No. 19-2495 & 19-2496

In the United States Court of Appeals for the Third Circuit

ANGELA HYMAN,
Appellee/Cross-Appellant

v.

BRYAN DEVLIN,
Appellant/Cross-Appellee.

On Appeal from the United States District Court
for the Western District of Pennsylvania
Case No. 3:17-cv-00089

APPELLEE/CROSS-APPELLANT'S PRINCIPAL AND RESPONSE BRIEF

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INTRODUCTION

When Pennsylvania State Police trooper Bryan Devlin arrived at Angela Hyman's house, there was, in his own words, a "stalemate." Devlin Opening Br. 6. A tow-truck driver was trying to take Angela's car—unbeknownst to Angela, Capital One had hired him to repossess it—and Angela's wife was sitting in the car to prevent him from doing so. Only one side of the stalemate, however, was behaving unlawfully: Capital One did not have a court order authorizing it to take Angela's property. And Angela objected to its doing so. Yet the repo man refused to leave.

As Devlin later testified, he *knew* that, absent a court order, police officers may not use their authority as officers of the state to enable one private party to take the property of another. The Fourth Amendment's prohibition on unlawful seizures and the Fourteenth Amendment's prohibition on taking property without due process forbid it.

Nevertheless, Devlin did exactly that: He ordered Angela's wife Shyree to get out of the car, so the repo man could take it. And when Shyree did not immediately comply with his unlawful order, Devlin escalated. He threatened to break the car window, forcibly remove her from the car, and arrest her. The whole time, Angela's daughter, a law student, was telling Devlin he was violating the law. Devlin's response? "That's OK."

Unsurprisingly, a jury found that Devlin violated Angela's constitutional rights. The jury awarded $5,000 in compensatory damages and $500,000 in punitive damages. Now, Devlin is trying to escape liability from that decision.

First, Devlin contends that he's entitled to qualified immunity, shielding him from the jury's verdict. But any reasonable officer would know that it is unlawful for a police officer to threaten to break a car window, forcibly remove someone from the car, and then arrest them without probable cause, just so that a repossessor—without any court order permitting it to do so—can take a private citizen's car.

Devlin does not seriously argue otherwise. Instead, he argues that's not what he did. But a video of that night shows Devlin explaining that the reason Angela's wife had to leave the car—the reason Devlin was threatening her with violence and arrest if she did not—was *so that* the repossession could proceed. Nevertheless, Devlin now argues he threatened to break a car window, pull a woman out of it, and falsely arrest her because he was concerned about safety. Devlin's newfound safety rationale rests entirely on accepting *his* after-the-fact version of what happened that night—a version of events that is contradicted by his own statements on video and by every other witness to testify at trial; a version of events that, based on its verdict, was rejected by the jury.

But this Court may not consider that version of events. At this stage, qualified immunity must be assessed based on the facts taken in the light most favorable to the

party who *prevailed* at trial: Angela, not Devlin. And on those facts, there can be no dispute that any reasonable officer would know that Devlin's conduct was unlawful.

Second, before the district court, Devlin argued that if he can't escape the jury's verdict entirely, he's entitled to have a court override the jury's punitive-damages award. He is not. As the district court recognized, Devlin's conduct was reprehensible and malicious. After all, he knowingly violated Angela's constitutional rights, and used threats of violence and false arrest to do so. Nevertheless, the district court held that the Constitution required the court to substitute the jury's punitive-damages award with its own. In the district court's view, the ratio between the jury's punitive-damages award and its compensatory-damages award was just too high.

The district court went wrong in two ways: First, it evaluated the wrong ratio. The relevant ratio, the Supreme Court has instructed, is not the ratio between punitive damages and compensatory damages. It's the ratio between punitive damages and the harm a defendant's misconduct caused *and threatened to cause*. Juries commonly value harm similar to the harm Devlin threatened here—using unnecessary force against and then falsely arresting a woman for doing nothing more than sitting in her own driveway—at approximately $250,000, sometimes more. So the relevant ratio here—the ratio between the punitive

damages and the harm, actual and threatened—is not 100:1, as the district court believed. It's 2:1.

Second, the district court evaluated its wrong ratio under the wrong rubric. The court concluded that a single-digit ratio was constitutionally required. But a single-digit ratio typically applies in cases where the harm is primarily economic—and therefore easy to quantify—and the compensatory damages are high. Where, as here, a defendant causes non-economic harm that's difficult to value monetarily or an "egregious act" results in low compensatory damages, "greater" ratios "may comport with due process." *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003).

