No. 17-1345

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

FREDRICK WALKER,
Appellant,

v.

TIMOTHY PRICE, ET AL.,
Appellees.

On Appeal from the United States District Court
for the Central District of Illinois, Peoria Division
The Honorable Harold A. Baker
Case No. 1:14-cv-01343-HAB

BRIEF OF APPELLANT

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DISCLOSURE STATEMENT

I, the undersigned counsel for Appellant, Fredrick Walker, furnish the following list in compliance with FED. R. APP. P. 26.1 and CIR. R. 26.1:

1. The full name of every party or amicus the attorney represents in the case:

   Fredrick Walker

2. This party is not a corporation.

3. The names of all law firms whose partners or associates are expected to appear for the party before this Court:

   Sarah O'Rourke Schrup (attorney of record), John S. Elson (attorney), Samuel Halter (senior law student), and Gregory G. Peterson (senior law student), of the Bluhm Legal Clinic at the Northwestern Pritzker School of Law.

4. The names of all law firms whose partners or associates have appeared for the party in the district court and are not expected to appear:

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Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). **Yes**

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Appellant Fredrick Walker filed this lawsuit pursuant to 42 U.S.C. § 1983, alleging that the defendants violated his Eighth Amendment rights by using excessive force against him, failing to intervene during the use of force, and failing to treat his serious medical need. The United States District Court for the Central District of Illinois, Peoria Division, had jurisdiction over Walker's civil action under 28 U.S.C. §§ 1331 and 1343(a)(3).

Walker filed his complaint in the district court on August 29, 2014. (R.1.)[1] The case proceeded to trial and, after a two-day trial, the jury delivered its verdict on February 8, 2017. (R.142.) The district court entered judgment in favor of the defendants on the next day. (A.1.) Walker timely filed his notice of appeal on February 17, 2017. (R.146.) At that time, he also filed for leave to appeal in forma pauperis. (R.147.) The district court granted Walker leave to appeal in forma pauperis and certified that his appeal was not frivolous on March 3, 2017. (3/3/17 Text Order.)

This Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291, which grants jurisdiction of "all final decisions of the district courts of the United States" to its courts of appeal.

[1] References to the trial transcript shall be denoted as ([Date] Trial Tr. ___) and references to the voir dire transcript as (2/7/17 Voir Dire Tr. ___). All other references to the Record shall be denoted with the appropriate docket number as (R.___). References to the material in the appendix shall be denoted as (A.___).

STATEMENT OF THE ISSUES

I. In determining whether a prisoner should be appointed counsel in a civil rights claim, a district court must balance the prisoner's capabilities against the complexity of the case. Fredrick Walker applied for appointed counsel six times, pointing to his lack of legal capability and the difficulty of conducting discovery against prison officials while confined in the same prison. Did the district court err in denying Walker counsel?

II. A district court may only conduct a prisoner's trial by videoconference if, after carefully balancing the relevant factors, it finds that the government's interest in keeping a prisoner confined outweighs the prisoner's interest in presenting his case in person. Here, the question is whether the district court abused its discretion when its analysis omitted several factors and entirely ignored Walker's need to establish his own credibility to the jury.

III. Whether defense counsels' factually unsupported and highly prejudicial remarks during opening and closing statements warrant a new trial.

IV. Whether the cumulative effect of the errors, irregularities, and inequities in Walker's case require a new trial.

STATEMENT OF THE CASE

The August 21, 2013, Incident

Plaintiff Fredrick Walker sued three guards at Pontiac Correctional Center for events arising out of an incident on August 21, 2013. On that day, according to Walker and neighboring inmate John Hudson, Defendant Timothy Price handed them food that Price had scooped off the floor after several breakfast trays had toppled off the cart. (2/7/17 Trial Tr. 116, 147.) Price admitted that he was in charge of delivering trays on that day and that sometimes trays would fall off the cart and on to the floor, causing them to become contaminated. (2/8/17 Trial Tr. 65–66, 73–74.) Walker testified that Price denied these prisoners' requests for clean food and trays, and when Walker and the other prisoners asked to speak to his supervisor, Price said "F*ck . . . F all you . . . ." (2/7/17 Trial Tr. 116.) Price did not remember the breakfast tray incident, but later recalled that Hudson "assaulted" him that morning by throwing a liquid on him (2/8/17 Trial Tr. 67–68), which Hudson denies, (2/7/17 Trial Tr. 147). Several minutes later, after Price had left, at least two additional officers—including Defendants Jeffrey Stahl and Glendal French—arrived to fetch Hudson from his cell, move him to a more restrictive floor, and issue him a disciplinary report. (2/7/17 Trial Tr. 10, 148–49.) As they walked by, Walker reported the tray incident, and Stahl assured him that he would receive a new, clean tray. (2/7/17 Trial Tr. 117.)

About 45 minutes later, French and another officer, Scott Punke, told Walker to "cuff up" and step out of his cell. (2/7/17 Trial Tr. 118.) They said he was going

downstairs to the floor that houses inmates with disciplinary problems—called "1 Gallery." (2/7/17 Trial Tr. 118.) French justified this disciplinary action on the ground that Walker had been kicking his cell door. Although Stahl admitted that kicking a cell door is a disciplinary violation and warranted moving Walker to more restrictive confinement, what Walker called "72 hour strip out status," (2/8/17 Trial Tr. 19–20, 118), Walker was never issued a citation for this conduct, (2/7/17 Trial Tr. 109).

The officers escorted Walker down from his cell in 5 Gallery to the entryway outside 1 Gallery, an area known as "the flag." (2/8/17 Trial Tr. 21.) There, Walker said he encountered another officer, Brian Schmeltz, and a paramedic, Jennifer Tinsley. (2/7/17 Trial Tr. 119–20.) French called Tinsley over and informed her that "he was teaching [Walker] a lesson about who runs things over here." (2/7/17 Trial Tr. 120.) This provoked Walker to respond: "You can't teach me no . . . b*llshit like that." (2/8/17 Trial Tr. 120.) Hearing that, French told Stahl that they should "put the leg shackles on him." (2/8/17 Trial Tr. 120.)

At trial, Walker described what happened next:

> Both of them grabbed me by my arm. One grabbed me by one arm, and the other grabbed me by the other arm; and they threw me down, face-first, on the floor. So once I got in that position, facedown on my stomach, the Defendant Glendal French put his knee in my neck and in my head and began to pressing up and down on my head. So, you know, I was, you know, hollering and stuff like that, about pain and distress, you know—know what I'm saying? You know, I couldn't breathe because my Adam's apple was on the floor; and, you know, my head was hurting real bad when he was doing that.
>
> So he told me, "You need to die." He said, "You need to die like this" while the Defendant Stahl was bending my arm back, asking if I was resisting when I wasn't doing nothing, you know, just hollering out

> of, you know, sheer pain and suffering because the, the Lieutenant French applied pressure to my head and my orbital bone with bouncing up and down on my neck with his, with his knee on my, on my head and my neck. And, and Defendant Jeffery Stahl was trying to take my shoes off at the same time.

(2/7/17 Trial Tr. 120–21.) At trial, Tinsley testified that she could not remember if she was in the area that day, nor could she remember seeing Stahl pinning Walker's arms behind him. (2/7/17 Trial Tr. 53–54, 72.) She also denied seeing French kneel on Walker's neck. (2/7/17 Trial Tr. 71–72.) Schmeltz and Stahl also denied seeing French kneeling and bouncing on Walker's neck. (2/7/17 Trial Tr. 106–07; 2/8/17 Trial Tr. 34.) Stahl, however, could not remember whether he witnessed excessive force being used against Walker, nor could he remember whether Walker was slammed down on the concrete. (2/8/17 Trial Tr. 32.) Stahl could not remember bending Walker's arms back. (2/8/17 Trial Tr. 33.) For his part, French denied that he slammed Walker down on the ground or kneeled on his neck. (2/8/17 Trial Tr. 56–57.)

All prison officials allegedly present at the incident, except for Tinsley, cited the lack of a report of the event as proof it did not happen; if it had, they argued, they would have been forced to report either the excessive force or the injury. (2/7/17 Trial Tr. 109; 2/8/17 Trial Tr. 34, 51, 57, 76.) Tinsley testified that correctional officers cannot prevent inmates from receiving medical care, (2/7/17 Trial Tr. 63), but also that she had heard of prisoners being denied medical care at the request of officials, (2/7/17 Trial Tr. 76–77).

Walker's Injuries and Requests for Medical Care

Walker describes the injuries and pain he suffered as a result of this beating as follows:

> So, you know, I told him. You know, I requested medical attention because the right side of my – because I had damage already to my orbital bone. So when he did that, it felt like kind of mushy, like he messed it up again, like he fractured or broke it or stuff, you know. So, and I had swelling on that whole side, my right side of my face. And my arms was – you know, my wrists, both my wrists was hurting real bad. And then the cuffs had tightened up on me throughout the process, cutting into my wrist and stuff like that.

(2/7/17 Trial Tr. 122.) Walker also testified to severe pain in his foot from stepping on a sharp object while being escorted in his socks to 1 Gallery:

> So in the process of escorting me to 106 cell—and it was an object on the gallery. You know, I don't know what it was and what—know what I'm saying?—and, you know, it cut the bottom of my feet. You know what I'm saying? So, you know, now I hollered out in pain because it was like a big old gash; I had a big gash in the bottom of my foot.

(2/7/17 Trial Tr. 122.) At trial, Schmeltz, Price, and French all denied seeing any injuries to Walker, while Stahl testified that he could not remember seeing any injuries. (2/7/17 Trial Tr. 106–07; 2/8/17 Trial Tr. 32–33, 37, 56–57, 76.) However, two inmates housed in 1 Gallery during the incident, Marlon Minter and John Hudson, testified that Walker's face was bruised and swollen, and that he was loudly complaining about pain in his foot as the officers escorted him to his cell. (2/7/17 Trial Tr. 24, 43, 155.)

Walker repeatedly requested medical attention for his injuries afterwards. (2/7/17 Trial Tr. 12–13.) In addition to his requests for medical care to Stahl and

French, (2/7/17 Trial Tr. 122), Walker used other avenues to request care, including leaving slips for the medical technicians doing their rounds, but all but a few were left behind, (2/7/17 Trial Tr. 132). Ultimately, weeks later, a paralegal named Mark Spencer conveyed Walker's request to the medical unit. (2/7/17 Trial Tr. 124.)

Walker testified that all his requests were ignored for months, by which point his bruised face had already healed. (2/8/17 Trial Tr. 10.) Marlon Minter confirmed that Walker's pleas for medical aid went unanswered in the days following the incident. (2/7/17 Trial Tr. 26–27.) All of the defendants denied they had knowledge that Walker was refused his requests for medical care. (2/7/17 Trial Tr. 106–07; 2/8/17 Trial Tr. 34, 58.)

Finally, on June 2, 2014, Walker was seen by Nurse Brian Boggess for lingering wrist pain. (2/8/17 Trial Tr. 10.) The nurse prescribed 600 milligrams of Motrin, to be taken twice a day for three months. (2/8/17 Trial Tr. 9.)

Walker's § 1983 complaint and pre-trial litigation

On August 29, 2014, Walker filed a pro se, handwritten complaint under 42 U.S.C. § 1983 in the Federal District Court for the Central District of Illinois. (R.1.) At the same time, Walker requested the court recruit counsel to assist him. (R.4.) The court conducted merit review pursuant to 28 U.S.C. § 1915(a), and found that Walker alleged three viable claims: (1) that Stahl, French, and Price used excessive force; (2) that the officers failed to intervene to stop the excessive force; and (3) that the officers displayed deliberate indifference to Walker's need for

medical treatment. (R.1, R.8.) The court denied his first request for counsel, stating that Walker had prior litigation experience, his complaint demonstrated knowledge of law and procedure, that his personal knowledge of events would be sufficient for him to obtain evidence, and that the case was simple. (A.7.)

Walker sought the assistance of an inmate to prepare his discovery requests. (R.4.) The fellow inmate helped Walker understand why he would need an actual lawyer: among other things, he would be litigating from segregation, had an IQ of 78, and could need expert testimony. (R.24.) On June 17, 2015, Walker issued interrogatories and document requests to the defendants. (R.28.) He sought information regarding the prison procedures, including information on the named guards, along with incident reports and information that would help him identify witnesses. (R.28.)

Knowing that Pontiac contained video cameras throughout, Walker sought the tapes of the relevant areas on August 21, 2013, as well as the Illinois Department of Corrections' policies on the maintenance of videotapes. (R.28.) The court ordered the defendants to produce the requested tapes and the prison's video retention policy. (R.51.) But the defendants insisted both that "[n]o video exists" and that "[n]o video retention policy exists." (R.54.) Instead of a video retention policy, the defendants supplied an administrative directive on "Use and Control of Cameras," (R.54), which stated that "[D]ocumentation of use of cameras and related equipment shall be maintained by each facility[, and a]ccess to such documentation shall be limited by the Chief Administrative Officer," (R.128 at 83–84). Walker

requested the court provide the jury with an adverse-inference instruction indicating that the missing videotape would have contained evidence unfavorable to the defendants, (R.63), but the court denied the motion, (7/13/16 Text Order). At trial, French testified that excessive force could not have been used because videotaping occurs at Pontiac, and "[i]f it would have happened, it would have been on videotape." (2/8/17 Trial Tr. 61.) But when Walker attempted to cross-examine French about the reasons for the video's absence, French simply stated that he had "no idea" why they had not produced the video. (2/8/17 Trial Tr. 61.)

As discovery proceeded, the defendants repeatedly missed deadlines. The court ordered the defendants to respond to Walker's discovery requests within thirty days, (R.23), and Walker served the defendants with his requests on June 17, 2015, (R.28). But by August 5, Walker had not received the defendants' response, and so Walker filed what he termed a "Motion to Compel," which essentially sought a directed verdict for what he perceived as rampant discovery abuses. (R.28.)

On September 13, nothing had happened, so Walker filed another motion requesting the court enforce its own discovery deadline. (R.31.) On October 23, the court granted Walker's motion, and ordered the defendants to comply. (A.9.) The defendants immediately requested an extension, which the court granted on December 2—now one hundred and sixty-eight days after Walker's initial request for production. (R.37, 12/2/15 Text Order.) The new discovery deadline became February 29, 2016. (12/2/15 Text Order.) On March 3—three days after the latest deadline passed, and two hundred and sixty days after receiving Walker's requests

for production, the defendants responded to the requests. (R.49 at 18.) Walker asked for video footage and photographs of the incidents relevant to his claim. (R.49.) The record does not reflect that the defendants ever produced them.

Walker's requests for counsel

Until November 4, 2016, Walker received assistance from a "jailhouse lawyer" (i.e., a fellow prisoner, working as a volunteer) when preparing his pleadings. (10/19/16 Text Order.) As he had when he filed his complaint, he continued to request that the court recruit counsel to assist him, knowing that his jailhouse lawyer was not a real attorney. In fact, Walker filed five additional requests for counsel. All were denied.

Walker's first motion for counsel laid out four main reasons he needed counsel: (1) his current use of the jailhouse lawyer; (2) his poor mental health record; (3) his lack of access to necessary supplies; and (4) his inability to afford or find counsel on his own. (R.4.) In an order, a magistrate judge noted that counsel was not needed. (A.7.) The magistrate judge listed four reasons for his decision: the case was simple; Walker had personal knowledge of the events in question; Walker had litigation experience; and Walker was doing a good job so far, as his complaint was competently written. (A.7.)

In his second motion, Walker maintained his four original reasons and added: (5) that expert testimony might be needed; (6) that credibility issues and a jury trial would both require the assistance of counsel; and (7) that his education was only

elementary and his IQ was 76. (R.24.) In response to this final argument, the magistrate judge ordered the defendants to submit Walker's Test for Adult Basic Education scores. (A.8.) They did not.

