicial immunity issue, it's settled law. There's no viable argument for reconsideration there.

And then the last point that is raised has to do with intervention in the state court case. So you talk in here about the Rooker Feldman exception or doctrine, R-o-o-k-e-r, F-e-l-d-m-a-n. I didn't rely on that. I relied on Younger v. Harris. Younger v. Harris clearly applies. It doesn't permit me to intervene.

The case that I cited is a Seventh Circuit case called Parejko, P-a-r-e-j-k-o, which essentially applies Younger to state court divorce and custody proceedings. The motion to reconsider is denied.

So the question is back to you. You've had plenty of time to think about this. What I did here is I dismissed most of the claims. I said that some of them, specifically, Counts 8, 12, and 13, which are claims against the sheriff's police officers and the sheriff, are viable claims that can proceed here. None of the other ones are. What I said in the last line of the order of January the 3rd is I didn't see given what those claims are, they're essentially excessive force claims.

MR. SYNNOTT: Your Honor --

THE COURT: You've got to decide whether you're willing to proceed in this case not as John Doe but under your own name. You've had plenty of time

to think about this. I am not going to extend it beyond today. So I need an answer to the question.

MR. SYNNOTT: Just for the record, I wasn't expecting -- or I was expecting to be able to argue my position.

THE COURT: That's what your motion was for. You filed here an 18-page motion. So if you left out arguments from that motion, the law doesn't permit you to do that. They all have to be in the motion. I've ruled on it. So now we're to the next question. Do you want to proceed with the remaining claims under your own name, yes or no?

MR. SYNNOTT: Could I have the extension to hire an attorney? I realize --

THE COURT: You have known about this question for a month now.

MR. SYNNOTT: Yes, your Honor.

THE COURT: I am not going to extend it beyond today. So you're going to either decide today or I'm going to dismiss the case for want of prosecution. This case has been on file since -- I will pull up the docket, so I can give you the exact date that you filed it. You filed it on September the 19th. That is four and a half months ago. You've had four and a half months to retain an attorney.

You've been proceeding in the state court case without a lawyer, right? Right?

MR. SYNNOTT: Yes.

THE COURT: Right?

MR. SYNNOTT: For a while.

THE COURT: For how long? How long is a while? How long have you been without a lawyer?

MR. SYNNOTT: At least two years.

THE COURT: How many?

MR. SYNNOTT: Two years. It's stalled. It hasn't gone anywhere.

THE COURT: Fine. You've had four and a half months in this case. I'm denying your request for a further extension. You need to make a decision now. I will give you until I talk to the other two people on my call, but that's it.

I made it clear to you the last time you were coming in here that you were going to have to decide this question today. It was a matter of, frankly, judicial grace that I extended it to today. I didn't have to.

So you're going to have about five minutes. Think quickly. Call the next case.

(Brief recess.)

THE CLERK: Case No. 15 C 9098, Doe v. Burgermeister.

MR. SYNNOTT: James Synnott, pro se.

THE COURT: Mr. Synnott, you've had actually pretty close to 15 minutes. What's it going to be?

MR. SYNNOTT: Could I ask for a quick clarification?

THE COURT: Absolutely.

MR. SYNNOTT: Is the declaratory injunctive relief dismissed?

THE COURT: The claims that you have -- the best way for me to answer that is to tell you what claims you have left. The claims that you have left are Counts 8, 12, and 13. As I understand Count 8, it's a claim under 42 United States Code 1983 against two particular sheriff's officers for violating your Fourth Amendment rights on an incident that occurred on January the 2nd, 2005, that had to do with, I guess, an attempt -- what was claimed to be an attempt to serve process on you at your house and then the aftermath of that.

Counts 12 and 13 -- Count 12 is a state law claim that I have construed as basically parallel to that same claim. So it's a federal and a state law claim arising out of that incident. And Count 13 is a claim against the Sheriff of DuPage County. It's an indemnification claim, and I said you can proceed on that to the extent that it relates to that same incident that's involved in Counts 8 and 12.

And so, no, what this boils down -- I think the short answer to your question then is no, because what you've got is a Fourth Amendment claim arising out of this incident on January the 2nd of 2015. I suppose I could come up with a theory under which you might ask for a declaratory judgment, but typically, that's a claim for damages.

