No. 127837

IN THE
SUPREME COURT OF ILLINOIS

CITY OF CHICAGO, a municipal corporation,

Defendant-Appellant,

v.

LELAND DUDLEY, JOHN W. GIVENS, and THERESA DANIEL as Special Administrator of the Estate of DAVID STRONG, deceased,

Plaintiffs-Appellees.

On Appeal from the Appellate Court of Illinois
First Judicial District, Nos. 1-19-2434 & 1-19-2457 cons.
There Heard on Appeal from the Circuit Court of Cook County, Illinois
County Department, Law Division
No. 2016 L 10768
The Honorable Bridget J. Hughes, Judge Presiding

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS AND POINTS AND AUTHORITIES

NATURE OF THE CASE

Leland Dudley, John Givens, and David Strong broke into an electronics store, loaded merchandise into a van parked in the garage adjoining the store, and smashed the van through the closed metal garage door directly into the Chicago Police Department ("CPD") officers gathered outside, striking one officer. Several officers shot at the van until it stopped moving. All three men in the van suffered gunshot wounds, and Strong died. Dudley and Givens were convicted of first-degree felony murder, aggravated battery of a peace officer, burglary, and possession of a stolen vehicle.

Dudley and Givens, along with Theresa Daniel, administrator of Strong's estate ("Strong"), sued the City of Chicago, alleging battery, survival, and wrongful death. The circuit court entered summary judgment for the City and against Dudley and Givens, ruling that their criminal convictions collaterally estopped their civil claims. Strong's claims went to trial. The jury returned a $1,999,998 verdict for Strong but found him 50% at fault and reduced the award to $999,998. The jury also made special findings that the officers were neither intentionally nor recklessly willful and wanton. The court granted the City's motion for judgment on the special interrogatories and entered judgment for the City. Dudley, Givens, and Strong appealed.

Dudley and Givens argued that the circuit court erred in granting the City's motion for summary judgment because the issues decided in their criminal cases were not identical to those presented in their civil suit. Strong

argued that the special interrogatories were improper and that the jury's answers to them could be reconciled with the general verdict. On September 28, 2021, the appellate court reversed summary judgment and remanded for trial as to Dudley and Givens; reversed the judgment for the City on the special interrogatories; and reinstated the $999,998 verdict for Strong. The City appeals. No questions are raised on the pleadings.

ISSUES PRESENTED

1. Whether the City is entitled to summary judgment on Dudley's and Givens's claims because their criminal convictions collaterally estop their civil claims.

2. Whether the circuit court correctly entered judgment for the City and against Strong based on the jury's special findings that the officers' conduct was not willful and wanton.

JURISDICTION

On May 10, 2019, the circuit court entered summary judgment for the City on Dudley's and Givens's claims and certified pursuant to Ill. Sup. Ct. Rule 304(a) that there was no just reason to delay appeal of that order. A37; C. 1360.[1] On May 30, 2019, the court "entered and continued" judgment on the jury's verdict in Strong's case. C. 1632. On June 6, 2019, the court

[1] We cite the common law record as C. __, the report of proceedings as R. __, the exhibits in the supplemental records as Supp E __, and the documents in the appendix to this brief as A__.

granted Givens's motion to vacate the Rule 304(a) language contained in the May 10, 2019 order. C. 1633. On June 7, 2019, the City moved for judgment on the special interrogatories, C. 1634-47, and on June 21, 2019, the court entered judgment for the City, A42-A45; C. 1628-31. On July 22, 2019, Givens and Strong filed a post-trial motion. C. 1762-82. Strong sought reversal of the judgment for the City on the special interrogatories or, in the alternative, a new trial, C. 1767-80, and Givens sought reversal of the May 10, 2019 summary judgment order, C. 1780-81. Dudley also filed a post-trial motion seeking reversal of the May 10, 2019 summary judgment order. C. 1785-88. On November 4, 2019, the court denied the motions. C. 2257. On December 2, 2019, Givens and Strong filed a notice of appeal, A46-A48; C. 2258-60, and on December 4, 2019, Dudley filed a notice of appeal, A49-A50; C. 2275-76. On September 28, 2021, the appellate court reversed the circuit court's judgment. A36. The City filed a petition for leave to appeal on November 2, 2021, which this court granted on January 26, 2022. This court has jurisdiction under Ill. Sup. Ct. R. 315.

STATEMENT OF FACTS

Background. On April 30, 2012, at 2:11 a.m., Dudley, Givens, and Strong broke into an electronics store at 2459 S. Western Avenue in Chicago. R. 568-70. They entered the building by prying open a grate, removing an air conditioning unit, and climbing through the opening. R. 1833-36. Once inside, they loaded merchandise into a van parked in a garage adjoining the

store. R. 1840-44; Supp E 10, 11, 16. An upstairs tenant alerted police to the break-in, R. 1064, 1068, and nineteen CPD officers responded, R. 1730.

The officers surrounded the building, shined flashlights through the windows and the gap beneath the closed garage door, repeatedly announced themselves as police, and yelled that the building was surrounded and to come out peacefully. R. 1257; see also Supp E 10, 16, 17 (5:50-13:40). They shook and kicked the garage door, R. 1343-44, 1386-87, and attempted to break open a service entrance to the garage, R. 1228-29; see also Supp E 11, 17 (11:10-13:40). Surveillance footage showed Dudley, Givens, and Strong reacting to the officers' presence and hurrying to load the remaining merchandise into the van. Supp E 11, 16 (8:50-11:30).

The three men got into the van and accelerated backward, smashing through the closed metal garage door directly into the officers, Supp E 11, 17 (12:30-13:50), and striking Officer Michael Papin, R. 1598-1600. The van then crashed into another vehicle at the end of the driveway, pushing it into the street, and lurched forward before coming to a stop. Supp E 11, 17 (13:43-13:48). The officers fired at the van until it was disabled and could no longer move forward. R. 1127-28. All three men in the van suffered gunshot wounds, C. 31, 33, and Strong died, R. 1678.

Criminal Proceedings. A jury convicted Dudley and Givens of first-degree felony murder, aggravated battery of a peace officer, burglary, and possession of a stolen vehicle. C. 563-64, 1039. The appellate court upheld

their convictions. People v. Dudley, 2018 IL App (1st) 152039-U; People v. Givens, 2018 IL App (1st) 152031-U; C. 1045-66, 1068-84. The appellate court concluded that the evidence supported the jury's determination that Dudley and Givens were "aware that, in driving through the garage door, it was practically certain that a police officer would be hit," Dudley, 2018 IL App (1st) 152039-U, ¶ 33; accord Givens, 2018 IL App (1st) 152031-U, ¶ 45, and that Strong's death was a foreseeable consequence of Dudley's and Givens's actions, Dudley, 2018 IL App (1st) 152039-U, ¶¶ 22-23; Givens, 2018 IL App (1st) 152031-U, ¶¶ 29-30.

Circuit Court Proceedings. Dudley, Givens, and Strong sued the City, alleging battery, survival, and wrongful death. C. 29-37. The City moved for summary judgment based on the estoppel effect of Dudley's and Givens's criminal convictions, arguing that those final judgments established facts dispositive of their civil claims. C. 502-18. As the City explained, Dudley's and Givens's felony murder convictions "conclusively determined that any injuries caused by the shooting were proximately caused" by their intentional actions, C. 512, and a plaintiff whose intentional misconduct proximately caused his own injuries is barred from recovering from another alleged tortfeasor, C. 513. The court granted the City summary judgment as to Dudley and Givens and denied it as to Strong. A37; C. 1360.

Strong filed a first amended complaint eliminating his battery claim and alleging that the officers acted willfully and wantonly in shooting him.

C. 1366, 1368. The City raised the defense of contributory fault, alleging that Strong's injuries were proximately caused by his own willful and wanton conduct. C. 1505-09. Strong's case went to trial. R. 2.

Trial Evidence & Testimony. At trial, the parties presented surveillance footage of the events of April 30, 2012. See Supp E 10, 11, 16, 17. The City presented line-of-sight reconstruction animations to demonstrate to the jury what the officers observed on the ground. See Supp E 12-15.

The officers who were on the scene recounted the events. They did not hear radio warnings before the van burst out of the garage, R. 919, 1106, 1195-96, 1273, 1347, and, as one officer explained, "never imagined a car coming out exploding through the garage door," R. 698; see also R. 918, 1113, 1211, 1266, 1348, 1403. Just before the van burst through, some officers noticed the van's lights shining through a gap at the bottom of the garage door and heard the engine turn over. R. 1203. An officer looking through a hole in the garage's service entrance also saw the van lights turn on. R. 1231-33. The officers shouted warnings. R. 989, 1116, 1203, 1232. At almost "the same time," R. 989, the van suddenly rammed through the door, e.g., R. 1141 ("It was a blink-of-an-eye. It was really fast."); see also R. 972-73, 1203-05, 1211, 1480, 1602, 1708-11.

Officer Papin testified that, when the van shot out of the garage, he "felt a significant impact" in his "left hip area," R. 1626, that "threw [him] off

balance," R. 1599-1600. The other officers testified that they saw the van strike Officer Papin, e.g., R. 1353 ("[T]he driver's side rear of the vehicle struck Officer Papin's left side of his body."); see also R. 935-36, 964, 976, 990, 1117-19, 1233-34, 1406, 1482, 1542, and feared he had been dragged beneath the vehicle, e.g., R. 1482 ("I lost sight of Officer Papin. . . . I don't know if he was being dragged."); see also R. 936, 964, 1118, 1234, 1354, 1547.

The officers viewed the van's blast through the garage door as a "violent escape attempt," R. 1408, that indicated the burglars would "use whatever means necessary to get away and escape," R. 964. Because the men in the van had, after exiting the garage, "boxed themselves in" between the vehicle they crashed into at the end of the driveway and the squad cars lined up on the street, they would have had to drive "straight [through the] officers" to get away. R. 1142. As the van lurched forward, the officers believed they did not have time to get out of its path. E.g., R. 1510 ("I'm directly in front of [the van] and there's other officers next to me. We're in the path. Nowhere else would that vehicle go."); see also R. 1167, 1364, 1486, 1521, 1570, 1760-61. A few officers testified that, as the van lurched forward, they saw the driver move his hands up and down, as if he was putting the van in drive, R. 1410, 1548, and two officers testified that they observed the gear shift in drive after the incident, R. 1558, 1740.

Each of the officers testified that they feared for the safety of themselves and their fellow officers and believed that they had to shoot to

stop the van from harming anyone. For example, as one officer testified, he shot at the van "to stop that vehicle from causing any more damage to anybody else." R. 1494. Another testified, "I saw the van hit an officer, and I believe that the officer was being dragged; and then all of a sudden the vehicle moved forward; and first thing I was thinking is the officers in front of me to my left, I thought they were going to get killed." R. 1269; see also R. 698 ("I thought I was going to get run over."); R. 990 ("I see the van hit an officer, and it continued to go towards officers."); R. 1136 ("That van was only going to come out either through me or through the other officers across the apron."); R. 1141 ("[T]he only way out was either through me or through the other officers on the other side of the driveway."); R. 1719 ("We were all in that immediate area at that point in time, so the likelihood of one or more officers getting hit by the van was very high."). The officers who fired their weapons testified that they aimed at the driver, R. 938, 1126-27, 1236, 1271, 1355, 1406, 1484, 1548, 1715, later identified as Dudley, R. 1801, and did not know there were any passengers in the vehicle, R. 938, 1127, 1235, 1356, 1495, 1551.

The parties presented expert testimony about whether the officers' use of deadly force was justified. Christopher Ferrone, an accident reconstruction specialist, R. 1883-84, testified that if the van had not been disabled, the officers would have had less than one second to react before the van reached them, R. 1899. Roy Taylor, a North Carolina police chief and expert in police

procedure, R. 2070-71, testified that the officers' use of deadly force was justified because the burglars demonstrated a "disregard for human life," R. 2095. He explained that the burglars used the van as "a deadly weapon to [e]ffect their escape," and if not apprehended immediately, could have caused "further suffering of bodily injury or death to others." R. 2099. He explained that an officer is justified in using deadly force to prevent escape following the commission of a forcible felony, and the officers' perception that "Officer Papin had been struck by the van . . . turned this forcible felony into a situation that authorized deadly force." R. 2100. Finally, he stated that the officers would not have been required to flee the scene had they heard the radio warnings about the van. R. 2117-18.

Strong's expert, Geoffrey Alpert, opined that the shooting was unjustified. R. 729, 810. While he agreed that a vehicle can be a "deadly weapon," he did not believe it was used as one in this case. R. 781-82. He submitted that the officers had time to move out of the van's way, R. 803, violated CPD orders by disregarding radio warnings and failing to evade the van's path, R. 811, and engaged in "contagion fire" by shooting at the van without determining if there was a real threat, R. 807-08, 809.

Verdict & Special Interrogatories. The jury returned a $1,999,998 verdict for Strong but found him 50% at fault and reduced the award to $999,998. A38; C. 1624. The jury also answered three special interrogatories. A39-A41; C. 1625-27. Special interrogatory #1 asked, "At

the time deadly force was used, did the Chicago Police Officers who used deadly force engage in a course of action without legal justification, which showed an actual or deliberate intention to harm David Strong?" A39; C. 1625. Special interrogatory #2 asked, "At the time deadly force was used, did the Chicago Police Officers who used deadly force engage in a course of action without legal justification, which showed an utter indifference or conscious disregard for the safety of others?" A40; C. 1626. Special interrogatory #3 asked, "At the time deadly force was used against David Strong, did the Chicago Police Officers who used deadly force reasonably believe that such force was necessary to prevent imminent death or great bodily harm?" A41; C. 1627. The jury answered "No" to all three special interrogatories. A39-A41; C. 1625-27.

The City moved for judgment on the special interrogatories, explaining that the jury's negative responses to the first two interrogatories conclusively established that the officers did not act willfully and wantonly. C. 1634-47. The interrogatories controlled the general verdict and mandated that judgment be entered for the City. C. 1641-47.

After a hearing, R. 2574-2628, the circuit court ruled that the "[t]he answers to the first and second interrogatories control the verdict." A42; C. 1628. The court explained that it was necessary to give both special interrogatories #1 and #2. A42-A45; C. 1628-31. First, it explained, "to find for the Plaintiff, the jury must have found that the Chicago Police Officers'

actions were willful and wanton and without legal justification when they collectively caused the death of David Strong." A43; C. 1629. But there are two types of willful and wanton conduct: "reckless" and "intentional," and the distinction between the two is critical when, as here, the defendant raises the affirmative defense of contributory negligence. Id. Under Poole v. City of Rolling Meadows, 167 Ill. 2d 41 (1995), a plaintiff's damages can "be reduced by the percentage of his contributory negligence," but only if "the defendant's conduct amounted to reckless willful and wanton conduct," not if "the defendant's willful and wanton conduct was intentional." A43; C. 1629.

Because Strong "chose to proceed" with claims of *both* intentional and reckless willful and wanton conduct, Poole required clarity as to what willful and wanton conduct, if any, the jury found. A43; C. 1629. The circuit court was "concerned" about correctly informing the jury of the law "as directed by" Poole and therefore "suggested" to the parties that special interrogatories would allow the jury to "make a special finding as to whether" the officers' conduct, if willful and wanton, was intentional or reckless. Id. "Interrogatory #1 focused on the element of intentional willful and wanton conduct. Interrogatory #2 focused on the element of reckless willful and wanton conduct." A44; C. 1630. Each interrogatory "asked a single straightforward question as to an ultimate issue of fact which was dispositive of" one of Strong's "two separate claims" of willful and wanton conduct. Id. Given how Strong chose to frame his claims, the jury could reach multiple

possible verdicts, A43; C. 1629, and each interrogatory would control "*some general verdict* that . . . might be returned." A44; C. 1630.

The court then explained that the interrogatories were a check against the verdict and were controlling. A42; C. 1628. The verdict could stand only if the officers were willful and wanton, but the jury specially found that the officers did not engage in *either* intentional *or* reckless willful and wanton conduct, and those answers controlled the verdict. Id.

The court also ruled that the interrogatories were neither ambiguous nor confusing. A44-A45; C. 1630-31. Strong argued that because "special interrogatory #2 did not include the name David Strong, the jury could have concluded that special interrogatory #2 referred to people other than David Strong." A44; C. 1630. The court rejected that interpretation as "self-serving," noting that it was an entirely "new argument made by counsel after the trial." A45; C. 1631. The court emphasized that "[t]he proper way to interpret a special interrogatory is the way a reasonable juror would interpret it in light of all other instructions and evidence in the case." A44; C. 1630. The jury could not "have interpreted 'others' to not include David Strong" because the parties specifically explained to the jury "who was included in the definition of 'others.'" Id. Furthermore, no bystanders were involved in the incident, and the only injured persons were the people in the van. Id. Finally, the court explained that special interrogatory #3 did not control the verdict because it tested only one theory of legal justification.

A45; C. 1631. The court entered judgment for the City. A42; C. 1628. All three plaintiffs appealed. A46-A50.

Appellate Court Decision. The appellate court reversed, remanded for a trial on Dudley's and Givens's claims, and reinstated the $999,998 verdict for Strong. A36. On the collateral estoppel issue, the court concluded that the "exact" issues raised in the civil suit were not litigated in the criminal proceeding. A31. The court acknowledged that "it was clear" from the criminal convictions that Givens and Dudley "intended to commit aggravated battery by striking Officer Papin, knowing him to be a police officer." A31. It noted the principle that "a plaintiff's intentional willful and wanton conduct" serves "as a complete bar to the plaintiff's recovery." A16. The court concluded, however, that "the criminal prosecution did not conclusively determine whether under civil standards Givens and Dudley were by degrees intentionally or recklessly willful and wanton in bringing about their own injuries," A31, or consider "whether the officers' actions or omissions directly or immediately caused the injuries," A32. Finally, the court called it "manifestly unjust to permit Strong's case" to proceed but not Dudley's or Givens's. A33.

With respect to the special interrogatories used during Strong's trial, the appellate court acknowledged that a defendant's "willful and wanton conduct . . . can be either intentional or reckless," and that "the parties argued both forms to the jury." A10 (citing Poole, 167 Ill. 2d at 48-49). It also

noted that a defendant found guilty of "merely reckless" conduct "could seek reduced damages," but if the defendant's conduct was "intentional, there could be no such reduction." A15 (citing Ziarko v. Soo Line R.R. Co., 161 Ill. 2d 267, 280 (1994), and Poole, 167 Ill. 2d at 48-50). Despite the need to distinguish between reckless and intentional conduct, the court held that special interrogatories #1 and #2 were improper. The court rejected the City's argument that Poole required two special interrogatories to determine what type of willful and wanton conduct, if any, the jury found the officers committed, A24-A25, saying that Poole merely "suggests," but does not "mandate," the use of special interrogatories, A24 n.6. The court also called the interrogatories "impermissibly compound" because they asked whether the officers' use of force was justified and either intentional or reckless. A22.