Walker submitted a third motion, maintaining his seven previous reasons and adding that (8) the defendants' noncompliance with discovery deadlines was another reason he needed counsel. (R.29.) The magistrate listed three reasons for denying the motion: Walker had personal knowledge of the events in question; Walker had litigation experience; and Walker was doing a good job so far. (A.9.) The magistrate also acknowledged that Walker's well-drafted pleadings may have been the work product of a jailhouse lawyer, but noted that "that alone does not necessarily mean Plaintiff is unable to proceed pro se." (10/23/15 Text Order.)

Still without counsel, Walker maintained his eight previous claims in a fourth motion, also adding an affidavit from Minter—his "jailhouse lawyer"—as proof that he was receiving assistance. (R.42.) District Judge Sue E. Myerscough denied his request "for the reasons stated in [the magistrate judge's] 10/23/15 text order." (A.10.) The judge also expanded on the prior order's mention of litigation experience by listing six federal cases filed by Walker: *Walker v. Godinez, et al.*, 12–cv–50276 (N.D. Ill.); *Walker v. Dart, et al.*, 07–cv–3085 (N.D. Ill.); *Walker v. Godinez*, 11–cv–726 (S.D. Ill.); *Walker v. Pfister*, 14–cv–1341 (C.D. Ill.); *Walker v. French*, 14–cv–1342 (C.D. Ill.); *Walker v. Loverant*, 15–cv–1201 (C.D. Ill.). (2/5/16 Text Order.)

In his fifth motion, Walker claimed that the court was not responding to his arguments. (R.48.) The court responded by reiterating its previous reasoning, adding a seventh case to the list: *Illinois v. Walker*, 08–cv–3466 (N.D. Ill.), in which "Plaintiff filed a petition for removal." (A.14.) Nonetheless, the court offered to "attempt to recruit pro bono counsel," while noting that if counsel could not be found, Walker would continue pro se. (A.14.)

Days before the pretrial conference, Walker's own efforts to recruit a lawyer bore fruit, and the court agreed to appoint the lawyer, Harold Hirshman. (A.19.) Within minutes of Hirshman's appointment, however, he moved to withdraw, citing "irreconcilable differences" with Walker. (A.19.) Walker once again was pro se.

By the time of Walker's sixth motion, Minter had been transferred to another prison, so its reasoning was sparse. (R.103.) The court's response remained largely unchanged: Walker's "significant litigation experience," the straightforward nature of the case, Walker's personal knowledge of the events in question, and the quality of his pleadings all served as evidence that he was competent to proceed pro se. (A.20.) The court added one new piece of evidence: Walker appeared competent during videoconferenced pre-trial status hearings. (A.20.)

In the first fifteen months of the case, Walker filed seven requests for an update on the status of his case. (R.7, R.13, R.25, R.27, R.40, R.41, R.43, R.50.) In many of these requests, he indicated confusion over why his case was not progressing and why he was not receiving discovery or court rulings. (R.7, R.40.) He

also alerted the court that he was not receiving mail and that his pretrial materials had been confiscated by the prison. (R.27, R.41, R.95, R.103.)

The district court orders trial by video

After discovery concluded, neither party filed a motion for summary judgment, and the case was poised for trial. Up to that point, all of the pretrial status conferences with the court were conducted via videoconference, except for one, (2/3/17 Minute Entry), which was telephonic, (A.19, R.89, 10/11/16 Text Order, R.103, A.20, 1/25/17 Text Order). After hearing Walker's objections to and defense counsel's support for a trial by video, (R.85, R.87), the court determined that the trial should occur entirely by video, with the jurors and court reporter sitting in the courtroom while the defendants, their lawyers, and Walker would be appearing from the Pontiac Correctional Center, (1/12/17 Text Order). The court reasoned that the cost-saving and security-preserving aspects of video trial outweighed any interest that Walker had in appearing in person. (R.89.) The court also considered prejudice to Walker, and determined it was not an issue because:

> The courtroom has a very large video screen, so the jury will be able to see Plaintiff probably better than they could see him if he appeared in person. Plaintiff will be able to see the jurors during voir dire and the witnesses while testifying.

(A.4.) The court's order did not explicitly credit any factors other than security concerns and Walker's increased visibility, though it did promise to inform the jury that the "state's budget crisis" was the reason for the video trial, which would

provide a non-prejudicial cover. (A.4.) Within three months, the presiding district court judge—Judge Sue Myerscough in Springfield—transferred the trial to Judge Harold A. Baker in the Central District's Urbana Division due to scheduling issues. (A.20.) The record does not reflect whether the video screen or trial video procedures in Judge Baker's courtroom in Urbana were comparable to those of Judge Myerscough's courtroom in Springfield. Judge Baker never revisited the original ruling regarding the video trial, nor did he give the promised "cost-containment" rationale to the jury.

Walker's video trial

When the jury trial finally took place, all parties—Walker, the defendants, and the witnesses—appeared by video, except for Marlon Minter, who appeared once by videoconference and once by telephone. (2/7/17 Voir Dire Tr. 5; 2/8/17 Trial Tr. 86.) At times, the jury or witness simply did not understand Walker. (*See, e.g.,* 2/7/17 Trial Tr. 7 (juror informing court that he could not hear or understand Walker).) Nearly every witness misunderstood and needed him to clarify his questions. (2/7/17 Trial Tr. 36, 58, 79–80, 91; 2/8/17 Trial Tr. 14, 20, 27.) The problems continued: at one point during Schmeltz's testimony, the court asked Schmeltz if he recognized an exhibit, only to be informed that Walker had not yet shown documents to Schmeltz. (2/7/17 Trial Tr. 91.) The court noted, "I hear rustlings, and I figure you people up there are moving these papers around, and I guess not." (2/7/17 Trial Tr. 91.) Later, when Walker objected that Lieutenant

French was coaching Schmeltz during his testimony, Judge Baker responded, "I can't see that or hear that, so I don't know what's going on." (2/7/17 Trial Tr. 104, 105.) When Schmeltz responded "no" to the judge's question of whether he was having a conversation with somebody there, the judge simply said: "Okay. Ask another question." (2/7/17 Trial Tr. 105.)

The separation of the parties from the courtroom also contributed to a breakdown in the professionalism of the court staff. Not realizing their conversation was being heard in the "courtroom" in Pontiac, the court reporter and courtroom deputy were heard pronouncing Walker's case as all made up, or, as Walker related, "bulljive." (2/8/17 Trial Tr. 79.)

Walker's cases suffered from more than just audiovisual glitches, however; his lack of legal expertise consistently hurt him, too. For instance, when Walker tried to impeach Schmeltz, his examination became argumentative, and the judge told Walker that he'd "run out of [Walker's] time" and had to move on to a different topic. (2/7/17 Trial Tr. 110–13.) When Walker attempted to impeach Stahl, on the other hand, he began by reading Stahl's responses to a set of interrogatories, but did not confront Stahl with any contrary testimony. (2/8/17 Trial Tr. 20–28.) This second attempted impeachment ended with the court asking Walker, "Are you done with this witness?" Walker responded "No, sir. No, sir." And the court stated, "Yes, you are." (2/8/7 Trial Tr. 28.) The court was particularly wary that Walker might repeat himself, at one point ending Walker's cross-examination of French by

stating, "I think you're through with this witness. You're not covering any grounds." (2/8/17 Trial Tr. 52.)

The jury found in favor of all defendants and against Walker. (2/8/17 Trial Tr. 159–60.) Walker filed a notice of appeal and a motion for leave to appeal nine days later, (R.146, R.147), and Judge Baker granted leave to appeal in March 2017 (3/3/17 Text Order). In sharing his post-verdict reflections on the trial with the jury, the court observed that it had been "difficult for [the court] to walk an even path and make rulings where there's inadequate representation on both sides," referring to Walker's pro se representation and "the Assistant Attorney Generals[, who we]re very inexperienced young lawyers." (2/8/17 Trial Tr. 162–63.) The judge did not specify what inadequacies he had in mind, but defense counsel promised the jury in her opening statement that it would hear evidence that Pontiac is reserved for inmates who continue to engage in disciplinary infractions: "And Pontiac is a facility that's used when inmates continue to misbehave, even when in segregation at other correctional institutions." (2/7/17 Trial Tr. 17.) In closing argument, the other defense lawyer followed up on her colleague's strategy with the following explanation of why the jury should not believe Walker's testimony:

> August 21, 2013, it was just a regular day, an ordinary day in North Cell House. You heard testimony today that the North Cell House at Pontiac Correctional Center houses the worst of the worst in the State of Illinois. This is the place where offenders go when they cannot behave themselves in any other institution in the entire State of Illinois.

(2/8/17 Trial Tr. 129.) The defense had not introduced any witness testimony or documentary evidence to support these statements about the character and propensities of Pontiac inmates.

SUMMARY OF THE ARGUMENT

Failure to appoint counsel

When deciding whether to appoint counsel to an inmate plaintiff, the judge must assess whether the difficulty of litigating a case exceeds the plaintiff's capacity to present it to the jury. *See Pruitt v. Mote*, 503 F.3d 647, 655 (7th Cir. 2007) (en banc). Here, as the complexity of Walker's case escalated, and as he repeatedly requested counsel, the court merely recited boilerplate reasons that ignored the particular challenges that Walker faced. In short, the court's analysis reflected neither a careful consideration of the proper factors nor a reasoned balancing of those factors in light of the totality of the circumstances.

First, the court repeatedly stated that the case was simple, given the essential 'he said/she said' nature of the expected testimony. The challenges of litigating a prisoner civil rights claim are far from simple. Walker needed to: navigate a complex discovery process while incarcerated and without access to documents; marshal expert and lay witness testimony to establish the elements of his claims, including a complex state-of-mind requirement; and avoid the pitfalls of conducting a credibility trial by videoconference.

Second, the court pointed to Walker's knowledge of the events as a reason to deny counsel. Yet ability to testify at trial is not the same as ability to *litigate* a case. The fact that Walker experienced the alleged beating says nothing about his ability to ably obtain discovery, to craft a convincing narrative, or to obtain

corroborating testimony from other witnesses in the face of repeated evidentiary objections.

Third, the court noted that Walker's prior litigation experience and the relatively high quality of his pleadings showed that he did not need a lawyer. But a cursory glance at the dockets reveals that none of Walker's prior pro se efforts were litigated with any degree of competence. And, as Walker repeatedly stated in his requests for counsel, his legal motions were drafted by a "jailhouse lawyer"—a fellow prisoner, who would not be able to help him at trial.

Video trial

The court also erred in finding that Walker's trial could be conducted by videoconference. This Court has articulated a balancing test, in which eight factors are carefully weighed against each other. *See Perotti v. Quinones*, 790 F.3d 712, 723 (7th Cir. 2015). Here, too, the court failed to weigh the proper factors, ignoring Walker's vital need to face the jury when testifying to establish credibility.

The court considered Walker's need to present his testimony in person based on just one criterion: the need for the jury to see Walker—a concern that the court felt was assuaged by the courtroom's large television screen. However, Walker's need to face the jury was about more than visibility: it was about establishing that he was telling the truth and that the defendants were not. The significant effect of video technology on a jury's ability to assess credibility cannot be discounted. Under

Perotti, a district court can find that factor outweighed by others, but it may not simply ignore it, as was done here.

Plain error in opening and closing

Defense counsel repeatedly argued to the jury that Walker's confinement at Pontiac Correctional Center—which they claimed housed "the worst of the worst" in Illinois's prison system—implied that he was necessarily a dangerous person, unworthy of belief. No evidence supports these contentions. These statements were highly prejudicial and warrant a new trial.

Cumulative error

Although this Court's case law warrants reversal on the basis of each of the foregoing errors, they combine with a litany of other procedural injustices to establish the trial's fundamental unfairness. Included in that litany is the court's failure: to allow testimony of a potentially critical corroborating witness; to protect a witness from reported retaliatory threats by prison employees; to engage in the requisite inquiry before having a corroborating witness testify wearing visible handcuffs; to prevent court staff from characterizing Walker's case as fabricated within the hearing of the parties in Pontiac; to sanction the defendants for not explaining their loss of the video recording at the time and place of the alleged excessive force incident; to protect against the defendants' coaching of their witnesses' testimony in Pontiac; to ensure that Walker's and his witnesses'

testimony was consistently audible and clearly depicted the features of all witnesses regardless of skin color; and to avoid the continual interruptions, corrections, and admonishments of Walker that undermined his already weak and often confused attempts to persuade the jury that his narrative was more credible than the defendants'.

ARGUMENT

In denying Walker's repeated motions for counsel and ordering trial by video, the court underestimated the complexity of the litigation, overestimated Walker's litigation skills, accepted dubious reasons for not transporting him to court, and did not consider the practical challenges faced by any prisoner who needed to persuade a jury to disbelieve prison officials' disavowals of beating him and denying him medical care.

I. The district court erred in failing to appoint counsel for Walker.

In *Pruitt v. Mote*, this Court set forth a carefully calibrated framework to guide district courts' exercise of discretion in appointing counsel: trial judges must address the essential question of "whether the difficulty of the case factually and legally exceeds the particular plaintiff's capacity as a layperson to coherently present it to the judge or jury himself." 503 F.3d 647, 655 (7th Cir. 2007) (en banc). To do so, this Court emphasized that the inquiry must extend beyond a plaintiff's capacity to try his own case, it must also encompass competency "to *litigate* his own claims, . . . and this includes . . . evidence gathering, preparing and responding to motions and other court filings, and trial." *Id.* (emphasis in original). "[B]oilerplate" reasons will not suffice; this Court will reverse when judges fail to analyze the required factors. *Id.* at 660. Here, the court's boilerplate reasons show that all of those factors were neither considered nor balanced in a way that encompassed "a totality-of-the-circumstances review of the proceedings as a whole." *Id.* This Court

reviews counsel-appointment questions for an abuse of discretion. *Id.* at 658 (citing *Greeno v. Daley*, 414 F.3d 645, 658 (7th Cir. 2005)).

A. The district court's boilerplate denials of counsel failed to consider both the multifaceted complexities of Walker's case and defendants' ongoing obstruction of Walker's attempts to discover critical evidence.

Viewing Walker's case as a mere 'he said/she said' recounting of a single event, the court vastly underestimated the complications Walker faced in meeting, among many others, the following litigation challenges:

- Discovering and producing witnesses who saw Walker before, during and after the incident, as well as those who knew of his many requests for medical care that went unanswered.

- Obtaining the prison documents to show: (1) the officers involved; (2) their assignments that day; (3) his disciplinary record to disprove defendants' accounts of his alleged misbehavior; (4) his requests for medical care; and (5) the video tapes of the incident or records showing why they were destroyed.

- Producing the expert testimony, which could have shown: (1) how his medical records corroborated his account of the excessive force and denial of medical care; (2) how the absence of a disciplinary report for Walker's alleged misconduct supports Walker's claim of a cover-up; and (3) how the nationally recognized "code of silence" by corrections employees operates to produce mass denials of misconduct at trial.

- Meeting the unique challenges of conducting a jury trial through video conferencing, such as developing rapport with a jury through a camera lens, introducing and objecting to evidence, and protecting against unfair practices that could not happen were everyone in the same room.

In order to prevail, Walker had to persuade the jury that the defendants falsely denied beating him and that they then refused him needed medical care. Walker's trial was not based on a mere 'he said/she said' event, not only because of the four sets of complex litigation challenges listed above, but also because Walker

was a prisoner facing four state officers swearing under oath that Walker's testimony was a lie. The court's assumption that Walker did not need an attorney to effectively deal with these multi-faceted legal challenges contravenes long-standing guidance from this and other circuit courts of appeal, which find credibility issues a critical determinant of the need for counsel. *See, e.g.*, *Swofford v. Mandrell*, 969 F.2d 547, 552 (7th Cir. 1992) ("During his incarceration Swofford has been unable to investigate crucial facts; his claim is likely to turn on the credibility of witnesses, making counsel important to ensuring that the truth is exposed; and he is unable to present his case adequately without counsel."); *Merritt v. Faulkner*, 697 F.2d 761, 765 (7th Cir. 1983) ("When properly presented the evidence in this case will consist of quite complex and probably contradictory evidence [from opposing parties] . . . Testing their opinions and their credibility will require the skills of a trained advocate to aid the factfinder in the job of sifting and weighing the evidence."); *Maclin v. Freake*, 650 F.2d 885, 888 (7th Cir. 1981); *see also Manning v. Lockhart*, 623 F.2d 536, 540 (8th Cir. 1980) ("[W]e feel that the appointment of counsel is appropriate here, where there is a question of credibility of witnesses and where the case presents serious allegations of fact which are not facially frivolous."); *Rayes v. Johnson*, 969 F.2d 700, 704 (8th Cir. 1992) ("In essence, the case [of denial of a prisoner's medical care] hinged on determinations of witness credibility, and Rayes' lack of courtroom skills prevented the adequate examination of witnesses.").