That's precisely the case here. Devlin "egregious[ly]" abused his power to violate Angela's constitutional rights—a harm that is grievous, yet impossible to quantify. And he threatened violence and false arrest while doing so. The jury's punitive-damages award should not be reduced, simply because the harm Devlin caused is difficult to measure in monetary terms.

The Constitution authorizes judicial revision of a jury's punitive-damages award "*[o]nly* when" it "can fairly be characterized as grossly excessive in relation" to the "legitimate interests in punishment and deterrence." *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 568 (1996) (emphasis added). Far from being grossly excessive, the

jury's award here is essential to punish Devlin's abuse of power and to deter other officers from following in his footsteps. The award should be reinstated in full.

STATEMENT OF THE ISSUES

1. Whether the district court correctly denied Corporal Devlin's motion for judgment as a matter of law based on qualified immunity because, in light of clearly established law, any reasonable officer would know that it is unlawful to use threats of violence and false arrest to enable a private repossessor with no court order to take someone's property. A.32-38, A.76.

2. Whether the district court erred in overriding the jury's punitive-damages award, even though Devlin's conduct was reprehensible; there is a single-digit ratio between the punitive damages and the harm Devlin caused and threatened; and the Supreme Court has made clear that, in any event, higher ratios are warranted in cases like this one, where an egregious act results in small compensatory damages. A.75, A.43-50.

STATEMENT OF RELATED CASES AND PROCEEDINGS

This case has not previously been before this Court. Appellee/Cross-Appellant is not aware of any other case or proceeding that is in any way related, completed, pending, or about to be presented before this court or any other court or agency, state or federal.

STATEMENT OF THE CASE

I. Factual background

A. Angela and Shyree move to Nanty Glo.

In 2016, Angela Hyman and her wife, Shyree, moved to Nanty Glo, a small town in West Central Pennsylvania. A.469. Angela had recently been diagnosed with a dangerous heart condition, and she wanted to move somewhere "quiet" where she could "live out the rest of [her] days." A.470. Nanty Glo, she thought, was that place. *Id.*[1]

At the time, Angela was extremely ill, and unable to work. A.472. And because she could not work, she began to fall behind on her car payments. *Id.* But Angela relied on her car—it was her only way to get to doctor's appointments, pick up medication, and go to the store. A.491-92. And she was committed to repaying her auto loan. *See* A.472. So Angela had several discussions with her lender, Capital One, to try to reach an agreement on a loan modification that would enable her to continue making payments despite her illness. A.472, 496. Unbeknownst to Angela, though, while these discussions were still ongoing, Capital One decided it would simply take her car. *See id.* The company didn't inform Angela of its decision. *See id.*

[1] In all quotations, internal quotation marks, citations, and alterations are omitted unless otherwise specified. In addition, unless otherwise specified, all citations to the docket are to the district court docket, Case No.17-cv-89 (W.D. Pa.).

As far as she knew, she and Capital One were working in good faith to come to an agreement. *See id.*

B. Without warning, Capital One tries to take Angela's car.

One night, Angela and Shyree were at home, when Shyree heard a noise outside. A.473. Shyree looked out to see a tow truck backing into their driveway—Capital One, it turned out, had hired a repo man to take Angela's car. *Id.* The repo man, the driver of the tow truck, did not have a court order permitting him to take the car. A.253. And Angela objected to his doing so, repeatedly. A.475, 479, 505, 533.

To prevent Angela's car from being repossessed, Shyree locked herself inside the car. A.474. And Angela went to speak to the repo man. Angela told him that he was trespassing on her property and asked him to leave. A.474-75. At trial, the repo man admitted that under Pennsylvania law, a company cannot repossess a person's property without a court order if the consumer objects. *See* A.579-80. Nevertheless, he refused to leave. *See* A.475.

Angela called her daughter, Makiba, who was a law student at the time. A.473. Makiba advised Angela to call the police. A.473, 476. After all, there was a man on Angela's property, refusing to leave and trying to take her car. When Angela called 911, they told her that police were already on their way—apparently, the repo man had already called them. A.476-77.

The first two officers to arrive spoke to Angela, who identified herself, told them that the woman in her car was her wife, and asked the officers to ask the tow-truck driver to leave their house. A.477-79. After speaking with these officers, Angela was hopeful they would help her. A.479.

