No. 09-3540

UNITES STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Michael R. Mejia,
Plaintiff-Appellant,

v.

Cook County, Illinois, et al.,
Defendants-Appellees.

Appeal from the United States District Court, Northern District of Illinois, Eastern Division,
Case No. 06 C 6214
Honorable Joan H. Lefkow, Judge Presiding

BRIEF OF THE DEFENDANTS-APPELLEES, BRIAN HARRIS, NICHOLAS PAOLINO, WILLIAM SCOTT, GREGORY LANIER, GARY GRAYER, AND CRAIG JOHNSON

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ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

Table of Contents i

Table of Authorities iii

Jurisdictional Statement 1

Statement of the Issues 2

Statement of the Case 2

Statement of the Facts 3

Summary of Argument 11

Argument 13

I. The District Court Correctly Denied Mejia's Rule 59(a) Motion For A New Trial 13

A. Standard of Review 13

B. The Jury's Verdict Was Not Against The Manifest Weight Of The Evidence 13

1. Mejia Did Not Prove That Defendants Used Excessive Force 15

a. Mejia's Evidence Was Not Credible Because It Was Not Corroborated 16

b. Mejia's Witnesses Were Not Reliable At Trial 19

2. The Defendants' Testimony Presented Reasonable Evidence At Trial That They Did Not Apply Excessive Force Against Mejia And Their Testimony Was Not Contradicted By Physical Facts Or Laws 21

C. The District Court Applied The Correct Legal Standard In Denying Mejia's Rule 59(a) Motion For New Trial 24

1. Standard of Review 24

2. The District Court Applied The Correct Legal Standard In Reviewing Mejia's Rule 59(a) Motion Where The Evidence Involved Simple But Highly Disputed Facts 24

3. The District Court Reviewed The Evidence Without Viewing The Evidence In Light Most Favorable To The Defendants........ 25

Conclusion 26

Certificate of Compliance with F.R.A.P. Rule 32(a)(7)........ 28

Circuit Rule 31(e)(1) Certification........ 29

Proof of Service 30

TABLE OF AUTHORITIES

Cases Page

Bankcard America Inc. v. Universal Bancard Inc., 203 F.3d 477 (7th Cir. 2000) 13

Briggs v. Marshall, 93 F. 3D 355 (7th Cir. 1996) 13

Carter v. Chicago Police Officers, 165 F. 3d 1071 (7th Cir. 1998) 14

Continental Air Lines, Inc. v. Wagner-Morehouse, Inc., 401 F. 2d 23 (7th Cir. 1968) 14

Foster v. Cont'l Can Corp., 783 F.2d 731 (7th Cir. 1986) 14

Gebhardt v. Wilson Freight Forwarding Co., 348 F. 2d 129 (3rd Cir. 1965) 14

Guenther v. Holmgreen, 738 F. 2d 879 (7th Cir. 1984) 16

Hudson v. McMillian, 503 U.S. 1, 6, 117 L. Ed. 2d 156, 112 S. Ct. 995 (1992) 15

Kapelanski v. Johnson, 390 F. 3d 525 (7th Cir. 2004) 14

Khan v. Gallitano, 180 F. 3d 829, 837 (7th Cir. 1999) 24

King v. Harrington, 447 F.3d 531 (7th Cir. 2006) 13

Lanigan v. Village of East Hazel Crest, 110 F. 3d 467, 477 (7th Cir. 1997) 16

Latino v. Kaizer, 58 F.3d 310 (7th Cir. 1995) .... *passim*

Lunsford v. Bennett, 17 F. 3d 1574, 1582 (7th Cir. 1994) 15

Massey v. Blue Cross-Blue Shield of Illinois, 226 F. 3d 922, 925 (7th Cir. 2000) 14

McNabola v. Chicago Transit Auth., 10 F. 3d 501 (7th Cir. 1993) 13

Miller v. Smith, 220 F. 3d 491, 495 (7th Cir. 2000) 16

Romero v. Cincinnati Inc., 171 F.3d 1091 (7th Cir. 1999) 26

Thomas v. Stalter, 20 F. 3d 298 (7th Cir. 1994) 15

United States v. Berkowitz, 927 F.2d 1376, 1384 (7th Cir. 1991) 26

Whitley v. Albers, 475 U.S. 312, 89 L. Ed. 2d 251, 106 S. Ct. 1078 (1986) 16

Williams v. City of Valdosta, 689 F. 2d 964, 974 (11th Cir. 1982) 14

Williamson v. Consolidated Rail Corp., 926 F.2d 1344 (3rd Cir. 1991) 15

Wipf v. Kowalski, 519 F. 3d 380, 384 (7th Cir. 2008) 13

Statutes

28 U.S.C. § 1291 (2009) 1

28 U.S.C. § 1331 (2009) 1

28 U.S.C. § 1343 (2009) 1

42 U.S.C. § 1983 (2005) 1, 2

Rules

FEDERAL RULE OF CIVIL PROCEDURE 59..*passim*

JURISDICTIONAL STATEMENT

The Appellant's jurisdictional statement is incomplete and inaccurate. The following statement is provided pursuant to Circuit Rule 28(b).

The United States District Court for the Northern District of Illinois, Eastern Division, had jurisdiction over Appellant Michael Mejia's civil action for deprivation of constitutional rights pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) and (4), because the case arose under the Eighth Amendment and 42 U.S.C. § 1983. This jurisdiction was based on an action alleging that Defendants used excessive force in violation of Mejia's Eighth Amendment right to be free of cruel and unusual punishment.