The court also failed to heed this Court's guidance where there is both a call for medical expertise and there are alleged injuries requiring objective proof. *See Perez v. Fenoglio*, 792 F.3d 768, 784–85 (7th Cir. 2015) ("Where an inmate alleges an objectively serious medical condition, it may be better to appoint counsel—so [as to] flesh out any claim that may exist—than to dismiss a potentially meritorious claim and leave the prisoner in harm's way."). Walker could, of course, testify to the injuries he suffered at the defendants' hands, but he obviously could not use principles of medical science to explain the seriousness of his injuries, how quickly they might have healed, and the correlation between the guards' alleged conduct and his resulting injuries.

One final factor that this Court considers in the complexity inquiry is whether state of mind is at issue. *Bracey v. Grondin*, 712 F.3d 1012, 1017 (7th Cir. 2013). Here, Walker's failure-to-intervene and denial-of-medical-care claims required proof of defendants' deliberate indifference to his medical need and brutal treatment, proof of which is well beyond most laypersons' competency. *Swofford,* 969 F.2d at 552 (internal quotation marks omitted) (noting "the difficult and subtle question of the state of mind required for a Fourteenth Amendment violation," which is often "too complex for a pro se plaintiff to understand or present to a jury").

In short, the intersection of the unusual and intractable discovery hurdles with the nature of Walker's claims should have signaled to the court that this was a special case warranting counsel. And even if that were not evident with Walker's first motion for counsel, it certainly became clear as the case progressed; indeed the

court's rote and repeated denials of his next five requests were unreasonable. Walker's subsequent motions not only documented defendants' continuing discovery obstruction, they stressed the urgency of Walker's need for the information in light of the upcoming discovery deadline and trial date. (*See, e.g.*, R.29.) The court's boilerplate denials of these motions show that the court was not considering the record as it existed at the time of the motion, which is what the Court requires. *See Pruitt*, 503 F.3d at 656 (stating the district courts must "make a determination based on the record as it exists when the motion is brought."); *see also Gil v. Reed*, 381 F.3d 649, 656–57 (7th Cir. 2004) (district court did not abuse its discretion in denying plaintiff's first motion for counsel but did in denying the second motion by underestimating the complications at trial and overestimating plaintiff's capabilities.).

B. The district court credited improper reasons for finding Walker able to proceed pro se and failed to account for the many indicia of Walker's diminished capacities.

The second half of this Court's test turns from the nature and characteristics of case to the nature and characteristics of the plaintiff. Both parts of the test are essential, so this Court will reverse when the record reflects a lack of attention to either part of the inquiry. *Santiago v. Walls*, 599 F.3d 749, 765 (7th Cir. 2010) (reversing a refusal to appoint counsel where a "methodological lapse in failing to give full consideration to each factor constitutes an abuse of discretion."). The most relevant factors include the prisoner's literacy, communication skills, education

level, litigation experience, intellectual capacity and psychological history. *Id.* at 762.

Here, the court entirely based its determinations of Walker's capacity to litigate on his prior federal litigation experience; it paid almost no attention to this Court's focus on the plaintiff's actual demonstrated capacities or limitations. Had it done so, the court would have seen that Walker was grossly unfit to handle the challenges of this case.

1. Walker's federal litigation history showed the opposite of effective capacity to litigate.

In denying Walker's motions, the court apparently found most compelling the fact that Walker had filed several other federal court cases. (*See* A.29 (citing docket numbers of prior cases and concluding that Walker could litigate pro se despite his mental challenges).) As a threshold matter, rote recitation of case numbers is not enough; the court should also analyze at least what the docket shows actually happened in the cases before deciding a motion for counsel. *See Farmer v. Haas*, 990 F.2d 319, 322–23 (7th Cir. 1993) (finding a plaintiff possessed adequate litigation capacity based on the combination of past successful appellate litigation, shrewd cross-examination, and a history of sophisticated criminal fraud.). Had the court engaged in even a cursory examination of the dockets it cited in support of denying Walker's request for counsel, (A.14), it would have learned a very different story:

- In *Walker v. Dart*, 07-cv-3085 (N.D. Ill.), the district court dismissed Walker's case for improperly completing his application to proceed in forma pauperis.

- In *Walker v. Parnell*, 11-cv-00726 (S.D. Ill.), the district court dismissed Walker's case for failure to prosecute after the defendant moved for judgment on the pleadings and Walker did not reply.

- In *Walker v. Godinez*, 12-cv-50276 (N.D. Ill.), as in *Dart*, Walker failed to properly complete his application to proceed in forma pauperis, and the district court dismissed his case.

- In *Walker v. Pfister*, 14-cv-1341 (C.D. Ill.), Walker's case was dismissed on the defendants' Rule 12(b)(6) motion.

- In *Walker v. French*, 14-cv-1432 (C.D. Ill.), the district court dismissed the case for failure to exhaust administrative remedies.

- In *Walker v. Loverant,* 15-cv-1201 (C.D. Ill.), the district court granted the defendant's motion for summary judgment.

Walker requested—and never received—counsel in all six cases. All six cases were dismissed, often in very early stages.

Walker's only successful litigation was *Walker v. Sheahan*, 05-cv-5634 (N.D. Ill.), in which he reached a settlement on the day of trial. But in *Sheahan*, Walker was represented by Kirkland & Ellis from the very beginning.

The court cited one other case: *State of Illinois v. Walker*, 08-cv-3466 (N.D. Ill. 2009), in which, according to that district court, Walker "filed a petition for removal." (A.14.) As the judge remarked in his memorandum order dismissing that case only a week after it began:

> Fredrick Walker ("Walker") has filed what he captions a "Notice of Removal" that has been assigned the case number listed in the above caption—but both the caption and the text of Walker's self-prepared handprinted filing identify the proposed removal as targeting a state

> *criminal* case . . . . This memorandum order is issued sua sponte because Walker's removal effort is impermissible as a matter of law.

Walker v. Illinois, 09-cv-3466 (N.D. Ill. 2009). In short, a plaintiff's ability to *file* a lawsuit says nothing about his ability to *litigate* it. *See Pruitt*, 503 F.3d at 655.

2. In deciding that Walker had the mental capacity to litigate pro se, the court failed to factor in his history of mental illness, his serious cognitive deficits, and his history of litigating failures.

Although there are no "fixed requirements," this Court has set forth some indicia that reflect a pro se party's ability to litigate: "literacy, communication skills, educational level, and litigation experience" along with "intellectual capacity and psychological history," to the extent that they are known. *Pruitt*, 503 F.3d at 655. Walker satisfies none of them. As noted above, Walker's litigation experience affirmatively shows his lack of ability. As for the remaining indicia, Walker is functionally illiterate; the reports Walker submitted to the court show that he reads at a second-grade level with his reading ability in the fifth percentile. (R.2.) Second, Walker submitted evidence that he has low communication skills and limited vocabulary. (R.24 at 7–20.) Third, the court was told that Walker only completed coursework through the sixth grade level while in juvenile detention. (R.24 at 14.) Fourth, Walker's intellectual capacity is also well below normal. His IQ hovers at the level of a borderline disabled person with additional mental deficiencies. (R.24 at 19 (teacher noting that Walker mastered his class schedule only after two years); *see also* R.24 at 13–20 (showing that as an adult Walker tests at the level of an elementary student); R.24 at 15 (most recent psychological testing of Walker, which

shows that his "abilities rang[e] from the cusp between low average and borderline defective to the middle of the borderline deficit range of functioning").) Other tests show a pattern of neurocognitive impairment along with a very limited vocabulary, low average verbal attention and concentration, low average concrete verbal reasoning and moderately impaired abstract verbal reasoning. (R.24.) Finally, Walker has an extensive psychological history—he has been confined to two separate mental health centers where correctional officials have deemed him a "seriously mentally ill prisoner." (R.4 at 3.) With this wealth of information about Walker's serious mental limitations, the court erred in not adequately factoring them into its decision-making.

This Court's remaining requirements are also amply met. Walker was more than diligent in seeking and requesting counsel. (R.4, R.24, R.29, R.42, R.48, R.72, R.103.) With each subsequent motion for counsel, Walker reiterated his prior grounds and updated them with new grounds based on developments in the case that made it increasingly difficult for him to prepare for trial. (R.24, R.29, R.42, R.48, R.103.) Walker ultimately did succeed in recruiting counsel to assist him, though within minutes of the appointment, counsel withdrew due to newly discovered irreconcilable differences. (A.19.)

C. There is a strong likelihood that counsel would have made a difference in the outcome of the litigation.

Assuming that the trial court did not properly exercise its discretion in

denying appointed counsel, this Court must then address "the question [of] whether assistance of counsel could have strengthened the preparation and presentation of the case in a manner reasonably likely to alter the outcome." *Pruitt*, 503 F.3d at 660. The many challenges and difficulties counsel could have addressed and ameliorated are catalogued in detail above, *see supra* Section I.A, and below, *see infra* Section IV.A. Those problems, alone or in concert, are more than sufficient to establish the requisite "strong likelihood" of a different outcome for Walker.

One important, additional fact that counsel could have developed was that, as a pro se prisoner, Walker was in no position to develop a theory based on "code of silence" practices that have been recognized as endemic in prisons. *See Jeffes v. Barnes*, 208 F.3d 49, 62 (2d Cir. 2000) ("In light of the scope, duration, openness, and pervasiveness of the retaliation against officers who broke the code of silence, the jury could find that" the head of the jail knew about this kind of retaliation.); *Rossi v. City of Chicago*, 790 F.3d 729, 737–38 (7th Cir. 2015) (trial court's denial of plaintiff's "code of silence" claim upheld because he failed to retain a defense expert or identify expert reports, despite the fact that the facts of this case "raise serious questions about accountability among police officers"); *see also* Andrea Jacobs, *Prison Power Corrupts Absolutely: Exploring the Phenomenon of Prison Guard Brutality and the Need to Develop A System of Accountability*, 41 Cal. W. L. Rev. 277, 286 (2004) ("A code of silence among guards exists in various prisons and jails, allowing these officials the discretion to unnecessarily physically harm inmates without having to answer for their wrongs."); John Boston, *Excessive Force in the*

New York City Jails: Litigation and Its Lessons, 22 Wash. U. J. L. & Pol'y 155, 172 (2006) ("The code of silence is even more difficult to defeat in prisons . . . since the actions of prison staff take place behind walls and bars out of the view of neutral civilian witnesses."). Expert testimony, developed by an attorney, that correctional officers uniformly deny or cannot remember incidents when called to testify as to fellow officers' illegal behavior would have been critical in Walker's case, likely outcome determinative.

II. The district court abused its discretion in holding Walker's trial by videoconference.

The importance of live testimony—a party's ability to sit among a jury of his peers and present his case—cannot be understated. *See* Fed. R. Civ. P. 43 advisory committee's note to 1996 amendment (stating that the "opportunity to judge the demeanor of a witness face-to-face is accorded great value in our tradition," because "[t]he very ceremony of trial and the presence of the factfinder may exert a powerful force for truthtelling"); *see also Perotti v. Quinones*, 790 F.3d 712, 723 (7th Cir. 2015). Of course, situations exist when live trials simply are not feasible. *Sisk v. United States*, 756 F.2d 497, 499 (7th Cir. 1985). In the rare instances when the presumption in favor of live trials might be overcome, the balancing of interests must be done carefully, and the decision to forego a live trial must not "be taken lightly." *Thornton v. Snyder*, 428 F.3d 690, 698 (7th Cir. 2005). In particular, a district court must weigh "the interest of the plaintiff in presenting his testimony in person" against "the interest of the state in maintaining the confinement of the

plaintiff–prisoner." *Stone v. Morris*, 546 F.2d 730, 735 (7th Cir. 1976). A district court "should consider" the following factors when deciding whether to require a prisoner to litigate his civil case by videoconference: (1) the "substantiality of the matter at issue"; (2) the "plaintiff's probability of success on the merits" of his claim; (3) the "plaintiff's interests in presenting his testimony in person rather than by alternate means";[2] (4) the "cost and inconvenience of transporting the plaintiff" to court from prison; (5) "the "potential danger or security risk that the plaintiff would pose to the court"; (6) the "integrity of the correctional system"; (7) any need for an early determination of the claim; and (8) the possibility of postponing trial until the plaintiff is released from prison. *See Perotti*, 790 F.3d at 721 (enumerating factors) (citing *Moeck v. Zajackowski*, 541 F.2d 177, 181 (7th Cir. 1976)). The first three factors arguably favor the plaintiff in a typical case; the next three favor a defendant. And the last two factors are irrelevant in a case like this one where the plaintiff is serving a lengthy sentence.

This Court reviews for an abuse of discretion whether the trial court has considered the requisite criteria, engaged in balancing, and not omitted anything significant from its analysis. *Perotti*, 790 F.3d at 726. Here, the court both failed to strike a reasonable balance of the competing interests and omitted significant factors from its analysis. In particular, the court failed to consider the critical role

[2] This Court has articulated additional subfactors that are subsumed by factor three: "(a) whether the case will be tried to the bench or to a jury; (b) whether the plaintiff has other witnesses to call or is the sole person who can provide testimony consistent with his complaint; and (c) whether the defendants themselves plan to testify." *Perotti*, 790 F.3d at 721.

in-person testimony plays in any case that hinges on witness credibility, but especially in one where a prisoner must overcome a phalanx of officer denials.

A. The district court did not adequately account for the prominence of credibility where the two sides offer contradictory versions of events.

Once the district court identifies the relevant factors at play in the case, it must balance them, considering the totality of the circumstances. In *Perotti*, this Court emphasized the common theme undergirding the district court's balancing responsibilities: credibility. The district court must consider both "how important credibility is to the case, and how remote appearance may . . . limit the factfinder's ability to evaluate the inmate's credibility as a witness. . . ." *Perotti*, 790 F.3d at 724–25. The record in this case reveals that the undercurrent of credibility simply did not factor into the district court's analysis; the sum of the court's reasoning on the pro-live-trial side of the balance was:

> The claims in this case are relatively simple—alleged excessive force and failure to provide medical attention for the injuries caused by that force. The courtroom has a very large video screen, so the jury will be able to see Plaintiff probably better than they could see him if he appeared in person.

(A.4.)

The factual issues in this case are far from simple. But even if they were, simplicity is not relevant to the question whether trial by video "limit[s] the factfinder's ability to evaluate the inmate's credibility as a witness." *Perotti*, 790 F.3d at 725. The court based its assumption that video transmission would not affect the jury's ability to assess credibility on a finding that the courtroom

contained a "very large video screen." (A.4.) The court thus did not account for the extent the video medium itself degrades the ability to appear both credible and sympathetic. Specifically, video inherently distances the viewer from the subject, which is the precise rationale underlying both this Court's and the Federal Rules' Advisory Committee's conclusion that trial by video is not equivalent to in-person testimony and should be used only in exceptional circumstances. *See* Fed. R. Civ. P. 43 advisory committee's note to 1996 amendment ("Contemporaneous transmission of testimony from a different location is permitted only on showing good cause in compelling circumstances. The importance of presenting live testimony in court cannot be forgotten."); *Thornton*, 428 F.3d at 697 (stating "it is to be expected that the ability to observe demeanor, central to the fact-finding process, may be lessened in a particular case by video conferencing" and emphasizing the special detriment arising from requiring a *party* to testify by video); *see also Mattox v. United States*, 156 U.S. 237, 242–43 (1895) (situating the Confrontation Clause not only in the right to cross-examine one's accuser, but also in the right to "compel[] him to stand face to face with the jury in order that they may look at him and judge by his demeanor upon the stand and the manner in which he gives his testimony whether he is worthy of belief").

