No. 126577

In the

Supreme Court of Illinois

JANE DOE,

Plaintiff-Appellant / Cross-Appellee,

v.

BEAU PARRILLO,

Defendant-Appellee / Cross-Appellant.

On Leave to Appeal from the Illinois Appellate Court,
First Judicial District, No. 1-19-1286.
There Heard on Appeal from the Circuit Court of Cook County, Illinois,
County Department, Law Division, No. 16 L 012247.
The Honorable **James M. Varga**, Judge Presiding.

APPELLANT'S REPLY BRIEF AND RESPONSE TO REQUEST FOR CROSS-RELIEF

RANDALL B. GOLD, ESQ.
(rgoldlaw@aol.com)
FOX & FOX, S.C.
124 West Broadway
Monona, Wisconsin 53716
(608) 258-9588

DANIEL J. VOELKER
(dvoelker@voelkerlitigationgroup.com)
VOELKER LITIGATION GROUP
33 North Dearborn Street
Suite 1000
Chicago, Illinois 60602
(312) 870-5430

Counsel for Appellant Jane Doe

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REPLY BRIEF

ARGUMENT

A. The Jury Was Presented With Overwhelming Evidence In This Case That Defendant Acted Willfully And Maliciously.

In his Response Brief, Defendant makes much about the "quantum" of evidence elicited by Plaintiff at trial. Defendant, for example, argues that the text messages that the jury viewed during deliberations, *i.e.,* that he sent to Plaintiff after sexually assaulting her - did not contain the words "murder"' or "kill." (Response Brief at pp. 3 and 13-14). Defendant also argues that the photographs of Plaintiff's battered body were "fake and doctored" and "fraudulently doctored." (Response Brief at pp. 16 and 24). Finally, Defendant claims that his "affirmative defenses of self-defense, consent and provocation indicate that his conduct was not reprehensible as alleged by the plaintiff." (Response Brief at pp. 8, 11 - 12 and 17).

As if Plaintiff's trial testimony of sexual assault was not enough, Defendant – more than two (2) years since the January 15, 2019 trial of this matter–improperly seeks to contest the severity, credibility and, indeed, the admissibility of probative physical evidence and testimony introduced at trial. However, Defendant has ignored a, if not *the,* cardinal rule of appellate advocacy, *i.e.* a litigant may ***not*** argue facts or evidence that is neither in the record nor was timely presented to the jury. *Dropp v. Village of Northbrook,* 257 Ill. App. 3d 820, 824, 630 N.E.2d 84 (1st Dist. 1993). Further, Defendant

was in Chicago, Illinois, at the time of the trial of this matter, but chose not to attend the trial and, instead, simply submitted an Affidavit to the Court in order to obtain a continuance – falsely claiming that he was in Florida by his sick father's side - when he was not. (R 199, L6-L8, 14-17, 23, R 207, L17). Defendant has no one to blame but himself for his predicament.

As even Defendant recognizes, under the manifest weight of the evidence standard, a factual finding will only be overturned "when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary or not based upon the evidence." *Goldberg v. Astor Plaza Condo Ass'n,* 2012 IL App (1st) 110620, ¶ 60. Such an "opposite conclusion" cannot, however, be based upon facts *not in evidence*. Otherwise, it would, quite literally, be impossible to obtain a fair and just appellate review and to bring any litigated matter to proper and final conclusion.

B. The Appellate Court's Decision Is At Odds With Established Illinois Law And Defendant Adds Nothing To Refute That Fact.

The principal argument made by Plaintiff in this appeal is that the appellate court, in its decision, ignored long-standing precedents of this Court governing punitive damage awards. While Defendant concedes that the appellate court cited and was plainly aware of this legal precedent, it did not follow them. Instead, as argued in her Opening Brief, the Appellate Court essentially created its own bright-line test for the constitutionality of a punitive damages award. That bright-line test conflicts with long-standing

decisions of both this Court and the United States Supreme Court regarding punitive damages.