Mejia timely filed his action under 42 U.S.C. § 1983 on November 14, 2006. (A. 16).[1] The trial lasted from October 20, 2008 to October 28, 2008. (R. 250-255). The jury found for the Defendants on October 29, 2008. (R. 259). The District Court entered final judgment on October 31, 2008. (R. 260).

Mejia filed a motion for a new trial under Rule 59(a) of the Federal Rules of Civil Procedure on November 17, 2008. (R. 261). The District Court denied the motion on September 30, 2009. (A. 2). Mejia filed a timely appeal on October 14, 2009. (A. 192). This Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291.

[1] Citations to documents contained within Mejia's appendix are designated (A. #). Citations to documents, including trial transcripts, are cited to the district court docket number, page number, and line number (R. #, page #).

STATEMENT OF THE ISSUES

I. Whether the District Court abused its discretion in denying Mejia's Rule 59 (a) motion for new trial where the record demonstrates that the jury's verdict was not against the manifest weight of the evidence.

II. Whether the District Court applied the proper standard of review in denying Mejia's Rule 59 (a) motion for new trial where the record demonstrates that the jury's verdict was not against the manifest weight of the evidence.

STATEMENT OF THE CASE

On October 9, 2005, during a search on Tier BJ of the Cook County Department of Corrections, Mejia refused to comply with officers' orders. When Officer Paolino approached Mejia and attempted to restrain him, Mejia became combative with officers. At that time, officers used reasonable force in detaining Mejia by taking him to the ground and handcuffing him.

Mejia filed a lawsuit asserting claims under 42 U.S.C. § 1983 on November 14, 2006. (A. 16). Following a jury trial, the jury found in favor of Defendants on October 29, 2008. (R. 259). The District Court entered final judgment on October 31, 2008. (R. 260).

Mejia filed a motion for new trial on November 17, 2008. (R. 261). The District Court denied the motion on September 30, 2009. (A. 2). Mejia filed his appeal on October 14, 2009. (A. 192).

STATEMENT OF FACTS

On October 9, 2005, Michael Mejia ("Mejia") was a prisoner of the Illinois Department of Corrections temporarily residing on Tier BJ of the Cook County Department of Corrections ("CCDOC"). (R. 307, pp. 254, 288; A. 17). Mejia was housed in Division 11 of the CCDOC, which is a maximum security facility containing thirty-two inmate living units, also known as tiers. (R. 309, p. 558). On October 9, 2005, correctional staff responded to a call of inmates fighting in Tier AD. (*Id.* at 534). Contemporaneous to this incident, an officer issued another call of assistance to tier BJ, and officers responded, including William Scott ("Scott"), Nicholas Paolino ("Paolino"), Jermaine Lanier ("Lanier"), Gary Grayer ("Grayer"), Brian Harris ("Harris"), and Sergeant Craig Johnson ("Johnson")(collectively referred to as "Defendants"). (R. 309, pp. 534, 562; R. 307, pp. 168-170).

Upon arrival, officers commenced a search of the inmates and their living unit, also known as a shakedown, for security purposes in finding makeshift weapons, drugs, or other contraband. (R. 309, pp. 565-566). During the course of the search, officers ordered the inmates to line-up and face the wall of the living unit. (R. 310, p. 738). Over sixty people, including staff and inmates, were present on Tier BJ, including Mejia and Gregory Rutledge ("Rutledge"). (R. 308, pp. 419-420; R. 309, p. 663).

During this search, Mejia was disobedient. (R. 310, p. 738; R. 308, p. 444). As officers stood guard of other inmates, Scott ordered Mejia to turn around and face the wall several times. (R. 310, p. 739; R. 309, pp. 537, 568, 639-640, 651-652, 654,

669-670, 675, 679, 681-682). Mejia did not comply with these orders; but rather, Mejia turned around from the wall and said, "This is bullshit." (R. 309, p. 568). Scott again ordered Mejia to face the wall. (*Id.*). Grayer testified that Mejia's refusal to comply with Scott's orders created a dangerous situation because this refusal instigates the other inmates to become disruptive, which could result in a loss of control and possibly incite a riot. (*Id.* at 569).

As Mejia continued to disregard Scott's orders, Paolino approached Mejia. (R. 310, p. 739). Paolino motioned for Mejia to turn around and attempted to restrain him. (R. 310, pp. 740, 749; R. 309, pp. 538, 539, 570; R. 308, p. 444). At that time, Mejia became combative and punched at Paolino. (R. 310, pp. 739, 749; R. 308, pp. 420, 427, 428, 444). Scott immediately grabbed Mejia's arm, and both Scott and Paolino struggled with him. (R. 310, pp. 740, 744). During this struggle, Scott and Paolino took Mejia to the ground. (R. 310, p. 744; R. 308, p. 444). Mejia received a cut while struggling with Scott and Paolino. (R. 310, p. 746). Scott and Paolino were the only officers who had any contact with Mejia. (*Id.* at 745). No officer hit, kicked, or jumped on Mejia, including Scott and Paolino. (R. 309, p. 657; R. 310, p. 744). When Sgt. Johnson entered the tier, Mejia was already restrained on the ground. (R. 309, pp. 598, 602). After Mejia was placed in handcuffs, Paolino took him to the dispensary for medical attention. (R. 310, p. 746).