C. State Trooper Bryan Devlin threatens violence and arrest if Angela and her wife do not comply.

But about thirty minutes later, Corporal Bryan Devlin—the officers' shift supervisor—arrived. A.403. And everything changed. Devlin banged loudly on the door to Angela's house, terrifying her. A.480-81. When Angela opened the door, Devlin asked who was in her car. A.485. Angela answered that it was her wife, Shyree. *Id.* Devlin told Angela to make Shyree get out of the car. *Id.* While he was talking, Devlin repeatedly touched his gun. A.488.

As all this was happening, Angela had remained on the phone with her daughter Makiba, the law student, who then asked to speak to Devlin. A.486. Angela handed the phone—on speakerphone—to Devlin. *Id.* There is a video of the conversation that followed. *Id.*[2]

[2] This video was part of the trial record, and although it was listed in the joint appendix as "Plaintiff's Exhibit 1 – Video," A.776, Devlin did not transmit it to the Court with the appendix. Therefore, on May 1, 2020, we filed an unopposed motion to supplement the appendix with the video. *See* Unopposed Mot. Supplement App'x, Case Nos. 19-2495 & 19-2496, Doc. 55 (May 1, 2020). Throughout this brief, the video is cited as "Video."

In the video, Devlin makes clear that his goal is to enable the tow-truck driver to repossess Angela's car that night. First, he tells Makiba to ask Shyree to get out of the car, "so these gentlemen"—the tow-truck driver and another man, who was helping with the repossession—"can do their job." Video at 00:49-00:53. Then Devlin says that either Shyree leaves the car voluntarily or he will break the car window, remove Shyree, and arrest her. *Id.* at 1:11-1:23. Either way, he says, the car is "gonna get taken." *Id.* at 1:23-1:25.

Makiba repeatedly reminds Devlin that police officers may not aid a private party in taking someone else's property without a court order; that by forcing Shyree out of the car so it can be repossessed, he's "breaking the law." *See, e.g.*, *id.* at 00:22-00:36, 00:52-00:56, 1:44-2:07. Devlin's response: "OK, you can file a complaint on me later." *Id.* at 00:56-00:59; *see also id.* at 00:59-1:16, 1:26-1:32 (Makiba repeating that Devlin is breaking the law and Devlin responding "That's OK.").

After speaking with Makiba, the video shows Devlin going over to Angela's car, banging on the window, and talking directly to Shyree. *Id.* at 2:48. Devlin tells Shyree she has "about 30 more seconds" to get out of the car, or he's "breaking the window and coming in." *Id.* at 2:52-3:15. Once thirty seconds pass, Devlin bangs on the window again, telling Shyree, "Your time is up." *Id.* at 3:50-3:55. To avoid being forcibly removed from the car and arrested, Shyree gets out of the car herself. *Id.* at 4:09. The video ends there.

After Shyree got out of the car, Devlin told the repo man "to go ahead and take it." A.490. And that's exactly what he did. *Id.*

It's undisputed that the reason he was able to take Angela's car that night was because Devlin forced Shyree to get out of the car. *See* A.428-30. It's also undisputed that neither Angela nor Shyree posed any threat. *See* A.416-17. As one of the other troopers who was there would later testify, the only person threatening violence that night was Devlin. A.307-08.

Although, at trial, Devlin claimed that he did so because he was concerned about safety, the video shows that he never mentioned being concerned about safety that night. Instead, he repeatedly stated that his concern was ensuring that the tow-truck driver could take Angela's car. *See, e.g.*, Video at 00:35-00:40, 00:50-00:52, 1:23-1:25.

Watching a police officer threaten to break her car window, so he could forcibly remove and then arrest her wife, terrified Angela. A.488. She was scared for Shyree's safety; scared that Shyree would be taken to jail; and scared that she wouldn't have the money to bail Shyree out. A.489.

For three days afterward, Angela couldn't sleep or eat. A.492. Because Capital One had taken her car, she didn't know how she was going to get to her doctor's appointments—appointments that were essential to monitor her heart condition. A.491-92. Angela's blood pressure spiked so high that she had to go to the hospital.

A.492. She had panic attacks and nightmares about being shot by the police—nightmares that continued for what seemed "like a lifetime." A.493. Eventually the stress became too much for Angela's wife. A.494. They separated, and Angela left Nanty Glo, the town in which she'd hoped to quietly live out the rest of her days. *Id.*

At trial, Devlin was unrepentant. When asked, "if you had to do it all over again, Corporal Devlin, would you have done anything differently," Devlin replied, "Absolutely not. Given the same totality of the circumstances, the same situation, the same set of facts, absolutely not." A.431.