As set forth in her Opening Brief, a reviewing court may not disturb an "award of punitive damages on ground that the amount is excessive unless it is apparent that the award is the result of passion, partiality or corruption" - which the appellate court in this instance did not find. *Deal v. Byford,* 127 Ill. 2d 192, 204 (1989). Moreover, "[t]here is no requirement that the amount of punitive damages imposed on a defendant bear any particular proportion to the size of the plaintiff's compensatory recovery." *Id. See also*, *International Union of Operating Engineers, Local 150 v. Lowe Excavating Co.,* 225 Ill. 2d 456, 490-91 (2006) (approving punitive damages award to compensatory damages award in a ratio of 11 to 1). This is, of course, a larger ratio than the 8 to 1 award ratio rendered by the jury in the instant case.

The appellate court's decision should be reversed since it also ignores decisions of the United States Supreme Court holding that a punitive damages award as a single digit multiplier of the compensatory damages award is not violative of the United States Constitution. *BMW of North America v. Gore,* 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996); *State Farm Mut. Auto Ins. Co. v. Campbell,* 538 U.S. 408, 425, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003) ("Single digit multipliers are more likely to comport with Due Process, while still achieving the State's goals of deterrence and retribution…."). Here, the jury's punitive damage ratio of 8 to 1 is a single digit multiplier.

In his Response Brief, Defendant essentially does not attempt to explain how the decision of the appellate court in the instant case comports with this long-standing legal precedent. Instead, Defendant merely argues generally that the punitive damages award assessed against him was excessive and violated Due Process without any salient legal analysis or discussion.

Rather, Defendant argues what he believes his trial evidence *would* have shown - if he and his two (2) attorneys had defended him at trial. In distinguishing *Deal* and *International Union*, Defendant argues that "[a]t a minimum, in those cases the defendant and his counsel were present and participated in the proceedings." (Response Brief at 17). This, however, is a separate issue and not a relevant to whether the punitive damages actually awarded in the instant case comport with Due Process.

And Due Process is not a sliding scale based upon a defendant's subjective view of the quality of his legal defense in a given case. Instead, it is the right and obligation of the trier of fact to determine the amount of the punitive damages award while fulfilling the definitions and limitations in the punitive damages instructions provided by the trial court. This is precisely what the jury did under the circumstances.

Here, as the trial court also aptly observed, the harm to Plaintiff here was of the most severe kind, which in a civilized society cannot and will not ever be tolerated: "[t]his lady was raped" and "[s]he was the victim of sexual assault, physical assault, mental, psychological assault." (RT 160, L 23 - 24;

and L 16 - 18). That is the clear verdict - and strong message – that the jury sent to Defendant.

Plaintiff further submits that if Defendant *truly* believed there was an innocent construction to the text messages introduced at trial, then he should have so testified. Similarly, if Defendant really believed that the photographs showing Plaintiff battered, bruised and bloody were "fraudulently doctored" or "fake and doctored," then he should have so testified. (Response Brief at pp. 16 and 20). Yet he did not. Instead, he chose, by his own admission, to submit a false Affidavit in a desperate attempt to avoid defending himself at trial.

For all these reasons, as well as those addressed below in opposition to Defendant's request for cross-relief, Plaintiff requests that this Court reverse in full the reduction of Plaintiff's punitive damage award imposed by the appellate court, and affirm in all other respects.

ARGUMENTS IN OPPOSITION TO DEFENDANT-APPELLEE'S REQUEST FOR CROSS-RELIEF

A. Defendant And His Attorneys Made A Deliberate Decision Not To Defend This Case And To Abandon The Trial.

On January 15, 2019, after hearing the evidence and receiving the exhibits and unopposed jury instructions given by the trial court, a twelve (12) person jury awarded damages in favor of Plaintiff and against Defendant in the amount of: $1,000,000 in compensatory damages and $8,000,000 in punitive damages, for a total award of $9,000,000 (the "Judgment"). During the trial, defense counsel were "standing in the hallway and looking through the glass doors." (R C915 V2). Later, both defense attorneys were present in the courtroom during the start of jury deliberations. After the jury reached its decision, both defense attorneys were also present in the courtroom when the Court entered judgment on the $9,000,000 jury award. (R C911 V2).