The rest of this, honestly, I am just going to be blunt about it. What you're trying to do is get me to overturn what's happened in the state court divorce case, and for the reasons that I have explained in here, you can't do that.

MR. SYNNOTT: Shouldn't that be state?

THE COURT: I have dismissed those claims.

MR. SYNNOTT: Is that with prejudice?

THE COURT: I have dismissed them with prejudice. There is a rule. So it's not an appealable order yet because it's not a final order because it's only disposed of some claims. There is a rule. I am going to tell you what it is. It's Federal Rule of Civil Procedure 54(b) that permits me to make a non-final judgment final if you want to appeal it, and I would absolutely entertain that kind of a motion if you would file it.

There's certain findings that I have to make. It basically involves whether the claims that I have dismissed and the claims that I haven't dismissed are separable enough that the Court of Appeals isn't going to have to be dealing with the same issue twice. I think there's a decent chance that requirement is met here, but it's not for sure, so you need to file a motion.

Right now I have dismissed the other claims with prejudice except for the ones that I have dismissed for lack of jurisdiction. I am not going to go through it with you again here. The order that I entered is sufficiently clear.

What I'm telling you is that in order to appeal that, you'd need to first file a motion for a finding under 54(b).

MR. SYNNOTT: Just for the record, there's Rule 4 waiver that has been sent. I didn't know what I could say or couldn't say without being here.

THE COURT: Well --

MR. SYNNOTT: The other is in answer to your question, if it can wait until I file a motion to seal these first two, I am exposing my daughter --

THE COURT: When you say seal the first two, what?

MR. SYNNOTT: The complaint and amended complaint. If I can seal these and refile or come under an attorney that wants to file on their own --

THE COURT: Let me talk that through with you. I understand where you're coming from. Give me just a second. I want to look at what the state of the docket is at the moment. Bear with me.

(Brief pause.)

THE COURT: Are they sealed now?

MR. SYNNOTT: It was unsealed.

THE COURT: No, I unsealed it.

Okay. So this is what -- this is the deal and the only deal that I am willing to make with you. Okay? So if you're willing to file an amended complaint that includes only the claims that I have allowed you to proceed on, because that complaint has to be unsealed, that can't be under seal because there's no appropriate basis for it to be under seal. The stuff where you talk about the divorce case and the custody matters, I understand your argument on that. I am not necessarily adopting it, but the only way that I am prepared to put the original amended complaint under seal is if you commit to me that you are going to file a further amended complaint that includes only those claims. You won't be giving up your right to pursue an appeal on the claims that I've dismissed, but I need to

have something that's on the public record that the defendants who are left are able to respond to.

MR. SYNNOTT: I understand. I understand that, and I don't want to complicate issues by me filing it and having someone else come in and amend it. So I don't know what that time frame that you would want for it.

THE COURT: I am going to tell you. It's going to be three weeks.

MR. SYNNOTT: Three weeks to file?

THE COURT: Three weeks to file a further amended complaint. Once you do that, once I get it, once I actually see it, then I'll enter an order that tells the clerk to put docket entries 1, which is the original complaint, and I guess the amended complaint got filed twice, 11 and 12 under seal.

Now, with this little asterisk. It's conceivable that when the defendants who are left get served with the further amended complaint that you filed that they are going to say, hey, I want to see what the original complaint was because who knows, maybe Mr. Synnott has said something inconsistent in there. So I'm not saying that it's necessarily going to be sealed for all time and nobody will be able to see it, but I'm willing, if you file an amended complaint, a further amended complaint along the lines that I said, I'm willing to put those documents under seal subject to the defendants' right to ask me to unseal them.

MR. SYNNOTT: Well, they already have copies, and I have proof of service.

THE COURT: There you go. Then maybe it won't even be an issue.

MR. SYNNOTT: The last two things, if you don't mind.

THE COURT: Sure.

MR. SYNNOTT: One was if there was any extension of time to file because I realize there may be statutes of limitations that have run up for the state court.