If the presence of a "very large screen" automatically satisfied the requirement of "good cause in compelling circumstances," then it would render that maxim toothless. These days, big screens are ubiquitous. Yet they cannot account for the very real and documented impact on the jury of distance and electronic

transmission of a party's face. Gerald L. Williams et al., *Juror Perceptions of Trial Testimony as a Function of the Method of Presentation*, 1975 BYU L. Rev. 375, 411 (finding "significant distortions in juror perceptions of trial testimony" in videotaped testimony as compared to live testimony); Gordon Bermant et al., *Juror Responses to Prerecorded Videotape Trial Presentations in California and Ohio*, 26 Hastings L.J. 975, 998 (1975) (relating interviews with jurors who noted that "feeling [for the witnesses] was definitely lost" and that "[i]t's just very hard to explain . . . [but] the human factor is needed."); Shari Seidman Diamond et al., *Efficiency and Cost: The Impact of Video Conferenced Hearings on Bail Decisions,* 100 J. of Crim. L. & Criminology 869, 898 (2010) (finding a "substantial increases in bail levels that immediately followed the implementation of videoconferenced bail hearings in Cook County"); Frank M. Walsh & Edward M. Walsh, *Effective Processing or Assembly-Line Justice? The Use of Teleconferencing in Asylum Removal Hearings*, 22 Geo. Immigr. L.J. 259, 271, 280 (2008) (finding that use of videoconferencing in asylum cases results in 50% lower likelihood of a grant at least in part because it impairs the judge's ability to assess credibility). Here, the court simply did not consider the central role of credibility in Walker's case and, therefore, failed to apprehend the degree to which trial by videoconference would harm him.

B. The district court did not heed *Perotti*'s caution that the decision to conduct the jury trial by video must be made with an appreciation of the technology's effect on the particular case.

The decision to conduct the trial by video was made without any findings regarding the capacity of Judge Baker's courtroom's video technology to fairly portray Walker to the jury and to allow Walker a fair opportunity to manage his case. *See Perotti*, 790 F.3d at 725 (stating that its balancing test "must" be conducted with a "realistic appreciation of how much the available technology will enable all parties to see and hear of one another, and how the limitations of video conferencing are likely to impact the presentation of the inmate's case, the factfinder's assessment of the evidence, and the fundamental fairness of the trial."); *see also id.* at 724 (cautioning that "[a] court may therefore not simply assume that remote appearance by video conferencing will necessarily be good enough in any case."). In *Perotti*, for example, this Court commended the district court's attention to this critical inquiry:

> We wish to highlight that before the judge made this decision, she conducted a pretrial conference with Perotti appearing by video. Thus, rather than making assumptions or relying on second-hand information about videoconferencing, the judge was able to both confirm that Perotti's remote participation was logistically possible and to assess first-hand its efficacy as an alternative to Perotti's in-person participation.

Id. at 725. Although "test runs" of the video equipment may not be mandatory in every case, the record here does not reflect that the court's decision was guided in any way by the "realistic appreciation" this Court requires. *Id.* at 725.

Here, the court's sole finding with respect to the adequacy of the technology was that the video screen was large enough so that the jury and the plaintiff would be able to see each other. (A.4.) This finding was made without reference to the video technology or lighting setup that would be used by Pontiac.[3] (A.4.) No one mentioned, let alone remedied, potential technical issues.[4] Even worse, once the trial was transferred to a different judge in Urbana, no testing of the video capabilities occurred before trial; the new judge simply accepted wholesale the prior judge's decision to hold the trial by video. Far from the "realistic appreciation" of the technology at hand, the court's cursory mention of the size of the video screen—in a courtroom that was not actually used—does not satisfy this Court's concerns from *Perotti*.

C. The district court failed to address four of the *Perotti* factors weighing in favor of live trial and emphasized a single factor in deciding to hold a video trial.

The court's disregard for the central role of credibility in Walker's trial and its failure to ensure the technology was adequate before permitting a trial by video were the most serious mistakes below, but they were not the only ones. The court

[3] Walker and his witnesses' dark complexions, (R.85 at 7), likely rendered them harder to see on video*, see, e.g.*, John Jackman, *Lighting for Digital Video and Television* 128–29 (3d ed. 2010) ("Imagine the difficulty of controlling exposure with a very dark-skinned subject! [...] Lighting dark-skinned subjects is an art unto itself."). While newer technologies are able to clearly show the features of dark-skinned faces, the court did not test the Pontiac-to-court connection, and issued its order of video trial without first-hand knowledge that the technology would properly convey Walker's testimony and affect to the jury.

[4] Indeed, snags did materialize at trial. *See infra* Section IV (detailing the repeated instances of microphone- and video-caused confusion and lack of clarity).

also failed to consider four *Perotti* factors: (1) the plaintiff's interest in conducting a live trial; (2) the substantiality of the matter at issue; (3) the integrity of the correctional system; and (4) the plaintiff's probability of success on the merits. Each is integral to a district court's decision-making, *Perotti*, 790 F.3d at 721, but all were absent here, (A.2–A.6).

First, as demonstrated above, Walker possessed an overriding interest in presenting his case to the jury in person. *See supra* Section II-A. Second, maintaining effective recourse to federal jury trials for those under the total control of one of the government's most coercive and closed institutions is critical to rule of law. *See, e.g.*, *Trop v. Dulles*, 356 U.S. 86, 100 (1958). Walker's case—one involving a prison beating and denial of medical care—presented a substantial issue that strikes at the heart of correctional system integrity. Finally, the court ruled at the threshold of the case that Walker stated meritorious claims. (A.46–A.49.) The defendants neither moved to dismiss nor for summary judgment. Yet despite these clear indicia of merit, when the court was tasked with weighing it in making its video-trial decision, it did not do so.

Not only did the court give short shrift to the pro-plaintiff factors of the *Perotti* test, it also improperly handled one factor on the defendants' side of the leger: the danger of transporting Walker to the courthouse, which the court over-weighted.

The only *Perotti* factor the judge directly cited in support of her video trial determination was security risk, which she supported by noting that "Plaintiff is in

prison for life, serving a sentence for murder and other violent felonies. His adjustment to prison has been poor—he has an extensive prison disciplinary record and is currently in disciplinary segregation until March 2019." (A.4.) The defendants' wish not to transport Walker for security reasons obviously deserves serious consideration, but it is not a trump card. An inmate plaintiff's security risk is to be balanced along with all other relevant *Perotti* factors, something the court did not do here. Significantly, Walker appeared in person in another case around the same time. *See* No. 14-cv-01432 at R.68. The records in those cases do not reflect any difficulties resulting from his in-person attendance. *See* No. 14-cv-01432, Minute Entry of 4/18/16.

Finally, Walker's pro se status alongside the peculiar problems of conducting a remote jury trial while under the control of adversary-jailors created special problems. Instead of deciding the video trial issue in the context of the specific trial challenges facing Walker as a pro se litigant in a complex case, the court independently considered the video and counsel issues. Had the court viewed them as interdependent, it may have come to the same conclusions, but at least would have done so considering them in the context of the real litigation challenges facing Walker.

III. Because defense counsels' argument that Walker was confined with the "worst of the worst" in the Illinois prison system was plain error and highly prejudicial, it warrants a new trial.

This is one of those exceptional cases where reversal and remand is warranted under the plain error doctrine to prevent a miscarriage of justice resulting from lawyers' arguments to the jury. *Walker v. Groot*, 867 F.3d 799, 805 (7th Cir. 2017).

The error here could not be plainer. In both opening statement and closing argument, defense counsel used the fact of Walker's confinement at a high security prison to portray him as an incorrigibly dangerous bad man and, therefore, one whose character, makes him unworthy of belief and undeserving of a remedy. (A.35 (defense's opening statement that "Pontiac is a facility that's used when inmates continue to misbehave, even when in segregation at other correctional institutions . . . [, and] that the North Cell House is used at Pontiac Correctional Center for the segregation [of] inmates that continue to engage in disciplinary infractions even when at Pontiac Correctional Center."); A.39 (defendants' closing argument that "the North Cell House at Pontiac Correctional Center houses the worst of the worst in the State of Illinois. This is the place where offenders go when they cannot behave themselves in any other institution in the entire State of Illinois.").)

Defense counsel did not offer evidence to support these contentions, perhaps because there was none or because they feared the trial judge would admonish them for the attempt. *See* Fed. R. Evid. 404(a)–(b) (prohibiting evidence of a person's

character or of conduct to show propensity). Thus, defense counsels' use of opening and closing statements to put before the jury concepts that did not and could not come in via evidence was plainly error. *Trytko v. Hubbell, Inc.*, 28 F.3d 715, 727 (7th Cir. 1994) ("Though the scope of closing argument is broad, counsel may not make reference to matters not in evidence.").

Defense counsels' continuing focus in their opening and closing statements on Walker's bad character and propensities served no other purpose than to inflame the jury's passions against Walker. Because the verdict depended entirely on which of the parties' conflicting accounts of the excessive force incident the jury would find more credible, jurors would be more likely to credit the testimony of corrections officers than that of a prisoner whom they were warned was incorrigibly dangerous, one of the "worst of the worst" in the State of Illinois. *See Barber v. City of Chicago*, 725 F.3d 702, 714 (7th Cir. 2013) (granting a new trial in excessive-force claims against Chicago police after the defendants introduced and relied on the plaintiff's criminal history, which created a substantial risk that the jury entered "a defense verdict based not on the evidence but on emotions or other improper motives, such as a belief that bad people should not be permitted to recover from honorable police officers."); *see also Hillard v. Hargraves*, 197 F.R.D. 358, 360 (N.D. Ill. 2000) (finding plain error and ordering new trial when defense counsel's references to a prisoner's "confinement in 'maximum' security, the highest level of security in Cook County Jail . . . may have had the effect of triggering the jury's conscious fears or

subconscious belief that Mr. Hillard was a dangerous convicted felon" and that "the defendants' use of force on Mr. Hillard therefore was justified.").

Given that the jury's verdict in Walker's case directly hinged on which side was more credible, the defense counsels' illegitimate attempts to portray Walker as "the worst of the worst" could only have unfairly infected the jury deliberations with the type of illegitimate considerations that warrant a new trial. These arguments of the two assistant attorney generals, therefore, constituted the extraordinary circumstances that warrant plain error review and reversal.

IV. Taken together, numerous errors amounted to a denial of Walker's right to a fair trial.

Many errors coalesced to render Walker's trial fundamentally unfair. *See Jordan v. Binns*, 712 F.3d 1123, 1137 (7th Cir. 2013) ("Where there are several errors, each of which is harmless in its own right, a new trial may still be granted if the cumulative effect of these otherwise harmless errors deprives a litigant of a fair trial"); *United States v. Allen*, 269 F.3d 842, 847 (7th Cir. 2001) ("Cumulative errors, while individually harmless, when taken together can prejudice a [litigant] as much as a single reversible error and violate a [litigant's] right to due process of law.").

A. The absence of appointed counsel effectively prevented Walker from developing and presenting evidence and arguments likely to have been outcome determinative.

As discussed in Section I *supra*, the court's first error, which infected Walker's opportunity for a fair trial throughout the rest of the case, was its consistent conclusion over nearly three years and six requests that Walker did not need counsel. Even though the court requested the defendants produce Walker's Adult Basic Education test scores, the defendants never did, and yet the court continued to deny Walker's requests in the absence of this essential, requested information.

The defendants' failure to provide the court with the scores it requested was one of only a series of discovery lapses. The defendants first set of responses to Walker's discovery requests arrived three months late, and only after Walker moved, twice, to ask the court to enforce its own deadlines. (R.23, R.28, R.31, A.9.) The defendants' discovery, when it arrived, was sparse and mostly non-responsive. (R.49 at 18) (stating affirmatively only that the defendants were not injured on the day in question and that the discovery process was ongoing). Additionally, while in answer to Walker's discovery requests the defendants stated that "[n]o video exists," (R.54), French at trial stated the opposite, (2/8/17 Trial Tr. 61). Walker, without a lawyer and at constant risk of losing access to his case file by virtue of his disciplinary segregation level, could not shore up his case during the pretrial phase. He did not, and perhaps could not, depose the defendants, and the court stymied his attempts to depose Pontiac paralegal Mark Spencer, who purportedly received and

submitted numerous requests for medical care on Walker's behalf in the immediate wake of the incident. (R.47.)

These errors snowballed at trial. First, the court erroneously ordered a video trial, and that decision was never revisited even after the case was transferred to a new judge in a new courthouse. (*See* A.2–A.6.) As discussed above, these errors—one of commission, one of omission—combined with Walker's lack of a lawyer to leave him isolated and ineffectual at trial.

The most important evidence Walker was unable to present at trial was the video recording that French admits was made at the time and place of the alleged excessive force incident and that would, therefore, have revealed whether the incident actually happened. (2/8/17 Trial Tr. 61.) The defendants said they no longer had the recording, but never answered Walker's discovery requests as to what they did with it. (R.54.) Walker's request for a negative inference instruction was, nevertheless, denied. (7/13/16 Text Order.) Given the defendants' failure to explain why they could not produce this outcome-determinative videotape, Walker's counsel would have had a compelling argument that such failure could only have been to cover up their guilt.

Walker's trial preparation was also dealt a potentially critical blow when the trial court unaccountably denied Walker's attempt to present a witness employed by Pontiac to corroborate his denial of medical care claim. Although Walker claimed he had repeatedly given Mark Spencer, a senior paralegal in the prison library, forms to request medical care, his request for a subpoena for Spencer's testimony was

denied by the trial judge on the ground that Walker simply did not need him as a witness. (R.47.) Because this witness was a prison employee, his corroboration of Walker's claim, that was denied by all other employees, could have had a decisive impact in enhancing Walker's credibility and undermining that of the defendants. A competent lawyer would have been capable of cogently articulating this to the court in a way that Walker could not.

B. Appearances of unfairness and impropriety pervaded the trial process.

Judge Baker told Walker not to be concerned that he heard the judge's staff say they believed Walker made up his whole case. (R.79.) Because those statements were not said in the jury's presence, the judge called them "of no effect." (R.80.) The trial judge cannot be faulted for wanting to protect his staff: "the court staff is experienced, professional people. They've been with me for years, some of them…." (R.64.) Yet it is also the role of the court to preserve the appearance of fairness, and to do so with even special vigilance in inmate cases. *Greenholtz v. Inmates of Nebraska Penal & Corr. Complex*, 442 U.S. 1, 34 (1979) ("this Court has stressed the importance of adopting procedures that preserve the appearance of fairness and the confidence of inmates in the decision-making process."). In weighing whether cumulative errors were sufficient to warrant reversal, this Court in *Llaguno v. Mingey* deemed it especially important to avoid the appearance of unfairness when unsympathetic plaintiffs such as criminals are pitted against law enforcement officers:

> We need not decide whether any one of these errors would warrant reversal in and of itself, or even whether all together would warrant reversal in a different kind of case. But bearing in mind that civil rights actions often pit unsympathetic plaintiffs—criminals, or members of the criminal class (even—in this case—a multiple murderer's parents and brother)—against the guardians of the community's safety, yet serve an essential deterrent function . . . we take a serious view of trial errors that consistently favor the defendants in such a case.

763 F.2d 1560, 1570 (7th Cir. 1985), *abrogated on other grounds by Cty. of Riverside v. McLaughlin*, 500 U.S. 44 (1991). The Supreme Court in *Morrissey v. Brewer*, 408 U.S. 471, 484 (1972), also noted the societal importance of appearing to treat those enmeshed in the criminal process fairly: "[S]ociety has a further interest in treating the parolee with basic fairness: fair treatment in parole revocations will enhance the chance of rehabilitation by avoiding reactions to arbitrariness."