Both of Defendant's lawyers, Allison K. Muth ("Muth") and Robert Holstein ("Holstein"), are experienced – yet chose not to defend their client in this case or move to continue. "Not only did defendant's attorneys fail to present an emergency motion to continue trial, one failed to appear for jury selection and one appeared but chose not to participate in jury selection." (R C911 V2). The trial court also found that "…Beau Parrillo lied (or did not tell the truth) to get a trial continuance." (R C914 V2).

Defendant now wants a "do – over," *i. e.* a new trial before a new trial judge. Given the record evidence in this matter, including Defendant's abusive

conduct towards Plaintiff, as well as his own disdain for the rule of court, and decision to avoid or unduly delay trial by lying to the trial court, he is not so entitled. As observed by the trial court, "Defendant's efforts, through his attorneys, are the most audacious attempt to undermine the judicial process which this Court has seen in over twenty-four (24) years." (R C913 V2). "The Court concludes that they walked away from the trial and abandon[ed] it." (R C915 V2). Plaintiff submits that nothing more need - or could – be said to describe Defendant's actions in this entire matter.

In his Response Brief, Defendant also raises numerous arguments as to why the Judgment should be vacated and he should be granted a new trial. Not surprisingly, these arguments fail to acknowledge that all of Defendant's objections were effectively waived as he knowingly failed to appear at trial and defend himself. Waiver is commonly defined as "the intentional relinquishment of a known right." *Ryder v. Bank of Hideaway Hills,* 146 Ill.2d 98, 104, 585 N.E.2d 46 (1991). That is precisely what occurred here.

The record also reflects that the trial court went to great lengths to afford defense counsel every reasonable opportunity to defend Defendant – including waiting for his (supposed) return to Chicago for trial, and present an emergency motion for a continuance before the Presiding/Assignment Judge in Courtroom 2005 where it had been noticed for hearing. As the trial court observed, "[t]he Court held the case for one day. The Court and the attorneys

agreed to start jury selection the following day and stop selection for Ms. Muth to present her motion on the 11:00 a.m. call." (R C915 V2).

Defendant deliberately failed to pursue any of these courses. Rather, in what can be fairly described as egregious gamesmanship, defense counsel presented to the trial court - and without prior notice to Plaintiff's counsel – a Motion for Mistrial *during the jury deliberations*. This motion, of course, was properly denied.

B. Defendant's Motion For Continuance (And Motion For Mistrial) Of The Trial Was At Best Unwarranted.

It is well-established that the decision to grant or deny a motion for continuance is within the sound discretion of the trial court and will not be disturbed on appeal "unless it has resulted in a palpable injustice or constitutes a manifest abuse of discretion." *Wine v. Bauerfreund*, 155 Ill. App. 3d 19, 22, 507 N.E.2d 155 (1987). A circuit court's ruling is considered an abuse of discretion only when it is arbitrary, fanciful, or unreasonable, or when no reasonable court would take the same view. *Roach v. Union Pacific R.R.*, 19 N.E.3d 61, 385 Ill. Dec. 503, 2014 IL App (1st) 132015, ¶ 20.

Supreme Court Rule 231(f) provides that "[n]o motion for the continuance of a cause made after the cause has been reached for trial shall be heard, unless a sufficient excuse is shown for the delay." Ill. S. Ct. R. 231(f) (eff. Jan. 1, 1970). Once the case reaches the trial stage, the party seeking a continuance must provide the court with "especially grave reasons" for the continuance because of the potential inconvenience to the witnesses, the

parties, and the court. *In re Marriage of Ward*, 282 Ill. App. 3d 423, 430-31, 668 N.E.2d 149 (1st Dist. 1996). According to local circuit court rules, a continuance "shall not be granted upon the ground of substitution or addition of attorneys." *K&K Iron Works, Inc. v. Marc Realty, LLC*, 2014 IL App (1st) 133688, ¶ 23, 21 N.E.3d 1190, 1195-96 (citing to Cook Co. Cir. Ct. R. 5.2(b) (July 1, 1976)).

The record here also shows that Defendant had an adequate opportunity to present his motion for a continuance of the trial. On January 7, 2019, attorney Muth was present at the trial certification hearing. (R C332). Defendant did not ask the Court for a continuance at such time.