During the struggle with Mejia, Rutledge moved towards Paolino's back with a closed fist as though he was going to strike Paolino. (R. 309, pp. 532, 570-571, 573-574, 653, 682; R. 310, p. 743). Grayer intervened and swung Rutledge to the

concrete floor. (R. 309, pp. 539, 571). Rutledge briefly struggled and threw punches before he was taken down to the ground. (*Id.* at 656, 684-685). Grayer, who was 6'4" and approximately 270 lbs, landed on top of Rutledge with all of his body weight. (*Id.* at 542, 571, 584). As Grayer fell to the ground with Rutledge, Rutledge hit the ground face first without shielding his fall. (*Id.* at 587). While on the ground, Harris and other officers helped to control Rutledge, who continued to struggle and kick his legs. (R. 309, pp. 540-543, 684-685, 690; R. 310, pp. 702-703). No officer kicked, punched, or struck Rutledge at any time. (R. 309, pp. 543, 554, 660, 688-689). Grayer took Rutledge to the dispensary for medical treatment. (*Id.* at 573).

Dr. Yan Yu worked as attending physician at Cermak Health Services, which provided medical care to inmates at CCDOC; however, inmates that suffered serious injury or loss of consciousness went to a trauma center at an off-site hospital. (R. 308, pp. 503, 521). On October 9, 2005, Dr. Yu observed Mejia with a single forehead bruise (or ecchymosis) without swelling or bleeding, a superficial laceration to Mejia's left face, and tenderness to Mejia's left rib without deformity. (*Id.* at 504, 506, 507). Dr. Yu did not note any injuries to the arms or torso of Mejia. (*Id.* at 516-517). Moreover, Dr. Yu did not order an x-ray of Mejia or send Mejia to an off-site hospital. (*Id.* at 517). Dr. Yu did not note any complaints of internal injuries. (*Id.* at 518). In fact, Mejia admitted that he did not receive any additional medical treatment and did not sustain broken ribs. (*Id.* at 279-280, 308-310).

Dr. Yu also treated Rutledge for non-emergent injuries on October 9, 2005. (*Id.* at 509). Dr. Yu observed ecchymosis to the left forehead and the right side of

the face/jaw area and neck. (*Id.* at 509). Dr. Yu did not observe any other injuries to Rutledge. (*Id.* at 509, 520-521). Rutledge further admitted that he received pain reliever and went back to his living unit, without any additional medical care. (*Id.* at 187, 242-243).

Mejia provided quite different evidence as to the events on Tier BJ. On October 9, 2005, Mejia weighed 146 pounds and allegedly suffered from an infection to his lungs causing weakness, fatigue, and other symptoms. (R. 307, pp. 254-255). While officers were conducting a search of Tier BJ, officers told Mejia to remove the insoles from his shoes; however, Mejia did not comply with the officers' orders because Mejia's insoles did not separate from his shoes. (*Id.* at 261-263). After Mejia failed to comply, Paolino inexplicably picked up Mejia's shoes, tore the insoles from these shoes, and threw them to the ground. (*Id.* at 263). Afterwards, Scott told Mejia, who was in the process of putting his shoes back on, "Turn the f around." (*Id.* at 264).

Mejia and his witnesses provided conflicting accounts of each Defendant's conduct thereafter. Mejia testified that Scott slammed Mejia's head into a concrete wall three times, but did not fall down or lose consciousness. (*Id.* at 177-178, 209, 265, 293). However, Elijah Santiago ("Santiago"), a detainee, saw Scott shove Mejia's head into closet window a single time, not multiple times. (R. 308, pp. 466, 471, 486-487). On the other hand, Paul Barney ("Barney"), a detainee, testified that Lanier, not Scott, smashed Mejia's head against a closet door one time. (*Id.* at 333, 335, 376-377). Next, after Mejia's head was struck, Mejia alleged that Paolino

punched him in the ribs. (R. 307, p. 265). However, according to Santiago, Scott punched Mejia in the ribs, while Barney did not know who punched Mejia in the side. (R. 308, pp. 334, 487).

Mejia alleged that while Paolino, Lanier, Scott, Grayer, Clark, Rodriguez, Mingo, Garcia, and two officers with the last name of Lopez, stood in front of Mejia, Harris repeatedly punched Mejia from head to toe, including Mejia's face without provocation. (R. 307, pp. 266-267, 271, 296). An officer then threw Mejia to the ground and Grayer, Scott, Paolino, Harris, Lanier, and the other six officers commenced stomping and kicking Mejia repeatedly as Mejia covered his face. (*Id.* at 268, 298, 300-301, 303-304). Conversely, Barney testified that Harris, Grayer, and Johnson were not involved in beating Mejia. (R. 308, pp. 336, 387-388). In fact, Barney testified that Scott threatened him that day; however, he never testified that Scott was involved in the beating of Mejia. (*Id.* at 368-370). Moreover, Santiago testified that he did not have any memory of Harris, Paolino, Grayer, or Lanier's participation in the beating of Mejia that day. (*Id.* at 499-500). Additionally, although Mejia testified to eleven officers beating him, Santiago testified that fifteen to twenty officers attacked Mejia. (*Id.* at 472-473, 484, 487).

Mejia testified that he saw Harris, Lanier, Grayer, Paolino, and Scott leave the scene of his beating when another group of unknown officers subsequently attacked Mejia. (*Id.* at 268-270). Mejia testified that officers eventually handcuffed him and continued kicking his head and ribs. (*Id.* at 273). However, Santiago testified that no officer struck Mejia while he was handcuffed. (R. 308, p. 497).