THE COURT: I can't tell you -- I can't tell you how the statute of limitations works. On the claims that you filed already -- I mean, if you add new claims, if you add new defendants, which I haven't authorized you to do, by the way, you know, you probably cut off the running of the statute of limitations when you filed the original lawsuit. It doesn't start over again, in other words, or it doesn't keep running, but that's something that you need to consult somebody else on if you need an answer to it.

What's your second question?

MR. SYNNOTT: Well, I guess it was just for the record that I didn't want to deny anybody the opportunity to respond, but I thought I would have an opportunity --

THE COURT: They don't need to respond to something that I already dismissed.

MR. SYNNOTT: That was with regard to my motion.

THE COURT: The order for today is going to say the motion to alter, amend, or for reconsideration is denied. The motion for additional time to retain an

attorney is denied without prejudice. Plaintiff has leave to file a second amended complaint including only the claims that I have authorized to proceed -- that the Court has authorized to proceed by three weeks from today, which is the 23rd of February. If and when that complaint is filed, documents 1, 11, and 12 will be placed under seal subject to a motion to unseal.

And then I am going to have you -- I'm going to have you come back here -- February 23rd I set, right, so come back after that. I'm going to set it for -- are you available on Monday the 13th of March?

MR. SYNNOTT: Whenever it is you would like me here.

THE COURT: 9:30 in the morning on the 13th of March. Take care.

MR. SYNNOTT: Thank you, your Honor.

(Which were all the proceedings had in the above-entitled cause on the day and date aforesaid.)

I certify that the proceedings is a correct transcript from the record of proceedings in the above-entitled matter.

_____ _____

Carolyn R. Cox Date
Official Court Reporter
Northern District of Illinois
/s/ Carolyn R. Cox, CSR, RPR, CRR, FCRR

[DR18] 02/02/2017 MINUTE ENTRY

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS – CM/ECF LIVE, Ver 6.1.1 Eastern Division

John Doe,
Plaintiff,

v.

Officer Burgermeister, et al.
Defendants.

Case No: 1:16 C 09098

Honorable Matthew F. Kennelly

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Thursday, February 2, 2017:

MINUTE entry before the Honorable Matthew F. Kennelly: Status hearing and motion hearing held on 2/2/2017. Motion to reconsider [16] is denied for reasons stated in open court. Plaintiff has until 2/23/2017 to file an amended complaint stating only the remaining claims. If and when that amended complaint is filed, docket nos. [1], [11] and [12] will be sealed subject to a motion to lift the seal. Motion for additional time to obtain an attorney is denied without prejudice. Status hearing set for 3/13/2017 at 9:30 a.m. Mailed notice. (pjg,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure.

It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at **www.ilnd.uscourts.gov.**

[DR14] 01/03/2017 ORDER

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

John Doe,	)	
Plaintiff	)	Case No: 16 C 9098
v.	)	
Sean McCumber, et al.,	)	Judge Kennelly
Defendants.	)	

Order

For the reasons stated below, the Court dismisses Counts 1, 2, 4, 7, 9, 10, 11, 14, 15, 16, 17, and 18 of plaintiff's amended complaint for failure to state a claim upon which relief may be granted. The Court dismisses Counts 3, 5, and 6 of the amended complaint for lack of federal subject matter jurisdiction. Plaintiff's complaint may proceed as to Counts 8, 12, and 13 against defendants Burgermeister, Northop, and the Sheriff of DuPage County. The Clerk is directed to change the name of defendant "DuPage Sheriff Department" to "Sheriff of DuPage County" and is directed to terminate all defendants other than Burgermeister, Northop, and the Sheriff, and is to change the name of the caption and title of the case to read, Doe v. Burgermeister. Plaintiff is advised that, having paid the filing fee, he is required to serve the remaining defendants with summons and the complaint. Service may be accomplished via personal service, which must be performed by a person who is not a party to the case and is at least 18 years old, see Fed. R. Civ. P. 4(c)(2), or by the waiver process described in Federal Rule of Civil Procedure 4(d). The 90 day deadline for serving

the defendants with summons, see Fed. R. Civ. P. 4(m), begins on today's date. The case is set for a status hearing on January 19, 2017 at 9:30 a.m. Plaintiff is directed to appear at that time and is advised that if he fails to do so, the Court may dismiss the case for want of prosecution. Plaintiff will be expected to advise the Court at the status hearing whether he intends to pursue the case in view of the Court's determination that he can no longer proceed under a pseudonym.