Attorney Muth then filed an emergency motion to continue trial on February 13, 2019, but failed to attach an appropriate affidavit pursuant to Illinois Supreme Court Rule 231. On January 14, 2019, attorney Holstein filed his appearance on behalf of Defendant and appeared in the trial court on his behalf. Attorney Holstein was also present in Court on January 14, 2019, when the Presiding/Assignment Judge in Courtroom 2005 assigned this matter for trial in Courtroom 2406 before the Honorable Judge James A. Varga. (R C15; R C882-883, ¶¶ 4-5). Defendant also admits that attorney Holstein "agreed to assist Muth with the procedural aspects of the trial…." (R C882, ¶4). Why attorney Holstein chose not to stand up and present a motion for continuance to the Presiding/Assignment Judge, or to at least inform the

Presiding/Assignment Judge of the purported problems of Defendant and Muth, is unknown.[1]

And when the case was assigned to Judge Varga for trial, he afforded defense counsel every reasonable opportunity to properly seek a continuance of the trial. Despite continuing the trial for an entire day (or 24 hours), neither Holstein nor Muth presented a motion for the same to the Presiding/Assignment Judge as they said they intended to do. Again, both attorneys appeared in Judge Varga's courtroom on both January 14, 2019, and January 15, 2019, but did nothing to continue the trial. (R C915 V2).

Making matters worse, attorney Holstein walked out of the courtroom on January 15, 2019, when asked by Judge Varga to participate in jury selection and the trial, claiming he was ill-prepared to do so and that he had never even met the Defendant. As the trial court stated, "[t]he Court asked Mr. Holstein if he was going to participate, Mr. Holstein said he was not." (R C915 V2). For her part, attorney Muth waited until the trial was concluded and the jury began to deliberate in the afternoon on January 15, 2019, and suddenly presented the Court with a Motion for Mistrial. (R C915 V2).

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[1] Defendant failed to present his Motion for a Continuance to the Presiding/Assignment Judge as is required despite a period of over a day to do so. Indeed, the Local Rule specifically provides as follows: "All motions to continue trial on a case assigned to the Master Calendar Section must be presented to the Presiding Judge of the Law Division or his attorney or her designee on the appropriate Courtroom 2005 motion call. Motion judges may not set or continue a case for trial." (General Administrative Order 16-2 at Section VI. B; R C656-658).

Whether Muth was able to present the motion for a continuance or not, Holstein *was* just outside of the courtroom, but made no effort to present any such motion. Holstein was also in the hallway outside the courtroom and observed the venire in the courtroom. (R C885, ¶ 20). This behavior is not justifiable given the experience he possessed, having been licensed to practice law in the State of Illinois for over fifty (50) years. Whether he felt comfortable taking the lead role in the trial of the case or not, as he had been retained supposedly to handle "procedural aspects", certainly he could have presented the Motion for Continuance himself; a procedural matter.

Regardless, as the appellate court so aptly stated, "[t]hey (Muth and Holstein) could have cross-examined Doe, presented evidence, and attended the jury instruction conference. Instead, they decided to pin their client's case on a motion for a mistrial." *(Doe v. Parrillo,* 2020 IL App (1st) 191286, ¶ 49). While Defendant argues that the trial court abused its discretion by not granting the Motion for Continuance, the fact remains that the motion was never presented by Defendant even *after* Defendant, through attorney Muth agreed to present it on January 15th (during a break in jury selection), to the Assignment Judge in Courtroom 2005, where it belonged. (R C914-5 V2).

Finally, whether to declare a mistrial rests in the trial court's sound discretion and will not be reversed absent abuse of discretion. *Maple v. Gustafson*, 151 Ill. 2d 445, 455 (1992). The failure to present the motion for continuance, and, alternatively, to appear and defend himself at trial was the

fault of Defendant and his counsel collectively. As they say, Defendant was the architect of his own predicament. For this, he cannot be heard to complain. The Motion for Mistrial was properly denied.

Hence, this point of error is without merit and the decision of the appellate court should be affirmed as to this issue. Whether or not Defendant believes that his legal counsel acted properly under these circumstances is not an issue for this Court to consider, much less to less resolve.

C. Defendant Waived Any And All Objections To The Jury Instructions And Counsel for Defendant Never Sought To Participate In The Jury Instruction Conferences.