The appellate court further held that the interrogatories were "vague and confusing" and thus reconcilable with the general verdict. A23. The court agreed with Strong that the jury could have believed that interrogatory #2's reference to the "safety of others" referred to "possible passersby or innocent bystanders rather than the burglars in the van." A23. According to the appellate court, that was a "reasonable hypothesis" which allowed the interrogatory to be "reconciled with the general verdict." A24. Finally, the court described the City's motion for judgment on the special interrogatories, C. 1634-47, as a motion for "judgment notwithstanding the verdict," A25. It reviewed the evidence itself, "in a light most favorable to" Strong, A26-A27,

and concluded that it "supported a finding of recklessness," A27. The court reinstated the verdict for Strong. A37. The City appeals.

ARGUMENT

A criminal conviction estops a defendant from contesting facts in a civil suit that were established in the criminal proceeding. Dudley and Givens were convicted of both aggravated battery of a peace officer and first-degree felony murder. Those convictions conclusively established two things: (1) Dudley and Givens engaged in conduct that, under Illinois tort standards, was intentionally willful and wanton; and (2) Dudley's and Givens's conduct proximately caused the police officers to respond by firing on the van, injuring its occupants. Those settled facts foreclose Dudley's and Givens's ability to recover on their civil claims against the City. Under Illinois law, a person whose intentional misconduct proximately caused his own injuries is barred from recovering from another alleged tortfeasor. The circuit court therefore correctly entered summary judgment for the City on Dudley's and Givens's claims. The appellate court erred in holding that the same issues were not decided in the criminal case and that collateral estoppel does not apply. Moreover, the appellate court's superficial distinction of the criminal case as not involving civil tort standards undermines settled law recognizing the preclusive effect of criminal convictions in civil cases and allows criminals convicted of murder and aggravated battery to collect for harm caused by their own violent conduct. The judgment of the appellate court should be

reversed.

The circuit court also correctly submitted to the jury two special interrogatories, each addressing one of the two forms of willful and wanton conduct, as required by Poole, and each asking a straightforward question using language approved by this court and incorporated into Illinois Pattern Jury Instruction ("IPI") 14.01. The jury's negative answers indicated that the officers' actions were not willful and wanton – answers that were irreconcilable with a verdict for Strong. The appellate court, therefore, erred in holding that the interrogatories were improper and could be reconciled with the verdict. Finally, the appellate court erred by conducting its own review of the evidence to conclude, contrary to the jury's interrogatory answers, that the officers acted recklessly. In short, the appellate court misapprehended the purpose of special interrogatories, misapplied Poole, and usurped the jury's role as factfinder. Its decision to reinstate the verdict should also be reversed.

Whether collateral estoppel bars Dudley's and Givens's claims, and whether the special interrogatories were in proper form and controlled the verdict in Strong's case, are questions of law, which this court reviews de novo. See Stanphill v. Ortberg, 2018 IL 122974, ¶ 31; Krywin v. Chicago Transit Authority, 238 Ill. 2d 215, 226 (2010). Under that standard, this court should reverse the appellate court's decision and enter judgment for the City and against all three plaintiffs.

I. DUDLEY'S AND GIVENS'S CLAIMS ARE BARRED BY COLLATERAL ESTOPPEL.

Dudley's and Givens's intentionally willful and wanton misconduct, which proximately caused their own injuries, was a complete defense to liability, and their criminal convictions estopped them from challenging the facts that established that defense. Collateral estoppel "promotes fairness and judicial economy by preventing relitigation in one suit of an identical issue already resolved against the party against whom the bar is sought." Kessinger v. Grefco, Inc., 173 Ill. 2d 447, 460 (1996). "It is generally accepted that a criminal conviction collaterally estops a defendant from contesting in a subsequent civil proceeding the facts established and the issues decided in the criminal proceeding." Talarico v. Dunlap, 177 Ill. 2d 185, 193 (1997). Such estoppel prevents a party from taking contrary positions in different lawsuits, protects the finality and integrity of criminal judgments, and promotes judicial economy and an end to litigation. E.g., Collateral Estoppel: Use of Criminal Conviction in Subsequent Civil Suit, 65 COLUM. L. REV. 1491, 1494 (1965). It also recognizes that individuals "should have no opportunity to benefit financially from the commission of a crime." Id. at 1493.

A party is collaterally estopped from litigating an issue when: "(1) the issue decided in the prior adjudication is identical [to] the one presented in the suit in question, (2) there was a final judgment on the merits in the prior adjudication, and (3) the party against whom estoppel is asserted was a party or in privity with a party to the prior adjudication." Talarico, 177 Ill. 2d at

191. The second and third elements are not at issue here: Dudley and Givens were parties to criminal proceedings that resulted in final judgments. The only dispute is whether there is an identity of issues between their criminal proceedings and this case. Answering that question requires a two-step inquiry: the court should identify the facts necessarily established by the criminal convictions, then compare them to civil tort standards. See, e.g., In re Estate of Ivy, 2019 IL App (1st) 181691, ¶ 39 ("Application of collateral estoppel must be narrowly tailored to fit the precise facts and issues that were clearly determined in the prior judgment."). As we explain below, Dudley's and Givens's criminal convictions established that their knowing misconduct proximately caused their injuries – facts that necessarily bar their civil claims. The appellate court's contrary conclusion was erroneous.

A. Dudley's And Givens's Criminal Convictions Established That Their Knowing Misconduct Proximately Caused the Officers' Use Of Force.

To begin, we identify the relevant facts settled by Dudley's and Givens's criminal convictions. The criminal jury found Dudley and Givens guilty of aggravated battery of a peace officer. Dudley, 2018 IL App (1st) 152039-U, ¶ 2; Givens, 2018 IL App (1st) 152031-U, ¶ 2. Under the Illinois criminal code, aggravated battery of a peace officer occurs when a person "knowingly . . . [c]auses great bodily harm or permanent disability or disfigurement to an individual whom the person knows to be a peace officer." 720 ILCS 5/12-3.05(a)(3). A person acts "knowingly" if he "is consciously

aware that th[e] result is practically certain to be caused by his conduct." Id. 5/4-5(b). Since the jury returned a verdict against Dudley and Givens on the aggravated battery count, it necessarily found that Dudley and Givens were aware their misconduct was practically certain to cause great bodily harm to a police officer. As the appellate court stated in upholding their convictions, Dudley and Givens were "aware it was practically certain [they] would hit a police officer in driving through the garage door." Givens, 2018 IL App (1st) 152031-U, ¶ 45; accord Dudley, 2018 IL App (1st) 152039-U, ¶ 33.

Second, the criminal jury also found Dudley and Givens guilty of the first-degree felony murder of Strong. Dudley, 2018 IL App (1st) 152039-U, ¶ 2; Givens, 2018 IL App (1st) 152031-U, ¶ 2. That necessarily means the jury found that Dudley and Givens proximately caused the officers' use of force. An individual commits first-degree felony murder if he commits "a forcible felony" and "in the course of or in furtherance of such crime or flight therefrom," he or another participant "causes the death of a person." 720 ILCS 5/9-1(a)(3). Illinois has adopted the "proximate cause theory" of felony murder, People v. Hudson, 222 Ill. 2d 392, 401 (2006), which holds a felon "responsible for the direct and foreseeable consequences of his actions," People v. Belk, 203 Ill. 2d 187, 192 (2003). Liability attaches "for any death proximately resulting from the unlawful activity – notwithstanding the fact that the killing was by one resisting the crime," People v. Lowery, 178 Ill. 2d 462, 465 (1997) (emphasis added), such as a police officer attempting to

prevent the felons' escape, see, e.g., People v. Hickman, 59 Ill. 2d 89, 94 (1974).

In line with that precedent, the criminal jury was instructed that, to convict Dudley and Givens of felony murder, they must find "beyond a reasonable doubt" that Strong's death by police gunfire was "a direct and foreseeable consequence of a chain events set into motion" by Dudley's and Givens's misconduct. C. 230. The jury made that finding, and the appellate court reviewing the felony murder convictions "categorically reject[ed]" the argument that it was not foreseeable that the officers "would use deadly force in shooting at the van." Dudley, 2018 IL App (1st) 152039-U, ¶ 29; Givens, 2018 IL App (1st) 152031-U, ¶¶ 22-23. As the court explained, the evidence showed that the officers continuously announced their presence, attempted to open the garage door, yelled for the men to come out, and shined their flashlights into the garage. Dudley, 2018 IL App (1st) 152039-U, ¶ 30; Givens, 2018 IL App (1st) 152031-U, ¶ 22. The court thus explained that Dudley and Givens "had reason to know that once the van crashed through the garage door, a police officer would be in the vehicle's path" and that, because the "van itself was a deadly weapon," it would be met with the officers' own deadly force. Dudley, 2018 IL App (1st) 152039-U, ¶ 30; Givens, 2018 IL App (1st) 152031-U, ¶ 22. The court noted that "the evidence in this case was not closely balanced" and "[t]he jury was entitled to determine that such actions would lead the police to shoot, and no evidence otherwise

suggested that the police would not shoot under those circumstances." Givens, 2018 IL App (1st) 152031-U, ¶ 52; Dudley, 2018 IL App (1st) 152039-U, ¶ 42. Thus, Dudley's and Givens's felony murder convictions established that their misconduct proximately caused the police to react with the deadly gunfire that killed Strong.

In summary, Dudley's and Givens's criminal convictions necessarily established both (a) that Dudley and Givens engaged in misconduct that they knew was practically certain to cause great bodily harm to a police officer when they smashed the getaway van through the closed garage door directly into the group of police officers; and (b) that their actions proximately caused the officers to respond by shooting at the van.

B. The Facts Established By Dudley's And Givens's Criminal Convictions Bar Their Civil Claims.

Next, comparing the facts determined by the criminal convictions to the relevant civil standards establishes that Dudley's and Givens's civil claims are barred. The civil standards are set out in Poole and Ziarko: a plaintiff whose intentional misconduct proximately causes his own injuries cannot recover against other alleged tortfeasors, Poole, 167 Ill. 2d at 48-49, because where an injury arises from a party's own "deliberate wrong," he "should not be afforded the equitable benefit of shifting a portion of that liability to another tortfeasor," Ziarko, 161 Ill. 2d at 271.

Here, the *mens rea* the criminal jury found – Dudley's and Givens's knowledge that it was "practically certain" that their conduct would cause

great bodily harm to a police officer – aligns with the definition of intentional misconduct under tort law. Under the common law, a person acts intentionally if he has "'a substantially certain belief that the consequences will result.'" American Family Mutual Insurance Co. v. Savickas, 193 Ill. 2d 378, 388-89 (2000) (quoting Ziarko, 161 Ill. 2d at 272); accord Restatement (Second) of Torts § 8A cmt. B (person acts intentionally if he "knows that the consequences are certain, or substantially certain, to result from his act, and still goes ahead"). A "substantially certain belief" is equivalent to knowledge that a result is "practically certain" to occur. Indeed, to the extent these standards differ, the criminal standard – "practically certain" – is more demanding.[2] Therefore, Dudley's and Givens's criminal convictions for aggravated battery of a peace officer – which established that they knew it was practically certain they would cause great bodily harm to a police officer upon crashing through the garage door – also established their intentional misconduct under civil tort standards.

Moreover, as we explain above, the factual findings necessary to Dudley's and Givens's convictions for felony murder included a jury finding that their misconduct proximately caused the police to react by firing upon the van, killing Strong. The exact same police reaction caused their injuries,

[2] "Practically" is defined as "almost or very nearly," https://dictionary.cambridge.org/us/dictionary/english/practically, whereas "substantially" means "to a large degree," https://dictionary.cambridge.org/us/dictionary/english/substantially.

too. After all, the three men were in the same van and met with identical officer resistance. That means that, just as Dudley's and Givens's conduct proximately caused Strong's injuries, it caused their own injuries as well.[3]

Thus, Dudley's and Givens's criminal proceedings established that, by crashing the van through the garage door and striking an officer outside, they engaged in intentionally tortious conduct which proximately caused the police officers' reaction and their own injuries. That bars them from relitigating either of those factual determinations. See Talarico, 177 Ill. 2d at 193. And under the civil standards set forth in Poole and Ziarko, intentional tortfeasors whose conduct proximately causes their own injuries cannot recover damages in a civil suit. See Poole, 167 Ill. 2d at 48-49; Ziarko, 161 Ill. 2d at 271. The City was entitled to summary judgment on Dudley's and Givens's claims.

C. The Appellate Court's Refusal To Apply Estoppel Was Erroneous.

The appellate court acknowledged that, based on Dudley's and Givens's criminal convictions, "it was clear" that they "intended to commit aggravated battery by striking Officer Papin, knowing him to be a police officer," A31, and that their "unlawful activity" proximately caused Strong's death. A32. It also acknowledged that "a plaintiff's intentional willful and

[3] Indeed, as the driver of the getaway van the officers were attempting to stop, R. 1801, Dudley's injuries were even more foreseeable than those of Strong, his passenger. The officers were focused on the driver because he controlled the vehicle that posed the threat. See R. 1126-27.

wanton conduct" serves "as a complete bar to the plaintiff's recovery." A16. As we explain above, that was enough to collaterally estop relitigation of the same issues here, and thus Dudley's and Givens's claims fail as a matter of law. The appellate court, however, refused to apply collateral estoppel to bar Givens's and Dudley's claims, finding there was no identity of issues between the criminal and civil proceedings. According to the appellate court, the "exact" issues raised in the civil suit were not litigated in the criminal proceedings because "the criminal prosecution did not conclusively determine whether under civil standards Givens and Dudley were by degrees intentionally or recklessly willful and wanton in bringing about their own injuries," A31, or "whether the officers' actions or omissions directly or immediately caused the injuries," A32. The court also called it "manifestly unjust to permit Strong's case" to proceed but not Dudley's or Givens's. A33. That analysis was legally and factually incorrect, for several reasons.

First, the appellate court wrongly stated that collateral estoppel did not apply because the "the criminal prosecutions did not encompass *civil* tort law" or "conclusively determine" whether Dudley and Givens engaged in intentionally willful and wanton conduct "under *civil* standards." A31 (emphasis added). That is not – and cannot be – the test for whether a criminal conviction estops a civil claim. By definition, a criminal case will never apply "civil standards"; yet this court has made clear that findings in a criminal case can estop the same findings in a civil case. Talarico, 177 Ill. 2d

at 193. Instead of drawing a line between criminal and civil standards, the court's task is, as we explain, to identify the *facts* necessarily established by the criminal conviction and determine the effect of those unalterable facts under the relevant civil standards. The appellate court failed to undertake that inquiry.

In Savickas, this court squarely rejected the approach the appellate court took here and held that estoppel can indeed apply when facts established by criminal convictions are evaluated under civil tort law standards. This court explained that, where a certain mental state was necessary to a defendant's criminal conviction, that finding may be used to establish intent under tort standards. See 193 Ill. 2d at 388-89; see also Allstate Indemnity Co. v. Hieber, 2014 IL App (1st) 132557, ¶ 22 (criminal finding that defendant's acts were "likely to cause death" established that defendant acted "recklessly" for purposes of civil suit). In fact, "the differences between civil and criminal litigation" – such as the burden of proof and rights to remain silent and to counsel – "all favor the criminal defendant," and thus "militate, if anything, in *favor* of according estoppel effect to criminal convictions because of the greater safeguards in favor of their reliability." Savickas, 193 Ill. 2d at 385.

As we explain, the mental state necessarily established by Dudley's and Givens's aggravated battery conviction matches the standard for intentionally tortious conduct, and the finding of causation necessary to their

felony murder convictions matches the tort standard for proximate cause. The appellate court, for its part, failed to even define the relevant standards, let alone explain why the facts establishing criminal *mens rea* and causation do not also establish intent and proximate cause under tort law.

Second, the appellate court also erred in concluding that the criminal jury did not "consider whether the officers' actions or omissions directly or immediately caused the injuries." A32. The court's focus on whether there were findings about the officers' conduct misses the point. Whether Dudley's and Givens's civil claims are barred turns, not on the officers' conduct, but on whether Dudley's and Givens's *own conduct* was intentional and proximately caused their injuries; and the jury's verdict in the criminal case leaves no doubt that it was and did. Nothing about the officers' conduct removes the preclusive effect of that finding. Indeed, as the appellate court itself recognized, A15-A16, an intentionally willful and wanton plaintiff is barred from recovery, even if the defendant's willful and wanton conduct also contributed to the plaintiff's injuries, e.g., Ziarko, 161 Ill. 2d at 280 (disallowing contribution based on comparative fault where party's "willful and wanton acts amount to intentional behavior").

Moreover, contrary to the appellate court's comment, the criminal jury did consider whether the officers' conduct broke the causal chain between Dudley's and Givens's actions and Strong's death. The criminal court gave Dudley and Givens wide latitude to argue that the police were at fault for

Strong's death, and that that they should not be held accountable because of the officers' intervening misconduct. C. 533-34, 539. Indeed, they made that the centerpiece of their defense, contending that in attempting to escape the crime scene, they could not have anticipated the police would use deadly force that would endanger Strong's life. C. 136. They told the jury that, although their "method of getting back home was a little bit unconventional," C. 667, they could not have expected that the police would "use deadly force to stop" them, C. 669, and argued that the officers' use of force was an intervening and unforeseeable cause of Strong's death, e.g., C. 981 ("Of course it is not foreseeable that the Chicago police would ever use excessive deadly force to stop burglars . . . It is excessive use of deadly force acting as an intervening factor that broke any chain of causation."); C. 983 ("The question is was it foreseeable that the Chicago police would use excessive deadly force to stop a non-violent property crime. The answer is no."). The criminal jury rejected those arguments.

Third, the appellate court erred when it held that applying collateral estoppel would be "manifestly unjust" because Strong could proceed with a claim, but Dudley and Givens could not. A33. In fact, we have found no case supporting the idea that it is unjust to apply estoppel to a party that *actually litigated* an issue because another similarly situated party had no opportunity to do so. Whether applying collateral estoppel is unjust turns instead on whether the party to be estopped had an opportunity and

incentive to fully litigate the relevant issues in his or her criminal case. To evaluate a party's "incentive and opportunity to litigate" an issue, the court considers "the seriousness of the allegations or the criminal charge." Talarico, 177 Ill. 2d at 192. "[W]hen an individual is charged with a crime for which he may be sentenced to a substantial term in prison, incentive to litigate is necessarily established by the need to defend against the charge." Id. at 195; see also Savickas, 193 Ill. 2d at 389 (where charge is murder, "[i]t cannot seriously be questioned that [the criminal defendant] had a full incentive to litigate his criminal trial"). In contrast, the unfairness exception may apply where there was little incentive for a litigant to contest an underlying criminal proceeding. E.g., Savickas, 193 lll. 2d at 385-89. But even then, a court should not refuse to give a criminal conviction "preclusive effect . . . without a compelling showing of unfairness." Talarico, 177 Ill. 2d at 196.