STATEMENT

The plaintiff in this case, who has sued under the pseudonym John Doe, has filed a pro se lawsuit regarding events arising out of an ongoing child custody dispute that is pending in DuPage County. He sued the mother of their child, under the pseudonym Jane Doe; her attorneys, who are with a firm the Court will refer to as the Sullivan law firm; three named DuPage County judges; two supervising judges, who are unnamed; two named DuPage Sheriff's police officers; the Sheriff of DuPage County (misnamed in the complaint as the "DuPage Sheriff Department"); and DuPage County, as indemnitor for certain defendants on certain claims. When the Court reviewed plaintiff's original complaint, it noted the possibility of a jurisdictional defect but said that it could not tell for sure because the complaint, a sprawling, 55-page tome, bordered on being unintelligible. The Court therefore dismissed the complaint, with leave to amend, advising plaintiff that unless he filed a complaint that complied with the Federal Rules of Civil Procedure and stated a viable claim over which the Court has jurisdiction, the Court would dismiss the complaint.

The Amended Complaint

Plaintiff has now filed an amended complaint that is a little over twenty percent shorter than the original one (42 pages) but no less sprawling. The amended complaint includes eighteen counts. The first seven counts focus primarily on Jane Doe's lawyers. Count 1 is a claim against the Sullivan law firm under 42 U.S.C. § 1983 for committing various forms of misconduct in the divorce case. Count 2 is a claim against certain attorneys in the Sullivan firm under section 1983 for committing or failing to prevent other attorneys from committing misconduct. Count 3 is a state law claim against one of the attorneys, Sean McCumber, for battery, concerning an incident on September 17, 2014. Count 4 is a claim against Jane Doe and her attorneys under 42 U.S.C. §§ 1983 and 1985 for conspiring with each other to deprive plaintiff of his constitutional rights. Count 5 is a state law claim against the same defendants for intentional infliction of emotional distress. Count 6 is a state law claim against the same defendants for abuse of process. Count 7 is a claim against the same defendants plus (possibly) a guardian ad litem appointed by the state court, under section 1985 and the federal RICO statute for attempting to extort plaintiff on two specific dates.

Counts 8 through 13 focus on the DuPage Sheriff and certain Sheriff's police officers. Count 8 is a claim against officers Burgermeister and Northop under section 1983 concerning an incident on January 2, 2015. This incident is described more fully in paragraph 56 of the amended complaint. Plaintiff alleges that Jane Doe's attorney sent an "aggressive process server" to his home. The process server

allegedly attempted to enter the home unlawfully and made a false report to the police that allegedly led the officers to enter plaintiff's home unlawfully. Count 8 asserts a Fourth Amendment claim based on the alleged unlawful entry. Count 9 is a claim against the DuPage Sheriff (misnamed in the complaint as the DuPage Sheriff's Department) under section 1983 arising from the same incident. Count 10 is a section 1983 claim for failure to intervene, and Count 11 is a section 1983 conspiracy claim, both arising from the same incident. Count 12 is a state law claim arising from the same incident, and Count 13 is an indemnification claim against the Sheriff for the liability of the officers.

The next several claims, Counts 14 through 17, are section 1983 claims asserted against the DuPage County judges who presided over the divorce case at various junctures and against the County court system as a whole. The claims are based on rulings made by the judges during the course of the case that plaintiff contends violated his constitutional or statutory rights. Finally, in Count 18, plaintiff asserts a state-law indemnification claim against the County for the judges' conduct.