It is also axiomatic that a party must object to the admission of evidence that such believes the court should exclude—and to do so timely or at the time of its introduction. *Uhrhan v. Union Pac. R.R. Co*., 155 Ill. 2d 537, 546 (1993); *York v. El- Ganzouri*, 353 Ill. App. 3d 1, 17-18 (1st Dist. 2004). This requirement reflects the primary purpose of the waiver rule: to ensure that the trial court has the opportunity to correct the error. *York*, 353 Ill. App. 3d at 10. Furthermore, "[a] trial court cannot correct the error and prevent prejudice when the objection is not made as the error occurs." *Moller v. Lipov,* 368 Ill. App. 3d 333, 342 (1st Dist. 2006) (citing York, 353 Ill. App. 3d at 10).

A party must also properly and timely object to any jury instruction alleged to be improper or otherwise unsupported by evidence at the time an opponent offers the instruction. At the same time, counsel must tender an alternate instruction and ask that it be given in lieu of the instruction that the

court intends to give. *Vojas v. K-Mart Corp.*, 312 Ill. App. 3d 544, 549 (5th Dist. 2000). This is required even if counsel maintains that no version of an opponent's instruction is appropriate. *Compton v. Ubilluz*, 353 Ill. App. 3d 863, 869 (2d Dist. 2004).

Here, neither attorney Holstein nor Muth ever sought to participate in the jury instruction conference. "The defense made no objection and tendered no jury instructions." (R C913 V2). Thus, not only did Defendant waive any purported error with respect to the jury instructions, the instructions were, in fact, proper and Defendant has not shown otherwise – as virtually all of the proposed jury instructions were derived from the Illinois (Civil) Pattern Jury Instructions. (*See* IPI-Civil).

As the trial court correctly observed, notwithstanding the waiver by Defendant, "[t]he jury instructions are 'simple, brief, impartial, and free from argument' consistent with Supreme Court Rule 239." (R C916 V2). Contributory negligence and affirmative defenses were not included because no evidence was presented to support them. (R C916 V2). The instructions were simpler and clearer than the allegations in the complaint. (R C916-17 V2). IPI 3.08 was not given, of course, since no opinion testimony requiring special knowledge or skill was presented; and only Plaintiff testified. (R C917 V2). Hence, there was nothing erroneous with respect to the jury instructions given to the jury and, even if there were, the error would be harmless, not prejudicial and waived.

Finally, there was no evidence presented at trial by Defendant of any affirmative defense - as Defendant chose not to participate at trial or to testify. As a consequence, no such jury instruction would have been appropriate.

D. The Medical Records Were Introduced Into Evidence At Trial Without Objection And All Objections Were Waived.

Defendant also had every reasonable opportunity to defend himself and raise objections to the exhibits presented, but did not. "The defense waived all evidentiary rulings by the trial court and jury instructions given by the court." (R C913 V2). Since no objection was raised during the presentment of the trial exhibits, any objections to such exhibits were effectively waived. *Uhrhan v. Union Pac. R.R. Co.,* 155 Ill. 2d 537, 546 (1993); *York v. El-Ganzouri,* 353 Ill. App. 3d 1, 10 and 17-18 (1st Dist. 2004).

Concerning Plaintiff's trial exhibits, Defendant claims only that her medical/discharge records from Northwestern Hospital were admitted into evidence without sufficient foundation and were prejudicial. This, too, is an untimely argument since his, or his counsel's, failure to object to the lack of foundation waived any objections to the introduction or admission of the exhibit at trial. *Id.*

Plaintiff submits that a foundation objection is commonly waived as attorneys are frequently satisfied with the authenticity of a given record, and often make no objection especially before a jury at trial. Moreover, there is nothing prejudicial about the record as it relates to the victim of significant domestic violence and abuse by Defendant. In any event, any such purported

error is harmless. (R C917 V2). Defendant's claims in this regard are wholly without merit and should be rejected.

E. The Compensatory Damages Awarded By The Jury To Plaintiff Were Fair And Reasonable And, Given The Nature Of The Claims, Do Not Shock The Judicial Conscience.