Here, the trial court's assumption that his staff's expressions of their beliefs that Walker's entire case was a lie had "no effect" disregarded the likely effect of those opinions on not only Walker, but also on everyone else in the "courtroom" at Pontiac. What assurance did Walker have from his remote location at Pontiac that the faces of these court officials were not consciously or unconsciously signaling their disbelief to the jury? How could he know that they did not converse about the case to the judge's law clerk or to the bailiff in charge of the jury? Finally, why would the defendants in Pontiac who heard the court staff's description of Walker as a liar not take this as license to write off the seriousness of Walker's attempt to hold them judicially accountable for violating his fundamental rights? Letting this incident slide as one of "no effect" risks letting slide the role of court staff in preserving the appearance of fairness in federal judicial proceedings.

In a similar vein, Walker's primary corroborating witness, Marlon Minter, told the judge that between his first and second day testifying he was threatened by a prison officer at Menard from where Minter was testifying over video. (2/8/17 Trial Tr. 85–86.) The judge replied that "we'll deal with that in the case." (2/8/17 Trial Tr. 86.) The record is silent to whether anyone inquired into who made the threat, what the threat was, what could be done to protect Minter, or whether the threat affected Minter's ability to testify truthfully. Moreover, because the evidence from the John Howard Association's report on Pontiac indicates that threats to inmates involved in complaints against its staff are not uncommon, such nonchalance from a federal court—especially one that regularly hears cases from Pontiac—raises systemic questions about the integrity of the truth-seeking process for Pontiac prisoners. *See 2015 Monitoring Report: Pontiac Correctional Center*, John Howard Association of Illinois (2015) http://www.thejha.org/sites/default/files/Pontiac%20Correctional%20Center%20Report%202015.pdf [https://perma.cc/6C3A-5PSB] ("JHA heard from various inmates that while they are expected to follow rules, staff and IDOC are not. . . . Some inmates reported concerns about retaliation for complaints, grievances, and lawsuits. While we recognize this concern, JHA can only note that if situations are not reported and documented, they will generally not be addressed and cannot be reviewed."); Boston, *Excessive Force*, *supra*, at 172 (noting that in some facilities "officers fail to arrange for medical examinations of prisoners involved in uses of

force or even intimidate them and other prisoner-witnesses from reporting the events").

The appearance of unfairness in the trial court's treatment of Walker and his witnesses continued to accumulate when Walker's other corroborating prisoner witness, John Hudson, was called to testify:

> THE COURT: All right. Show the jury returns into open court. John Hudson, will you raise your right hand to be sworn by the clerk.
>
> COURTROOM DEPUTY: He cannot. He's got cuffs.
>
> THE COURT: Ask the question.
>
> JOHN HUDSON, sworn and testifying via videoconference: . . .

(2/7/17 Trial Tr. 145.) Because Walker insisted on Hudson's being given non-prison garb for his testimony before the jury (2/7/17 Trial Tr. 144), it seems unlikely that he knew that Hudson would be testifying in handcuffs. Therefore, when it was revealed that Hudson was handcuffed after being asked to take the oath, any objection by Walker would only have emphasized it.

Finally, Walker complained that one of the defendants (French) coached the testimony of a non-party witness (Schmeltz) by whispering answers to him. (2/8/17 Trial Tr. 104:20–105:08.) The judge, in Springfield, said he did not know what was going on in Pontiac because he could not see or hear it. His remedy was to ask Schmeltz whether he was being coached and when Schmeltz responded in the negative, the judge moved on. (2/8/17 Trial Tr. 104–105.) By appearing to automatically take the officer's word over Walker's, the judge not only reinforced

the appearance of partiality that his staff had already conveyed to Walker, but also signaled to the jury which side the court thought worthy of belief.

This unintentional signaling had been present from the first day of the trial. In her order of video trial, Judge Myerscough had promised to inform the jury that the "state's budget crisis" was the reason for the video trial, so as not to prejudice the jury against Walker. (R.89 at 3.) But at trial, Judge Baker gave no such instruction, (2/7/17 Voir Dire Tr. 5), permitting the jurors to draw prejudicial inferences as to why Walker was not allowed to try his case in person.

C. The shambles that Walker made of his case underscores the unfairness of the entire proceedings.

Nowhere was the combined effect of pro se litigation and video trial more visible than at the trial itself. The trial was riddled with interruptions and anomalies, beginning from the first moment of voir dire:

> WALKER: Excuse me for one minute. I still got the handcuffs on. I need to—
>
> THE COURT: Oh, take off the handcuffs. He can't have the handcuffs on during the trial.

(2/7/17 Trial Tr. 5.) As the voir dire began, the Court noted that "one of the jurors said they were having trouble hearing [Walker] or understanding" him, and so requested that Walker be sure to speak slowly. (2/7/17 Trial Tr. 7.) This continued into the trial, with the judge or jurors indicating that they could not hear Walker or the witnesses during the direct examination of Tinsley, (2/7/17 Trial Tr. 53), Tinsley's cross-examination, (2/7/17 Trial Tr. 66), the direct examination of

Schmeltz, (2/7/17 Trial Tr. 84–86), the direct examination of Stahl, (2/8/17 Trial Tr. 31), the direct examination of Price, (2/8/17 Trial Tr. 69), and the direct examination of Minter, (2/8/17 Trial Tr. 86:15–87:22). Prepared by their attorneys, however, the defendants spoke clearly enough that their words carried to the judge and jury.

The court continually interrupted Walker's arguments and questioning of witnesses. Admittedly, the judge was attempting to keep the trial moving with as much of a semblance of regularity as possible. (2/8/17 Trial Tr. 163) (court's parting comment to the jury that "it makes it difficult for me trying to walk an even path, . . . and make rulings where there's inadequate representation on both sides."). Walker's confused and rambling attempts to lay out the facts and the law on his side nonetheless were visibly hamstrung by the judge's intercessions and the video technology that everyone had trouble managing. (*See, e.g.*, 2/8/17 Trial Tr. 28 (Walker, being asked if he was finished, responding "No, sir. No, sir," only for the court to state, "Yes, you are.").)

As to substance, Walker did have a trial strategy that tried to use the few documents he managed to obtain through discovery. For example, Walker did figure that there was a serious flaw in the defendants' legal strategy. On the one hand, they claimed that at the time of the alleged excessive force incident they moved Walker, along with Hudson, his dirty-breakfast-food co-complainer, to a more restrictive disciplinary confinement, which Walker called "72-hour strip-out status." (2/7/17 Trial Tr. 118.) The defendants testified they did this because Walker was kicking his cell door, a disciplinary violation for which prison rules normally

required the filing of a written report. (2/8/17 Trial Tr. 19.) On the other hand, prison records revealed that no disciplinary report had ever been made of either Walker's violation or the justification for his disciplinary transfer to stricter confinement. (2/8/17 Trial Tr. 35.) The reason for this contradiction, under Walker's theory of the case, was that the defendants had not transferred him because of any disciplinary violation, which they would have been required to record. Instead, they did so for the same reason French beat him up: he had complained too much about being served food scraped off the floor and then talked back to French in front of Tinsley. (2/7/17 Trial Tr. 119–20.) Under this theory, having summarily beaten Walker for disrespecting an officer, the defendants would have wanted no written record. Walker's attempts to explain this theory to the jury were, unfortunately for him, continually frustrated, as a look to one representative stretch of the trial shows:

> WALKER: In response, you stated, "I do not recall I witnessed excessive force being used," correct?
>
> WITNESS STAHL: Yes.
>
> WALKER: Okay. In paragraph—
>
> THE COURT: Mr. Walker, what are you doing?
>
> WALKER: I'm impeaching—
>
> THE COURT: You aren't. You're repeating his testimony all over again. It hasn't said anything inconsistent. Why are you pursuing this? Do you want us—do you want to—I'm, I'm going to put an end to that, your further questions, unless you go on to a different subject.

> WALKER: Okay. Sir, you—sir, you, you, you are aware of the incident, or not, from the questions that I asked you and your response reading this document?
>
> THE COURT: I don't understand the question. The Court doesn't understand the question. Ask it again.
> . . .
>
> WALKER: Okay. And, and, and how, how was the plaintiff—was the plaintiff in compliance, or the plaintiff wasn't in compliance?
>
> THE COURT: That's cumulative. You've asked that question four times. Are you done with this witness?
>
> WALKER: No, sir. No, sir.
>
> THE COURT: Yes, you are.
>
> WALKER: Your Honor,—
>
> THE COURT: Do you have any other questions of this witness, defense counsel?
>
> ATTY. VINCENT: Yes, Your Honor.
>
> THE COURT: Go ahead.
>
> VINCENT: Thank you.

(2/8/17 Trial Tr. 26–28.) Due to defense objections, judicial interruptions, and his own lack of rhetorical competence, Walker could not convey his theory of the case. It is, of course, impossible to know whether Walker would have prevailed had his trial been in front of a judge and jury instead of broadcast from the prison and had he been represented by counsel. But in a case that has passed all the tests for going to trial and that has profound significance for the integrity of our criminal justice system, Walker deserved to be armed with counsel and an opportunity to make his case in person to the jury so that he would have at least a fighting chance.

CONCLUSION

For the foregoing reasons, Appellant Fredrick Walker respectfully requests that this Court vacate the judgment with instructions to reverse and remand for a new, in-person trial with appointed counsel.

Respectfully submitted,
Frederick Walker
Appellant

By: /s/ SARAH O'ROURKE SCHRUP
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/s/ JOHN S. ELSON
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CERTIFICATE OF COMPLIANCE WITH FEDERAL RULE OF APPELLATE PROCEDURE 32(a)(7)

1. This brief complies with the type volume limitations of Fed. R. App. P. 32(a)(7)(B) because the brief contains 13,697 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 as been prepared in a proportionally spaced typeface using Microsoft Office Word 365 in 12-point Century Schoolbook font with footnotes in 11-point Century Schoolbook font.

By: /s/ SARAH O'ROURKE SCHRUP
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/s/ JOHN S. ELSON
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Counsel for Appellant
FREDRICK WALKER

Dated: December 11, 2017

CERTIFICATE OF SERVICE

I, the undersigned, counsel for Appellant, Fredrick Walker, hereby certify that I electronically filed this brief and appendix with the clerk of the Seventh Circuit Court of Appeals on December 11, 2017, which will send notice of the filing to counsel of record in the case.

By: /s/ SARAH O'ROURKE SCHRUP
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Dated: December 11, 2017

CIRCUIT RULE 30(d) STATEMENT

I, the undersigned, counsel Appellant, Fredrick Walker, hereby state that all of the materials required by Circuit Rules 30(a) and 30(b) are included in the Appendix to this brief.

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Counsel for Appellant
FREDRICK WALKER

Dated: December 11, 2017

RULE 30(a) SHORT APPENDIX TABLE OF CONTENTS

E-FILED
Thursday, 09 February, 2017 08:53:54 AM
Clerk, U.S. District Court, ILCD

UNITED STATES DISTRICT COURT

for the
Central District of Illinois

Fredrick Walker,

Plaintiff

vs.

Price, Glendal French, Stahl,

Defendants

Case Number: 14-1343

JUDGMENT IN A CIVIL CASE

☒ **JURY VERDICT**. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☐ **DECISION BY THE COURT**. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that judgment is entered in favor of defendants and against plaintiff. Parties to bear their own costs.

Dated: February 9, 2017

s/ Kenneth A. Wells
Kenneth A. Wells
Clerk, U.S. District Court

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Wednesday, 07 September, 2016 04:32:47 PM
Clerk, U.S. District Court, ILCD

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

FREDERICK WALKER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	14-CV-1343
	)	
CORRECTIONAL OFFICER PRICE, LT. GLENDAL FRENCH, And SERGEANT STAHL	)	
	)	
Defendants.	)	

ORDER

SUE E. MYERSCOUGH, U.S. District Judge.

Plaintiff, proceeding pro se and incarcerated in Pontiac Correctional Center, proceeds on claims of excessive force, failure to intervene, and deliberate indifference to his injuries caused by the excessive force. The final pretrial is set for October 17, 2016. The jury trial is set for November 8, 2016, but that will be changed to November 15, 2016, because the video conferencing is not available the week of November 8th.

Plaintiff has filed another motion for recusal (88). Plaintiff asserts that the Court's 8/17/16 text order directing the parties to inform the Court whether they agree to a nonjury (bench) trial

shows that the Court is trying to prevent Plaintiff from requesting a bench trial, apparently because he received the text order too late to comply. Court rulings are not grounds for recusal, and, in any event, Plaintiff may still request a bench trial. However, both parties have to agree to a bench trial, and the Court needs to know soon if the trial will be a bench trial in order to avoid the expense of bringing in jurors. At this point, defense counsel has not filed anything suggesting that Defendants would agree to a bench trial, so the issue may be moot.

On a separate matter, the Court directed Defendants to file their position on whether this trial should be held by video conference, attaching Plaintiff's prison disciplinary record and security status. Defendants respond that Plaintiff should attend the trial by video given Plaintiff's classification as a high escape risk, high aggression, and maximum security level. Plaintiff has an extensive prison disciplinary history which includes assaults on inmates and staff, fighting, intimidating or threatening behavior, and masturbating at staff members. Plaintiff objects, arguing that the Court's order is another example of the Court's bias.

In light of the information submitted by Defendants (dkt 85), the Court concludes that, for security reasons, Plaintiff will appear for this trial by video. Plaintiff is in prison for life, serving a sentence for murder and other violent felonies. His adjustment to prison has been poor—he has an extensive prison disciplinary record and is currently in disciplinary segregation until March 2019. The claims in this case are relatively simple—alleged excessive force and failure to provide medical attention for the injuries caused by that force. The courtroom has a very large video screen, so the jury will be able to see Plaintiff probably better than they could see him if he appeared in person. Plaintiff will be able to see the jurors during voir dire and the witnesses while testifying. The Court will assist Plaintiff in publishing Plaintiff's exhibits to the jury. The Court will also inform the jury that Plaintiff is appearing by video in order to save transportation costs for the State—a very believable explanation in light of the State's budget crisis. In short, compelling security concerns warrant Plaintiff's appearance by video at the trial, and Plaintiff's appearance by video will not prejudice him. *See* Perotti v. Quinones, 790 F.3d 712 (7th Cir.

2015)(affirming pro se prisoner's appearance at his civil rights trial by video).

IT IS THEREFORE ORDERED:

(1) The jury selection and trial are rescheduled to November 15-17, 2016.

(2) Plaintiff's motion for recusal is denied (88).

(2) Defendants motion to extend their time to respond to the Court's 7/15/16 order is granted (84). Defendants have filed their response (85, 86).

(3) Plaintiff's motion to object to appearing by video for the trial is granted (87) to the extent that Plaintiff seeks to file an objection.

(4) The following are due by October 3, 2016: (1) agreed final pretrial order; (2) proposed jury instructions that are alternate or additional to the Court's jury instructions, clearly numbered and marked as alternate or additional; and, (3) motions in limine.

(5) Plaintiff shall appear for the final pretrial, jury selection, and jury trial by video.

(6) The clerk is directed to issue a video writ to secure Plaintiff's presence at the jury selection and trial in this case from November 15-17, 2016.