Discussion

The section 1983 claims against the attorneys and the guardian ad litem, Counts 1, 2, 4, and 7, are legally deficient due to the absence of a viable allegation of action "under color of law," which is required for a section 1983 claim. The law firm and its attorneys are clearly private, not state actors, and the same is true of a court-appointed guardian ad litem, who protects private interests—in this case, the

interests of a minor child. See, e.g., *Lane v. Milwaukee Cty. Dep't of Soc. Servs. Children and Family Servs. Div.*, No. 10-CV-297, 2011 WL 5122615, at *4 (E.D. Wis. Oct. 28, 2011) (collecting cases). The section 1985 claims are not viable due to the absence of any allegation of racial, ethnic, or other invidious class-based animus. See, e.g., *Majeske v. Fraternal Order of Police, Local Lodge* No. 7, 94 F.3d 307, 311 (7th Cir. 1996). Count 7 also purports to assert a claim under the federal RICO statute, but it includes no viable allegation of a "pattern"—as that term is defined under RICO—consisting of at least two federal crimes. For these reasons, the Court dismisses counts 1, 2, 4, and 7.

Plaintiff may or may not have viable state law claims as set forth in counts 3, 5, and 6, but federal diversity jurisdiction is lacking over these claims, because plaintiff and at least one (and probably all) of the defendants on these claims are Illinois citizens. The Court will return to those claims later in this order.

The judges whom plaintiff has sued are immune from claims under section 1983 for damages, see, e.g., *Dawson v. Newman*, 419 F.3d 656, 660-61 (7th Cir. 2005), and the law does not permit this Court to intervene in or enjoin a pending state divorce or custody proceeding. See Parejko v. Dunn Cty. Circuit Ct., 209 F. App'x 545, 546 (7th Cir. 2006). For these reasons, the Court dismisses Counts 14 through 18.

The Court next addresses Counts 8 through 13, the claims focused on Sheriff's police officers and the Sheriff. Count 8, though it is less than a model of clarity, appears to state a claim against the two

named officers under section 1983 for violation of plaintiff's Fourth Amendment rights in the January 2015 incident. Count 12, a state law claim based on the same incident, likewise appears to state a claim under the parallel provisions of the Illinois Constitution, and/or perhaps for a common law tort. These claims may proceed. Count 13, a claim against the DuPage Sheriff for indemnification of the police officers, may proceed to the extent it seeks indemnification for the matters alleged in Counts 8 and 12. Count 9, a claim against the Sheriff for the January 2015 incident, fails to state a claim. The complaint nowhere identifies (nor could plaintiff do so credibly) a policy of the Sheriff that was the driving force behind the alleged unlawful entry, which is what is required to assert a claim against the Sheriff under section 1983 in these circumstances. See generally *Monell v. Dep't of Social Servs. of City of N.Y.*, 436 U.S. 658 (1978). Count 10, a claim for failure to intervene, likewise fails to state a claim. Plaintiff alleges that both of the officers unlawfully entered his home, meaning that both have primary liability. The failure to intervene claim is superfluous and misplaced. Count 11, a conspiracy claim, likewise fails to state a claim due to the absence of any plausible factual allegations supporting the existence of a conspiracy. The Court therefore dismisses Counts 9, 10, and 11, but declines to dismiss Counts 8, 12, and 13. Because Count 8 asserts a claim under federal law (42 U.S.C. § 1983), there is a basis for subject matter jurisdiction over the claim in this Court. And because Counts 12 and 13, which are state law claims, arise from the same incident as Count 8, they are within the Court's supplemental jurisdiction under 28 U.S.C. § 1367(a).

The Court now returns to plaintiff's state law claims against Jane Doe's attorneys, specifically counts 3, 5, and 6. Without adjudicating whether these are viable state law claims, the Court concludes that they are not within the supplemental jurisdiction of the Court. They involve completely different incidents from the January 2015 entry into plaintiff's home that is the subject of Count 8. As a result, they are not part of the same "case or controversy" as the claim in Count 8. See 28 U.S.C. § 1367(a). If plaintiff wishes to pursue these claims, he must do so in state court.

Finally, given the filing of the amended complaint and the Court's elimination of many of plaintiff's claims, the Court sees no viable basis for plaintiff to continue to sue under a pseudonym. If plaintiff withes to pursue the case, he will have to be named in the public record. The Court will set the case for a status hearing at which plaintiff will be required to advise the Court of his choice in this regard.