Here, Dudley and Givens had every incentive to litigate their criminal cases. They were charged with serious crimes, including first-degree felony murder, which carries a minimum 20-year sentence. See 730 ILCS 5/5-4.5-20. Strong, in contrast, had no opportunity to litigate his case in criminal court. In fact, Strong's and Givens's lawyer argued to the circuit court that Strong could not be estopped by Givens's and Dudley's convictions because he "had no interest in the criminal case," as "his freedom was not at stake." C. 1276. There is therefore no unfairness in barring Givens's and Dudley's

claims, let alone the "compelling showing of unfairness," Talarico, 177 Ill. 2d at 196, needed to avoid a criminal conviction's preclusive effect.

In sum, the appellate court's faulty reasoning ignores well-established precedent and the principles of fairness and judicial economy underlying the doctrine of collateral estoppel, and its approach threatens to undermine the doctrine's applicability to criminal convictions. This court should affirm the doctrine's vitality as it applies to criminal convictions by reinstating summary judgment for the City on Dudley's and Givens's claims.

II. THE CITY IS ENTITLED TO JUDGMENT ON STRONG'S CLAIMS BASED ON THE JURY'S SPECIAL FINDINGS.

The circuit court gave the jury two special interrogatories, each asking whether the officers engaged in one of the two forms of willful and wanton conduct – intentional and reckless. A39-A40; C. 1625-26. Those interrogatories were necessary under Poole, and they were in proper form and not ambiguous or confusing. Because the jury's negative responses to the interrogatories were irreconcilable with the general verdict, the circuit court correctly entered judgment for the City. The appellate court's contrary conclusion is inconsistent with Poole and should be reversed.

A. The Interrogatories Were Necessary Under Poole.

Strong alleged that the officers engaged in willful and wanton conduct and asserted that there was evidence of both the intentional and reckless forms of willful and wanton conduct. C. 1366, 1368; R. 2389-90. In line with his claims, the jury instructions covered both kinds of willful and wanton

conduct; they defined willful and wanton conduct as "a course of action which is without legal justification and shows an actual or deliberate intent to harm *or* which, if not intentional, shows an utter indifference to or conscious disregard for a person's own safety and the safety of others." C. 1596 (emphasis added). That definition was based on IPI 14.01.[4]

Because Strong alleged two types of willful and wanton conduct, and the City raised the defense of contributory willful and wanton conduct, multiple verdicts were possible. Under Poole, a plaintiff's contributory fault can offset a defendant's reckless conduct, but not a defendant's intentional conduct. 167 Ill. 2d at 48-49. The jury could therefore have returned a verdict that the City was fully liable for damages caused by the officers' intentional conduct, liable for the officers' reckless conduct with a potential set-off for Strong's contributory fault, or not liable. The jury was accordingly given three different verdict forms. A43; C. 1629.

Poole instructs that, in such a situation, the trial court should submit special interrogatories "to determine whether the type of willful and wanton misconduct defendants were guilty of was reckless or intentional." 167 Ill. 2d at 49. In Poole, because the trial court did not submit special interrogatories to the jury, and the pleadings and instructions did not indicate the form of

[4] The model instruction provides, "When I use the expression 'willful and wanton conduct' I mean a course of action which shows actual or deliberate intention to harm or which, if not intentional, shows an utter indifference to or conscious disregard for a person's own safety and the safety of others." IPI 14.01 (brackets removed).

willful and wanton conduct for which the jury found the defendants liable, this court was unable to determine whether the defendants acted recklessly or intentionally, and it remanded for a new trial. Id. at 50. The lesson from Poole is that special interrogatories would have aided that determination and made the remand unnecessary. The Notes on Use in IPI 14.01 also contemplate the use of interrogatories in this situation, explaining that "if there is a submissible claim concerning the plaintiff's contributory fault, and if the jury finds the defendant's conduct to have been willful and wanton, there may need to be a jury finding (either on the verdict form or in a special interrogatory) as to whether the defendant's willful and wanton conduct was the 'intentional' kind or the 'reckless' kind." Notes on Use, IPI 14.01.

Given that Strong refused to limit his claims to one type of willful and wanton conduct, the circuit court reasoned that, under Poole, the jury should receive two special interrogatories distinguishing between the two forms of willful and wanton conduct. A43; C. 1629. The first asked whether the officers acted without legal justification in a way that was intentional; the second asked whether the officers acted without legal justification in a way that was reckless. A39-A40; C. 1625-26. The special interrogatories were exactly like the ones that this court held should have been given in Poole.

The appellate court said that Poole merely "suggests but does not mandate a special interrogatory be given to distinguish reckless and intentional willful and wanton conduct," and allows the use of "pleadings,

arguments, evidence, general jury instructions, special interrogatories, or some combination thereof" to make this determination. A24 n.6. But in criticizing the circuit court's use of the special interrogatories, the appellate court failed to explain what else could have provided the clarification needed here, given how Strong opted to frame and argue his claims. The appellate court also said that, because, in *its* opinion, the evidence showed that the officers' conduct was, if anything, reckless and not intentional, there was no need for special interrogatories specifying those states of mind. A25, A27. That reasoning is flawed. The appellate court's own view of what the evidence ultimately showed is irrelevant. What matters is that Strong claimed, and the pleadings and jury instructions covered, both forms of willful and wanton conduct. That made interrogatories distinguishing between intentional and reckless conduct necessary under Poole.

B. The Interrogatories Were In Proper Form.

A special interrogatory is in proper form if it relates to an ultimate issue of fact and a response to it would be inconsistent with some general verdict. Simmons v. Garces, 198 Ill. 2d 541, 555 (2002). An interrogatory should consist of a "single question, worded in terms that are simple, unambiguous, and understandable to the jury," and not "repetitive, confusing or misleading." Jacobs v. Yellow Cab Affiliation, Inc., 2017 IL App (1st) 151107, ¶ 124. And the interrogatory should "use the same language or terms as the tendered instructions." McQueen v. Green, 2020 IL App (1st)

190202, ¶ 50.

The special interrogatories at issue here easily satisfied these requirements. The interrogatories clearly related to an ultimate issue of fact. Strong alleged that the officers engaged in willful and wanton conduct, C. 1366, 1368, and the interrogatories asked whether the officers' actions were intentionally or recklessly willful and wanton. The first asked whether the officers "engage[d] in a course of action without legal justification, which showed an actual or deliberate intention to harm David Strong," C. 1625, while the second asked whether the officers "engage[d] in a course of action without legal justification, which showed an utter indifference or conscious disregard for the safety of others," C. 1626. Each interrogatory asked a straightforward question, and the jury could render a response to each interrogatory that would be inconsistent with some general verdict. A "yes" answer to the first interrogatory would be inconsistent with a verdict for the City and would also rule out the possibility of Strong's contributory fault because under Poole, Strong's contributory fault could not offset intentional misconduct. See 167 Ill. 2d at 48-50. A "no" answer would eliminate the possibility that the City was intentionally willful and wanton. A "yes" answer to the second interrogatory would also be inconsistent with a verdict for the City, while a "no" answer would rule out the possibility that the City was recklessly willful and wanton.

Moreover, each interrogatory tracked the language in the jury

instructions. The definition of willful and wanton conduct given to the jury was based on IPI 14.01, and each interrogatory mirrored one of the two definitions of willful and wanton conduct in the jury instructions. When a special interrogatory "track[s] the jury instruction nearly verbatim," there is a strong indication the jury was not confused. Douglas v. Arlington Park Racecourse, LLC, 2018 IL App (1st) 162962, ¶ 73; see also McCallion v. Nemlich, 2021 IL App (1st) 192499-U, ¶ 46 ("Plaintiff is hard-pressed to claim confusion when the language adhered so closely to the IPI instructions on which the jury based its general verdict."). For all these reasons, the interrogatories were in proper form.

The appellate court's conclusion that the special interrogatories were not in proper form, A22-A24, was incorrect. The court called the interrogatories "impermissibly compound and therefore not focused on one element dispositive of the claim." A22. The appellate court stated that interrogatories #1 and #2 asked whether the use of force was unjustified *and* either intentional (interrogatory No. 1) or reckless (interrogatory No. 2), and said that "the jury could have believed the use of deadly force was justified but either not intentional or not reckless," or that it "was not justified but was either intentional or reckless." A22. The court said that the jury's "negative answer to the aforementioned questions would do little to test the general verdict." A23. There are two problems with that analysis.

First, the appellate court should not even have entertained the

argument that the interrogatories were not in proper form because Strong waived it. Strong did not object to the interrogatories at the jury instruction conference, when the circuit court and the parties could have changed the language to address any alleged problems in the form of the question. "It is 'beyond dispute that a failure to specifically object to a special interrogatory when proffered at the instruction conference will ordinarily waive any claim of error in the giving of that special interrogatory.'" Price v. City of Chicago, 2018 IL App (1st) 161599, ¶ 22 (quoting La Pook v. City of Chicago, 211 Ill. App. 3d 856, 864 (1st Dist. 1991)); see also Bachman v. General Motors Corp., 332 Ill. App. 3d 760, 801 (1st Dist. 2002) ("[W]e note that plaintiffs have forfeited this issue on appeal by withdrawing their objection to the form of the special interrogatory"). Strong never suggested during the instruction conference that the special interrogatories were impermissibly compound and only stated generally that they were "setting th[e] verdict form up for failure." R. 2359. That was hardly an objection; the very purpose of special interrogatories is to test the general verdict. And to the extent this statement can be read as an objection at all, "[a] general objection to instructions, without specification, does not preserve the claimed error." People v. Thomas, 215 Ill. App. 3d 751, 760 (1st Dist. 1991); accord Conxall Corp. v. Iconn Systems, LLC, 2016 IL App (1st) 140158, ¶ 24 (plaintiff "forfeited any objection" to special interrogatory by lodging only general objection "just for the record"). Although Strong later objected to the

interrogatories in a post-trial brief, raising an objection for the first time in a post-trial motion does not preserve it for review. Palanti v. Dillon Enterprises, Ltd., 303 Ill. App. 3d 58, 64 (1st Dist. 1999).

Even though Strong identified no reason for the appellate court to overlook his failure to object to the interrogatories, the appellate court decided to do so. The court stated that whether a jury's answer to a special interrogatory is inconsistent with the general verdict cannot be waived. A20 at n.5. But that is a different question from whether the interrogatories were in proper form, and – as the cases we cite above illustrate – the latter question certainly can be waived. E.g., Price, 2018 IL App (1st) 161599, ¶ 22. The court also claimed that this case involves an "unclear area of the law" and that its consideration of the argument would be in "the interest of justice." A20 at n.5. But the law is not unclear. As we explain above, Poole and the notes on use for IPI 14.01 are clear about the requirements for interrogatories in these circumstances. Moreover, the interests of justice do not weigh in favor of overlooking Strong's waiver here. To the contrary, Strong's gamesmanship in saving specific objections to the interrogatories' language for after he lost at trial is manifestly unfair, and precisely what the waiver doctrine is designed to prevent. Honoring the waiver doctrine is particularly appropriate where "[a] contemporaneous objection would have given the court an opportunity to rule on the objection and, just as importantly, would have given the defendant the opportunity to cure any

error." McCallion, 2021 IL App (1st) 192499-U, ¶ 44. Plaintiffs should not be rewarded for their silence when the alleged error could have easily been fixed. See id. ("Allowing [the objection that an interrogatory was compound] to go unmentioned at trial, only to be raised after the trial has ended, would unfairly reward plaintiff for his silence and punish defendant for something beyond his control. We thus will not further consider this objection.").

Second, waiver aside, the appellate court was wrong in the way it characterized the interrogatories. They were not impermissibly compound. The court faulted the interrogatories as compound because they asked whether the use of force was unjustified and either recklessly or intentionally willful and wanton. A22. But an interrogatory is not "improperly compound" merely because it contains more than one legal issue that a jury must decide. See McCallion, 2021 IL App (1st) 192499-U, ¶ 41 ("While we have at times approved of special interrogatories that combined the concepts of negligence and proximate cause in a single question, in other instances we have found them improperly compound; the particular wording and circumstances have dictated the result."). For example, in Dynek v. City of Chicago, 2020 IL App (1st) 190209, a special interrogatory asked whether an official "both determine[d] policy and exercise[d] discretion regarding the designation of . . . a signed bike route," and the appellate court held it was not "improperly compound." Id. ¶¶ 36, 38. That was so even though the jury had to decide two things in one interrogatory: whether the official (1) determined policy

and (2) exercised discretion, because the City's discretionary immunity defense required both pieces. There could be no confusion about how to answer such an interrogatory; the jury could answer "yes" to the interrogatory only if both pieces were satisfied. If either piece was not satisfied, the answer had to be "no."

Similarly, here, the City could not be liable unless the officers' conduct was both (1) not legally justified *and* (2) either intentional (interrogatory #1) or reckless (interrogatory #2). Both of those aspects were part of the definition of willful and wanton conduct. C. 1596 (jury instruction defining willful and wanton conduct as "a course of action which is without legal justification *and* shows an actual or deliberate intent to harm *or* which, if not intentional, shows an utter indifference to or conscious disregard for a person's own safety and the safety of others") (emphasis added); see, e.g., Davis v. City of Chicago, 2014 IL App (1st) 122427, ¶ 122 (legal justification is an affirmative defense to an intentionally tortious act). There could be no confusion in how to answer such an interrogatory. As in Dynek, the answer to such an interrogatory could be "yes" only if both pieces were satisfied, and "no" if either piece was not satisfied. Thus, the inclusion of the concept of legal justification did not render the interrogatories confusing or misleading, but accurately stated the law.

In criticizing the interrogatories, the appellate court also directly contradicted its own decision in Price, 2018 IL App (1st) 161599, which held

that to properly ask whether a defendant's conduct was willful and wanton, a special interrogatory *needed* to "cover[ ] the issue of legal justification." Id. ¶ 46. In Price, the special interrogatory asked, "Was Officer Proano's conduct in shooting Niko Husband willful and wanton?" Id. ¶¶ 17, 46. The court deemed the interrogatory permissible only "when read in conjunction with the jury instructions," because the instructions "correctly defined willful and wanton conduct as including the words 'without legal justification' and correctly defined legal justification by itself." Id. ¶ 46. Thus, the appellate court held, the interrogatory in Price properly covered legal justification as part of willful and wanton conduct. The only difference between the interrogatories at issue here and in Price is that here, legal justification was expressly included in the interrogatory rather than only in the jury instructions' definition of "willful and wanton conduct." But that difference only enhances the clarity of the instruction in this case. The decision below is at odds with Price.

Furthermore, the interrogatories were not ineffective in "test[ing] the general verdict," as the appellate court determined. A23. Whether a jury answered "no" to the special interrogatories because it believed the officers' conduct was "legally justified" or because it believed their conduct was not intentional or not reckless, the City would not be liable, so the "no" answer would be inconsistent with the general verdict.

In sum, special interrogatories #1 and #2 went to an ultimate issue,

were straightforward, correctly reflected the law, and checked a general verdict the jury could have rendered. They were thus in proper form, and Strong waived any argument otherwise.[5]

C. The Interrogatories Were Irreconcilable With The General Verdict And Required Judgment For The City On Strong's Claims.

At the time of trial, section 2-1108 of the Code of Civil Procedure provided that, where the jury's response to a special interrogatory is irreconcilable with the general verdict, the interrogatory controls. 735 ILCS 5/2-1108; see also Simmons, 198 Ill. 2d at 556.[6] And, consistent with this general principle, a court could not conclude from a mere inconsistency

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[5] The appellate court called all three special interrogatories improper, A22-A23, even though Strong did not challenge interrogatory #3, either at trial or on appeal. The court should not have opined on the third interrogatory. Reviewing courts should not "render advisory opinions" or "consider issues . . . not essential to the disposition of the cause." Barth v. Reagan, 139 Ill. 2d 399, 419 (1990). Furthermore, as with interrogatories #1 and #2, Strong waived any claim of error by not objecting to interrogatory #3 at the instructions conference. See Price, 2018 IL App (1st) 161599, ¶ 22; Bachman, 332 Ill. App. 3d at 801. And the third interrogatory was proper regardless. It asked, "At the time deadly force was used against David Strong, did the Chicago Police Officers who used deadly force reasonably believe that such force was necessary to prevent imminent death or great bodily harm?" A41; C. 1627. That accurately states the standard for legal justification, an affirmative defense to liability for a tortious contact, such as battery. E.g., Davis, 2014 IL App (1st) 122427, ¶ 122 (use of "without legal justification" in instructions accounts for situation where defendants committed an "intentional shooting" but had "the affirmative defense of tort immunity"). A "yes" answer to the interrogatory would have controlled the verdict by establishing that the City was not liable because its officers' conduct was justified.

[6] Section 2-1108 was amended in 2020. As we explain below, the new version did not apply at the time of Strong's trial.

between a general verdict and a special interrogatory that the jury was confused by the interrogatory. E.g., Simmons, 198 Ill. 2d at 563-64; Blakey v. Gilbane Building Corp., 303 Ill. App. 3d 872, 882 (4th Dist. 1999). To do so would nullify the language in section 2-1108 stating that the interrogatory controls in the event of inconsistency with the general verdict. Simmons, 198 Ill. 2d at 564. The answers to interrogatories #1 and #2 were irreconcilable with, and thus controlled, the general verdict. The City was entitled to judgment on Strong's claims.

As this court has long recognized, "a jury more clearly understands a particularized special interrogatory than a composite of all of the questions in a case, and therefore a special finding upon which a jury presumably has more intensively focused its attention should prevail over an inconsistent general verdict." Borries v. Z. Frank, Inc., 37 Ill. 2d 263, 266 (1967). And when deciding whether the interrogatory answer is irreconcilable with the general verdict, the court's role is not to weigh the evidence itself, but to determine whether any "'reasonable hypothesis exists that allows the special finding to be construed consistently with the general verdict," such that the two "are not absolutely irreconcilable." Simmons, 198 Ill. 2d at 556 (quoting Powell v. State Farm Fire & Casualty Co., 243 Ill. App. 3d 577, 581 (1st Dist. 1993)). Here, no such reasonable hypothesis exists, so the jury's special findings control.

Again, to find in Strong's favor, the jury had to find that the officers

engaged in willful and wanton conduct, either intentionally or recklessly. That was the only basis of liability Strong alleged. C. 1366, 1368, 1602; R. 2389-90.[7] The jury's responses that the officers' actions were neither intentionally nor recklessly willful and wanton disposed of the officers' liability and are thus irreconcilable with a verdict for Strong. A special interrogatory controls where there is inconsistency, Simmons, 198 Ill. 2d at 564, so the circuit court correctly entered judgment for the City.