1. Controlling Law

It is well-established in Illinois jurisprudence that a jury's determination of damages, including punitive damages, will not be lightly reversed. *French* v. *Lowry*, 19 Ill. 158; *Bush* v. *Kindred*, 20 Ill. 93; *Carpenter* v. *Ambroson*, 20 Ill. 170; *School Inspectors of Peoria* v. *Hughes*, 24 Ill. 231; *Cross Carey*, 25 Ill. 562. Likewise, a verdict will not be set aside where the evidence is conflicting. *Martin* v. *Ehrenfels*, 24 Ill. 187; *Pulliam* v. *Ogle*, 27 Ill. 189. And in actions *ex delicto*, it is seldom that courts will interfere with the finding of a jury. *Fish* v. *Roseberry*, 22 Ill. 288; *Chi. & R. I. R. Co. v. McKean*, 40 Ill. 218, 223 (1866).

In fact, determining damages is the *quintessential* factual/jury question and courts are reluctant to interfere with the jury's discretion in this area. *Mileur v. Briggerman,* 110 Ill. App. 3d 721, 726, 442 N.E.2d 1356 (1982). A reviewing court will not disturb a jury's award of damages unless such is obviously the result of improper passion or prejudice. *Shaheed v. Chicago Transit Authority* (1985), 137 Ill. App. 3d 352, 359, 484 N.E.2d 582. And, an award is not excessive unless it falls outside the necessary limits of fair and reasonable compensation or it shocks the judicial conscience. *Id.*

Finally, a jury's award will not be subject to remittitur where it falls within the flexible range of conclusions which can be reasonably supported by the facts. *Guerrero v. City of Chicago,* 117 Ill. App. 3d 348, 352, 453 N.E.2d 767 (1983); *Chambers v. Rush-Presbyterian-St. Luke's Med. Ctr.*, 155 Ill. App. 3d 458, 467-68, 508 N.E.2d 426, 432 (1987). All of these rules of law and standards are satisfied in the instant case.

2. Pain and Suffering

Defendant also argues that the jury's $200,000 award to Plaintiff for her pain and suffering was excessive. In so arguing, Defendant relies upon the discharge record from Northwestern Hospital (for which he claims error) and compares the threats of murder and physical and sexual assault that Plaintiff sustained, according to the jury's findings, with the facts at issue in a case decided by the Illinois Supreme Court in *Richardson v. Chapman,* 175 Ill.2d 98, 113-14 *(*1997), involving a small scar sustained on a victim's face. Defendant, however, ignores the fact that he was found to have sexually assaulted Plaintiff, which finding would, no doubt, leave serious and permanent damage (albeit perhaps not as obvious as a scar on one's face). This $200,000 award, especially in modern society, certainly does not shock the judicial conscience and "the itemized amounts are not unreasonable in light of the plaintiff's testimony." (R C917 V2).

As the trial court also observed, "[a]ccording to the female plaintiff's testimony, she was the victim of the male defendant who attacked her

physically and mentally and sexually assaulted her." (R C914 V2). Defendant also claims that any further evidence offered to support plaintiff's claim for pain and suffering was comprised solely of the plaintiff's unchallenged, non-cross examined, self-serving testimony. While true, this was the result of the deliberate decisions of Defendant and his attorneys to abandon the trial of this matter. The jury was therefore free to afford Plaintiff's testimony the appropriate weight.

3. Present and Future Loss of Normal Life

Under Illinois law, a "loss of normal life" means "the temporary or permanent diminished ability to enjoy life." *Abruzzo v. City of Park Ridge,* 2013 IL App (1st) 122360, ¶ 86). Here, the Defendant claims foul - as the only evidence supporting her award of future loss of normal life was Plaintiff's own testimony. Again, since Defendant chose not to participate at the trial at this matter, he cannot now be heard to complain about the jury's decision to weigh such testimony and award damages commensurate with that testimony.

Defendant relies on *Maddox v. Rozek,* 265 Ill. App. 3d 1007, 1011 (1st Dist. 1994) in support of his argument in this regard. In *Maddox,* however, the court made clear that where "the future pain and suffering can be objectively determined from the nature of an injury, the jury may be instructed on future pain and suffering based on lay testimony alone or even in the absence of any testimony on the subject." *Id.*

Here, it goes almost without saying that a reasonable jury, as here, properly found that the Plaintiff's testimony about being sexually assaulted and mentally abused was not only truthful, but compelling, and properly awarded her the sum of $400,000. This award, too, should be sustained and respected.