/s/ Matthew F. Kennelly
MATTHEW F. KENNELLY
United States District Judge

Date: Jan. 3, 2017

[DR9] 10/21/2016 ORDER

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

John Doe,	)	
Plaintiff	)	Case No: 16 C 9098
v.	)	
Sean McCumber, et al.,	)	Judge Kennelly
Defendants.	)	

ORDER

The Court denies plaintiff's motion for leave to seal the file and directs the Clerk to unseal the file in this case, which was provisionally placed under seal. Plaintiff has failed to describe a sufficient basis to keep this file from the public record, particularly given plaintiff's allegations regarding misconduct by public officials. The Court takes under advisement plaintiff's motion to proceed under a pseudonym and will address that request in due course. For the reasons stated below, the Court dismisses plaintiff's complaint with leave to file an amended complaint by no later than November 4, 2016. If plaintiff fails to file by that date an amended complaint that complies with the Federal Rules of Civil Procedure and states a viable federal claim over which the Court has jurisdiction, the Court will enter judgment against him.

STATEMENT

The pro se plaintiff in this case has filed a sprawling 55-page complaint in which he names as defendants the mother of his minor child, her attorneys, three DuPage County judges, and several DuPage County Sheriff's deputies. The claims of the plaintiff, who identifies himself in the complaint only as "John Doe," all arise from wrongs that he alleges

took place in, or in connection with, court proceedings in DuPage County involving custody and visitation regarding regarding the minor child. There is a good chance that federal subject matter jurisdiction is lacking under the so-called Rooker-Feldman doctrine, under which federal district courts lack jurisdiction to review judgments of state courts, see generally *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005), but at this point it is difficult to say. The reason is the way the complaint is written. It attempts to catalogue, in exhaustive and sometimes stream-of-consciousness fashion, events said to have taken place over a period of over 15 years (2000 to now), and it jumbles them together in a way that makes the complaint border on unintelligibility. In short, the complaint is anything but a "short and plain statement" of either the grounds for the court's jurisdiction or of the plaintiff's claim. See Fed. R. Civ. P. 8(a)(1) & (2); see generally *Flayter v. Wis. Dep't of Corr., 16 F. App'x* 507, 508 (7th Cir. 2001). Because the complaint fails to comply with this basic requirement, the Court dismisses it, with leave to file an amended complaint by no later than November 4, 2016. If plaintiff fails to file by that date an amended complaint that complies with the Federal Rules of Civil Procedure and states a viable federal claim over which the Court has jurisdiction, the Court will enter judgment against him.

/s/ Matthew F. Kennelly
MATTHEW F. KENNELLY
United States District Judge

Date: 10/21/2016

State of Illinois Appellate Court Second District

Office of the clerk
847/695-3750
847/695-0092 TDD

Appellate Court Building
55 Symphony Way
Elgin, Illinois 60120-5558

Appeal from the Circuit Court of County of DuPage

Trail Court No.: 01F47, 12MR724

THE COURT HAS THIS DAY, 08/03/15, ENTERED THE FOLLOWING ORDER IN THE CASE OF:

Gen. No.: 2-14-0931

In re J., a Minor

On the Court's own motion, the panel has determined that the court does not have jurisdiction of this appeal because the orders appealed from are untimely, not final or otherwise not appealable. The appellant's February 11, 2015 motion is denied.
THIS ORDER IS FINAL AND SHALL STAND AS THE MANDATE OF THIS COURT.
(McLaren, Hudson, Birkett, JJ).

Robert J. Mangan

Clerk

Cc: James Synnott
Sullivan, Taylor & Gumina, P.C.
Emily R. Carrara

Constitutional Provisions Involved

Article III section 1 states in pertinent part,

> "The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish."

First Amendment states in pertinent part,

> "**Congress shall make no law** respecting an establishment of religion, or prohibiting the free exercise thereof; or **abridging** the freedom of speech, or of the press; or the right of the people peaceably to assemble, and **to petition the government for a redress of grievances**."

Fourth Amendment states in pertinent part,

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment states in pertinent part,

> **"No person shall *** be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation**."

Seventh Amendment states in pertinent part,

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Ninth Amendment states in pertinent part,

> "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Tenth Amendment states in pertinent part,

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Fourteenth Amendment Section 1 states in pertinent part,

> *** "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."
>
> "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

Nineteenth Amendment, states in pertinent part,

> "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex."