ENTERED: September 7, 2016

FOR THE COURT:

s/Sue E. Myerscough
SUE E. MYERSCOUGH
UNITED STATES DISTRICT JUDGE

12/10/2014		TEXT ORDER: Plaintiff's motion for the Court to request counsel to voluntarily represent him is denied (d/e 4). In determining whether the Court should attempt to find an attorney to voluntarily take the case, the question is "given the difficulty of the case, does the plaintiff appear competent to litigate it himself?" Pruitt v. Mote, 503 F.3d 647, 654-55 (7th Cir. 2007). Plaintiff has some litigation experience and his complaint adequately sets forth the facts giving rise to his claims, as well as demonstrating some knowledge of applicable law and legal procedure. Plaintiff has personal knowledge of the alleged excessive force and his injuries and should be able to obtain relevant evidence through discovery requests. On this record, Plaintiff appears competent to proceed pro se in light of the relative simplicity of his claims. Plaintiff's motion for a status is granted 7 . The clerk is directed to send Plaintiff a copy of the docket sheet after the merit review order is entered and the case sent for service. Entered by Magistrate Judge Tom Schanzle-Haskins on 12/10/2014. (MAS, ilcd) (Entered: 12/10/2014)

06/12/2015		TEXT ORDER: By June 30, 2015, the Court requests that Attorney Lipetz file Plaintiff's Test for Adult Basic Education scores, which the Court will consider in relation to Plaintiff's motion for appointed counsel. Plaintiff's motion for a copy of the docket sheet is granted 25 . The clerk is directed to send Plaintiff a copy of the docket sheet. Entered by Magistrate Judge Tom Schanzle-Haskins on 6/12/2015. (MAS, ilcd) (Entered: 06/12/2015)

10/23/2015		TEXT ORDER: Plaintiff's motions for the Court to search for pro bono counsel are denied (24, 29), with leave to renew. On this record, Plaintiff appears competent to proceed pro se. See Pruitt v. Mote, 503 F.3d 647, 654-55 (7th Cir. 2007). Plaintiff attaches documentation showing that he has cognitive deficits. However, Plaintiff has been able to pursue four cases in this court, three of which are still pending. 14-CV-1341, 14-CV-1342, 14-CV-1343, and 15-1201. His filings have been relatively well written, demonstrating knowledge of the law and the relevant facts. Plaintiff maintains that a "jailhouse lawyer" is writing the pleadings, but that alone does not necessarily mean Plaintiff is unable to proceed pro se. Additionally, Plaintiff already has personal knowledge of the excessive force he allegedly experienced. On a separate matter, Defendants are directed to respond to Plaintiff's motion to compel by November 2, 2015. Plaintiff's motion for clarification 30 is denied as moot, and Plaintiff's motion for reconsideration to file his discovery is denied 31 as unnecessary. Defendants' motion to extend the dispositive motion deadline to November 20, 2015, is granted 32 . Entered by Magistrate Judge Tom Schanzle-Haskins on 10/23/2015. (ME, ilcd) (Entered: 10/23/2015)

02/05/2016		TEXT ORDER: By February 22, 2016, Defendants are directed to file, under seal, the administrative directives they seek to withhold from Plaintiff. Plaintiff's "motion for a copy of the docket sheet" is granted 41 . Future requests for a copy of the docket sheet will cost 10 cents per page. Plaintiff's motion for clarification is granted 43 . The notice of electronic filing and first page of the pleading filed is Plaintiff's proof that he filed the document. Plaintiff is not entitled to one full free copy of his filed pleading. Plaintiff is responsible for keeping the original pleading. Plaintiff's motion to reconsider the appointment of volunteer pro bono counsel is denied 42for the reasons stated in Judge Schanzle-Haskins' 10/23/15 text order. In addition to those reasons, Plaintiff has some federal litigation experience. Walker v. Godinez, et al. 12-cv-50276 (N.D. Ill.); Walker v. Dart, et al., 07-cv-3085 (N.D. Ill.); Walker v. Godinez, 11-CV-726 (S.D. Ill.); Walker v. Pfister, 14-CV-1341 (C.D. Ill); Walker v. French, 14-1342 (C.D. Ill.); Walker v. Loverant, 15-CV-1201 (C.D. Ill.) The clerk is directed to send Plaintiff a copy of the docket sheet. Entered by Judge Sue E. Myerscough on 02/05/2016. (CC, ilcd) (Entered: 02/05/2016)

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Thursday, 28 April, 2016 12:17:01 PM
Clerk, U.S. District Court, ILCD

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

FREDERICK WALKER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	14-CV-1343
	)	
CORRECTIONAL OFFICER PRICE, LT. GLENDAL FRENCH, And SERGEANT STAHL	)	
	)	
	)	
Defendants.	)	

ORDER

SUE E. MYERSCOUGH, U.S. District Judge.

Plaintiff, proceeding pro se and incarcerated in Pontiac Correctional Center, proceeds on claims of excessive force, failure to intervene, and deliberate indifference to his injuries caused by the excessive force.

Discovery has closed except for the resolution of discovery issues and Plaintiff's renewed motions for counsel. Typically the Court refers nondispositive motions to Magistrate Judge Schanzle-Haskins, but Plaintiff appears to object to Judge Schanzle-Haskins' denial of Plaintiff's prior motions for counsel. Additionally, trial matters need to be addressed.

Defendants seek a protective order allowing them to withhold administrative directives regarding the use of force on security grounds. The Court has reviewed the directives *in camera* and agrees with Defendants that disclosure of the directives could jeopardize the safety and security of the institution. Further, the directives are of little relevance because Plaintiff alleges that, without justification, Defendant French "forcefully put his knee on Plaintiff's head and neck and then began to bounce up and down on Plaintiff causing Plaintiff to instantly endure excruciating pain and swelling to the right side of Plaintiff's head and orbital bone." (Complaint para. 18.) If true, Defendants obviously violated the directives, which authorize only reasonably necessary force. The specific directives are not necessary to come to that conclusion. Plaintiff's motion to compel this information is denied.

Plaintiff has also filed a motion to object to the response he received on his second document request, which the Court construes as a motion to compel. The Court has reviewed the motion, Plaintiff's document request, and Defendants' responses. Based on that review, the Court concludes that Defendants' responses were appropriate and agrees with Defendants' objections,

except as to the following information: (1) documents in Defendants' personnel files that discuss or refer to findings that Defendants used excessive force on other inmates; (2) "434" incident reports regarding the 8/21/13 incident; (3) the video of the 8/21/13 incident, if the video exists; (4) the video retention policy at Pontiac in August of 2013; and (5) the staffing assignment (7-3 shift) and inmate housing assignment for the north cellhouse on 8/21/13. Plaintiff seeks to identify potential witnesses, but he alleges that the excessive force occurred on a different gallery than the north cellhouse. Additionally, Plaintiff did not make this request in the document request he sent to Defendants. However, in the interest of efficiency and due to Plaintiff's pro se status, Defendants are directed to produce this information.

Plaintiff has also filed two renewed motions for counsel and asks to stay the proceedings until the Court rules on those motions. The Court agrees with Magistrate Judge Schanzle-Haskins that, for the reasons already stated by Judge Schanzle-Haskins, Plaintiff appears competent to proceed pro se, in light of the relatively straightforward nature of his claim. Plaintiff can testify personally to the excessive force and his injuries, and his discovery motions

demonstrate that he (or whoever is helping him) understands what the relevant evidence is and how to obtain that evidence. Plaintiff does present documents from years ago that he is borderline mentally challenged, but his litigation in this case and his several other cases suggest that he has the mental capacity to proceed pro se. *See* Walker v. Sheahan, 05-CV-5634 (N.D. Ill.); Walker v. Dart, 07-CV-3085 (N.D. Ill.); Walker v. Godinez, 12-CV-50276 (N.D. Ill.); Walker v. Godinez, 11-CV-726 (S.D. Ill.); Walker v. Pfister, 13-CV-1341 (C.D. Ill.); Walker v. French, 14-CV-1432; Walker v. Lovrant, 15-CV-1201 (C.D. Ill.); Illinois v. Walker, 08-cv-3466 (N.D. Ill)(Plaintiff filed a petition for removal).

Nevertheless, this case is going to trial, so the Court will attempt to recruit pro bono counsel to represent Plaintiff at trial. Defendants have not moved for summary judgment, perhaps because excessive force claims are rarely amenable to resolution on summary judgment. Plaintiff is advised that the Court's search for pro bono counsel is becoming increasingly difficult. The Court may be unable to find counsel, in which case Plaintiff will continue representing himself.

IT IS THEREFORE ORDERED:

(1) Defendants' motion for a protective order regarding the administrative directives about the use of force is granted (39).

(2) Plaintiff's motion to compel is denied (40) with regard to the administrative directives about the use of force filed under seal at docket entry 46. If Plaintiff has other information that he seeks to compel in his motion docketed at 40 that he has not received, Plaintiff should file a renewed motion to compel by May 13, 2016.

(3) Plaintiff's second motion to compel is granted in part and denied in part as set forth above (49). **Defendants are directed to produce the compelled information by May 13, 2016.**

(4) This case is referred to Magistrate Judge Schanzle-Haskins for a settlement conference. **The clerk is directed to notify Judge Schanzle-Haskins.**

(5) The final pretrial conference is set for June 6, 2016, at 1:30 p.m. Defense counsel shall appear in person. Plaintiff shall appear by video.

(6) The Court will circulate proposed jury instructions for discussion at the final pretrial conference.

(7) The following are due by May 24, 2016: (1) An agreed final pretrial order; (2) proposed jury instructions that are **alternate or additional** to the Court's jury instructions,

clearly numbered and marked as alternate or additional; and, (3) motions in limine.

(8) The jury selection and trial is scheduled for July 12 through July 14, 2016.

(9) The clerk is directed to issue a video writ to secure Plaintiff's video appearance at the final pretrial conference.

(10) The clerk is directed to issue a personal writ to secure Plaintiff's personal appearance at the jury selection and trial.

ENTERED: April 28, 2016

FOR THE COURT:

s/Sue E. Myerscough
SUE E. MYERSCOUGH
UNITED STATES DISTRICT JUDGE

05/16/2016		TEXT ORDER: Plaintiff's motions for counsel 44 , 48 are denied for the reasons stated in the 4/28/16 order. Plaintiff's motion for the clerk to issue a subpoena so that Plaintiff can seek testimony from a nonparty (the paralegal at Pontiac) is denied 47 . Plaintiff essentially seeks to depose a nonparty on written questions. Fed. R. Civ. P. 31. However, this rule requires the questions and answers to be taken by a court reporter just like any other deposition, and to be arranged by and paid for by the party seeking the deposition. Further, the testimony of the nonparty is not essential to Plaintiff's case. Plaintiff may testify himself as to the extent of his injuries. Plaintiff's motion for Judge Myerscough to recuse herself is denied 53 . Disagreement with rulings is not a basis for recusal. U.S. v. White, 582 F.3d 787, 807 (7th Cir. 2009) (judicial rulings are not grounds for recusal unless "'they display a deep-seated favoritism or antagonism that would make fair judgment impossible.'")(quoted cite omitted). If Plaintiff seeks a different judge, he might consider consenting to a Magistrate Judge. Plaintiff's motion to expedite a ruling 52 and motion for status 50 are denied. Entered by Judge Sue E. Myerscough on 5/16/2016. (MAS, ilcd) (Entered: 05/16/2016)

06/10/2016		TEXT ORDER: Plaintiff's third motion for recusal is denied 73 . As the Court explained in its prior orders, adverse rulings are not grounds for recusal. If Plaintiff seeks a different judge, he might consider consenting to a Magistrate Judge. Plaintiff's motion to appoint Attorney Harold Hirshman as pro bono counsel is granted 72 to the extent the Court will contact Mr. Hirshman and inquire whether he is willing to accept pro bono appointment. The final pretrial and trial dates are vacated, pending the determination of whether Mr. Hirshman will act as pro bono counsel or the Court is able to find any other pro bono counsel willing to represent Plaintiff for purposes of the taking of Plaintiff's deposition and for trial. Defendants' motion to depose is denied 71 with leave to renew after the Court informs the parties if pro bono counsel has been found. Entered by Judge Sue E. Myerscough on 6/10/2016. (MAS, ilcd) (Entered: 06/10/2016)

07/01/2016		Remark: Clerk inadvertently missed docketing d/e 80Plaintiff's "Motion to Object and for Reconsideration of Judge Sue E Myerscough Ruling on Plaintiff's Motion titled: Motion of Objections to Defendant's Response to Plaintiff's Second Request for the Production of Documents" e-mailed by the Plaintiff on 6/8/2016. Plaintiff's motion has now been docketed. (MAS, ilcd) (Entered: 07/01/2016)
07/13/2016		TEXT ORDER: Plaintiff's motions to reconsider the Court's prior orders are denied for the reasons stated in those orders (d/e's 80, 79). Plaintiff's motions in limine are denied (63, 68) with leave to renew by appointed counsel after the final pretrial conference is scheduled. Entered by Judge Sue E. Myerscough on 7/13/2016. (SG, ilcd) (Entered: 07/13/2016)
07/14/2016		Minute Entry for proceedings held before Judge Sue E. Myerscough: STATUS CONFERENCE held on 07/14/2016. Plaintiff Fredrick Walker present via video. Attorney Harold Hirshman present via video for possible pro bono appointment on behalf of Plaintiff. Attorney Ashley Vincent, Office of the Attorney General, present on behalf of Defendants Price, French and Stahl. Order to enter. Plaintiff to proceed pro se. Case set for Final Pretrial Conference on Monday, October 17, 2016 at 1:30 PM with the Jury Trial set for November 8, 2016 at 9:00 AM before Judge Sue E. Myerscough, Courtroom 1, Springfield. Hearing adjourned. (Tape #SP-1: 9:39 AM.) (DM, ilcd) (Entered: 07/14/2016)
07/15/2016		TEXT ORDER: At the status conference on July 14, 2016, Plaintiff consented to the appointment of Attorney Hirshman. However, after Mr. Hirshman and Plaintiff were given an opportunity to converse outside the presence of the Court, Mr. Hirshman moved orally to withdraw based on irreconcilable differences in how Plaintiff's case should be handled. The Court granted Mr. Hirshman's oral motion to withdraw. Plaintiff proceeds pro se again. The final pretrial is set for October 17, 2016, at 1:30 p.m. The jury selection and trial are set to begin November 8, 2016, at 9:00 a.m. The jury trial is expected to last 2-3 days. By October 5, 2016, the parties shall file an agreed proposed pretrial order; alternate or additional proposed instructions, if any; alternate statements of the case, if any; and motions in limine. By August 5, 2016, Defendants are directed to file their position on whether this trial should be held by video conference, attaching Plaintiff's prison disciplinary record and security status. Plaintiff may file his response by August 12, 2016. A status conference is set before Magistrate Judge Hawley on August 17, 2016, at 9:30 a.m. The court reporter is directed to prepare and file a transcript from the recording of the status hearing on July 14, 2016. The clerk is directed to: (1) send Plaintiff a consent to Magistrate form; (2) issue video writs for Plaintiff's presence at the 8/17/16 status conference and the 10/17/16 final pretrial conference; (3) terminate Attorney Hirshman on the docket; and (4) send this text order to the court reporter. Entered by Judge Sue E. Myerscough on 7/15/2016. (MAS, ilcd) (Entered: 07/15/2016)
07/21/2016		TEXT ORDER by Magistrate Judge Jonathan E. Hawley: Status Conference set for 8/17/2016 at 9:30 AM is set by telephone from Peoria (court will place call) before Magistrate Judge Jonathan E. Hawley. Clerk is directed to issue a phone writ rather than a video writ for Plaintiff's appearance at this status conference. Entered on 7/21/16. (WG, ilcd) (Entered: 07/21/2016)

12/08/2016		TEXT ORDER entered by Judge Sue E. Myerscough on 12/8/2016. Plaintiff's motion for an extension to file final pretrial materials is granted 109 . Plaintiff's final pretrial materials are due December 30, 2016. Plaintiff's motion to continue and motion to appoint counsel is denied 103 . Plaintiff has significant litigation experience. His pleadings demonstrate that he is competent to proceed pro se, as did the Court's observations of him when he appeared by video conference at several status hearings. The claims (excessive force and failure to obtain medical treatment) are relatively simple. Plaintiff already has personal knowledge of many of the facts underlying his claim. On this record, Plaintiff appears competent to proceed pro se in light of the straightforward nature of his claim. Pruitt v. Mote, 503 F.3d 647, 654-55 (7th Cir. 2007). On a separate matter, Defendants' motion to strike their notice, which was filed under an incorrect attorney's name, is granted 110 . Lastly, the jury selection and trial must be rescheduled to February 7-9, 2017, due to the unavailability of the prison video conference on the January dates. This Court will likely have a conflict with a trial date of February 7-9. Accordingly, this case is transferred for all purposes to Judge Harold A. Baker. The jury selection and trial are rescheduled to February 7-9, 2017, to be held by video. The final pretrial conference is rescheduled to January 12, 2017, at 1:30 p.m. by video conference. The clerk is directed to strike docket entry 108 . The clerk is directed to issue a video writ for Plaintiff's video appearance at the final pretrial conference on January 12, 2017 at 1:30 p.m. and Plaintiff's video appearance at the jury selection and trial from February 7-9, 2017 (9:00 a.m. to 5:00 p.m.) before Judge Baker in Urbana. The clerk is further directed to transfer this case to Judge Baker and to mark the final pretrial and trial dates on Judge Baker's calendar.(JMB, ilcd) Modified on 12/8/2016 to correct a typographical error. (JMB, ilcd). (Entered: 12/08/2016)

THE COURT: Okay.