II. Procedural History

Angela sued Devlin under 42 U.S.C. § 1983, alleging that by using his authority as a police officer to deprive her of her car without notice or an opportunity to be heard, he violated the Fourth Amendment's prohibition on unlawful seizures and the Fourteenth Amendment's prohibition on taking property without due process of law. *See* Am. Compl. ¶ 63, Dkt. No. 27.[3]

A jury, seated at the Johnstown federal courthouse, agreed—unanimously. A.71.[4] The jury found that Devlin "violated Ms. Hyman's federally protected

[3] Angela also brought claims against other defendants, but the only claim at issue in this appeal is her claim against Devlin.

[4] Two members of the twelve-person jury were empaneled despite stating in sworn questionnaires they had "strong feelings about homosexuality or same sex marriage that would prevent [them] from rendering a fair verdict in this case." *See e.g.* A.136-41, 143-47, 170 (excerpts of *voir dire*). Nevertheless, they found in Angela's favor.

constitutional rights" and that his violation was "reckless, malicious, or callous." A.71-72. The jury awarded $5,000 in compensatory damages and $500,000 in punitive damages. A.71-72.

Devlin moved for judgment as a matter of law, a new trial, and remittitur. A.75-76. Devlin's motion asserted several issues, but only two remain on appeal: First, Devlin argued that he was entitled to judgment as a matter of law based on qualified immunity because, he contended, no reasonable officer would have known that threatening to break the car window, remove Angela's wife from the car, and arrest her "translated into participation in a private repossession to a degree tantamount to state action." *See* Br. Supp. Def.'s Mot. J. Matter of Law, Dkt. No. 149, at 11, 15-16. And second, Devlin argued that the district court was required to reduce the jury's punitive-damages award. *See id.* at 21.

The district court held that Devlin was not entitled to qualified immunity from the jury's verdict against him, but it drastically reduced the punitive-damages award. A.45. On qualified immunity, the court held that by October 2016—when Devlin used threats of violence and arrest to enable Capital One to take Angela's car—the law was "clearly established that it was unlawful for a law-enforcement officer to affirmatively aid in a private repossession." A.35. Indeed, the court observed, Devlin himself testified at trial that he knew the Constitution prohibited police officers from taking sides in a civil dispute. A.38. Still, he played "a pivotal role" in enabling

Capital One's repossession of Angela's car: He told Angela's wife that the "car would be repossessed that evening" and "threatened to arrest her if she did not assent." A.37-38. Given the longstanding clearly established law that officers may not affirmatively aid in private repossessions, the court held, Devlin's conduct was not shielded by qualified immunity. A.38.

In considering the jury's punitive-damages award, the court found that Devlin's conduct—"maliciously" using threats of force and arrest to dispossess a "financially vulnerable" person of her car, despite knowing that it was unlawful for him to do so—was reprehensible. A.43-48. Nevertheless, the court held that the ratio between the jury's punitive-damages award and its compensatory-damages award (100:1) rendered the punitive damages unconstitutional under substantive due process principles. A.43-44.[5] The court relied on Supreme Court cases involving primarily economic harm, in which the Court has observed that "single-digit multipliers" between punitive and compensatory damages "are more likely to comport with due process." A.48. The district court acknowledged that the Supreme Court has distinguished those cases from cases in which "a particularly egregious act has

[5] The court repeatedly stated in its remittitur decision that the ratio of the punitive-damages award to the compensatory award was 500:1, but in fact, it is 100:1. *See* A.49 (noting that jury awarded $5,000 in compensatory damages and $500,000 in punitive damages, and incorrectly stating that this is a ratio of 500:1). The court corrected this in an order denying Angela's motion for reconsideration of the remittitur. Mem. Order, Dkt. No. 163, at 3.

resulted in only a small amount of economic damages," and that it has made clear that in such cases "greater ratios may comport with due process." A.49. But the court reduced the jury's award anyway. A.50. Although the jury found that an award of $500,000 was warranted to "to punish Trooper Devlin and deter similar conduct in the future," the court held that, in its view, the U.S. Constitution permitted only $30,000 in this scenario. A.50, 72. It therefore remitted the award to that amount. A.50.

Devlin appealed from the district court's decision that he was not entitled to qualified immunity from the jury's verdict against him, and Angela cross-appealed from the court's reduction of the jury's punitive-damages award. *See* A.1, 3.