According to Mejia's evidence, officers allegedly beat him between three and seven minutes. (R. 307, pp. 271-272; R. 308, pp. 384-385, 474).

Rutledge, who lived in Tier BJ in the CCDOC and also a plaintiff in this matter, testified that while officers beat Mejia, he turned away from the wall and said to the officers, "Why are you guys doing this?" (R. 307, pp. 156, 181-182; A.16-26). Rutledge was not supposed to turn around, but Rutledge testified that he did not run or attack the officers. (R. 307, pp. 181-182). Barney, however, stated that Rutledge jumped off the wall as if to run to Mejia, but officers caught him in the air and slammed him to the ground. (R. 308, pp. 339, 394).

Rutledge alleged that Harris punched him in the face knocking him to the floor, and then Grayer, Paolino, Lanier, and possibly Scott repeatedly beat and stomped on Rutledge's face, arms, and body. (R. 307, pp. 181-184, 223-227, 229-235). Rutledge testified that officers eventually handcuffed him, and at that time, Harris and Grayer kicked him in the face and chest; however, according to Santiago, no officer struck Rutledge after officers handcuffed him. (*Id.* at 184, 239; R. 308, p. 497). Barney did not agree that Harris, Johnson, Grayer, and Scott were involved in beating Rutledge. (R. 308, pp. 336, 368-370, 387-388). Moreover, Santiago did not recall Harris, Paolino, Grayer, or Lanier's participation in these events. (*Id.* at 499-500).

Following the events of October 9, 2005, Mejia was photographed four days later; Rutledge was photographed approximately a week and a half later. (R. 307,

pp. 193, 282-283, 288; A. 121-131[2]). Mejia and Rutledge later memorialized their versions of these events together while in segregation. (R. 307, pp. 287, 202-203; R. 318; R. 322).

Mejia retained Steve Martin ("Martin") as an expert in the field of use of force and corrections. (R. 310, pp. 775, 778, 783-784, 793). Martin testified that a correctional officer could permissibly apply a forceful takedown to an active resister inmate and cause inadvertent injury to the inmate only. (*Id.* at 825-826, 828-829; A. 180). Martin also testified that an officer, in addition to the previously stated use of force, could also strike, punch, use a baton, and kick an actively aggressive inmate, which could cause injury to the inmate without injury to the officer. (R. 310, pp. 830-832; A. 180). In fact, Martin also conceded that an inmate could suffer severe injuries without the application of excessive force. (R. 310, p. 835).

Martin's testimony proved to be unhelpful to the trier of fact. While Martin opined that Defendants adhered to a code of silence at CCDOC, he admitted his opinion was based on a previous case that he worked on. (*Id.* at 852-854). Moreover, Martin conceded that he never spoke with any of the witnesses in this case and was not present at the time of the incident. (*Id.* at 854, 856).

Martin also testified that although medical evidence is the most objective factor in deciding whether excessive force was applied, he was not a medical doctor, he did not speak with Mejia's doctor, and did he not rely on medical records as a

[2] A. 121-131 are black and white photographs that allegedly depict Mejia on October 13, 2005; however, for clarification, Mejia possesses facial tattoos in the shape of tears on the left side of his face which lack some clarity in Mejia's appendix.

basis supporting multiple officers striking Mejia. (*Id.* at 857-858, 860, 865-867). Martin also testified that he could not say, with any certainty, the circumstances of Mejia's injuries, including how many times Mejia was struck, the number of officers involved, or the cause of any injuries. (*Id.* at 859-860). Finally, Martin was admittedly unqualified in the area of medicine to testify as to the healing process depicted in the photographs. (*Id.* at 863).

At the conclusion of the evidence and closing arguments, the district court instructed the jury. (R. 311, pp. 993-1010; R. 256). On October 29, 2008, the jury returned a verdict in favor of all Defendants. (R. 258).

SUMMARY OF ARGUMENT

The District Court correctly denied Mejia's Rule 59 (a) motion for a new trial. At trial, Mejia presented evidence accusing Defendants and other officers at CCDOC of beating him on October 9, 2005. The jury rendered a verdict for the Defendants at trial.

The District Court did not abuse its discretion because the jury's verdict was not against the weight of the evidence. Mejia accused Scott and Paolino of initiating a beating, where Lanier, Harris, and Grayer and approximately six other officers joined in. Mejia alleged that officers repeatedly punched and kicked his face, body, arms, and legs. Mejia further stated that another group of officers beat him a second time; Mejia also alleged that officers beat him after he was handcuffed. However, the jury could have reasonably inferred that Mejia's evidence was incredible because it was contradictory and unsupported. Moreover, Defendants' demonstrated that officers applied reasonable force against Mejia on October 9, 2005 after he became combative. The District Court properly deferred to the jury's verdict in this matter.

Moreover, the District Court did not misapply the *Latino* standard in refusing to exclude evidence from the jury because Defendants' evidence was not contradicted by indisputable facts or laws. The District Court properly determined that this case was a swearing contest similar in nature to *Latino* where the trial court must grant great deference to the jury's verdict and only take evidence that a

reasonable person could not infer because such facts were disputed by physical facts or laws.