Twenty-fourth Amendment Section 1 states in pertinent part,

> "The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, **shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.**"

Statutory Provisions Involved

ILLINOIS

Statutes

Illinois § 750 ILCS. Pre and as amended

750 ILCS 5/602.5(a) states in pertinent part,

"Nothing in this Act requires that each parent be allocated decision-making responsibilities" mirrors prior **750 ILCS 5/601 (c)**

"There shall be no presumption in favor of or against joint custody."

750 ILCS 46/802(c) states in pertinent part,

"**In the absence of an explicit order or judgment for the allocation of parental responsibilities, the establishment of a child support obligation or the allocation of parenting time to one parent shall be construed as an order or judgment allocating all parental responsibilities to the other parent.** If the parentage order or judgment contains no such provisions, **all parental responsibilities shall be presumed to be allocated to the mother** ... "

Prior **750 ILCS 45/14(a)(2)** inter alia stated in pertinent part,

"If the parentage judgment contains no such provisions, custody shall be presumed to be with the mother ... "

Note: as reiterated 750 ILCS 46/802(c) and reads to incorporates relative factors (thus 750 ILCS 5/602) in 750 ILCS 46/808.

750 ILCS 5/602; 750ILCS 5/603 (Particularly 5/602.7; 5/602.8; 603.10 ...): Presumption of Visitation - Unconstitutional On its Face & As Applied: Equal Protection & Due Process

750 ILCS 5/602.7 states in pertinent part

"**Sec. 602.7. Allocation of parental responsibilities: parenting time.**

(a) Best interests. The court shall allocate parenting time according to the child's best interests.

(b) Allocation of parenting time. Unless the parents present a mutually agreed written parenting plan and that plan is approved by the court, the court shall allocate parenting 32 time. It is presumed both parents are fit and the court shall not place any restrictions on parenting time as defined in Section 600 and described in Section 603.10, unless it finds by a preponderance of the evidence that a parent's exercise of parenting time would seriously endanger the child's physical, mental, moral, or emotional health ..... "

***

(750 ILCS 5/602.8) states in pertinent part,

"**Sec. 602.8. Parenting time by parents not allocated significant decision-making responsibilities.**

(a) A parent who has established parentage under the laws of this State and who is not granted significant decision-making responsibilities for a child is entitled to reasonable parenting time with the child, subject to subsections (d) and (e) of Section 603 .10 of this Act, unless the court finds, after a hearing, that the parenting time would seriously endanger the child's mental, moral, or physical health or significantly impair the child's emotional development. The order setting forth parenting time shall be in

the child's best interests pursuant to the factors set forth in subsection (b) of Section 602. 7 of this Act.
***

750 ILCS 602.9 (d) (2) regarding **"Visitation by certain non-parents"** states

"The court shall not modify an order that grants visitation to a grandparent, great-grandparent, sibling, or step parent unless it finds **by clear and convincing evidence**, upon the basis of facts that have arisen since the prior visitation order or that were unknown to the court at the time of entry of the prior visitation order, that a change has occurred in the circumstances of the child or his or her parent, and that the modification is necessary to protect the mental, physical, or emotional health of the child. The court shall state in its decision specific findings of fact in support of its modification or termination of the grandparent, great-grandparent, sibling, or step-parent visitation. A child's parent may always petition to modify visitation upon changed circumstances when necessary to promote the child's best interests."

Note: actual parents and their children receive less protection via a "preponderance of evidence standards" in any restriction of time for same alleged endangerment 602.9. A "non-parent" has better protection under the law than a parent and parent's child to right of inter alia association.

750 ILCS Sec. 603.10. Restriction of parental responsibilities.

(a) After a hearing, if the court finds by a **preponderance of the evidence** that a parent engaged in any conduct that seriously endangered the child's mental, moral, or physical health or that significantly impaired the child's emotional development,. . . . ..