The appellate court strained to reconcile the jury's special findings with the general verdict, and its hypotheses about how the special findings could be consistent with a verdict for Strong were far from reasonable. First, the court stated that interrogatory #1 was "impermissibly narrow" because it focused "on the officers' intention to 'harm David Strong,'" specifically. A23. But that was a proper statement of intentional willful and wanton conduct. In tort, "intent" means that the actor "intended or expected" the result of his actions, Savickas, 193 Ill. 2d at 388, or had "a desire to cause consequences or at least a substantially certain belief that the consequences [would] result," Ziarko, 161 Ill. 2d at 272. For the officers to be liable for intentional willful and wanton conduct, Strong had to show either that the officers intended to

[7] It was the only basis of liability Strong could allege. Under section 2-202 of the Tort Immunity Act, a public employee is liable for acts or omissions in the execution or enforcement of the law only if "such act or omission constitutes willful and wanton conduct." 745 ILCS 10/2-202. And a local public entity is not liable if its employee is not liable. Id. § 10/2-109. Thus, if the officers' actions were not willful and wanton, the City would be immune from liability.

harm him or were substantially certain their actions would harm him. Special interrogatory #1 was not improperly narrow.

The appellate court also stated that "the negative answer" to interrogatory #1 could "be reconciled with the general verdict in favor of Strong but with reduced damages." A23. In other words, the court said that the jury's response to interrogatory #1 did not preclude a finding that the officers were recklessly willful and wanton. That is true, but it misses the point. Interrogatory #1 did not test Strong's claim of reckless willful and wanton conduct; that was the subject of interrogatory #2. As we explain, Strong alleged both forms of willful and wanton conduct, and interrogatory #1 tested the claim that the officers were intentionally willful and wanton. A special interrogatory "may focus on only one element," so long as "that element is dispositive of the claim at issue." Brannen v. Seifert, 2013 IL App (1st) 122067, ¶ 86. The "no" answer to interrogatory #1 disposed of Strong's claim that the officers were intentionally willful and wanton conduct, and that also meant the City could offset any liability for damages if the jury found Strong was also at fault.

In turn, the jury's response to interrogatory #2 rejected Strong's claim that the officers were recklessly willful and wanton. Together with the response to interrogatory #1, that eliminated all possibility that the City was liable for willful and wanton conduct and required judgment for the City. The appellate court, however, held that the second interrogatory was

"ambiguous" and "could be reconciled with the general verdict" for Strong. A24. To reach that holding, it gave the interrogatory an entirely implausible reading. The appellate court stated that the jury might have thought the phrase "safety of others," as used in interrogatory #2, referred only to "passersby or innocent bystanders" and not to "the burglars in the van," including Strong. A23. The court called that "a reasonable hypothesis that allowed" the interrogatory "to be construed consistently with the general verdict." A24. But that hypothesis – which Strong concocted only after losing at trial – defies all logic and has no basis in the record. This court construes special interrogatories "'in light of what an ordinary person would understand them to mean,'" and not based on abstract analysis. Morton v. City of Chicago, 286 Ill. App. 3d 444, 450 (1st Dist. 1997) (alteration omitted) (quoting La Pook, 211 Ill. App. 3d at 866). The phrase "safety of others" in interrogatory #2 plainly meant everyone but the officers, which obviously included Strong. The language in the special interrogatories was also identical to the language used in the jury instructions (which came directly from IPI 14.01). Furthermore, the burglary took place in the wee hours of the morning, and, as the videos of the incident show, Supp E 11, 17 (12:30-13:48), the only people on the street were the officers and the men in the van. There is no reason to think the jury was confused by the interrogatory or thought it did not refer to Strong. This court should reject the appellate court's contorted interpretation.

The interrogatory must also be viewed in the context of the parties' presentations to the jury. E.g., Simmons, 198 Ill. 2d at 563. At trial, both parties explicitly explained to the jury that "the safety of others," as used in the second interrogatory, referred to *Strong*. The City's counsel stated,

> The second interrogatory you'll be asked to answer: At the time deadly force was used, did the Chicago police officers who used deadly force engage in a course of action without legal justification which showed an utter indifference or conscious disregard for the safety of others? Your answer should be no. There is no evidence that any of these officers acted with an utter indifference or conscious disregard *for David Strong*.

R. 2459 (emphasis added). Strong's counsel, in turn, made the same point multiple times in explaining that he wanted the jury to answer "yes" to the interrogatory. He argued that the officers were willful and wanton because "there was a conscious disregard for *Mr. Strong's safety* that caused his injury," R. 2390 (emphasis added); that the officers "had utter indifference for the lives of anybody *in that van*," and kept firing when "[t]hey didn't even *know Strong was in the van*," R. 2483 (emphasis added); and that the officers "acted with a conscious disregard or reckless indifference *for David Strong*," R. 2489 (emphasis added).

Given that both parties' presentations addressed the meaning of "safety of others" head-on, there is simply no possibility that the jury was confused about whether interrogatory #2 referred to the van's occupants, including Strong. In fact, it is wholly disingenuous for Strong to claim that the jury would not have known that interrogatory #2 referred to him when

his own counsel told the jury – repeatedly – that it did. For that reason, the trial court, which had the benefit of hearing the evidence and the parties' arguments alongside the jury, dismissed Strong's argument because it was an entirely "self-serving" theory he invented only after losing at trial. A45; C. 1631.

Finally, the appellate court went on to analyze the evidence itself and stated that "the evidence showed that both Strong and the officers were recklessly willful and wanton in their conduct." A26. That undertaking was improper. When presented with a motion for judgment on the jury's special findings, the court's task is *not* to weigh the evidence, but to determine whether the special findings were irreconcilable with the verdict. E.g., Simmons, 198 Ill. 2d at 556. Whether, in the court's view, the evidence indicated that the officers acted recklessly was irrelevant to whether the special interrogatories were irreconcilable with a verdict for Strong. "[T]he appellate court should not usurp the function of the jury and substitute its judgment on questions of fact fairly submitted" to the jury. Maple v. Gustafson, 151 Ill. 2d 445, 452 (1992). Here, the court usurped the jury's role by weighing the evidence itself and disregarding the jury's special findings.

Interrogatories #1 and #2 are irreconcilable with, and control, the general verdict. The City was entitled to judgment on Strong's claims.

D. The Appellate Court Erred By Relying On The Amended Version Of The Special Interrogatory Statute.

The appellate court justified disregarding the special interrogatories by referencing "the new iteration of the statute on special interrogatories, section 2-1108 of the Code of Civil Procedure," which, it acknowledged, "applies to trials commencing on or after January 1, 2020." A27. It said the amendment "shows the legislature's desire to place the general verdict on a pedestal as a trophy" and called it "persuasive authority to support our result." A28. But the trial in this case took place in May 2019. The new version of the special interrogatory did not apply. Indeed, the amendment expressly states that it is prospective from January 1, 2020, so it simply did not apply before that date. 735 ILCS 5/2-1108 (West 2020). It could not be "persuasive" – or any – authority because it was irrelevant, as the appellate court itself has acknowledged elsewhere. E.g., McCallion, 2021 IL App (1st) 192499-U, ¶ 54 ("[T]he earlier version of the [special interrogatory] statute was in force at the time of [plaintiff's] trial in July 2019, and thus the new version of the statute is of no consequence here.").

Moreover, in relying on the amendment, the appellate court disregarded "general principles of statutory construction involving amendments," which teach that amendments are presumed "to change the law," Hoover v. May Department Stores Co., 77 Ill. 2d 93, 107 (1979), unless they are specifically designed to "clarify" an existing "ambiguity," O'Connor v.

A & P Enterprises, 81 Ill. 2d 260, 272 (1980). Here, the special interrogatory statute was amended to create a *new* process, not to clarify an ambiguity. Compare 735 ILCS 5/2-1108 (West 2018) (pre-amendment) ("When the special finding of fact is inconsistent with the general verdict, the former controls the latter and the court may enter judgment accordingly.") with 735 ILCS 5/2-1108 (West 2020) (for trials commencing on or after January 1, 2020, parties may explain to jury "what may result if the general verdict is inconsistent with any special finding"). Consequently, far from supporting the appellate court's result, the amendment supports the *City*'s position. A substantive revision of a statute indicates that it meant something *different* before the amendment. E.g., In re Application of County Collector, 356 Ill. App. 3d 668, 674 (1st Dist. 2005) ("The amendment must have some meaning."). Thus, the amendment to the special interrogatory statute, if relevant here at all, reinforces that under the statute in effect during Strong's trial, when a jury's answer to a special interrogatory conflicted with its general verdict, the jury's special findings controlled and superseded the general verdict.

The amendment to the statute on special interrogatories did not justify the court's decision to disregard the jury's responses to the special interrogatories. Those special findings are irreconcilable with and control the general verdict, and they require judgment for the City on Strong's claims.

* * *

This court should reverse the judgment of the appellate court and enter judgment for the City and against all three plaintiffs. Dudley's and Givens's claims are barred by collateral estoppel. The facts established by their criminal convictions necessarily demonstrate that their own intentional conduct proximately caused their injuries, which prevents them from recovering from the City for those injuries. The City is also entitled to judgment in its favor on Strong's claims because the jury specially found that the officers' conduct was not willful and wanton.[8]

CONCLUSION

For the foregoing reasons, this court should reverse the judgment of the appellate court.

Respectfully submitted,

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[8] The appellate court "address[ed] several issues that are likely to occur on remand" in Dudley and Givens's case. A34. Although it parted ways with the circuit court on two evidentiary issues, it did not hold that any abuse of discretion merited a new trial. See A34-A37. Likewise, Strong acknowledged in his brief to the appellate court that the purported trial errors he alleged did not "mandate reversal in and of themselves." Strong Appellant Br. 43.

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 50 pages.

/s/Ellen W. McLaughlin
ELLEN W. MCLAUGHLIN, Attorney

CERTIFICATE OF FILING/SERVICE

I certify under penalty of law as provided in 735 ILCS 5/1-109 that the statements in this instrument are true and correct and that the foregoing brief was electronically filed with the office of the Clerk of the Court using the File and Serve Illinois system and served via email, to the persons named below at the email addresses listed, on June 15, 2022.

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APPENDIX

TABLE OF CONTENTS TO THE APPENDIX

2021 IL App (1st) 192434

Nos. 1-19-2434 & 1-19-2457 cons.

Opinion filed September 28, 2021.

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

JOHN W. GIVENS, LELAND DUDLEY, and THERESA DANIEL, as Special Administrator of the Estate of DAVID STRONG, Deceased,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	No. 16 L 10768
v.	)	
THE CITY OF CHICAGO,	)	The Honorable Bridget J. Hughes,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court, with opinion.
Justices Howse and Cobbs concurred in the judgment and opinion.

OPINION

¶ 1 On April 30, 2012, around 2 a.m., John W. Givens, Leland Dudley, and David Strong, now deceased, burglarized an electronics store in Chicago, then attempted to escape in a stolen getaway van, but police appeared bearing guns and firing some 76 rounds at the van as it burst from the store's garage door. The three burglars were shot multiple times, and Strong died of his injuries. Following a joint criminal jury trial, Givens and Dudley were found guilty of felony

murder, since Strong was killed (albeit, by police gunfire) during the course of their felony burglary. They were also found guilty of aggravated battery of a police officer and possession of the stolen van. Givens was sentenced to a total of 32 years' imprisonment, while Dudley was sentenced to a total of 37 years. Their criminal convictions were affirmed on appeal. See *People v. Givens*, 2018 IL App. 152031-U; *People v. Dudley*, 2018 IL App. 152039-U.

¶ 2 In an unlikely turn of events, Givens and Dudley, along with the special administrator of Strong's estate, Theresa Daniel[1], filed a civil suit against the City of Chicago (City) for their injuries and Strong's death by police gunfire. Specifically, they alleged battery, survival, and wrongful death. Although Givens and Dudley's battery claims did not survive summary judgment due to collateral estoppel from their criminal convictions, Strong's estate proceeded to trial on its survival, wrongful death and willful and wanton claims against the City. Ultimately, Strong's estate prevailed, obtaining a $1,999,998 jury verdict. The jury nevertheless also found that Strong, as the burglar, was contributorily willful and wanton as alleged by the City, where his injuries were proximately caused by his own conduct, and accordingly the verdict was reduced to $999,999.

¶ 3 The City filed a motion for a judgment notwithstanding the verdict based on two special interrogatories inquiring whether the officers were unjustified in the shooting and were truly willful and wanton, *i.e.* intentional or reckless. Since the jury answered "No" to the questions, the City claimed these interrogatories controlled over the general verdict, and the trial court granted the City's motion. As such, the City ultimately won at trial.

[1]The special administrator of Strong's estate at the time of the original complaint was Beatrice Strong.

¶ 4 In this consolidated appeal, Givens and Dudley[2] challenge the summary judgment entered against them, claiming there was no identity between the criminal and civil issues to support collateral estoppel, while Strong's estate challenges the judgment notwithstanding the verdict against it. Strong's estate argues that based on Illinois Supreme Court precedent, the City was precluded from alleging Strong was contributorily willful and wanton without first alleging he was contributorily negligent. The estate further challenges the special interrogatories as improper in a variety of ways and raises a number of trial errors. The estate argues first that we must reinstate the full verdict and alternatively reinstate the reduced verdict, and if all else fails, that we reverse and remand for a new trial. We reinstate the $999,999 reduced verdict for Strong's estate and reverse the summary judgment entered against Givens and Dudley.

¶ 5 BACKGROUND

¶ 6 The evidence at Strong's trial, consisting of testimony, surveillance video, and exhibits, showed that Givens, Dudley, and Strong broke into Mike's Electronics (2459 South Western Avenue), located along the corner of Western Avenue and 25th Street in Chicago, by prying open an air conditioning grate and climbing through. Once inside this car electronics store, they loaded merchandise into a van parked in the adjoining garage. Meanwhile, the break-in had been reported to 911 by the upstairs tenant, and 19 police officers appeared a short while later casing the entry and exit points and creating a perimeter so as to preclude the burglars' escape. Police repeatedly announced their presence and identity as "Chicago Police," while also aiming flashlights through the showroom windows, located at Western Avenue and 25th Street, and the garage where the burglars were located. Police stated the building was surrounded and ordered

[2]We note that Dudley has adopted the appellate briefs and appendix filed on behalf of both Strong and Givens. Although filed in an untimely manner, the City has not objected to Dudley's motion. Dudley likewise adopted Strong's motion contesting the City's summary judgment, filed in the trial court.

the burglars to exit with their hands up. The surveillance video showed the burglars knew the police were there given that one saw their flashlights through the showroom window and hid behind a display wall for a short time before ducking to run into the adjoining garage, where he loaded more goods inside the van. Another burglar sought to enter the showroom, but on seeing the flashlights, turned back into the garage.

¶ 7 Officers surrounded the building's south-facing, locked metal garage door. Ultimately, about nine were situated on the east side, while three officers were immediately west of the garage, including Officer Michael Papin, who stood just next to it. Police attempted to open the garage door and used flashlights to illuminate the underside, but were only able to lift it several inches, prompting one of the burglars to jump back, as shown in the surveillance video. Police shook the door with a loud banging sound, kicked it, again letting the burglars know they were outside, surrounded, and had "nowhere *** to go."

¶ 8 Meanwhile, several officers had entered a side service door east of the garage into the vestibule area, and managed to kick a hole in the bottom of an inner door that had been barricaded but led inside the garage. On looking in, for example, one officer saw the van's taillights flash on, then saw the van in reverse, and shouted "they're coming out." Officer Adrian Valadez saw these same headlights, only through the Western Avenue showroom window and testified that he informed Officer Papin, standing by the garage door on the west side, to "be careful," although in a sworn statement given hours after the incident, Officer Valadez acknowledged he had stated "move out of the way" because the van was coming out. Also about one minute before the van moved, Officer Jeremy Lorenz, who was located by the Western Avenue window, radioed the emergency dispatcher, who in turn broadcast the message that the van lights were activated and the vehicle possibly exiting the building (the surveillance video

confirmed this timing of van lights' activation). Most officers by the garage nevertheless claimed not to hear these two warnings on their radios.

¶ 9 Following these warnings, the van then burst through the metal garage door before crashing into a vehicle parked along the driveway, pushing it into another on the street; officers claimed the van lurched forward but ultimately came to a stop. Officers described the van bust and verbal warnings as happening almost simultaneously, thus taking officers off guard. They never imagined the van would burst through the garage door, notwithstanding the prior warnings. Officers on both the east and west side of the garage testified they believed Officer Papin not only had been struck by the van but also was being dragged underneath and was possibly dead. Indeed, the video shows that just as the van bursts forth, Officer Papin hops back with arms outstretched appearing to be clipped by the backside of the van; however, he ultimately gains his footing and runs away while shots ring out. At trial, Officer Papin testified that the van struck his left hip, although it caused only pain and bruising.

¶ 10 With the domino effect in full swing, this all prompted eight officers to begin firing, mostly aiming at the driver, until the van's wheels were "shot out" and it was immobile. Officer Michael Curry on the west side (near Officers Papin and Valadez) fired his gun 18 times at the driver but did not know what or who he hit. He shot notwithstanding that Officer Papin ran right in front of him away from the scene. Officer Curry stopped firing when the van ceased moving, perceiving the threat over. Officer Manuel Gonzalez, on the other side of the garage inside the vestibule by the service door, fired his gun some three times because he thought the offenders were shooting at officers in an attempt to escape. Officers also testified they were in fear the van would drive right back towards them, with three testifying they saw Dudley (the driver) place it in drive or make similar such motions. Officer Daniel Lopez, for example, testified that he fired

six shots aimed for the driver as the van lurched forward because had seen Dudley moving his right arm up and down and believed the van might kill the officers in front of him. Officer Terrence Pratscher, who had already fired 11 shots at the driver, believing Officer Papin was struck, then fired a second time after observing the van lurch forward and Dudley place it in drive.

¶ 11 In fact, officers fired about 76 rounds at the van in an attempt to disable it, and the gear shift was later confirmed to be in "drive." Yet, no weapons were ultimately found on the burglars or inside the van, although there was testimony that the van itself could constitute a "deadly weapon." As set forth, the burglars claimed they turned victim because of the excessive force. The driver Dudley was shot 6 times; Strong, who was the front-seat passenger, was also shot 8 or 9 times; and Givens, who was the back-seat passenger, was shot 6 times. Following criminal proceedings, Givens and Dudley were convicted of stealing the van, the aggravated battery of Officer Papin, and murdering Strong. Thus, at the time of the civil trial, they were serving their 30-plus prison terms.

¶ 12 The parties also presented dueling experts as to whether the use of deadly force was justified. Dr. Geoffrey Alpert, for Strong's estate, asserted the shooting was unjustified since the vehicle was not utilized as a deadly weapon but rather as a method of escape for the burglars to avoid arrest. At that point the threat was over and no longer imminent. Dr. Alpert believed officers had time to move from the van's path before shooting at it and opined officers violated police department orders by disregarding radio warnings and failing to remove themselves from the van's path. Dr. Alpert noted, for example, that it soon became clear that Officer Papin had not been hit, dragged underneath the vehicle or, in his opinion, injured at all by the van. At that point, the danger to Officer Papin and the other officers had passed. In addition, Dr. Alpert

believed the van did not drive forward but ricocheted off the other car a small distance and then stopped on the deflated tire. Dr. Alpert asserted officers instead engaged in "contagion fire" by shooting at the van without determining if there was a true threat. He noted deadly force was a last resort requiring an exact target. Dr. Alpert opined that the officers behavior was willful and wanton, excessive, unreasonable, and unwarranted.