ARGUMENT

I. The District Court Correctly Denied Mejia's Rule 59(a) Motion For A New Trial.

A. Standard Of Review

Under Rule 59(a), the district court must determine whether the verdict is against the weight of the evidence, the damages are excessive, or if for other reasons the trial was not fair to the moving party. *Briggs v. Marshall*, 93 F. 3d 355, 360 (7th Cir. 1996). A district court's denial of a Rule 59(a) motion for new trial is reviewed under an abuse of discretion standard. *McNabola v. Chicago Transit Auth.*, 10 F. 3d 501, 516 (7th Cir. 1993). On appeal, the Court reviews the evidence in the light most favorable to the prevailing party and will uphold the jury's verdict if a reasonable basis in the record supports it. *Wipf v. Kowalski*, 519 F. 3d 380, 384 (7th Cir. 2008).

B. The Jury's Verdict Was Not Against The Manifest Weight Of The Evidence.

The jury's verdict is not reversible because it was not against the manifest weight of the evidence. A new trial is warranted if the verdict is against the manifest weight of the evidence or if a prejudicial error occurred. *Bankcard America Inc. v. Universal Bancard Inc.*, 203 F.3d 477, 480 (7th Cir. 2000). In establishing manifest weight of the evidence, a plaintiff must demonstrate that no rational jury could have rendered a verdict against him. *King v. Harrington*, 447 F.3d 531, 534 (7th Cir. 2006). The Seventh Amendment captures a key principle of the civil justice system which holds that a jury is the best body equipped to judge the facts, weigh the evidence, determine credibility, and use its common sense to arrive at a

reasoned decision. *Massey v. Blue Cross-Blue Shield of Illinois*, 226 F. 3d 922, 925 (7th Cir. 2000).

In determining whether to grant a new trial, a jury verdict must be accorded great deference. *Foster v. Cont'l Can Corp.*, 783 F.2d 731, 735 (7th Cir. 1986). The issues of credibility and weight of the evidence are within the purview of the jury. *Carter v. Chicago Police Officers*, 165 F. 3d 1071, 1079 (7th Cir. 1998). The assessment of the credibility of witnesses is peculiarly for the jury, and it is an invasion of the jury's province to grant a new trial merely because the evidence was sharply in conflict. *Latino v. Kaizer*, 58 F.3d 310, 317 (7th Cir. 1995). The grant of a motion for new trial begs more stringent review than a denial, and a still more rigorous review when the basis of the motion was the weight of the evidence. *Id.* at 314 (citing *Williams v. City of Valdosta*, 689 F. 2d 964, 974 (11th Cir. 1982).

Moreover, if the evidence in the record, viewed from the standpoint of the successful party, is sufficient to support the jury verdict, a new trial is not warranted merely because the jury could have reached a different result. *Continental Air Lines, Inc. v. Wagner-Morehouse, Inc.*, 401 F. 2d 23, 30 (7th Cir. 1968)(quoting *Gebhardt v. Wilson Freight Forwarding Co.*, 348 F. 2d 129, 133 (3rd Cir. 1965)). In any case, the jury is entitled to weigh the evidence presented to it, to evaluate the credibility of the witnesses, and to resolve any conflicts in testimony. *Kapelanski v. Johnson*, 390 F. 3d 525, 531 (7th Cir. 2004). New trials granted because the verdict is against the weight of the evidence are proper only when the record shows that the jury's verdict resulted in a miscarriage of justice or where the

verdict, on the record, cries out to be overturned or shocks our conscience. *Latino v. Kaizer*, 58 F.3d at 315 (quoting *Williamson v. Consolidated Rail Corp.*, 926 F.2d 1344, 1352 (3rd Cir. 1991)). The district judge can exclude evidence from the jury that reasonable persons could not believe; however, this exception is narrow and can only be invoked where the testimony contradicts indisputable physical facts or laws. *Id.*

1. Mejia Did Not Prove That Defendants Used Excessive Force.

Mejia did not prove that Defendants used excessive force on October 9, 2005. In order for Mejia to prevail at trial as a prisoner, Mejia needed to prove excessive force and supervisor liability against Defendants. (R. 311, pp. 1001-1003; A. 16-26).

When prison officials stand accused of using excessive force in violation of the Eighth Amendment, the key inquiry is whether the prison official applied force in a good-faith effort to maintain or restore discipline or whether the official applied such force maliciously or sadistically to cause harm. *Thomas v. Stalter*, 20 F. 3d 298, 301 (7th Cir. 1994)(quoting *Hudson v. McMillian*, 503 U.S. 1, 6, 117 L. Ed. 2d 156, 112 S. Ct. 995 (1992)). Not every malevolent touch by a prison guard gives rise to a constitutional violation. *Hudson v. McMillian*, 503 U.S. 1, 9, 117 L. Ed. 2d 156, 112 S. Ct. 995 (1992). Minor uses of force that are not repugnant to the conscience of humanity do not constitute Eighth Amendment violations, even if the officer's conduct cannot be condoned. *Lunsford v. Bennett,* 17 F. 3d 1574, 1582 (7th Cir. 1994). In determining whether the force used was malicious or sadistic, the courts must consider the need for the application of force, the relationship between the

need and the amount of force used, the threat reasonably perceived by the responsible official, and the extent of any resulting injury. *Hudson*, 503 U.S. at 6 (quoting *Whitley v. Albers*, 475 U.S. 312, 320-21, 89 L. Ed. 2d 251, 106 S. Ct. 1078 (1986)). A plaintiff must show personal involvement by an officer in order to establish excessive force. *Miller v. Smith*, 220 F. 3d 491, 495 (7th Cir. 2000). Moreover, in order for a supervisor to be liable for the acts of his subordinates, the supervisor must, with knowledge of the subordinates' conduct, approve of and personally participate in the conduct of the subordinates. *Lanigan v. Village of East Hazel Crest*, 110 F. 3d 467, 477 (7th Cir. 1997).