4. Infliction of Emotional Distress and Future Emotional Distress

Defendant also claims, without merit, that the jury award of $400,000 for the infliction of emotional distress, and future emotional distress, that Plaintiff has and will suffer were excessive as a matter of law since no evidence was introduced at trial that Plaintiff would have sustained emotional distress from the sexual assault and battery. In addition to being factually baseless, and contrary to the jury's "common sense," Defendant promised to get back at Plaintiff for running away from him: "your fucked…I will ruin u… Its about to get worse, Look over your shoulder, its about to get fun, Hahhahahhah… Ready, fun or flee, you should flee, 5, 4, 3, 2, …" (RC 838-843). In another text message, Defendant wrote: "I choked [Plaintiff], get me out of the hyatt." *Id.*

Plaintiff submits that this, and the other trial evidence of serious misconduct by Defendant, is ***precisely*** "so extreme as to go beyond all possible bounds of decency and to be regarded as intolerable in a civilized community." *See, Taliani v. Resurrection,* 2018 IL App (3d) 160327 ¶ 26. As such, damages for emotional distress were properly awarded to Plaintiff.

5. Judge Varga Easily Satisfied, and If Not Exceeded, His Obligation To Be Fair And Impartial In This Matter.

In what can only be described as act of sheer desperation, Defendant also claims that the purported post-trial hostility of Judge Varga, warrants reversal and a new trial. The appellate court dealt with this argument correctly in holding that the trial judge's comments "… stem from frustration with the defense's behavior rather than indicating deep-seeded favoritism or antagonism." *Doe v Parrillo,* 2020 IL App (1st) 191286, App. P. A-97, ¶ 37. Indeed, Judge Varga's comments were post - trial and thus could not have been prejudicial to Defendant during trial. *See Calabrese v. Benitez,* 2015 IL App (3d) 130827, ¶ 26.

CONCLUSION

For all of these reasons, Plaintiff-Appellant, Jane Doe, respectfully requests this Court to ***reverse*** the reduction of the jury's punitive damages award imposed by the appellate court, reinstate the full amount of punitive damages awarded of $8,000,000, and affirm the decision of the appellate court in all other respects.

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Respectfully Submitted,

/s/ Daniel J. Voelker
One of the Attorneys for Plaintiff/Appellant

Daniel J. Voelker
Voelker Litigation Group
33 N. Dearborn Street
Suite 1000
Chicago, Illinois 60602
312.870.5430
312.254.7666
dvoelker@voelkerlitigationgroup.com

Randall B. Gold
Fox & Fox, S.C.
124 West Broadway
Monona, Wisconsin 53716
608-258-9588
rgoldlaw@aol.com

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b) and Rule 315(h). The length of the Appellant's Reply Brief and Response to Request for Cross-Relief, excluding the pages contained in 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, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 20 pages.

/s/ Daniel J. Voelker
Daniel J. Voelker

NOTICE OF FILING and PROOF OF SERVICE

In the Supreme Court of Illinois

JANE DOE, *Plaintiff-Appellant,*	)	
v.	)	No. 126577
BEAU PARRILLO, *Defendant-Appellee.*	)	

The undersigned, being first duly sworn, deposes and states that on May 11, 2021, there was electronically filed and served upon the Clerk of the above court the Appellant's Reply Brief and Response to Request for Cross-Appeal. On May 11, 2021, service of the Brief will be accomplished by email as well as electronically through the filing manager, Odyssey EfileIL, to the following counsel of record:

Ronald F. Neville
(silver-ii@att.net)
Terence J. Mahoney
(tmahoney@nevillemahoney.com)
Neville & Mahoney
221 North LaSalle Street, Suite 2150
Chicago, Illinois 60601

Within five days of acceptance by the Court, the undersigned states that thirteen copies of the Brief bearing the court's file-stamp will be sent to the above court.

/s/ Daniel J. Voelker
Daniel J. Voelker

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Daniel J. Voelker
Daniel J. Voelker