¶ 13 The City's expert Roy G. Taylor, on the other hand, maintained that deadly force was justified where the burglars exhibited a disregard for human life since they knew the officers were outside the garage, yet still used the van as a deadly weapon to effect their escape after committing the forcible felony of burglary. He noted Illinois law permitted deadly force after a forcible felony where injury or the likelihood of injury was prevalent. He added that police believed Officer Papin had been struck, further justifying deadly force. Taylor cited the policy that police can shoot into a vehicle if they reasonably believe it's necessary to prevent death or great bodily harm. Moreover, there was testimony that had the van not been disabled, but continued to drive forward, officers would have had only about one second to react before the van reached them.

¶ 14 In closing, Strong's estate argued the police wrongfully killed Strong and that Strong's then 10-year-old son was entitled to $7.5 million for his death. Strong's estate specifically argued that the police were reckless in their failure to heed the radio and in-person verbal warnings that the van was about to burst through the garage, and they had other options than to simply wield their weapons using deadly force. As such the estate's attorney further argued police fired their guns without legal justification, whether out of fear or simply because others were firing, and thereby killed Strong in an intentionally, or at least, recklessly willful and wanton manner. He argued "[t]here was an actual intent to harm. But if it wasn't intentional, certainly - - certainly

there was a conscious disregard for Mr. Strong's safety that caused his injury." The estate's attorney noted that while Strong had certainly "done something stupid" in deciding to burglarize the store and escape as he did, Strong "did not deserve to die by firing squad."

¶ 15 The defense asserted the estate's argument could be summed up in one sentence: "You should award us money because you knew that we were about to come out of the door and you decided not to get out of our way." The defense argued Strong was at fault since he knew the police were outside, yet chose ram his car into them anyways after having committed a forcible felony of burglary, thus showing a complete disregard for human life. The defense argued that officers, many of whom were war veterans and with families, had only seconds to react to the van bursting forth from the garage in what placed officers in imminent fear of death or great bodily harm. Thus, the defense maintained police were justified in using deadly force for a variety of reasons.

¶ 16 At the close of arguments, the jury received three different verdict forms, verdict form A for the Strong's estate showing no contributory fault; verdict form B for Strong's estate but assigning some fault to Strong; and verdict form C for the City. The jury chose verdict form B, ruling in favor of Strong's estate and awarding it $1,999,998. The jury nevertheless also found that Strong, as the burglar, was 50 percent at fault for his injuries due to his own willful and wanton conduct, and the jury reduced the verdict by about half to $999,999.

¶ 17 In addition, the jury answered three special interrogatories, which were prepared and written by the court. Special interrogatory #1 asked,

> "At the time deadly force was used, did the Chicago Police Officers who used deadly force engage in a course of action without legal justification, which showed an actual or deliberate intention to harm David Strong?"

Special interrogatory #2 asked,

> "At the time deadly force was used, did the Chicago Police Officers who used deadly force engage in a course of action without legal justification, which showed an utter indifference or conscious disregard for the safety of others?"

Special interrogatory #3 asked,

> "At the time deadly force was used against David Strong, did the Chicago Police Officers who used deadly force reasonably believe that such force was necessary to prevent imminent death or great bodily harm?"

The jury answered "No," to all three special interrogatories, and the court permitted the parties to brief the matter before entering judgment on the verdict.

¶ 18 The City moved for entry of judgment in its favor based on the special interrogatories, arguing the answers compelled such a result as they betrayed a failure to establish willful and wanton conduct, and further, based on immunity and legal justification principles. The trial court agreed, finding the answers to the first and second interrogatories controlled the verdict. Strong's estate challenged this determination, while Givens and Dudley challenged the summary judgment motions against them. The trial court denied them relief, and this appeal followed.

¶ 19 ANALYSIS

¶ 20 On appeal, Strong's estate maintains that the entire $1,999,998 jury verdict must be reinstated because the City was barred from reducing damages. To address this dispositive matter, we turn first to the underlying allegations. Here, for Strong's estate to prove a claim under the Wrongful Death Act (740 ILCS 180/1 *et seq*. (West 2020)) and the Probate Act (Survival Act) (755 ILCS 5/27-6 (West 2020)), it was required to prove that the City owed a duty to Strong, the City breached that duty, the breach of the duty was a proximate cause of Strong's

injuries or death, and that monetary damages resulted to the entitled individuals under the acts. *Bovan v. American Family Life Insurance Co.*, 386 Ill. App. 3d 933, 938 (2008); see also *Messmore v. Silvis Operation*, 2018 IL App (3d) 170708, ¶¶ 24-25 (noting the differences between wrongful death and survival claims); *Williams v. Manchester*, 228 Ill. 2d 404, 421-22 (2008) (noting that aside from the death occurrence, these elements are the same as for common law negligence).

¶ 21 Because the City would otherwise be immune from liability for negligence, Strong's estate also had to prove that the officers' conduct was willful and wanton, as well as legally unjustified. See 745 ILCS 10/2-202 (West 2020) (noting that un the Tort Immunity Act, "A public employee is not liable for his act or omission in the execution or enforcement of any law unless such act or omission constitutes willful and wanton conduct."); *Price v. City of Chicago*, 2018 IL App (1st) 161599, ¶ 29. In response to allegations by Strong's estate, the City filed an affirmative defense alleging that Strong was contributorily willful and wanton, and it was Strong's own conduct that led to his untimely death. Thus, at trial, both parties alleged the other was willful and wanton. We note that "willful and wanton" is not a freestanding, independent tort. See *Ziarko v. Soo Line Railroad*, 161 Ill. 2d 267, 274 (1994). Rather, as a separate claim, willful and wanton conduct is often alleged in conjunction with negligence and can be either intentional or reckless. *Doe v. Coe*, 2019 IL 123521, ¶ 34; *Poole v. City of Rolling Meadows*, 167 Ill. 2d 41, 48-49 (1995). Here, the parties argued both forms to the jury.

¶ 22 *Comparative Willful And Wanton Conduct*

¶ 23 The estate now argues that the City failed to assert a proper affirmative defense because under current supreme court law the City had to specifically allege that Strong was *contributorily negligent*, rather than willful and wanton. The estate thus argues the City's contributory fault

affirmative defense was not legally cognizable, and a setoff in damages is disallowed where "all the parties are charged with willful and wanton conduct." In particular, the estate maintains "the damages levied against [a] defendant for its willful and wanton conduct can never be shared with another willful and wanton tortfeasor," such as Strong. Consequently, the estate maintains that the reduction in damages due to Strong's contributory fault was erroneous and the special interrogatories were not warranted. For these reasons, the estate asks that we reinstate the entire verdict in its favor.

¶ 24 The City responds that the estate forfeited this issue by failing to raise it below prior to the lengthy jury trial. We agree but nevertheless address the estate's arguments because they impact other contentions raised on appeal and also present an issue of first impression. See *Doe v. Alexian Brothers Behavioral Health Hospital*, 2019 IL App (1st) 180955, ¶ 28, fn 4 (noting that forfeiture is a limitation on the parties but not on the court). Since the establishment of Illinois' comparative fault system, our supreme court has not directly decided whether a tort claimant's own reckless willful and wanton conduct precludes him from recovering against a reckless willful and wanton defendant. See Illinois Pattern Jury Instructions, Civil No. 14.03, Notes on Use (noting, "no Illinois case has yet decided the effect of a plaintiff's contributory willful and wanton conduct"). The estate, in raising its rather convoluted claim that the City's willful and wanton affirmative defense was impermissible, draws on a line of supreme court decisions dating to the 1990s that examine the right to claim personal injury damages in the face of willful and wanton conduct.

¶ 25 In the seminal case, *Burke v. 12 Rothschild's Liquor Mart, Inc.*, 148 Ill. 2d 429 (1992), our supreme court addressed whether a plaintiff's negligence could be compared to a defendant's willful and wanton conduct, thereby limiting the plaintiff's recovery. There, the plaintiff, Burke,

went to Rothschild's liquor store and entered into an altercation over payment for soda pop. The manager ultimately shoved Burke, at which point he fell from a broken floor tile and struck his head on a steel door panel, immobilizing his arms or legs. Police then appeared pursuant to the manager's call, sprayed Burke with an eye-burning substance, and dragged him from the store only to drop him on the sidewalk before throwing him into the police paddy wagon so that his head struck the interior steel wall. Burke became a quadriplegic and sued both Rothschild's and the City of Chicago for negligence. Following a jury trial, the two defendants were found jointly liable. While Burke was determined to be contributorily negligent as to Rothschild's, thereby reducing those damages, the court ruled that Burke's contributory negligence could not be compared with the City's willful and wanton conduct. In other words, the City was not entitled to a setoff for Burke's comparative negligence.

¶ 26 The City appealed, arguing the historic rule that "ordinary negligence cannot be compared with willful and wanton conduct" was unfair. *Id*. at 440. The supreme court reviewed the comparative fault statute and tort immunity act then in effect and noted that the act clearly insulated cities "against suits for negligence" and "punitive damages," but would not shield willful and wanton behavior showing a "deliberate intention to cause harm or a complete indifference to the safety of others." *Id*. at 443. From this, *Burke* concluded that the legislature had not shown an intent to disrupt the historic rule. *Burke* then turned to conflicting case law on the issue, noting willful and wanton was "capable of various interpretations," with some cases treating it as a type of negligence and some treating it as quite distinct. Following this, the *Burke* court subscribed to the latter view also expressed in the Restatement (Second) of Torts § 500 (1965) "that there is a qualitative difference between negligence and willful and wanton conduct," since "willful and wanton conduct carries a degree of opprobrium not found in merely

negligent behavior." *Id*. at 450-51. Rather, it carries the degree of moral blame attached to intentional harm. As such, Burke reaffirmed the historic rule that a plaintiff's negligence *cannot* be compared with a defendant's willful and wanton conduct.[3]

¶ 27 Notwithstanding its holding, *Burke* did not distinguish the intentional form of willful and wanton conduct from the reckless form, as later cases would. Notably, intent denotes that the actor desires to cause consequences of his act or believes them to be substantially certain to result. Restatement (Second) of Torts § 8A (1965). Recklessness, on the other hand, denotes that the actor failed, after knowledge of impending danger, to exercise ordinary care to prevent it or failed to discover a danger (whether by being reckless or careless) when it could have been discovered with ordinary care. *American National Bank & Trust Co. v. City of Chicago,* 192 Ill. 2d 274, 285 (2000). Moreover, *Burke* left "to the future a determination of whether a *plaintiff's willful and wanton conduct* can be compared with the *willful and wanton conduct of the defendant*," (emphasis added), which is the scenario that now presents itself to us.

¶ 28 On the heels of *Burke*, the supreme court issued a plurality opinion in *Ziarko*, this time addressing contribution between two defendants, rather than a plaintiff's contributory negligence. There, the plaintiff Ronald Ziarko was struck by a Soo Line railroad train. A jury found Soo Line willful and wanton and the subject railroad yard, Milwaukee Motor, negligent. Soo Line sought contribution from Milwaukee Motor, but Milwaukee Motor argued that was impermissible because Soo Line was willful and wanton, *i.e.* intentional.

¶ 29 *Ziarko* first observed the contribution statute did not abolish the historic rule dating back to English common law that contribution is prohibited "between intentional tortfeasors."

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[3]The court further reasoned that given that punitive damages were prohibited by statute against the City, also disallowing the setoff from a plaintiff's contributory fault might deter municipal defendant's wanton and willful conduct.

(Emphasis added). *Ziarko*, 161 Ill. 2d at 271; see also *Gerrill Corporation v. Jack L. Hargrove Builders, Inc.*, 128 Ill. 2d 179, 204-05 (1989) (finding same). *Ziarko* noted the reasoning that an intentional tortfeasor whose liability arose from his own deliberate wrong should not "be afforded the equitable benefits of shifting a portion of that liability to another tortfeasor under principles of contribution." *Ziarko*, 161 Ill. 2d at 271. That, however, was not the case that presented itself in *Ziarko*, as explained immediately below.

¶ 30 The *Ziarko* plurality clarified that *Burke*'s holding was confined to the form of willful and wanton conduct that was so morally blameworthy it approached intentional harm. Like punitive damages, liability for intentionally willful and wanton conduct aimed to punish bad behavior. Yet, there were instances when willful and wanton conduct was merely intended to compensate plaintiffs for their injuries. *Ziarko* thus recognized a different form of willful and wanton conduct, which was merely reckless. "Under the facts of one case, willful and wanton misconduct may be only degrees more than ordinary negligence, while under the facts of another case, willful and wanton acts may be only degrees less than intentional wrongdoing." *Id*. at 276. Interpreting *Burke* to disallow *any* willful and wanton tortfeasor, even a merely reckless one, to offset his monetary responsibility was contrary to the current comparative fault and contribution principles.

¶ 31 Consequently, *Ziarko* held "a defendant found guilty of willful and wanton conduct may seek contribution from a defendant found guilty of ordinary negligence if the willful and wanton defendant's acts were found to be simply reckless." *Id*. at 280. Because the record in *Ziarko* showed Soo Line's conduct was merely reckless, it could pursue contribution from Milwaukee Motor. Thus, the holding in *Ziarko* was confined to determining whether a reckless defendant could seek reduced damages. The court did not, as the estate maintains, hold that contributory

negligence by the plaintiff is a precondition to reduced damages. Instead, the plurality opinion noted that the supreme court had not yet addressed "whether a *plaintiff's willful and wanton acts* should serve as a complete bar, or serve as a damage-reducing factor, in the award of compensatory damages, where the *defendant has also engaged in willful and wanton conduct*." (Emphasis added). *Id*. at 277-78.

¶ 32 A year later, a majority of the court adopted *Ziarko*'s holding in *Poole*, 167 Ill. 2d at 48. There, a police officer investigating an incident accidentally shot the plaintiff Steven Poole, and Poole sued the City and its police officer alleging willful and wanton conduct. A jury awarded Poole compensatory damages but found Poole was also contributorily negligent. Extending the analysis in *Ziarko*, the supreme court observed that whether the damage award could be reduced based on Poole's contributory negligence depended on whether the defendants committed intentional or reckless willful and wanton conduct. If intentional, there could be no such reduction; if reckless, there could be such a reduction. *Poole* concluded it was unclear which type of willful and wanton conduct the jury found defendants guilty of and reversed and remanded the case for a new trial.

¶ 33 The foregoing cases demonstrate several rules regarding a plaintiff's contributory conduct as compared to a defendant's willful and wanton conduct. See Illinois Pattern Jury Instructions, Civil No. 14.01, Notes on Use (noting, absent a plaintiff's contributory fault, "there may be no need for a jury to determine which form of willful and wanton conduct was committed by the defendant."). First, a plaintiff's intentional willful and wanton conduct cannot be compared to a defendant's willful and wanton conduct (whether reckless or intentional), thus serving as a complete bar to the plaintiff's recovery. Second, a plaintiff who is either negligent or recklessly willful and wanton can recover from a defendant who is intentionally willful and

wanton, but the damages are *not* then subject to reduction based on comparative fault principles. See *Poole*, 167 Ill. 2d at 48. Third, a plaintiff who is recklessly willful and wanton can recover from a defendant who is recklessly willful and wanton, and if both parties are found liable, the plaintiff's damages *are* subject to a reduction based on comparative fault principles.

¶ 34 If as under *Ziarko*, a defendant tortfeasor who engages in reckless willful and wanton conduct may seek contribution from another defendant tortfeasor who commits ordinary negligence, surely then a defendant tortfeasor who engages in reckless willful and wanton conduct may have his damages reduced by a plaintiff tortfeasor whose reckless willful and wanton conduct (which is a heightened standard) contributed to his injuries. The estate's contrary view on appeal[4] would lead to the anomalous result where a plaintiff who is contributorily negligent, or merely careless, would be entitled to less money after the setoff of damages than a plaintiff whose conduct was more egregious, *i.e.* recklessly willful and wanton.

¶ 35 We note that our conclusion departs from the Restatement insofar as the Restatement prohibits a reckless plaintiff's recovery against a reckless defendant. See Restatement (Second) of Torts § 503(3) (1965) (noting,"[a] plaintiff whose conduct is in reckless disregard of his own safety is barred from recovery against a defendant whose reckless disregard of the plaintiff's safety is a legal cause of the plaintiff's harm."). Our conclusion also departs from several older cases in existence before the modern comparative fault system that arose with *Alvis v. Ribar*, 85 Ill. 2d 1 (1981). Prior caselaw precluded a negligent plaintiff's recovery against a negligent defendant (but not a negligent plaintiff's recovery against a willful and wanton defendant). *Id*. at 5; *Burke*, 148 Ill. 2d at 441 (noting, "when a defendant's conduct was willful and wanton, the

[4]In fact, when discussing jury instructions during the trial, the estate conceded the City was entitled to a setoff to the extent it alleged "recklessness versus recklessness." The estate later repeated this concession.

plaintiff's contributory negligence could not be raised as a defense to bar recovery); see also Illinois Pattern Jury Instructions, Civil No. 14.01, Comment, citing *Green v. Keenan*, 10 Ill. App. 2d 53, 60 (1956) ("Prior to the adoption of comparative negligence, [a] defendant's willful and wanton conduct negated the defense of contributory negligence."). Significantly, caselaw likewise precluded a willful and wanton plaintiff's recovery against a willful and wanton defendant. See *Zank v. Chicago, R. I. & P. R. Co.*, 17 Ill. 2d 473, 476 (1959) (noting, "contributory willful and wanton misconduct of the plaintiff is a defense for a defendant charged with willful and wanton misconduct."). As stated, we believe *Burke* and its progeny changed the course of a willful and wanton plaintiff's recovery.

¶ 36 We also observe that between the decisions entered in *Ziarko* and *Poole*, effective March 9, 1995, the legislature amended Illinois' comparative fault statute, with the stated purpose of allocating tort damages based on the "proportionate fault" of the parties. 735 ILCS 5/2-1116(a) (West 1996)). The statute stated that a plaintiff's "contributory fault" must be compared to that of the other tortfeasors whose "fault" proximately caused "the death, injury, loss, or damage for which recovery is sought." 735 ILCS 5/2-1116(c) (West 1996)). This necessarily includes tortfeasors who committed reckless willful and wanton conduct. The statute defined "contributory fault" as "*any fault* on the part of the plaintiff (including but not limited to negligence, assumption of the risk, or *willful and wanton misconduct*) which is a proximate cause of the death, bodily injury to person, or physical damage to property for which recovery is sought." (Emphasis added.) 735 ILCS 5/2-1116(b) (West 1996)). The statute further defined "fault" in relevant part as "any act or omission that (i) is negligent, *willful and wanton*, or *reckless* *** and (ii) is a proximate cause of death, bodily injury to person, or physical damage to property for which recovery is sought." (Emphasis added.) *Id*.