Mejia did not provide reliable evidence that officers beat him at CCDOC. At trial, Mejia had the burden of proving all of the elements of his claims against each Defendant by a preponderance of the evidence. *Guenther v. Holmgreen*, 738 F. 2d 879, 888 (7th Cir. 1984). As demonstrated below, even without the testimony of Defendants, the jury could properly determine that Mejia's evidence was unconvincing and a jury could have found against Mejia based on lack of credibility.

a. Mejia's Evidence Was Not Credible Because It Was Not Corroborated.

Mejia's evidence did not support a jury verdict in his favor because Mejia's story defied common sense. Initially, Mejia's account that many officers beat him head to toe while Mejia was weak and defenseless was not supported by the evidence.

Mejia alleged that Defendants and other officers beat him without

provocation on three separate occasions by at least twenty officers. (R. 307, pp. 254-255, 266-270; R. 318; R. 322). Mejia further alleged that, at one point, he was handcuffed and kicked in his heads and ribs. (R. 307, p. 273). Yet, Mejia's appearance and medical treatment following this incident are inconsistent with Mejia's version of the events.

Although Mejia's evidence alleged multiple officers beat him about his body and face approximately three to seven minutes, Mejia did not possess any injuries that corroborated his story. (R. 307, pp. 271-272, 296; R. 308, pp. 384-385, 474). Shortly after this alleged beating, Dr. Yu noted only minor injuries, including discoloration without swelling or bleeding on the left forehead, a superficial laceration on Mejia's left cheek, and Mejia's subjective complaint of tenderness to the left rib. (R. 308, p. 506). Dr. Yu's observations were not dispositive of a beating as Mejia described; but rather, these injuries were substantially consistent with Scott and Paolino's testimony of limited use of force to control Mejia and take him down to the concrete floor.

One could reasonably expect that Mejia would have exhibited some greater types of injuries if he was truly beaten in the violent fashion that Mejia, Rutledge, Santiago, and Barney provided to the jury, yet, Mejia presented no such evidence or explanation as why no such injuries existed. Dr. Yu testified that blunt trauma from striking or impact with a hard object leaves a bruise; however, Mejia had no bruising that matched multiple officers' unfettered attack all over his body. (*Id.* at 508; A. 121-131). For example, Mejia testified that while officers beat him, he

covered his body defensively with his arms, but Mejia presented no evidence through Dr. Yu or his photographs which showed blunt force trauma to his arms. (R. 308, pp. 516-517; R. 307, 268, 282-283). Dr. Yu further supported the non-existence of any serious injury where he declined to send Mejia to an outside hospital for x-rays or other trauma care. (R. 308, p. 517). It was reasonable for the jury to conclude that Mejia's claims were meritless because the absence of injuries provided the most damaging impeachment to his case.

Furthermore, Mejia's physical appearance showed such a significant lack of injuries that the events of October 9, 2005 could not possibly have unfolded as Mejia described them. (A. 121-131). Mejia did not present the jury with a valid explanation justifying the dichotomy of his version of events on October 9, 2005 with the lack of injuries depicted four days later. Certainly, Martin was not qualified to explain the contradiction of such evidence. (R. 310, pp. 859-860, 863). In fact, to the extent Martin offered any evidence on behalf of Mejia, the jury was not required to accept his opinion at all. (R. 311, p. 998).

Finally, Mejia's claims lacked a reasonable motive where Mejia asserted Paolino and Scott beat him as a consequence of Paolino's irritation over Mejia's delay in putting on his shoes, and that Paolino, Scott, Harris, Lanier, Grayer, and many other officers condoned Paolino's conduct through a public and prolonged beating. (R. 307, pp. 261-264). It strongly contradicts logic and reason that officers would abandon their duties of guarding other inmates, severely jeopardize security during a search, risk losing their jobs, and expose themselves to criminal or civil

liability so that they could viciously attack a sickly Mejia for failing to comply with orders expeditiously.

b. Mejia's Witnesses Were Not Reliable At Trial.

At trial, Mejia called Rutledge, Barney, and Santiago to corroborate his testimony; however, these witnesses proved unreliable. Mejia's co-plaintiff Rutledge possessed a motive to testify untruthfully, and Rutledge's ability to profit from collusion with Mejia was a reasonable inference that the jury could rely on in weighing his believability. Moreover, Rutledge's version of the events was as incredible as Mejia's and smacked of collusion between these parties.

Initially, it is very clear that both Mejia and Rutledge had ample opportunity to fabricate the events of October 9, 2005 where they cell-mates in segregation, and together completed handwritten grievances four days later that were virtually identical. (R. 307, pp. 287, 202-203; R. 318; R.322). Rutledge also testified to a similar beating as that of Mejia, and similarly, Rutledge's testimony was not supported by physical evidence. He alleged that the officers violently beat him all over his body and face, while lying on the floor of Tier BJ. (*Id.* at 181-184, 223-227, 229-235). In contrast, Dr. Yu treated minor injuries without the need for emergency trauma care. (R. 308, pp. 509, 520-521). Rutledge's greatly exaggerated claims severely impugn Mejia's believability and further exacerbate the divide between Defendants' credible testimony and the unsupported hyperbole of Mejia.