(Brief pause in proceedings.)

(Jury present, 2:47 p.m.)

THE COURT: All right. Let the record show the jury's returned into open court, and same appearances at Pontiac.

And, Mr. Walker, you may now testify as a witness in your case in chief. Start out by stating your name.

COURT REPORTER: He needs to be sworn.

THE COURT: Yes. We have to swear you in first. I forgot.

FREDRICK WALKER, sworn and testifying via videoconference, 2:48 p.m.

THE COURT: All right. Start out by saying your name.

PLAINTIFF WALKER: Fredrick Walker.

Then you want me to say what --

THE COURT: Tell what happened on, on -- in support of your case on April 21, 2013 -- I mean, August 21, 2013.

PLAINTIFF WALKER: Ladies and gentlemen of the jury, on August 21, 2013, I was an inmate here at Pontiac Correctional Center, housed in North Cell House Segregation Unit on 5 Gallery, cell 551.

Officer Price, Timothy Price, who is named as a defendant in this case, was assigned the gallery officer for 5 Gallery, North Cell House, Segregation Unit. At breakfast time, he was delivering breakfast trays; and the trays fell onto the gallery, off the food cart that he delivered the trays on. He picked the trays up; and the food that fell off the trays onto the gallery, put it back on the trays.

One of the trays was badly damaged. He did not put the food back up on that tray. He put the tray back up on the cart and put the food that had fell on the floor -- so I guess the roaches and stuff that was running around, he put as much that he could up on the cart and started, kept on delivering it, the trays.

The trays that he was passing out was contaminated, what had fell on the gallery. I got one of those contaminated trays, and a couple more inmates. We complained to Lieu-- I mean, the defendant, Timothy Price, about giving us contaminated trays; requested another tray other than a contaminated tray. He denied us.

I asked him -- well, I believe other inmates asked as well -- to speak to his supervisor. He told us "Fuck" -- "F all you, [inaudible]." So, you know, everybody was just uproared, stuff like that, about the

incident.

And, eventually, the, the Defendant Price -- I mean, the Defendant French and Stahl came onto gallery. They was going towards, like, 40 something because I was in 51. And the next cell is used for the law library, so ain't nobody housed in there unless law library's being used. At that time, wasn't nobody in there.

So when the Defendant Stahl approached my door, walking past my door, I stopped him; and I tell him about the incident. I believe -- I'm not for certain -- but I told Defendant French as well. But I think I did, coming off or -- either way it go. But Stahl told me -- Defendant Stahl told me he gonna notify French, and they gonna look into the matter, and I was gonna get a tray, basically.

So I just, you know, sat on my bed and just waited to see what was gonna happen.

French, after him and Stahl went down there to, like, 40-some cell, I believe they was talking to an inmate by the name of John Hudson. And then French, the Defendant French left the gallery before Stahl. Stahl stayed down there at John Hudson's door, and then he got John Hudson out of his cell with a laundry bag with all John Hudson's personal property there, escorted him off the gallery.

Approximately 40 -- 30 -- 45 minutes later, the Defendant French appeared at my door with a lieutenant by the name of Scott Punke, Scott Punke. Punke was assigned to the other side of the North Cell House Segregation Unit where they kept the inmate that was in a different type of segregation status than I was, and he told me to cuff up. The Defendant French, he told me to cuff up after him and this guy, Lieutenant Scott Punke, appeared at my door.

So I complied with the orders and cuffed up, and they opened the cell door. I, I believe it was Defendant Price opened the cell door, and the officer ordered, "Step out." And I stepped out the cell; and, and Defendant French told Defendant Price to pack all my stuff, take it downstairs, put it in the sergeant's office because he was housing me on 1 Gallery in strip-out status, 72-hour strip-out status. That's where all your property's confiscated. You don't have anything; just, maybe, a face towel, shower shoes. You only have one pair of shoes, so it's gonna be shower shoes or gym shoes, whichever you want. Limited property.

So when they was taking me downstairs to the 1 and 2 Gallery flag, he seen, he seen Sergeant Stahl right there. The Defendant French seen Sergeant Stahl, and he

said, "Hey, watch him while I go to the armory and get the keys to cell -- 1 Gallery keys." So Defendant Stahl was holding me right there by the gate between 1 and 2 Gallery.

Paramedic Jennifer Tinsley, who you just heard testify about medical, she was present with the Tactical Team Unit. They was going inside of 2 Gallery right there for -- you know, I guess they had to extract somebody from the cell. And, and while they was waiting on the door to be open, she was in the back, because the med tech got to be with the extraction team when they come; so she was in the back. And Lieutenant French -- the defendant, Lieutenant French -- he called her over to where we were standing because he came back from the, the armory thing. And, and I guess they told that the officer was on the gallery with the keys, I believe with Brian Schmeltz. He was on the gallery with the keys, and he came to the gate where me and Stahl was standing there, and he looked down the gallery. The Defendant Glendal French, he looked down the gallery, and I guess he seen Brian Schmeltz standing down the gallery. So we waited by the gate until somebody come off the gallery with the key to unlock the gate so we could get onto the gallery.

So while we was right there waiting, he called

the lady paramedic, Tinsley, over to where we was standing. And while he was talking to her, he told her that he had -- and he was teaching me a lesson about who run things around here, simply because I complained to them about the defendant's -- Price knocking down the trays and his conduct about, you know, when I brought it to his attention -- request a noncontaminated tray and speak to his supervisor -- that he disrespected me and other guys, stuff like that. So, I -- he basically retaliated against me for that right there.

So when he, when he told her that right there, I told him, "You can't teach me no" -- you know, I cuss -- "bullshit like that." So then he tell the defendant, Jeffrey Stahl, "Let's put the leg shackles on him," knowing that before they exited me from that cell on 5 Gallery, especially if I was kicking on the door like he said I was, they supposed to put the shackles on me then. But, instead -- know what I'm saying? -- he tell him, he tell Defendant Stahl, "Let's put the shackles on him," because I told him he can't teach me no bulljive.

Both of them grabbed me by my arm. One grabbed me by one arm, and the other grabbed me by the other arm; and they threw me down, face-first, on the floor. So once I got in that position, facedown on my stomach, the

Defendant Glendal French put his knee in my neck and in my head and began to pressing up and down on my head. So, you know, I was, you know, hollering and stuff like that, about pain and distress, you know -- know what I'm saying? You know, I couldn't breathe because my Adam's apple was on the floor; and, you know, my head was hurting real bad when he was doing that.

So he told me, "You need to die." He said, "You need to die like this" while the Defendant Stahl was bending my arm back, asking if I was resisting when I wasn't doing nothing, you know, just hollering out of, you know, sheer pain and suffering because the, the Lieutenant French applied pressure to my head and my orbital bone with bouncing up and down on my neck with his, with his knee on my, on my head and my neck. And, and Defendant Jeffery Stahl was trying to take my shoes off at the same time.

Now, I don't know if it was Brian Schmeltz, that was just testifying here, or the Defendant Timothy Price that came up; but somebody came and began assisting Defendant Stahl with taking off my shoes, taking off my shoes. So once they got my shoes off my feet -- you know, they helped me up. The Defendant Jeff Stahl, he helped me up; he actually helped me up.

And once I got to my feet, the Defendant,

Defendant French had the gate open -- or I guess it was Schmeltz that came through the gate, but the gate was open.

So they all escorted me down to cell 106, and they was escorting me to 106 cell. So in the process of escorting me to 106 cell -- and it was an object on the gallery. You know, I don't know what it was and what -- know what I'm saying? -- and, you know, it cut the bottom of my feet. You know what I'm saying? So, you know, now I hollered out in pain because it was like a big old gash; I had a big gash in the bottom of my foot.

So, you know, I told him. You know, I requested medical attention because the right side of my -- because I had damage already to my orbital bone. So when he did that, it felt like kind of mushy, like he messed it up again, like he fractured or broke it or stuff, you know. So, and I had swelling on that whole side, my right side of my face. And my arms was -- you know, my wrists, both my wrists was hurting real bad. And then the cuffs had tightened up on me throughout the process, cutting into my wrist and stuff like that.

So he tell me when I asked him for -- the Defendant Glendal French, I asked him for medical attention. He told me, like, straight out, "You ain't got shit coming," or nothing coming.

So they then took me down to 106 cell, and the Defendant Glendal French went in there and checked the toilet. Something was wrong with the, with that cell. So he said, "Now we gonna check '7." '7 was right next door, 107 cell. Went in there, checked that. Wasn't nothing wrong with that, so they put me up in that cell. And then they, they left.

And then shortly thereafter, they housed another inmate, who he just brought off 7 Gallery early that day, in cell 106 right next door, too.

Now, I believe that the med, the med tech had done came and gone around this time, or what, because I didn't get a chance to see nothing; but I was on 72-hour strip-out status with nothing to even put in a request because you got to write the requests out, and then you got to get the money voucher from the officer.

So my experience with being incarcerated, if you get into it with one officer, you get into it with all officers. Ain't none of them gonna do nothing to you until they feel satisfied that the problem over with or the [inaudible] group is satisfied with whatever happened to you as a result of the situation, whatever.

So, so I have relied on the help of inmates around me to give me the materials that I need to submit a request. When we put my request in the door for

medical attention and stuff like that, they kept walking. They kept walking past, stuff like that, because, I mean -- you know, these peoples more concerned about they job than the inmates complaining about something that happened to them because they looking at it like, "Hey, you a prisoner, and there ain't no telling what happened. You probably brought it on yourself." You know what I'm saying?

Because, like the lady stated, North Cell House house inmates that's -- well, segregation and stuff like that there, you know. So, therefore, anybody over there, you know, an allegation made against you, they're not sure whatever, you know. It's just up to you. You know, if you get a chance to prove it, if they want to believe, if they not against you or whatever, and that's real slim. So you automatically looked at as a problem if one officer got a problem with you.

So I had to rely on the, on the paralegal from the, from the max law library at Pontiac Correctional Center to submit my requests to the, to the, to the -- to the Health Care Unit for medical attention. It took me, like -- it took me, like, six months, seven months to get any medical attention for my medical needs.

Now, I believed that I was gonna be called. So at the time that I seen paramedic Jennifer Tinsley on the

incident that occurred outside of this matter, where they said an inmate spit on me and then I spit on an inmate at the Prisoner Review Board -- that's where you go and see the people from Springfield about any good time that they talking about taking from you and stuff like that; it's totally independent, but it's incident.

Ms. Tinsley didn't have no idea that she was seeing me for the matter that's before the Court right now. I believed that I was gonna receive medical attention with my request being put in through the senior paralegal guy, Mark Spencer. So I didn't even -- and then, and then it was like two or three weeks from the time that the incident had occurred, so the swelling and stuff went down. I heal pretty, pretty, pretty quick because, you know, because I don't have no health issues, whatever. And I, you know -- I take vitamins and stuff, so I don't have no problem with my immune system or nothing.

But, you know, like I said, pain -- a knot still in the side of my hand for some months afterwards, and a knot inside my hand. I had a lot of pain in my wrists and stuff like that due to the, due to the situation. But I was still seeking, seeking medical attention for the, for the, for the overall situation because I had intended on [inaudible] -- my assessment

Courts with it -- I assessed the Courts with this matter because I felt they violated my constitutional rights by assessing me -- subjecting me to excessive force. Because I haven't did anything. I was not destroying state property. Because if I was, they would have wrote me a disciplinary report. I'm sure of that. They would have made an incident report because they know that I be doing a lot of legal work and stuff. They know this here. I do legal work. I work on my criminal case; and, you know, I write briefs against them if they do something to me like they write me up for things.

So, so, so, so I'm knowing that it was a camera. It was a video camera cell house. Know what I'm saying? They say that's gone.

They didn't write no incident report regards that -- they claim that force weren't used. But an incident report would have been wrote about this particular matter, which they -- because they take my shoes off. They keep saying I refused to give my shoes up and all this stuff right here. So these -- this stuff would have been documented, and I would have went before the Adjustment Committee. The video camera would have showed all that.

So, I mean, you know, that's, that's -- that's what happened.

THE COURT: Is that your testimony -- or your completion?

PLAINTIFF WALKER: Huh?

THE COURT: What did he say?

COURT REPORTER: He said, "Huh?"

THE COURT: Are you done testifying?

PLAINTIFF WALKER: Yes, sir. Yes, sir.

THE COURT: Okay.

Cross-examination, counsel.

MS. VINCENT: Yes, Your Honor.

CROSS-EXAMINATION BY MS. VINCENT:

Q Mr. Walker, you're a convicted felon; is that correct?

A Yes, ma'am.

Q How many felonies have you been convicted of?

A I, I -- three. I got -- one -- yeah, with this one, with this case and two prior cases.

Q Your first felony is for murder, and you're serving a sentence --

A No.

Q -- of natural life, correct?

A That's not my first felony.

Q What's your first felony?

A My first felony was for attempt murder, aggravated discharge of firearm [inaudible].

defense. Tell us what your theory of the case is and what you expect the evidence to show.

MS. BAUTISTA: Thank you, Judge. This is Laura Bautista on behalf of the defendants.

Thank you, ladies and gentlemen of the jury.

This is our first, or at least my first attempt at a trial fully by video, so I very much appreciate your patience with us as we get through this.

I, along with my partner, Ms. Ashley Vincent, represent the defendants in this case: Timothy Price, Glendal French, and Jeffrey Stahl. This case is about what happened and, even more importantly, what didn't happen on August 21, 2013.

As was explained to you earlier by the judge, it's going to be your job to listen to the testimony and look at the evidence in this case and to determine who's telling the truth in this case. It's a very important job, especially because, in this case, Mr. Walker claims that he was assaulted on August 21, 2013.

But the evidence will show that that did not happen. You will hear from each of my clients. Timothy Price, he's currently an Illinois State Police trooper. He was a correctional officer here at Pontiac at the time. Jeffrey Stahl is retired from the Department of Corrections; but at the time, he was a

sergeant. And Glendal French is now a major with the Department of Corrections. But at the time, he was a lieutenant, responsible for North Cell House.

They're going to explain to you their day-to-day duties at Pontiac Correctional Center. It's a maximum facility. It's a disciplinary Segregation Unit, and you'll hear about what segregation means. Segregation is something that's used for inmates who engage in disciplinary infractions. And Pontiac is a facility that's used when inmates continue to misbehave, even when in segregation at other correctional institutions.

You're also going to hear about North Cell House. That's where Mr. Walker was housed on the date at issue. He started off on the 5 Gallery and moved to the 1 Gallery later that day. You'll hear that North Cell House is used at Pontiac Correctional Center for the segregation inmates that continue to engage in disciplinary infractions even when at Pontiac Correctional Center.

You'll hear that inmates will start on the 1 Gallery. That's the first floor of the North Cell House. And then as they behave, they can move up. The second floor of North Cell House is referred to as 3 Gallery. The third floor of North Cell House is 5 Gallery. That's

where Mr. Walker was on the beginning of August 21, 2013. And then the top floor is 7 Gallery.