¶ 37 Taken as a whole, the statute required the willful and wanton conduct by the plaintiff to be compared with the willful and wanton or reckless acts or omissions of the defendant whose fault was a proximate cause of the death, injury, loss, or damage for which recovery was sought. See *Roberts v. Alexandria Transportation, Inc.*, 2021 IL 126249, ¶ 29 (reading the statute's plain and ordinary language so as to divine its intent). While that statute was later declared unconstitutional for other reasons, the now defunct amended statute and the legislature's apparent intent to codify the common law confirms our determination: allowing a plaintiff's reckless willful and wanton conduct to reduce its damages against a reckless willful and wanton defendant is consistent with *Burke* and its progeny. See *Ready v. United/Goedecke Services, Inc.*, 232 Ill. 2d 369, 381-82 (2008); *In Best v. Taylor Machine Works*, 179 Ill. 2d 367, 467 (1997); see also *Bruso by Bruso v. Alexian Brothers Hospital*, 178 Ill. 2d 445, 458 (1997) (in amending a statute, the legislature is presumed to have been aware of judicial decisions interpreting the statute and to have acted with this knowledge). Given that the statute did not distinguish between the plaintiff's reckless or intentional willful and wanton conduct, it did not upset the common law rule established in *Burke* and its progeny barring recovery or contribution for intentional willful and wanton tortfeasors.

¶ 38 Having established the state of the law, we must reject the estate's argument that *Ziarko* would only permit a reduction in damages for Strong's contributory negligence in this case if the City had alleged ordinary contributory negligence rather than contributory willful and wanton conduct. We also note that willful and wanton conduct is but a heightened form of negligence, and one for which the City did raise as an affirmative defense.

¶ 39 Thus, to the extent the estate argues the affirmative defense was legally or factually inadequate, we disagree. The City alleged and argued that Strong had a duty to refrain from

willful and wanton criminal conduct, he breached that duty, and his conduct proximately caused his injuries. See *Hartmann Realtors v. Biffar*, 2014 IL App (5th) 130543, ¶ 20 (noting that an affirmative defense is a pleading which gives color to the opponent's claim but asserts a new matter that defeats the plaintiff's apparent right of recovery); see also *Bell v. Taylor*, 827 F. 3d 699, 704-05 (7th Cir. 2016) (an affirmative defense limits or excuses the defendant's liability by asserting facts and arguments that, if true, will defeat the plaintiff's claim, even assuming the allegations in the complaint are true). The City added that this was the case even if the police officers also caused the injuries, given that Strong was more willful and wanton than the officers. The City thus adequately alleged willful and wanton conduct as an aggravated form of negligence that could defeat Strong's cause of action. See *Doe v. Coe*, 2019 IL 123521, ¶ 34.

¶ 40 *Whether Special Interrogatories 1 And 2 Were In Proper Form And The Answers Were Consistent With The General Verdict*

¶ 41 Strong's estate next contends the special interrogatories directed at willful and wanton conduct were improper. Special interrogatories are meant to test the validity of a jury's general verdict on one or more issues of ultimate fact. *Brown v. City of Chicago*, 2019 IL App (1st) 181594, ¶ 42; *Inman v. Howe Freightways, Inc.*, 2019 IL App 1st 172459, ¶ 117. Thus, a special interrogatory is in proper form if, as presented in easily understandable terms, it relates to an ultimate issue of fact on which the parties' rights depend and the answer thereto may be inconsistent with the general verdict. *Inman*, 2019 IL App 1st 172459, ¶ 117. It must consist of a single, direct question that, standing on its own, is dispositive of an issue in the case such that it would, independently, control the verdict. *Id.*

¶ 42 Moreover, courts should find an inconsistency between a special finding and the general verdict *only* when the two are *clearly and absolutely irreconcilable*. *Price*, 2018 IL App (1st)

161599, ¶ 24. If there is a reasonable hypothesis allowing the special finding to be construed consistently with the general verdict, they are not "absolutely irreconcilable," and the special finding will *not* control. *Brown*, 2019 IL App (1st) 181594, ¶ 42. We exercise all reasonable presumptions in favor of the general verdict and we review the propriety of the special interrogatories, as well as the granting of judgment notwithstanding the jury's verdict, *de novo*. *Id*.

¶ 43 The estate contends special interrogatories 1 and 2 were improper, as they were "ambiguous, vague and confusing" and neither invited an answer that was absolutely irreconcilable with the $999,999 general verdict. Thus, according to the estate, the interrogatories should not have been given and the jury's answers thereto cannot control the general verdict.[5] The City responds that the special interrogatories properly tested the City's affirmative defense in the face of the general verdict for Strong's estate.

¶ 44 As set forth, the jury in this case returned general verdict form B for Strong's estate and against the City. In accordance with the instructions, the jury had to find that (1) the police shot Strong without legal justification insofar as police reasonably believed such force was necessary to prevent imminent death or great bodily harm or the commission of a forcible felony, among

[5]The City contends the estate waived its contentions. To avoid waiver of an objection to a special interrogatory, a party must lodge specific objections about the special interrogatory's form at the jury instruction conference. *Price*, 2018 IL App (1st) 161599, ¶ 23; *La Pook v. City of Chicago*, 211 Ill. App. 3d 856, 864-65 (1991). Whether a special interrogatory is inconsistent with the general verdict, however, is not subject to waiver. *La Pook*, 211 Ill. App. 3d at 865 (noting that a plaintiff can be bound only to the issues the jury's special interrogatory actually determines). We proceed on the merits notwithstanding the estate's failure to raise some of its specific objections at the conference as to the form of the special interrogatories. See *Doe v. Alexian Brothers Behavioral Health Hospital*, 2019 IL App (1st) 180955, ¶ 28, fn 4 (addressing the improper form of a special interrogatory even though it was not objected to until the posttrial motion and noting that forfeiture is a limitation on the parties but not the on court); see also *Struthers v. Jack Baulos, Inc.*, 52 Ill. App. 3d 823, 826 (1977) (noting that neither the trial court nor a reviewing court is bound by the failure of a party to specifically challenge a special interrogatory). Given this as-yet unclear area of law and in the interest of justice, we exercise discretion to consider the estate's challenge to the special interrogatories.

other bases; (2) the police were willful and wanton in shooting Strong insofar as they shot him multiple times, shot at the van he occupied, fired without justification, engaged in contagion fire resulting in his injury, or used force likely to cause great bodily harm; (3) Strong died; and (4) the officers' willful and wanton conduct proximately caused Strong's death. Yet, in returning verdict form B, the jury also found that Strong was willful and wanton insofar as he placed officers in imminent fear of death or great bodily harm to themselves or others, and he was 50 percent at fault for causing his own death. The court instructed the jury that willful and wanton conduct was "a course of action which is without legal justification and shows actual or deliberate intention to harm or which, if not intentional, shows an utter indifference to or conscious disregard for a person's own safety and/or the safety of others." See Illinois Pattern Jury Instructions, Civil No. 14.01.

¶ 45 On the heels of this, the jury was presented with the special interrogatories, which we construe from the perspective of an ordinary person in light of the jury instructions and not on the basis of mere abstract mathematical analysis as an exercise in symbolic logic. *La Pook*, 211 Ill. App. 3d at 866. Special interrogatory 1 asked, "At the time deadly force was used, did the Chicago Police Officers who used deadly force engage in a course of action without legal justification, which showed *an actual or deliberate intention* to harm *David Strong*?" (Emphasis added.) Special interrogatory 2, which was prefaced the same, asked whether police "showed an *utter indifference or conscious disregard for the safety of others*?" (Emphasis added.) Finally, although the estate does not challenge special interrogatory 3, it's worth noting that it asked, "At the time deadly force was used against David Strong, did the Chicago Police Officers who used deadly force reasonably believe that such force was necessary to prevent imminent death or great bodily harm?"

¶ 46 The clear aim of these respective questions was to determine whether the officers engaged in *intentional* willful and wanton conduct, *reckless* willful and wanton conduct, and whether deadly force was justified. Yet, the aim fell demonstrably short.

¶ 47 First and foremost, all three special interrogatories were impermissibly compound and therefore not focused on one element dispositive of the claim. See *Simmons v. Garces*, 198 Ill. 2d 541, 563 (2002); *La Pook*, 211 Ill. App. 3d at 865 (noting, a plaintiff is bound only to those issues actually decided by the jury's special interrogatory). As to interrogatories 1 and 2, they asked whether the use of deadly force by police was unjustified *and* either intentional (interrogatory 1) or reckless (interrogatory 2). However, the jury could have believed the use of deadly force was justified but either not intentional or not reckless. Likewise, the jury could have believed the use of deadly force was not justified but was either intentional or reckless. There are also two ways to interpret interrogatory 3. Either the officers didn't believe force was necessary to prevent imminent death or great bodily harm, and therefore they were intentionally acting without authority, or, the officers believed force was necessary to prevent imminent death or great bodily harm, but their belief wasn't reasonable and they were therefore reckless. A negative answer to the aforementioned questions would do little to test the general verdict. See *Alexian Brothers Behavioral Health Hospital*, 2019 IL App (1st) 180955, ¶ 32. The form of the special interrogatories, accordingly, was "in direct contradiction to the established rule that a special interrogatory must be phrased as a single, straightforward question." See *Smart v. City of Chicago*, 2013 IL App (1st) 120901, ¶ 37. For this reason alone, the special interrogatories were improper and should be stricken.

¶ 48 Additionally, the interrogatories were vague and confusing. As to interrogatory 1, the question was impermissibly narrow in focusing on the officers' intention to "harm David

Strong." We agree with the estate that the question would have been more effective if directed at the van's driver and/or occupants rather than focusing solely on Strong. The jury's negative answer to special interrogatory 1 could have signified its belief that the officers intentionally shot at the van's driver but only recklessly shot Strong. Indeed, this interpretation would be more consistent with the trial evidence, where police testified they aimed their shots at the *driver* so as to disable the van and prevent further harm. There was no evidence that police *intended* to shoot Strong in particular. See *Alexian Brothers Behavioral Health Hospital*, 2019 IL App (1st) 180955, ¶ 35 (noting, special interrogatories are to be read in the context of the claims and instructions to determine potential jury interpretations or confusion). In that sense, the negative answer can also be reconciled with the general verdict in favor of Strong but with reduced damages. See *Brown*, 2019 IL App (1st) 181594, ¶ 42.

¶ 49 The estate further argues that interrogatory 2 was too broad, insofar as it was directed at "safety of others," and the jury could have concluded this referenced possible passersby or innocent bystanders rather than the burglars in the van. The evidence would tend to support this interpretation since there was testimony that officers did not know who or what they hit when shooting. As such, the estate maintains the question was ambiguous. The estate maintains the "ambiguity could have easily resulted in a negative answer" even if the jury believed the officers were acting recklessly towards the van's occupants. The estate contends, and we agree, the negative answer therefore could be reconciled with the general verdict in its favor.

¶ 50 Because there was a reasonable hypothesis that allowed interrogatories 1 and 2 to be construed consistently with the general verdict, the interrogatories were not "absolutely irreconcilable" with the general verdict. See *id*. The attempted clarification as to whether the officers' conduct was intentional or reckless failed, and the special interrogatories did not guard

the integrity of the general verdict, as required. See *Blue v. Environmental Engineering, Inc.*, 215 Ill. 2d 78, 112 (2005). For these reasons, the special findings cannot control, and we must reinstate the general verdict.

¶ 51 The City nonetheless maintains that *Poole* precludes this result because it's impossible to determine whether Strong's conduct could be compared to that of the officers. In other words, the City maintains there was no factual finding as to whether the officers' conduct was reckless or intentional such that damages may be reduced in accordance with verdict form B.

¶ 52 In *Poole*, discussed above, the jury awarded the plaintiff Poole about $200,000 for his injuries. The trial judge reduced the award by a third due to Poole's contributory negligence, and Poole filed a motion for judgment notwithstanding the verdict arguing he was entitled to the full jury award of $200,000 because the defendants were willful and wanton under *Burke* (which had not yet distinguished reckless versus intentional willful and wanton conduct). The trial court agreed, but the supreme court reversed. As set forth, after adopting *Ziarko*, the supreme court found it was unclear from the pleadings or jury instructions which type of willful and wanton conduct the jury found defendants guilty of. The court also noted no special interrogatory was submitted on the matter. As such, the court stated it could not determine whether the damages should be reduced by Poole's contributory conduct.[6]

[6]In reaching this conclusion, we observe that *Poole* suggests but does not mandate a special interrogatory be given to distinguish reckless and intentional willful and wanton conduct. Instead, the pleadings, arguments, evidence, general jury instructions, special interrogatories, or some combination thereof must demonstrate which type of willful and wanton conduct both parties are liable of. See *Poole*, 167 Ill. 2d at 49-50; see also *Ziarko*, 167 Ill. 2d at 282 (permitting contribution between the defendants where the record did not reflect the jury found one defendant's willful and wanton conduct to have been intentional); Illinois Pattern Jury Instructions, Civil No. 14.01, Notes on Use (noting there may be a jury finding distinguishing reckless from intentional willful and wanton conduct via the instruction or a special interrogatory).

¶ 53 Significantly, *Poole* also cited the familiar standard that judgments notwithstanding the verdict must be entered "only in those cases in which all of the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors [the] movant that no contrary verdict based on that evidence could ever stand." *Poole*, 167 Ill. 2d at 50, citing *Pedrick v. Peoria & E. R. Co.*, 37 Ill. 2d 494, 510 (1967). Thus, viewing the evidence in favor of the defendant-opponents, *Poole* concluded it could not say the evidence so overwhelmingly showed they were intentionally willful and wanton such that the plaintiff's contributory negligence could not be considered in reducing damages.

¶ 54 This case reaches us at a different juncture. Here, the City was the movant seeking judgment notwithstanding the verdict based on the special interrogatories. Yet, overriding a jury's verdict is a drastic step that affects public confidence in the jury system. *Brown*, 2019 IL App (1st) 181594, ¶ 58; see also 735 ILCS 5/2-1108 (West 2018) (stating, "[u]nless the nature of the case requires otherwise, the jury shall render a general verdict."). *Id.* As such, a verdict must be allowed to stand if *any* facts exist allowing the verdict to be harmonized with the jury's special findings, even without knowing a precise basis for the jury's verdict. *Id.* "Although the law at present not only allows but requires courts to pose special interrogatories to a jury designed to undermine the often hard-fought consensus that their general verdict represents, courts have a duty to exercise all reasonable presumptions in favor of the jury's verdict." *Id.* That is just what we do now.

¶ 55 Here, as stated, the jury returned verdict form B holding the City liable and also finding Strong contributorily at fault. On this same verdict form, the jury reduced the damages by half (whereas there was no such jury finding in *Poole*). Consistent with the jury verdict, the evidence showed that both Strong and the officers were recklessly willful and wanton in their conduct. See

Mazikoske v. Firestone Tire & Rubber Co., 149 Ill. App. 3d 166, 181 (1986), citing *Moore v. Jewel Tea Co.*, 46 Ill. 2d 288, 294 (1970) (noting, the resulting general verdict will be sustained if there are one or more good causes of action or counts to support it). The police had some knowledge of the impending danger, which was the van exiting the garage. Several officers verbally warned that the van was exiting and two radio warnings were issued about a minute before the van exited, although very few of the officers heard them. Thus, officers failed to use ordinary care to prevent what was at that point an expected danger, injury to themselves from the van. They likewise could have discovered the danger by merely listening to their radios or better coordinating with one another. When the van did burst through the garage, officers then recklessly fired 76 rounds towards it, apparently without much regard to who they were firing at. Although officers claimed to aim for the driver, they shot all three burglars multiple times. See Restatement (Second) of Torts § 500(d) (1965) (noting, where a person knows or has reason to know that others are in range of his conduct involving serious risk of harm, that is conclusive of recklessness toward them). Officer Papin, who appeared to be the main reason many fired their weapons, also walked away from the scene with minimal injury.

¶ 56 Likewise, the evidence showed that Strong and his cohort knew at various points that police were by the store windows, the garage, and side entry door. As the burglars hopped into the van, police were trying to enter through the side door and yelling at them. Thus, Strong and his cohort were equally reckless in failing to acknowledge the pending danger of striking an officer or bystander when they burst through the garage door, as well as the resistance such actions would inspire in the police.

¶ 57 It is the province of the jury to resolve conflicts in the evidence, pass on the credibility of witnesses, and decide what weight should be given to witnesses' testimony. *Price*, 2018 IL App

(1st) 161599, ¶ 24. Given that the evidence in this case supported a finding of recklessness, as well as the aforementioned presumptions, we must reinstate the jury verdict of $999,999. Moreover, viewing the evidence in a light most favorable to the estate as the nonmovant, we cannot say the evidence so overwhelmingly showed that the officers were intentionally willful and wanton such that the jury was disallowed from using verdict form B to then reduce the damages. We further note that the City has effectively conceded (albeit in the context of their argument in favor of the special interrogatories) that the officers did not intend to harm Strong. This concession is consonant with the conclusion that police thereby acted in a reckless manner.

¶ 58 We note this result is also consistent with the new iteration of the statute on special interrogatories, section 2-1108 of the Code of Civil Procedure (735 ILCS 5/2-1108 (West 2020)), which applies to trials commencing on or after January 1, 2020. That new version makes the decision of whether to submit a special interrogatory a discretionary matter for the trial judge, rather than one of law garnering *de novo* review. *Cf.* 735 ILCS 5/2-1108 (West 2018). In the event of an inconsistency between the special and general verdict, the judge "shall direct the jury to further consider its answers and verdict." 735 ILCS 5/2-1108 (West 2020)). A new trial then becomes a matter of discretion if the jury cannot render a general verdict compatible with any special finding. Finally, it permits the parties during closing to explain to the jury what may result if the general verdict is inconsistent with any special finding." *Id*.

¶ 59 The amendment clearly shows the legislature's desire to place the general verdict on a pedestal as a trophy that few special interrogatories can knock down. See *Roberts*, 2021 IL 126249, ¶ 29 (reading the statute's plain and ordinary language so as to divine the legislature's intent). In short, the amendment codifies the already existing common law giving ultimate deference to the general verdict. See *Bruso by Bruso*, 178 Ill. 2d at 458. While this iteration of

section 2-1108 did not apply in the present case, tried in May 2019, we find it persuasive authority to support our result. See also *Brown*, 2019 IL App (1st) 181594, ¶ 59 (noting that cases where incompatibility arises serve as "a good illustration of the need for the increased flexibility" that the amendment of section 2-1108 aims to provide).

¶ 60 *Whether The Trial Court Erred In Granting The Summary Judgment Motion Against Givens And Dudley*

¶ 61 We next address the granting of summary judgment against Givens and Dudley under *de novo* review. See *Espinoza v. Elgin, Joliet & Eastern Ry. Co.*, 165 Ill. 2d 107, 113 (1995). Summary judgment is appropriate only when the pleadings, depositions, and admissions, together with affidavits, in the record show there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2020); *Horwitz v. Holabird & Root*, 212 Ill. 2d 1, 8 (2004). We construe the evidence strictly against the movant and liberally in favor of the nonmoving party. *Espinoza*, 165 Ill. 2d at 113. Summary judgment should not be granted unless the right of the moving party is clear and free from doubt. *Horwitz*, 212 Ill. 2d at 8.