Moreover, Mejia's witnesses, Barney and Santiago, contradicted Mejia on material facts at to each officer's participation. As to the first officer who allegedly

struck Mejia's head, Mejia testified that Scott slammed his head into the wall three times, yet Santiago testified that Scott only hit Mejia's head into a closet window a single time. (R. 307, p. 265; R. 308, pp. 471, 486-487). Conversely, Barney testified that it was Lanier who slammed Mejia's face into a door a single time, and not Scott, as Mejia and Santiago testified. (R. 308, pp. 335, 376-377). These witnesses' contradictions as to the identity and participation of Scott and Lanier adversely affected the believability of Mejia's case.

Mejia and his witnesses were further inconsistent regarding the identity of the second officer alleged to have punched Mejia in the ribs. Mejia testified that Paolino punched him in the side after his head was slammed by Scott. (R. 307, pp. 178, 265). However, Santiago stated that after Scott slammed Mejia's head into a window, Officer Scott punched Mejia in the ribs, not Paolino. (R. 308, p. 487).

Furthermore, Barney testified only Lanier and Paolino struck Mejia on October 9, 2005. (*Id.* at 336). Barney exculpated Harris, Grayer, Johnson, and Scott at trial where he testified that Harris, Grayer, and Johnson were not involved in beating Mejia. (*Id.* at 387-388). Moreover, Barney never testified that Scott was involved in beating Mejia even though he knew Scott previously to October 9, 2005 and testified that Scott threatened him earlier that day. (*Id.* at 336, 368-370). Additionally, Santiago also offered exculpatory evidence for Defendants where he did not remember any presence or participation of Paolino, Harris, Grayer, Lanier, or Johnson. (*Id.* at 499-500). Although he testified that fifteen to twenty officers beat Mejia, Santiago named only Scott during the trial. (*Id.* at 472-473, 484, 488).

Mejia's witnesses' inconsistencies and contradictions irreparably weakened Mejia's proof in this case in favor of the Defendants. The jury reasonably gave little to no credence in Mejia's testimony and returned a verdict in favor of the Defendants.

2. Defendants' Testimony Presented Reasonable Evidence At Trial That They Did Not Apply Excessive Force Against Mejia And Their Testimony Was Not Contradicted By Physical Facts Or Laws.

Defendants testified to the reasonable application of force against Mejia. Moreover, Defendants' testimony was not contradicted by physical facts or laws.

Scott and Paolino admitted they used reasonable force in order to control Mejia after he became combative. Scott and Paolino's accounts reasonably explained that they used force on a combative Mejia and that, as a result, Mejia suffered minor injury. (R. 310, pp. 738-739, 537; R. 308, pp. 427, 444). After Mejia punched at Paolino, Scott and Paolino struggled with Mejia and took him down to the ground. (R. 310, pp. 740, 744; R. 308, p. 444). A jury could reasonably infer that Mejia would suffer minor injury without the existence of excessive force. Any inconsistencies that may have existed speak to credibility determinations, which in this case, may only be resolved by the jury.

In *Latino*, Chicago Police officers were sued for a constitutional violation stemming from false arrest. *Id.* at 311. The plaintiffs testified that they were falsely arrested by the officers for attempting to illegally sell Chicago Bulls tickets at Chicago Stadium. *Id.* at 312. The officers and the plaintiffs testified to strikingly different versions of the facts, and essentially presented the jury with a swearing

contest. *Id.* at 311-2. After the first trial, the jury found in favor of the officers, and the district court granted plaintiffs' motion for new trial because the district court held that it believed the defendants perjured themselves. *Id.* at 315.

In reversing, the Court held that the judge in a jury trial does not act to evaluate and weigh the evidence, and the judge should not set the verdict aside as against the weight of the evidence merely because, if that judge acted as juror, he or she would have reached a different result. *Id.* In cases involving simple issues but highly disputed facts, greater deference should be afforded to the jury's verdict than in cases involving complex issues with facts not highly disputed. *Id.* at 314. The Court held that the district judge can take away from the jury testimony that reasonable persons could not believe; however, that exception is a narrow one, and can be invoked only where the testimony contradicts indisputable physical facts or laws. *Id.* at 315. Even if a judge finds that facts are improbable, the judge can only grant a new trial where facts testified to are physically impossible. *Id.* The Court held that the district court abused its discretion and usurped the jury's role in granting a motion for new trial. *Id.* at 317.

Latino is similar to the case at bar because here, like *Latino*, the versions of events presented by the parties are diametrically opposed. As such, like *Latino*, the jury's role was to resolve any conflicts in the trial testimony in this case. In this matter, it is a reasonable inference that Scott and Paolino acted expeditiously to control a combative Mejia, and as a result, Mejia suffered incidental and minor injury, without the use of excessive force. Mejia's injuries as a result of a struggle

and a takedown were not contradicted by physical facts or laws.

Mejia assumes that the existence and nature of Mejia's injuries were indisputable facts, and because Defendants allegedly could not explain the cause of these injuries, the only physical explanation is Defendants applied excessive force. (Mejia Br. 29-33). However, Defendants did not concede the injuries as Mejia contends in his brief; but rather, Defendants specifically disputed the existence and nature of Mejia's injuries through Mejia's photographs and testimony of Dr. Yu. Additionally, Defendants provided a reasonable explanation of Mejia's injuries through the use of force with a combative Mejia. As such, it was proper for the jury to resolve any disputes in the evidence.