You will hear that Mr. Walker was kicking the door to his cell on 5 Gallery, and this presented a problem. This is a perforated door; and by kicking the door, Mr. Walker could have caused damage. This is a safety and security concern. The decision was made to move Plaintiff down to 1 Gallery. See, the doors are different on 1 Gallery because those are used for inmates that are continuing to engage in disciplinary infractions. Those have solid steel doors with a Plexiglas window. Less damage can be caused when kicking a solid steel door.

Like all segregation inmates, Mr. Walker had to be handcuffed when being removed from his cell. This is a policy of the Department of Corrections. Segregation inmates are handcuffed whenever moved from their cells. Mr. Walker was taken from 3 Gallery down the stairs, getting ready to go onto 1 Gallery; and then he was asked to kneel so that leg shackles could be placed on his ankles and so that his shoes could be removed. The theory there is: If an inmate doesn't have shoes on, they'll be less likely to kick a steel door.

Now, you'll also hear from Major French regarding why the leg shackles were used on 1 Gallery

back in 2013 but they weren't being used on 5 Gallery. There's not much incentive that you can give to an inmate to behave once they're in North Cell House. But one thing they could do, and one thing that Major French did do, is he instituted a policy at that time that, once you were able to gain your way up to 5 Gallery, you no longer had to wear leg shackles when outside of your cell. But before Mr. Walker could be taken on 1 Gallery, he did have to wear leg shackles because they were required on 1 and 3 galleries. And this gave inmates an incentive to behave.

And that's all that happened on August 21, 2013. Mr. Walker was placed in his cell on 1 Gallery. It was completely uneventful. We agree with Mr. Walker that he complied with all orders that day.

As you will hear, inmates get moved both up and down in North Cell House on a daily basis. This is not an unusual occurrence. You're going to hear testimony from my clients, from at least one other correctional officer, and from medical personnel regarding what medical care Mr. Walker did receive. And it certainly wasn't seven or eight months before he was seen by any medical personnel.

The facts will show that there was no force used on August 21, 2013, against Mr. Walker. No one

failed to step in to prevent force from being used because there was no reason to step in. And there was no reason to get Mr. Walker any medical attention on August 21, 2013, because there weren't any injuries. But he did get medical attention within a month around this date, and we will present evidence as to what happened at that time.

After listening to all the testimony and considering all the evidence, you will have a chance to deliberate after the judge instructs you as to the law, and I ask that you find in favor of my clients: Timothy Price, Glendal French, and Jeffrey Stahl.

Thank you.

THE COURT: All right. Now, we're going to have to go slightly out of order. We have a, a witness, a plaintiff's witness, scheduled. He's at the Menard Correctional Center, and that's the reserved video time we have.

So, Mr. Walker, you'll have to be ready to present the testimony of your witness -- which one is it?

COURTROOM DEPUTY: Marlon Minter.

THE COURT: Yeah. And we're going to get him up on the screen now.

Go ahead, Jessica.

This, this is the first plaintiff's witness.

proceedings had. I appreciate it.

Thank you.

THE COURT: Closing argument for the defense.

MS. VINCENT: As the Court is going to instruct you later, you're allowed to use your common sense in this case; and this case just doesn't make any sense because it didn't happen.

August 21, 2013, it was just a regular day, an ordinary day in North Cell House. You heard testimony today that the North Cell House at Pontiac Correctional Center houses the worst of the worst in the state of Illinois. This is the place where offenders go when they cannot behave themselves in any other institution in the entire State of Illinois.

Plaintiff never told you why he was moved from 5 Gallery to 1 Gallery, and it doesn't make any sense that he would be moved for no reason or just for complaining about a breakfast tray. On August 21, 2013, you heard testimony that Plaintiff's witness, John Hudson -- he assaulted my client, Mr. Price, in the morning. Mr. Hudson and Mr. Walker were both inmates housed on 5 Gallery. Mr. Hudson assaults Mr. Price that morning.

Afterwards, Mr. Walker complains about not receiving a breakfast tray, which he testified to. He

starts banging on the cell door with his shoes. He kicks the cell door with his shoes. Like Mr. French had testified, that is a safety and security issue. When an inmate is kicking on a cell door on 5 Gallery, they can knock the door off the track. So to prevent that from happening, Mr. Walker was taken down to 1 Gallery. His shoes were taken off, and he was placed in a cell there.

As Mr. French testified, inmates in North Cell House are moved daily. In fact, two to three times a day, inmates can be moved from 5 Gallery down to 1 Gallery. This is not an uncommon occurrence. This is an everyday thing in North Cell House.

Mr. Walker claims that Lieutenant French -- well, Lieutenant French at the time -- bounced up and down on his head and neck with his knee. Well, you heard today: Mr. French -- he's not a small guy -- he's six-four; he weighs 265 pounds. If, if Mr. Walker's allegations are true, there would be some pretty extreme injuries that Mr. Walker would have suffered; but there's been zero evidence of any injuries in this case.

Mr. French also testified today that, you know, anything that he had did, he's following departmental rules, whether or not Mr. Walker agrees with that. On August 21, 2013, Mr. French, he was a lieutenant. Today he is now promoted as a major. It doesn't make sense

that an individual would get promoted by not following departmental rules.

The plaintiff claims that Mr. Stahl bent his hand back. However, there's no evidence at all in this case that's what happened. And even taking Plaintiff's claims as true, he has to prove that he suffered some type of injury based on Stahl's actions. There's zero evidence that Mr. Stahl caused any injury to Mr. Walker on August 21, 2013. In addition to that, Mr. Stahl told you that he retired in 2014. It doesn't make any sense that Mr. Stahl, who has a year left to retirement, would do anything to jeopardize that.

Next, you have Officer Price. Officer Price testified that, yeah, he was on 1 -- 5 Gallery that day. Mr. Hudson told you he was on 5 Gallery that day because Mr. Hudson claims that Price didn't give him a breakfast tray. Mr. Walker testified also that Mr. Price was on 5 Gallery that day because he was upset about getting -- about not getting or getting a contaminated breakfast tray. We're not disputing that Mr. Price was on 5 Gallery.

The plaintiff has not presented any evidence that Mr. Price saw Mr. French or Mr. Stahl allegedly subject him to excessive force on the, on the flag or the entrance of North Cell House. There's been no evidence

at all that Mr. Price saw it, saw any injuries, or saw the force. And for those reasons, we ask that you do not -- we ask that you find in favor of Defendant Price.

What you did hear about Mr. Price, though, is that day he was assaulted by John Hudson, which John Hudson admitted that to you.

And Plaintiff's belief that Mr. Price was present for these incidents is not enough to be found liable for violating Mr. Walker's constitutional rights.

You heard from Ms. Jennifer Tinsley. She's a certified medical technician at Pontiac Correctional Center. She reviewed his medical rec-- an excerpt from the plaintiff's medical record. Nothing in the medical record indicates that Mr. Walker suffered from any type of injury. In fact -- and you'll see, because the medical records will go back to the jury room with you -- you have a year excerpt of Mr. Walker's medical record. In that year's time, he saw a doctor or a nurse or a mental health professional -- or somebody with a medical background -- 21 times the year after this alleged incident. But what you're not going to find is there, in there is any documentation of any injury that Plaintiff, that Mr. Walker claims that he suffered on behalf of my clients.

Mr. Walker pointed out to you two dates in

those medical records -- June 2, 2014, and June 5, 2014 -- where he says that "I finally received some medical treatment for these injuries." We have no idea where these alleged injuries came from. This is almost a year after he claims that these officers subjected him to excessive force. Nothing in those records show that my officers did anything to Plaintiff on August 21, 2013.

Mr. Walker called his two friends, Marlon Minter and John Hudson, to the stand. You heard from Mr. Minter. Mr. Minter told you, "Yeah. I spent most of my time in North Cell House." He told you that he picked up multiple disciplinary tickets. Mr. Minter's very familiar with North Cell House. Offenders don't get housed in North Cell House for no reason. They are there because they're misbehaving.

Mr. Minter, when he testified while Mr. Walker was questioning him, he knew every answer to every question that Mr. Walker asked. And if you recall, he could not answer one question that my trial partner asked him with a simple "yes" or "no."

You also heard from Mr. John Hudson. He was moved from 5 Gallery down to 1 Gallery after he assaulted Mr. Price. And he also told you that he couldn't see anything that day. He couldn't see Plaintiff's face or any alleged injuries.

And then Mr. Walker. Mr. Walker -- he tried to explain his deposition testimony today, the inconsistencies in his testimony. Well, he took that deposition in November of 2016. His testimony back then is different from what he's saying today, and that's not too long ago. So it's up to you to decide when he's telling the truth. Is he telling the truth today, or did he tell the truth back then?

The one thing that just does not make any sense about this case is you heard that Mr. Hudson had assaulted Mr. Price. Mr. Hudson was taken down to 1 Gallery as a result of that. Mr. Hudson testified that no force was used against him, and he was just placed in another cell.

Yet, the plaintiff wants you to believe, because he complained about a breakfast tray, that these officers subjected him to excessive force; but an inmate who assaults an officer is not subjected to excessive force. That just doesn't make any sense. And it doesn't make any sense because what Plaintiff says just didn't happen.

Mr. Walker wants you to believe that several nurses, correctional officers, majors, lieutenants -- all these staff members on three shifts -- 24 hours a day, seven days a week, he complained to them and asked for

medical attention; yet, none of them wanted to give him medical attention. That makes absolutely no sense, and his medical records show otherwise.

The Court's going to instruct you on what the plaintiff needed to prove in order to find my clients liable; and the law is very clear that neither Mr. French, Mr. Stahl, or Mr. Price violated any of the plaintiff's constitutional rights on August 21, 2013; and I ask that you find in favor of my clients.

Thank you.

THE COURT: Mr. Walker, you may speak in rebuttal.

PLAINTIFF WALKER: Yes, sir.

Ladies and gentlemen of the jury, as stated earlier, the defendants will say anything to disconnect theyself to the claim that's made against them by the plaintiff.

Now, they -- she talk about it don't make any sense about Lieutenant -- I mean, Defendant Price moving, or claiming that John Hudson assaulted him and move him to 1 Gallery. The reason why he move -- he, he claimed that John Hudson assaulted him because John Hudson, as you seen from, from him being in this courtroom, didn't have any problem with letting his supervisor know, just like I did, those, that this dude had dropped the trays

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Wednesday, 10 December, 2014 02:35:10 PM
Clerk, U.S. District Court, ILCD

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

FREDERICK WALKER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	14-CV-1343
	)	
CORRECTIONAL OFFICER PRICE, LT. GLENDAL FRENCH, And SERGEANT STAHL	)	
	)	
	)	
Defendants.	)	

MERIT REVIEW OPINION

SUE E. MYERSCOUGH, U.S. District Judge.

Plaintiff, proceeding pro se and incarcerated in Pontiac Correctional Center, seeks leave to proceed in forma pauperis. The case is before the Court for a merit review pursuant to 28 U.S.C. § 1915A.

In reviewing the Complaint, the Court accepts the factual allegations as true, liberally construing them in Plaintiff's favor. Turley v. Rednour, 729 F.3d 645, 649 (7th Cir. 2013). However, conclusory statements and labels are insufficient. Enough facts must be provided to "'state a claim for relief that is plausible on its

face.'" Alexander v. U.S., 721 F.3d 418, 422 (7th Cir. 2013)(quoted cite omitted).

Plaintiff alleges that, on August 21, 2013, Officer Price accidentally dropped several breakfast trays while delivering them. Officer Price then refused to obtain new breakfast trays, leaving Plaintiff and another inmate with no breakfast. Plaintiff's vocal protests brought Lieutenant French and Sergeant Stahl to the scene, whereupon French and Stahl cuffed Plaintiff and escorted him to a cell to be placed on "72-hour strip-out status," which means that an inmate is deprived of his clothing, bedding, and personal property until he earns them back through good behavior.

Before placing Plaintiff in the strip-out cell, Defendants French and Stahl ordered Plaintiff to his knees, affixed leg shackles to Plaintiff, and then Defendant French allegedly proceeded to "forcefully put his knee on Plaintiff's head and neck and then began to bounce up and down on plaintiff causing plaintiff to instantly endure excruciating pain and swelling to the right side of plaintiff's head and orbital bone." (Complaint para. 18.) Meanwhile, Defendant Stahl bent Plaintiff's hands. Officer Schmelts, who is not named as a defendant, arrived to assist with taking off Plaintiff's

shoes. Defendants Stahl and French allegedly refused to allow Plaintiff to access medical care for his injuries from the excessive force.

Plaintiff clearly states Eighth Amendment excessive force and failure to intervene claims against Defendants Stahl and French. The Court cannot tell if Defendant Price was present when the excessive force occurred, so Price will be included in the excessive force/failure to intervene claim at this time. An Eighth Amendment claim for deliberate indifference to Plaintiff's need for medical treatment is also stated against all three defendants.

However, no claim is stated against Price for depriving Plaintiff of one meal. See Johnson v. Arbeiter, 2010 WL 4717642 at 2(S.D.Ill Nov.15, 2010)(deprivation of one meal does not state constitutional violation); Brown v. Madison Police Dept., 2003 WL 23095753 at 4(W.D.Wis. May 15, 2003)(missing two meals on one occasion does not rise to constitutional violation); Ellison v. Minnear, 2009 WL 5217340 at 4 (S.D.Ill.Dec. 29, 2009) (no claim where inmate missed five separate meals but did not allege any harm to his health). Additionally, no claim is presently stated regarding the strip-out cell. To state an Eighth Amendment claim, the allegations must

give rise to a plausible inference that the conditions in the cell deprived Plaintiff of the "'minimal civilized measure of life's necessities.'" Farmer v. Brennan, 511 U.S. 825, 834 (1994)(quoted cite omitted). Being deprived of personal property for a few days does not rise to that level, and Plaintiff does not say how long he was without bedding, clothing, or other necessities. Plaintiff may file an amended complaint if he has additional detail about the deprivations he suffered in the cell.

IT IS THEREFORE ORDERED:

1) Pursuant to its merit review of the Complaint under 28 U.S.C. § 1915A, the Court finds that Plaintiff states Eighth Amendment claims for excessive force, failure to intervene, and deliberate indifference to the need for treatment for his injuries and pain. This case proceeds solely on the claims identified in this paragraph. Any additional claims shall not be included in the case, except at the Court's discretion on motion by a party for good cause shown or pursuant to Federal Rule of Civil Procedure 15.

2) This case is now in the process of service. Plaintiff is advised to wait until counsel has appeared for Defendants before filing any motions, in order to give Defendants notice and an

01/12/2017		TEXT ORDER entered by Judge Harold A. Baker on 1/12/2017. On the Court's own motion, the final pretrial conference set for January 12, 2017, at 1:30 p.m., is VACATED and RESET for January 24, 2017, at 10:00 a.m., by video conference from Urbana. The clerk is directed to issue the appropriate writ to insure plaintiff's appearance at this final pretrial conference. The jury trial in this matter remains set for February 7, 2017, beginning at 9:30 a.m., and will be held by video conference. A video writ has already been issued for plaintiff's appearance at the jury trial. Counsel, as well as the defendants, and any witnesses for the plaintiff and the defendants will also be appearing by video conference. The Court has reviewed the parties' proposed witness lists, and it appears that the following witnesses may have relevant testimony: John Hudson M25343, an inmate at Menard Correctional Center; Marlon Minter M24371, an inmate at Menard Correctional Center; Jennifer Tinsley, staff at Pontiac Correctional Center; Officer Schmeltz, staff at Pontiac Correctional Center and Brian Boggess, staff at Pontiac Correctional Center. Video writs will be prepared for these witnesses. By January 20, 2017, a party may file a motion to add witnesses regarding any proposed witness who was not included, explaining the relevance of their testimony. The parties are directed to file, no later than January 20, 2017, a copy of all exhibits they will be presenting at the trial, along with a list setting forth which exhibits the party expects to use with which witness. (JMB, ilcd) (Entered: 01/12/2017)