¶ 62 As set forth, although Givens, Dudley, and Strong all participated in the events, only Strong's civil suit was permitted to proceed. The claims of Givens and Dudley were dismissed based on collateral estoppel from their criminal convictions. Criminal convictions can have an estoppel effect on civil litigation like the present when three threshold requirements are met. *American Family Mutual Insurance Co. v. Savickas*, 193 Ill. 2d 378, 387 (2000); *Enadeghe v. Dahms*, 2017 IL App (1st) 162170, ¶ 12. The issue decided in the criminal case must be identical with that in the civil case, there must have been a judgment on the merits in the criminal case, and the party against whom the estoppel is asserted must have been a party to the prior

adjudication. *Id*. In addition, no unfairness must result to the party who is estopped from relitigation. *Id*. The court, in determining whether estoppel should apply, must balance the need to limit litigation against the right to an adversarial proceeding in which a party is accorded full and fair opportunity to present his case. *Id*.

¶ 63 The only dispute before us is the identity of issues. Givens and Dudley maintain there was no identity of issues because the officers' alleged willful and wanton conduct was not litigated in their criminal cases, making collateral estoppel inapplicable. The City takes a different tact and argues the officers' conduct at first blush is irrelevant. The City maintains the criminal cases demonstrated that Givens and Dudley's "own intentional conduct caused their injuries," and precluded any finding that the officers were unjustified in the shooting. As such, the City maintains the two offenders are now barred from civil recovery.

¶ 64 The City, as the party asserting collateral estoppel, bears a heavy burden of demonstrating with clarity and certainty that Givens and Dudley's prior criminal convictions determined identical matters. See *People v. Pawlaczyk*, 189 Ill. 2d 177, 191 (2000); *Peregrine Financial Group, Inc. v. Martinez*, 305 Ill. App. 3d 571, 581 (1999). For collateral estoppel to apply, it must be conclusive that *a fact was so in issue* that it was necessarily decided by the court rendering the prior judgment. *Id*; see also *Gauger v. Hendle*, 2011 IL App (2d) 100316, ¶ 114 (collateral estoppel is narrowly tailored to fit the precise facts and issues that were clearly determined in the prior judgment). In that sense, a judgment in the first suit operates as an estoppel *only* as to the point or question actually litigated and determined and not as to other matters that might have been litigated and determined. *Gauger*, 2011 IL App (2d) 100316, ¶ 114.

¶ 65 For the reasons to follow, we reject the City's claim that collateral estoppel applies here. In *Givens*, 2018 IL App (1st) 152031-U, and *Dudley*, 2018 IL App (1st) 152039-U, this court

considered the sufficiency of the evidence to sustain the burglars' felony murder and aggravated battery convictions, among other claims. At issue was whether the felony murder statute applies when someone resisting the underlying felony (in this case the police) fired the fatal shots killing the victim (*i.e.*, Strong). In upholding the convictions, we found that liability attaches for *any* death that is a proximate or direct and foreseeable consequence of the defendant's underlying felony. We noted that encountering resistance, even if deadly, when committing a forcible felony like burglary was a direct and foreseeable consequence of the felony. We thus upheld the felony murder convictions of Givens and Dudley because Strong's death was a direct and foreseeable result of the offenders' burglary, notwithstanding that it was the police officers who shot Strong. We also upheld Givens and Dudley's aggravated battery convictions, rejecting the argument that the conduct was unknowing or reckless. We held the burglars knew there were police outside the garage and the evidence supported the jury's determination that "it was practically certain" the offenders would hit a police officer, which happened to be Officer Papin, when driving through the garage door. *Givens*, 2018 IL App (1st) 152031-U, ¶ 46; *Dudley*, 2018 IL App (1st) 152039-U, ¶ 23. We also rejected Givens and Dudley's contentions that the trial court abused its discretion in excluding evidence about the officers' use of force policy.

¶ 66 Several matters distinguish the criminal case.[7] First and foremost, with respect to felony murder, this court *did not* determine whether Givens and Dudley were intentional in murdering Strong. On appeal, we expressly observed that a defendant may be found guilty of felony murder regardless of intent, and the mental state is derived only from the underlying offense (here, burglary). *Givens*, 2018 IL App (1st) 152031-U, ¶ 26. At the criminal jury trial, for example,

[7]As to Givens and Dudley's criminal cases, we note that any discrepancies between the civil and criminal trials may be challenged in a postconviction petition. However, we offer no comment on the merits of such a petition.

consistent with the jury instructions, the State emphasized in closing arguments that "it is immaterial whether the killing is intentional or accidental," so long as a death occurs in the course of the felony. On appeal we noted that liability automatically attaches under those facts. Thus, it was clear that Givens and Dudley intended to commit burglary by knowingly entering the building absent authority and with intent to commit theft. It was likewise clear that they intended to commit aggravated battery by striking Officer Papin, knowing him to be a police officer.

¶ 67 Yet, the criminal prosecution did not conclusively determine whether under civil standards Givens and Dudley were by degrees intentionally or recklessly willful and wanton in bringing about their own injuries in the form of the substantial gunshot wounds. In that sense, this case is distinguishable form *Savickas*, 193 Ill. 2d at 388, where collateral estoppel was found to apply. There, the homeowner's insurance company was absolved from defending or indemnifying Savickas, who previously had been found guilty by a criminal jury of intentional murder. The supreme court noted his mental state was necessary to his conviction and concluded that finding established Savickas "intended or expected" the result of his actions, thus excluding him from coverage by the insurance company. Unlike in *Savickas*, the exact issue was not litigated in this case. The City's argument to the contrary that the criminal jury found the two burglars were intentional tortfeasors, which could foreclose a civil suit, must therefore be rejected.

¶ 68 Similarly, the criminal prosecution did not encompass civil tort law, where more than one person may be to blame for causing an injury. See *Leonardi v. Loyola University of Chicago*, 168 Ill. 2d 83, 100 (1995). While the criminal jury certainly found Strong's death was a direct and foreseeable result of the offenders' burglary, and thus the death was a proximate cause of

Givens and Dudley's unlawful activity, the criminal jury did not also consider whether the officers' actions or omissions directly or immediately caused the injuries. On appeal, we wrote, for example, "[t]he issue here is whether Strong's death was a foreseeable consequence of defendant's burglary, not whether the police *shooting* was foreseeable." (Emphasis in original). *Givens*, 2018 IL App (1st) 152031-U, ¶ 34; see also *Dudley*, 2018 IL App (1st) 152039-U, ¶ 27 (same). Indeed, the police potentially could be liable for willful and wanton conduct whether it contributed wholly or partly to Givens and Dudley's injuries so long as it was *one* of the proximate causes of the injury. See *Leonardi*, 168 Ill. 2d at 92-93 ("A person who is guilty of negligence cannot avoid responsibility merely because another person is guilty of negligence that contributed to the same injury.").

¶ 69 Relatedly, the criminal jury did not consider whether the police officers' actions were justified or excessive since the jury was disallowed from considering that evidence. During the criminal trial, the judge expressly excluded testimony about the general orders of the police department, stating that was better left to a civil case. On appeal, we noted "no evidence otherwise suggested that the police would not shoot under [the] circumstances." *Givens*, 2018 IL App (1st) 152031-U, ¶ 52; *Dudley*, 2018 IL App (1st) 152039-U, ¶ 42. While the defense attorneys for Givens and Dudley argued in closing that the police shooting was reckless, a result of fear, or an overreaction involving excessive force, neither defendant was permitted to fully support his theory of defense or fully litigate the matter because it was irrelevant in the criminal trial. *Cf*. *Enadeghe*, 2017 IL App (1st) 162170, ¶¶ 15-17 (noting that the defendant's prior criminal conviction for battery could serve as a basis for civil liability where the defendant had a full and fair opportunity to litigate all relevant issues in his criminal trial).

¶ 70 The focus of the criminal trial thus was on the offenders' conduct, not the officers' duty to respond appropriately to a crime consistent with their training, society's expectations, and the law. In short, the criminal case dealt with whether Givens and Dudley committed crimes against the public. The civil case is designed to deal with whether the public, *i.e.* the City via its police officers, committed wrongs against Givens and Dudley. For the reasons stated above, the City has not fulfilled its heavy burden of demonstrating with clarity and certainty that Givens and Dudley's prior criminal convictions determined identical matters as would arise in a civil proceeding. We conclude collateral estoppel does not apply to bar their civil suit.

¶ 71 We believe that fairness standards associated with collateral estoppel also dictate this result. See *Enadeghe*, 2017 IL App (1st) 162170, ¶ 12 (noting, "no unfairness must result to the party who is estopped from relitigation"). It is manifestly unjust to permit Strong's case, brought by his estate, to proceed in the civil context but not the case of Givens and Dudley, where the only distinguishing factor is that Strong died from his injuries while Givens and Dudley lived. Viewing the evidence liberally in favor of Givens and Dudley, as the nonmoving parties, summary judgment for the City should not have been granted. See *In re Estate of Barry*, 277 Ill. App. 3d 1088, 1092 (1996) (noting, summary judgment is a drastic a drastic remedy and should only be allowed when the record clearly is devoid of any genuine issue of material fact). On remand, Givens and Dudley will have the opportunity to amend their complaint, which presently alleges only battery, and proceed to trial.

¶ 72 *Trial Errors*

¶ 73 Given our holding and in the interest of judicial economy, we address several issues that are likely to recur on remand. See *Shackelford v. Allstate Fire and Casualty Insurance Company* 2017 IL App (1st) 162607, ¶ 10. Plaintiffs argue the trial court erred in barring testimony from

two employees who reviewed this police shooting for the Civilian Office of Police Accountability (COPA).[8] COPA is the civilian oversight agency of the Chicago Police Department and investigates complaints of excessive force or incidents where a person dies or sustains a serious bodily injury as a result of police actions. Here, COPA issued a final report finding the shooting justified, but prior to trial the estate's counsel noted that an investigator and supervisor from COPA had both recommended the opposite, that the shooting was *not* justified and violated police policy (notably, these employees were subsequently fired). Counsel requested that they be permitted to testify about their findings, but the trial court barred the testimony as irrelevant and distracting.

¶ 74 Plaintiffs maintain these officials should be permitted to testify on remand. The City disagrees and relies on *Bulger v. Chicago Transit Authority*, 345 Ill. App. 3d 103, 116-17 (2003), holding that evidence of a Chicago bus driver's violation of an internal rule and mandated retraining was inadmissible in a negligence suit. The City also cites another case barring evidence of post-accident remedial measures to impeach or prove prior negligence, but those cases are inapposite. Here, plaintiffs' proposed witnesses are from an independent agency responsible for assessing whether the officers' actions were justified based on misconduct complaints; the evidence does not involve post-remedial measures. Regardless, a jury may consider an officer's violation of a police department rule, along with other evidence, in reaching a determination about misconduct. See *Hoffman v. Northeast Illinois Regional Commuter Railroad Corporation*, 2017 IL App (1st) 170537, ¶ 47. We see no reason for barring testimony from those who evaluated the shooting, as they were mandated and trained to do, and found the shooting lacked justification, the very heart of the civil case. See *Ford v. Grizzle*, 398 Ill. App.

[8]COPA replaced the Independent Police Review Authority (IPRA).

3d 639, 646 (2010) **(**noting, evidence is relevant "if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence"). Of course this testimony must be limited to the investigator/supervisor's opinion on the matter and not venture into a discussion of their firing or removal from COPA.

¶ 75 Plaintiffs also contend the officers "arranged a story that the minivan struck Officer Papin in order to retroactively justify the shooting." To support this theory at trial, the estate pointed to a portion of the surveillance videotape, which has no sound, showing officers some 20 minutes after the shooting talking amongst themselves in a group and gesticulating. Some were pointing at the disabled van. The estate also proposed eliciting testimony from its expert Dr. Alpert that officers are disallowed from consulting after a shooting. We have reviewed the tape and agree with the City that this proposed evidence is entirely too speculative to support the theory that officers arranged a cover-up. See *People v. Cloutier*, 156 Ill. 2d 483, 501 (1993) (noting, evidence that is remote, uncertain, or speculative may be rejected on the grounds of relevancy). Regardless, the estate was not precluded from challenging whether the van struck Officer Papin, and this may be done again on remand.

¶ 76 Plaintiffs next contend the court should not have admitted reconstruction animation videos from several officers' points of view as demonstrative evidence. Trial testimony showed the animations were rendered from 3D laser scans of the scene at 2459 S. Western, surrounding cameras, and also the surveillance video to accurately recreate the officers' perspectives. The videos thus were admissible to aid the jury's understanding as they were relevant and fair. See *Preston ex rel. Preston v. Simmons*, 321 Ill. App. 3d 789, 801 (2001); see also *Webb v. Angell*, 155 Ill. App. 3d 848, 861 (1987) (noting, the requirements for foundation). Plaintiffs nonetheless

complain that the video from Officer Curry's perspective omits Officer Papin "running right across his face" and the videos as a whole inaccurately portray lighting, the van's headlights, and show the driver shifting the gear into drive contrary to Dudley's testimony (but consistent with that of the officers). All this goes to the weight of the evidence and not its admissibility. See *Preston ex rel. Preston*, 321 Ill. App. 3d at 801-02. On remand, the parties will have the opportunity to correct any claimed inaccuracies or to again cross-examine the animator as to them at trial.

¶ 77 Last, plaintiffs contend the trial court incorrectly excluded allegations of willful and wanton conduct as part of the issues instruction. At trial, the estate sought to instruct the jury that police officers were willful and wanton in failing to stand clear of the garage door, placing themselves before a moving van, and failing to heed verbal and radio warnings, as well as using excessive force. This conduct could be construed as a course of action showing indifference or disregard for the officers' own safety, which contributed to the excessive shooting. We agree that on remand, plaintiffs should be permitted to instruct the jury that this evidence supports a finding of reckless willful and wanton conduct by the officers. See *Lounsbury v. Yorro*, 124 Ill. App. 3d 745, 751 (1984) (noting, a court must instruct the jury on all issues reasonably presented by the evidence).

¶ 78 CONCLUSION

¶ 79 Based on the foregoing, we reinstate the jury's verdict in favor of Strong's estate for $999,999. We therefore reverse the trial court's judgment notwithstanding the verdict. We also reverse the trial court's granting of summary judgment against Givens and Dudley and remand the case for proceedings consistent with this opinion.

¶ 80 Reversed; remanded, in part.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-LAW DIVISION

Rev. 3/18

Plaintiffs GIVENS / STRONG

-v-

Defendants CITY OF CHICAGO,

NO: 16 L 10160

Motion Call: "X" Time: 11:30 Line #: ____

2005 Trial Date: 5/13/19

CASE MANAGEMENT ORDER

(Please check off all pertinent paragraphs and circle proper party name)

(4231) ____ 1. Written, 213(f)(1), (f)(2) and 214 discovery to be **issued** by _____ *or deemed waived;*

(4296) ____ 2. Written, 213(f)(1), (f)(2) and 214 discovery to be **answered** by _____;

(4218) ____ 3. Party depositions, fact, 213(f)(1) and/or (2) depositions to be **completed** by _____;

(4297) ____ 4. Plaintiff to send list & addresses of treaters and HIPAA order to Defendant(s) by _____;

(4288) ____ 5. Subpoenas for treating physicians' records/deps to be **issued** by _____ *or deemed waived;*

(4218) ____ 6. Treating physicians depositions to be **completed** by _____;

(4231) ____ 7. All dispositive motions shall be filed **no later than** _____;

(4296) ____ 8. All SCR 215 & 216 discovery **completed** by _____;

(4206) ____ 9. (Plaintiff) - (Defendant) - (Add. Party) shall **answer** 213 (f)(3) Interrogatories by _____;

(4218) ____ 10. **Plaintiff's 213(f)(3)** witnesses' depositions to be **completed** by _____;

(4218) ____ 11. **Defendant's 213(f)(3)** witnesses' depositions to be **completed** by _____;

(4218) ____ 12. **Add. party's 213(f)(3)** witnesses' depositions to be **completed** by _____;

(4295) ____ 13. **All fact discovery, SCR 213(f)(1), (f)(2), 215(a) and 216 discovery is closed.** *(Circle all applicable)*

(4619) X 14. The matter is continued for subsequent Case Management Conference on _____ at _____ AM/PM in Room 2205 for:

(A)____ Proper Service (B)____ Appearance of Defendants (C)____ Case Value
(D)____ Pleadings Status (E)____ Discovery Status (F)____ Pre-Trial/Settlement
(G)____ Mediation Status (H)____ Trial Certification (I)____ Other

(1) CITY OF CHICAGO'S MOTION FOR SUMMARY JUDGMENT IS GRANTED ON ISSUE OF COLLATERAL ESTOPPEL AS TO GIVENS & DUDLEY, AND IS DENIED AS TO EST. OF DAVID STRONG. STRONG'S MOTION TO FILE FIRST AMENDED COMPLAINT IS GRANTED; GIVENS' MOTION TO AMEND IS MOOT.

(4005) ____ 15. Case is DWP'd. (4040) ____ The case is voluntarily dismissed pursuant to 735 ILCS 5/2-1009.

(4331) ____ 16. Case stricken from CMC Call (4284) ____ Motion Stricken or Withdrawn from Call (4330) ____ Case stricken from Motion Call.

NAME: M/W
ADDRESS: 1440 S. DEARBORN 1600
PHONE: 312 322 2619
ATTY ID#: 56491
ATTY FOR PARTY: P
NOTICE:

ENTER:

(2) The Court finds that there is No just reason to delay enforcement or appeal of the Court's granting of summary judgment as to the claims of Givens and Dudley.

JUDGE

Judge Brendan A. O'Brien

MAY 10 2019

Circuit Court - 2175

★ *COPIES OF ALL PRIOR CMC ORDERS MUST BE BROUGHT TO ALL CMC COURT DATES.*

★ *FAILURE OF ANY PARTY TO COMPLY WITH THIS CMC ORDER WILL BE A BASIS FOR SCR 219(C) SANCTIONS. FAILURE OF ANY PARTY TO ENFORCE THIS CMC ORDER WILL CONSTITUTE A WAIVER OF SUCH DISCOVERY BY THAT PARTY.*

16L10768 Givens John, et al. v. City of Chicago

127837

VERDICT FORM B

We, the jury, find for plaintiff, Theresa Daniel, Administrator of the Estate of David Strong, deceased, and against the defendant, City of Chicago.

We further find the following:

D
801

First: We find that the total amount of damages suffered by Theresa Daniel, Administrator of the Estate of David Strong, deceased is $ 1,999,998, itemized as follows:

Loss of money, benefits, goods and services: $ Ø

Grief, sorrow and mental suffering: $ 1,000,000

Loss of society: $ 999,998

PLAINTIFF'S TOTAL DAMAGES: $ 1,999,998

Second: Assuming that 100% represents the total combined fault of all persons or entities whose fault proximately caused the death of David Strong, we find the percentage of fault attributable to each as follows:

a) David Strong 50 %

b) Defendant City of Chicago 50 %

Third: After reducing the plaintiff's total damages from paragraph "First" by the percentage of fault, if any, of David Strong from line (a) in paragraph "Second," we award Theresa Daniel as Special Administrator of the Estate of David Strong recoverable damages in the amount of $ 999,999.