Finally, in this case, the District Court clearly indicated that it disagreed with the jury's verdict; however, it would be an invasion of the jury's province for the District Court to question the jury's verdict particularly in a straight-forward excessive force case involving fourteen witnesses over four days of testimony. (R. 307-312). In short, the district court's disagreement with the jury was inconsequential and does not serve as a legal basis for reversing the verdict in this matter.

C. The District Court Applied The Correct Legal Standard In Denying Mejia's Rule 59(a) Motion For A New Trial.

1. Standard Of Review

Whether the district court applied the correct legal standard in reviewing Mejia's Rule 59(a) motion is subject to *de novo* review. *Khan v. Gallitano*, 180 F. 3d 829, 837 (7th Cir. 1999).

2. The District Court Applied The Correct Legal Standard In Reviewing Mejia's Rule 59(a) Motion Where The Evidence Involved Simple But Highly Disputed Facts.

Mejia contends that the trial judge misapplied the law in denying his Rule 59(a) motion; however, the District Court applied the appropriate law articulated in *Latino*.

As stated previously, a district court may grant a new trial only when the verdict is against the weight of the evidence where the record shows that the jury's verdict resulted in a miscarriage of justice or where the verdict, on the record, cries out to be overturned or shocks the conscience. *Id.* The district judge can take away from the jury testimony that reasonable persons could not believe. *Id.* The district court relied on this standard in its order of September 30, 2009. (A.2-14).

Specifically, the District Court held that "[t]he issue is whether these facts taken together sufficiently prejudiced the jurors' view of Mejia that the verdict shocks the conscience and must be overturned." (A. 13). The District Court reasoned that, although it disagreed with the jury's verdict in this case, its disagreement alone is not enough to grant a new trial. *Id.* The District Court properly recognized

that it could only negate the Defendants' testimony if a reasonable jury could not believe their testimony because it contradicted indisputable physical facts or laws. *Id.* In other words, the District Court acknowledged that its ruling on Mejia's motion for new trial was constrained by the jury's verdict.

Simply put, the District Court could exclude evidence from a jury's consideration only where Defendants' evidence was contrary to indisputable physical facts. *Latino*, 58 F. 3d 316. The District Court reasoned that because it could not find that Defendants' evidence defied physical facts or laws, the jury may have believed Defendants' testimony and that Mejia's resulting injuries were not the result of excessive force. (A. 13). The District Court did not abuse its discretion in finding that Defendants' evidence did not defy indisputable physical facts.

Moreover, Mejia asserts that the jury's verdict should be afforded less deference by the District Court because this case did not involve complex issues. (Mejia Br. 33-35). Mejia's position is unsupported. The facts in this case were precisely the swearing contest that *Latino* addressed. The District Court did not abuse its discretion in finding that the jury's verdict was afforded greater deference.

3. The District Court Reviewed The Evidence Without Viewing The Evidence In Light Most Favorable To The Defendants.

The District Court did not afford greater deference to Defendants in its denial of Mejia's motion for new trial; but rather, the District Court severely scrutinized Defendants' evidence. (Mejia Br. 24-27; A. 2-14). Mejia misinterprets the District Court's application of *Latino* as the District Court affording Defendants deference.

The District Court's reference to "reasonable persons" is taken from the plain language of *Latino's* text. Mejia's claim that the District Court deferred to Defendants is wholly inaccurate.

Finally, Mejia asserts that the jury's verdict shocks the conscience because it rewards Defendants' errors at trial; however, Mejia does not develop this argument with any concrete examples or authority, and therefore, this argument is waived. *United States v. Berkowitz*, 927 F.2d 1376, 1384 (7th Cir. 1991)(perfunctory and undeveloped arguments and arguments that are unsupported by pertinent authority are deemed waived). Moreover, even if errors occurred, no new trial is required if the errors were harmless. *Romero v. Cincinnati Inc.*, 171 F.3d 1091, 1096 (7th Cir. 1999). The errors Mejia complains of clearly had no bearing on the jury's verdict in this case as Mejia does not expound on any arguments concerning these alleged errors and does not discuss authority supporting this position.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court affirm the District Court's order denying Mejia's Rule 59(a) motion for new trial.

Respectfully submitted,

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No. 09-3540

UNITES STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Michael Mejia, Plaintiff-Appellant, v. Cook County, et al., Defendants-Appellees.	Appeal From The United States District Court For The Northern District Of Illinois, Eastern Division Case No. 1:06-cv-06214 The Honorable Joan H. Lefkow

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 6,647 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 12 point font and footnotes in 11 point font in Century Schoolbook type.

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Dated: January 19, 2011

No. 09-3540

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Michael Mejia, Plaintiff-Appellant, v. Cook County, et al., Defendants-Appellees.	Appeal From The United States District Court For The Northern District Of Illinois, Eastern Division Case No. 1:06-cv-06214 The Honorable Joan H. Lefkow

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Circuit Rule 31(e)(1) Certification

I, the undersigned, counsel for the Defendants-Appellees, Brian Harris, Nicholas Paolino, William Scott, Gregory Lanier, Gary Grayer, and Craig Johnson, hereby certify that I have filed electronically, pursuant to Circuit Rule 31(e), versions of the brief that are available in non-scanned PDF format.

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PROOF OF SERVICE

I, the undersigned, counsel for the Defendants-Appellees, Brian Harris, Nicholas Paolino, William Scott, Gregory Lanier, Gary Grayer, and Craig Johnson, hereby certify that on January 19, 2011, two copies of the foregoing Brief of Appellee, as well as a digital version containing the brief, were sent by United States mail to the following individual:

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