(b) Also ... "preponderance of the evidence"

750 ILCS 5/607.5(c)(2), (3), and (9) Regarding Abuse of allocated parenting time.

750 ILCS 5/607.5(c)(2) states in pertinent part

"a requirement that either or both of the parties attend a parental education program at the expense of the non-complying parent;"

750 ILCS 5/607.5(c)(3) states in pertinent part,

"upon consideration of all relevant factors, particularly a history or possibility of domestic violence, a requirement that the parties participate in family or individual counseling, the expense of which shall be allocated by the court; if counseling is ordered, all counseling sessions shall be confidential, and the communications in counseling shall not be used in any manner in litigation nor relied upon by an expert appointed by the court or retained by any party;"

750 ILCS 5/607 .5(c)(9) states in pertinent part

"any other provision that may promote the child's best interests."

750 ILCS 5/607.6-Counseling Statute

750 ILCS 5/607.6. counseling, states,

"(a) The court may order individual counseling for the child, family counseling for one or more of the parties and the child, or parental education for one or more of the parties, if it finds one or more of the following:

(1) both parents or all parties agree to the order;

(2) the child's physical health is endangered or that the child's emotional development is impaired;

(3) abuse of allocated parenting time under Section 607.5 has occurred; or

(4) one or both of the parties have violated the allocation judgment with regard to conduct affecting or in the presence of the child."

Note: Prior statute 750 ILCS 5/608 regarding counseling was repealed and then addressed in 750 ILCS 5/607 (primarily 607.5) was substantially similar to as now replaced in 750 ILCS 5/607.6 in regard to constitutional issues such as unwarranted state intrusion, not narrowly tailored, nor survive either heightened or strict scrutiny standards.

750 ILCS 5/506 - Statutes Re Appointment of Inter Alia GAL, Child Representative... :

(750 ILCS 5/506) primarily in (a) states in pertinent part,

"(a) Duties. In any proceedings involving the support, custody, visitation, allocation of parental responsibilities, education, parentage, property interest, or general welfare of a minor or dependent child, the court may, on its own motion or that of any party, appoint an attorney to serve in one of the following capacities to address the issues the court delineates:"

750 ILCS 5/604.10 See Sec. 604.10. Interviews; evaluations; investigation

750 ILCS 5/604.10 (a) states in pertinent part,

"Court's interview of child. "The court may interview the child in chambers to ascertain the child's wishes as to the allocation of parental responsibilities .. .. "

750 ILCS 5/604.10 (b) states in pertinent part,

"any conclusions of the professional relating to the allocation of parental responsibilities under Sections 602.5 and 602.7; (5) any recommendations of the professional concerning the allocation of parental responsibilities or the child's relocation; and .... "

750 ILCS 5/604.10 (d) states in pertinent part,

"Investigation. Upon notice and a motion by a parent or any party to the litigation, or upon the court's own motion, the court may order an investigation and report to assist the court in allocating parental responsibilities. The investigation may be made by any agency, private entity, or individual deemed appropriate by the court. The agency, private entity, or individual appointed by the court must have expertise in the area of allocation of parental responsibilities. The court shall specify the purpose and scope of the investigation."

Federal

18 U.S.C. §3509(d) states in pertinent part,

(2)Filing under seal.—All papers to be filed in court that disclose the name of or any other information concerning a child shall be filed under seal without necessity of obtaining a court order. The person who makes the filing shall submit to the clerk of the court—

(A)the complete paper to be kept under seal; and

Children's Online Privacy Protection Act of 1998, Pub. L. No. 105-277 (1998) (codified as amended at 15 U.S.C. §§ 6501-6506 (2003))

15 U.S. Code § 6501 – Definitions states in pertinent part,

"(8)Personal information

The term "personal information" means individually identifiable information about an individual collected online, including—

(A)a first and last name;

(B)a home or other physical address including street name and name of a city or town;

(C)an e-mail address;

(D)a telephone number;

(E)a Social Security number;

(F)any other identifier that the Commission determines permits the physical or online contacting of a specific individual; or

(G)information concerning the child or the parents of that child that the website collects online from the child and combines with an identifier described in this paragraph.

(9)Verifiable parental consent

The term "verifiable parental consent" means any reasonable effort (taking into consideration available technology), including a request for authorization for future collection, use, and disclosure described in the notice, to ensure that a parent of a child receives notice of the operator's personal information collection, use, and disclosure practices, and authorizes the collection, use, and disclosure, as applicable, of personal information and the subsequent use of that information before that information is collected from that child.