Foreperson

Melissa Vera

DR

FILED
D3
MAY 30 2019
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

ENTERED
Judge Bridgett Hughes -1955
MAY 30 2019
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

C 1624

16L10768 Gibbons John, et al. v. Chicago 127937

SPECIAL INTERROGATORY #1

At the time deadly force was used, did the Chicago Police Officers who used deadly force engage in a course of action without legal justification, which showed an actual or deliberate intention to harm David Strong?

YES _____

NO X

JH 5/30
JEH MEISTER
Foreperson

Mary Beth Welch
Andy Ou
Melissa Vera
Leni Taylor
Celia Delgado Ordaz

FILED
D3
MAY 30 2019
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

D.R
ENTERED
Judge Bridgett Hughes - 1955
MAY 30 2019
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

16L10768 Givens John, et. al. v. City of Chicago 127837

SPECIAL INTERROGATORY #2

At the time deadly force was used, did the Chicago Police Officers who used deadly force engage in a course of action without legal justification, which showed an utter indifference or conscious disregard for the safety of others?

YES _____

NO X

JEFF MEISTER 5/30
Foreperson

FILED
D3
MAY 30 2019
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

ENTERED DR
Judge Bridgett Hughes - 1955
MAY 30 2019
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

16L10768 Givens John, et al. v. City of Chicago 127837

SPECIAL INTERROGATORY #3

At the time deadly force was used against David Strong, did the Chicago Police Officers who used deadly force reasonably believe that such force was necessary to prevent imminent death or great bodily harm?

YES _____

NO X

Foreperson

ENTERED
Judge Bridgett Hughes - 1955
MAY 30 2019
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

FILED
D3
MAY 30 2019
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

THERESA DANIEL, AS SPECIAL ADMINISTRATOR OF THE ESTATE OF DAVID STRONG, DECEASED, Plaintiff, v. CITY OF CHICAGO, Defendant.	Case No. 16 L 10768 The Honorable Bridget J. Hughes

OPINION AND ORDER

I. OPINION

On May 30, 2019, the jury returned a verdict against the defendants, City of Chicago and in favor of the plaintiff, Theresa Daniel, as special administrator of the estate of David Strong, deceased, in the amount of $1,999,998.00. The jury signed Verdict B and further found that the plaintiff, David Strong, was 50% contributorily willful and wanton and thus reduced the award to $999,999.

In addition, the jury answered three special interrogatories. The first special interrogatory asked, "At the time deadly force was used, did the Chicago Police Officers who used deadly force engage in a course of action without legal justification, which showed an actual or deliberate intention to harm David Strong?" The jury answered, "NO." The second special interrogatory asked, "At the time deadly force was used, did the Chicago Police Officers who used deadly force engage in a course of action without legal justification, which showed an utter indifference or conscious disregard for the safety of others?" The jury answered, "NO." The third interrogatory asked, "At the time deadly force was used against David Strong, did the Chicago Police Officers who used deadly force reasonably believe that such force was necessary to prevent imminent death or great bodily harm?" The jury answered, "NO."

Based on the jury's negative answer to the issue of whether the Chicago Police Officers engaged in willful and wanton conduct, without legal justification, special interrogatory #1 and special interrogatory #2, the Defendants moved for judgment in its favor and against the Plaintiff. After a hearing and reviewing briefs filed by each party, a verdict will be issued in favor of the Defendant and against the Plaintiff pursuant to *735 ILCS 5/2-1108*. The answers to the first and second interrogatories control the verdict.

In order to find for the Plaintiff, the jury must have found that the Chicago Police Officers actions were willful and wanton and without legal justification when they collectively caused the death of David Strong. The Plaintiff presented two claims of willful and wanton conduct, intentional and reckless. The Defendant presented the affirmative defense of Plaintiff's contributory willful and wanton conduct. Pursuant to *Poole v. City of Rolling Meadows*, a plaintiff's damages could be reduced by the percentage of his contributory negligence if the defendant's conduct amounted to reckless willful and wanton conduct. 167 Ill.2d 41 (1995). However, if the defendant's willful and wanton conduct was intentional, there would be no reduction in damages. *Id.*

A submissible claim concerning the Plaintiff's contributory willful and wanton conduct was presented at trial. Multiple jury instruction conferences were held between the parties prior to closing arguments. The trial court was concerned as to whether the jury was properly informed of the law as directed by the Illinois Supreme Court in *Poole* and the Illinois Pattern Jury Instruction for willful and wanton conduct. Neither party presented a verdict form, nor a special interrogatory to account for the fact that if the jury found in favor of the Plaintiff, it would then be required to make a special finding as to whether the Defendant's willful and wanton conduct was the "intentional" kind or the "reckless" kind. The trial court suggested a version of special interrogatory #1 and #2 would satisfy this requirement or in the alternative, the Plaintiff could proceed with only one claim of willful and wanton conduct. If the Plaintiff proceeded with one claim of willful and wanton conduct there would be no need to inquire as to the jury's finding and possibly no reduction in damages due to Defendant's affirmative defense of contributory willful and wanton conduct.

The Plaintiff chose to proceed with both claims of willful and wanton conduct and, with minor changes to each question, special interrogatory #1 and #2 were prepared and presented to the jury along with all other instructions. The Plaintiff objected to special interrogatory #1 and #2 and suggested that the specific finding be in the verdict form and not in a special interrogatory. The plaintiff did not propose a different verdict form. During closing arguments, the Plaintiff argued to the jury that there was evidence of both intentional and reckless willful and wanton conduct and that the jury should answer "yes" to both special interrogatory #1 and #2. The Defendant argued multiple theories as to why the Chicago Police Officers were legally justified in the use of deadly force and therefore the jury should answer "no" to special interrogatory #1 and #2.

Three forms of verdict were presented to the jury along with three special interrogatories. The jury signed and returned verdict form B, finding in favor of the Plaintiff's decedent but reducing the award by 50% due to his contributory willful and wanton conduct. However the jury answered "NO" to special interrogatory #1 and #2, finding that the defendants did not engage in willful and wanton conduct without legal justification on either theory. The jury also answered 'NO" to special interrogatory #3.

The Plaintiff claims that due to multiple reasons, special interrogatory #1 and #2 were not in proper form, and are not absolutely irreconcilable with verdict form B and should be disregarded. Plaintiff first argues that special interrogatory #1 and #2 asks the jury to separately answer a question of fact for each of the plaintiff's claims, and thus they are improper. The plaintiff argues that the interrogatories are co-dependent and that an interrogatory must, standing alone, be dispositive of an issue in the case. However, plaintiff reaches this conclusion by wrongly assuming that the jury could return only one general verdict. Here, the jury received three possible verdicts, Verdict A, Verdict B or Verdict

C. Interrogatory #1 and #2 separately focused on an ultimate issue of fact for each of the plaintiff's claims. Interrogatory # 1 focused on the element of intentional willful and wanton conduct. Interrogatory #2 focused on the element of reckless willful and wanton conduct.

The Illinois Supreme Court held that special interrogatories need not contain or address every single element of an underlying cause of action, but may separately focus on one or several separate elements that are dispositive of a claim. *Simmons v. Garces*, 198 Ill. 2d 541 (2002). Additionally the Supreme Court found that an interrogatory is proper if the answer would control *some general verdict* that the might be returned. *Id.* (emphasis added).

Interrogatory #1 and #2 were not improper because they separately asked the jury to determine which claim of willful and wanton conduct they found against the defendant. The language in each interrogatory was taken directly from the definition of willful and wanton conduct in the Illinois Pattern Jury Instructions. The entire definition of willful and wanton conduct was read and given to the jury. *Chapter 14, Notes on Use*, specifically suggests the need for a special interrogatory or verdict to determine which form of willful and wanton conduct the jury finds liability if both are pled. *Ill. Pattern Civil Jury Instr. (2017-18), Chapter 14.00* Each interrogatory asked a single, straightforward question as to an ultimate issue of fact which was dispositive of plaintiff's claim, namely, whether the defendants engaged in either intentional willful and wanton conduct or reckless willful and wanton conduct. In this case, plaintiff made two separate claims therefore the special interrogatory #2 was a proper check against *a verdict* (Verdict B) that the jury returned.

Plaintiff cites *Northern Trust Co. v. Univ. of Chicago*, to support his position that special interrogatories which address only one theory of a claim are improper. 355 Ill. App.3d 230 (1st Dist 2004). This case is not persuasive as it presents facts that are distinguishable to the present case. In *Northern Trust*, the special interrogatories were not independently dispositive of the claims at issue. *Id at 253*. Here, special interrogatory #1 and #2 were independent and would serve as a check against general verdict.

Secondly, plaintiff claims that Interrogatory #2 is not a check against verdict B because it did not include the name David Strong and instead used the pronoun "others." Plaintiff claims that since special interrogatory #1 included the name David Strong but special interrogatory #2 did not include the name David Strong, the jury could have concluded that special interrogatory #2 referred to people other than David Strong. Again, the trial court disagrees with this argument. Special interrogatories must be considered together in light of the other instructions to determine how the interrogatory was understood or if there might have been confusion. *Simmons v Garces*, 198 Ill. 2d 541 563 (2002); *LaPook v City of Chicago*, 211 Ill. App. 3d 856, 866 (1991).

Here, special interrogatory #2 was a check against reckless willful and wanton conduct. Reckless willful and wanton conduct was an ultimate issue of fact that the jury decided. Special interrogatory #2 was drafted directly from the definition of reckless willful and wanton conduct consistent with IPI 14.01. The interrogatory was not a misstatement of the law. Plaintiff made a general objection to both interrogatories but never suggested another version, nor requested "David Strong" be included. It is not convincing that the jury could have interpreted "others" to not include David Strong. The plaintiff had the opportunity to explain to the jury who was included in the definition of "others." The only people injured were the individuals in the van, which included David Strong. No police officer was shot or

injured by another police officer. No innocent bystander was shot or injured by a police officer. It is a self-serving conclusion to now argue that special interrogatory #2 was confusing when read in conjunction with special interrogatory #1. The proper way to interpret a special interrogatory is the way a reasonable juror would interpret it in light of all other instructions and evidence in the case and not based on a new argument made by counsel after the trial has concluded. *Mudd v. Goldblatt Bros., Inc*, 118 Ill. App 3d 431 (1st Dist. 1983); *Morton v. City of Chicago*, 286 Ill 3d 444 (1st Dist. 1997); *LaPook v. City of Chicago*, 211 Ill. App. 3d 856, 866 (1991)

The final issue is whether the jury's answer to special interrogatory #3 controls the verdict. It does not due to the fact that it was not dispositive of an ultimate issue of legal justification. Similarly and pursuant to *Price v. City of Chicago*, the law that controlled the outcome of this case included the definitions of willful and wanton conduct and legal justification. 2018 IL App (1st) 161599. Just as plaintiff presented two theories of willful and wanton conduct, the defendant presented three theories of legal justification. Defendant's theories of legal justification were essentially as follows: 1) deadly force was necessary to prevent death or great bodily harm; or 2) deadly force was necessary to prevent..the commission of a forcible felony; or 3) deadly force was necessary to prevent the arrest from being defeated by resistance or escape and the person arrested has committed a forcible felony which involves the infliction or threat of infliction of great bodily harm.

Interrogatory #3 tested only one theory of legal justification, whether or not the officers reasonably believed that deadly force was necessary to prevent death or great bodily harm. The negative answer by the jury to interrogatory #3 did not resolve whether the officers were legally justified in the use of deadly force. There were two other theories of legal justification that the jury could have found that the officers were legally justified in the use force and the two theories were supported by the evidence. Special interrogatory #3 was not dispositive of an ultimate issue. A negative answer to interrogatory #3 does not establish a lack of legal justification.

For all of the foregoing reasons, the judgement is entered in favor of the defendant, City of Chicago.

II. ORDER

THEREFORE, IT IS HEREBY ORDERED THAT:

Judgement is entered in favor of the defendant, City of Chicago.

9107

ENTERED
Judge Bridgett Hughes -1955
JUN 21 2019
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Entered:

Judge Bridget J. Hughes

No. 1-19-_____

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

APPEAL TO THE ILLINOIS APPELLATE COURT
FIRST JUDICIAL DISTRICT

JOHN W. GIVENS, LELAND DUDLEY, and THERESA DANIEL as Special Administrator of the Estate of DAVID STRONG, deceased,	)	
Plaintiffs-Appellants,	)	
v.	)	No. 16 L 10768
CITY OF CHICAGO,	)	
Defendant-Appellee.	)	

PLAINTIFF'S NOTICE OF APPEAL

Please take notice that the plaintiffs-appellants, JOHN W. GIVENS and THERESA DANIEL, as Special Administrator of the Estate of DAVID STRONG, deceased, through their undersigned attorneys, are hereby appealing to the Appellate Court of Illinois, First Judicial District, the following Orders and Judgment entered by the Circuit Court of Cook County, Illinois, copies of which are attached to this Notice of Appeal and incorporated by reference as if fully delineated herein:

1. The June 21, 2019 Judgment entered in favor of the defendant-appellee, City of Chicago and against the plaintiffs-appellants;

2. The May 10, 2019 Summary Judgment Order and the June 6, 2019 Order (which modified the May 10, 2019 Order, in part), entering summary judgment in favor of the defendant-appellee and against the plaintiff-appellant, John W. Givens; and

3. The November 4, 2019 Order denying the plaintiffs-appellants' Post-trial Motion.

By this appeal, the plaintiffs-appellants will ask the Appellate Court of Illinois to:

1. To vacate and reverse the June 21, 2019 Judgment entered in favor of the defendant-appellee, City of Chicago and against the plaintiffs-appellants;

2. To vacate and reverse the May 10, 2019 Summary Judgment Order which entered summary judgment in favor of the defendant-appellee and against the plaintiff-appellee, John W. Givens;

3. To vacate and reverse the November 4, 2019 Order denying the plaintiffs-appellants' Post-trial Motion;

4. As to the plaintiff-appellant, THERESA DANIEL, as Special Administrator of the Estate of DAVID STRONG, deceased, to remand with instructions to the circuit court to:

a. enter judgment on the jury's verdict, as reduced, in the amount of $999,999.00 (nine hundred ninety nine thousand, nine hundred ninety nine and no/100 dollars); or alternatively,

b. enter judgment on the jury's verdict in the amount of $1,999,998.00 (one million, nine hundred ninety nine thousand, nine hundred ninety nine and no/100 dollars); or alternatively,

c. order a new trial on damages, only; or alternatively

d. enter any such other relief as the court deems equitable, appropriate and just.

5. As to the plaintiff-appellant, JOHN W. GIVENS, to remand with instructions to the circuit court to:

a. vacate and reverse the May 10, 2019 Summary Judgment Order which entered summary judgment in favor of the defendant-appellee and against the plaintiff-appellee, John W. Givens; and

b. order a new trial on all issues, including liability and damages, or alternatively,

c. order a new trial on damages only, or alternatively,

d. enter any such other relief as the court deems equitable, appropriate and just.

Respectfully submitted,

/s/ Brion W. Doherty

One of the attorneys for the plaintiffs-appellants, JOHN W. GIVENS and THERESA DANIEL, as Special Administrator of the Estate of DAVID STRONG, deceased

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Firm I.D. No. 38932

No. 1-19-_____

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

APPEAL TO THE ILLINOIS APPELLATE COURT
FIRST JUDICIAL DISTRICT

JOHN W. GIVENS, LELAND DUDLEY, and BERNICE STRONG as Special Administrator of the Estate of DAVID STRONG, deceased,	)	No. 16 L 10768
Plaintiffs-Appellants,	)	
v.	)	
CITY OF CHICAGO,	)	
Defendant-Appellee.	)	

PLAINTIFF'S NOTICE OF APPEAL

Please take notice that the Plaintiff-Appellant LELAND DUDLEY, through his attorney THE MEMMEN LAW FIRM, is hereby appealing to the Appellate Court of Illinois, First Judicial District, the following Orders and Judgment entered by the Circuit Court of Cook County, Illinois, copies of which are attached to this Notice of Appeal and incorporated by reference as if fully delineated herein:

1. The June 21, 2019 Judgment entered in favor of the defendant-appellee, City of Chicago and against the plaintiff-appellant;
2. The May 10, 2019 Summary Judgment Order and the June 6 2019 Order (which modified the May 10, 2019 Order, in part) entering summary judgment in favor of the defendant-appellee and against the plaintiff-appellant, Leland Dudley; and
3. The November 4 2019 Order denying the plaintiff-appellant's Post-trial Motion.

By this appeal, the plaintiffs-appellants will ask the Appellate Court of Illinois to:

1. To vacate and reverse the June 21, 2019 Judgment entered in favor of the defendant-appellee, City of Chicago and against the plaintiff-appellant;

2. To vacate and reverse the May 10 Summary Judgment Order which entered summary judgment in favor of the defendant-appellee and against the plaintiff-appellant, Leland Dudley;
3. To vacate and reverse the November 4, 2019 Order denying the plaintiff-appellant's Post-trial Motion;
4. As to the plaintiff-appellant, Leland Dudley, to remand with instructions to the circuit court to:
    a. Vacate and reverse the May 10 2019 Summary Judgment Order which entered summary judgment in favor of the defendant-appellee and against the plaintiff-appellant, Leland Dudley; and
    b. Order a new trial on all issues, including liability and damages, or alternatively;
    c. Order a new trial on damages only, or alternatively,
    d. Enter any such other relief as the court deems equitable, appropriate, and just.

Alexander McH. Memmen (#6290208)

The Memmen Law Firm, LLC
Cook County: 52431
505 North LaSalle, Suite 500
P. 312.878.2357
F. 312.794.1813

Respectfully Submitted,
LELAND DUDLEY

/s/ Alexander McH. Memmen
By one of Plaintiffs' attorneys

CERTIFICATE OF SERVICE

I, the undersigned, under penalties as provided by law pursuant to 735 ILCS 5/1-109, depose and state that I served the foregoing Notice and listed documents on all persons of record at their respective addresses by electronic mail on December 4, 2019.

/s/ Alexander McH. Memmen
Alexander McH. Memmen

TABLE OF CONTENTS OF THE RECORD ON APPEAL

Common Law Record

Volume One of Two

Volume Two of Two

Reports of Proceedings

Volume One of One

OPENING STATEMENTS

WITNESSES

Guadalupe Lopez

Jonathan Michel

Adrian Valadez

WITNESSES

Geoffrey Alpert, Ph.D.

Daniel Lopez

Theresa Daniel

WITNESSES

Terrence Pratscher

WITNESSES

Officer Daniel Vazquez

Officer Jorge Mendez

WITNESSES

Officer Michael Papin

Video Evidence Deposition Of Dr. Danielo Perez

WITNESSES

Manuel Gonzalez

Supplement to the Record

Volume One of One