STANDARDS OF REVIEW

1. *Judgment as a Matter of Law.* A district court's decision on a motion for judgment as a matter of law is reviewed de novo. *Addie v. Kjaer*, 737 F.3d 854, 861 (3d Cir. 2013). Like district courts deciding such motions in the first instance, appellate courts reviewing their decisions are required to "view the evidence in the light most favorable to the non-moving party"—here, Angela—"and give that party the advantage of every fair and reasonable inference." *Frank C. Pollara Grp., LLC v. Ocean View Inv. Holding, LLC*, 784 F.3d 177, 184 n.9 (3d Cir. 2015); *see also Woodwind Estates, Ltd. v. Gretkowski*, 205 F.3d 118, 122 (3d Cir. 2000) (applying this standard in qualified immunity appeal), *abrogated on other grounds by United Artists Theatre Circuit, Inc. v. Twp.*

of Warrington, PA, 316 F.3d 392 (3d Cir. 2003). And they must "disregard all evidence favorable to the moving party"—here, Devlin—"that the jury [was] not required to believe." *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 151 (2000).

2. *Remittitur.* This Court reviews de novo a district court's conclusion that a jury's punitive-damages award violates the Due Process Clause and its decision to reduce that award. *Jester v. Hutt*, 937 F.3d 233, 238 (3d Cir. 2019). The Court "engage[s] in an independent examination of the relevant criteria to determine whether the punitive damage award is so grossly disproportional to the defendant's conduct as to amount to a constitutional violation." *Willow Inn, Inc. v. Pub. Serv. Mut. Ins. Co.*, 399 F.3d 224, 230 (3d Cir. 2005).[6] In doing so, the Court must "accord a measure of deference to the jury's award." *Jester*, 937 F.3d at 243. And, because the jury ruled in Angela's favor, the Court must accept her version of disputed facts. *See TXO Prod. Corp. v. Alliance Res. Corp.*, 509 U.S. 443, 447 (1993) (plurality op.).

[6] The district court stated that this Court would review its decision to override the jury's punitive-damages award for abuse of discretion. *See* A.19-20. That's incorrect. The district court seems to have confused two different kinds of remittitur: (1) a reduction in punitive damages because the court believes the amount of the punitive-damages award cannot be supported by the evidence; and (2) a reduction in punitive damages because the court believes the amount awarded by the jury is unconstitutional. The former is reviewed for abuse of discretion, but the latter—the kind of remittitur at issue in this case—is reviewed de novo. *Cortez v. Trans Union, LLC*, 617 F.3d 688, 716–17 (3d Cir. 2010).

SUMMARY OF ARGUMENT

I. The district court correctly held that Devlin is not entitled to qualified immunity. The law has been clear for decades that the Fourth Amendment prohibits police officers from participating in an unlawful repossession; and the Fourteenth Amendment prohibits officers from aiding a private party in repossessing another's property without notice or an opportunity to be heard. This Court, therefore, has repeatedly held that police officers called to the scene of a repossession must remain neutral; they may not aid the repossessor.

Here, Devlin ordered Angela's wife to get out of her car so that a private repossessor (who had no legal right to do so) could take it away. If she refused, Devlin threatened, he would break the car window, pull her out, and arrest her. Any reasonable officer would know that this conduct was unlawful.

Unable to contest the law, Devlin argues the facts: He asserts that he didn't threaten violence and arrest to enable Capital One to take Angela's car; he did so, he claims, "to promote safety." Devlin Opening Br. 19. But Devlin's claim rests entirely on accepting *his* version of events, a version of events that was disputed even by his fellow officers—and rejected by the jury. This Court may not do so. The jury ruled for Angela, so this Court is required to consider the facts in the light most favorable to her. On those facts, any reasonable officer would know that Devlin's conduct was unlawful. He is, therefore, not entitled to qualified immunity.

II. Nor was Devlin entitled to have a court override the jury's punitive-damages award. Although the Supreme Court has previously held that substantive-due-process principles place some outer limit on the amount of punitive damages a jury may award, an award exceeds that limit only when it is so "grossly excessive" that it "furthers no legitimate purpose." *State Farm*, 538 U.S. at 417. The jury's award here was not "grossly excessive." To the contrary, it was an entirely reasonable means of punishing and deterring Devlin's reprehensible conduct. Each of the three guideposts the Supreme Court has identified to guide review of a punitive-damages award supports reinstating the jury's award here.

As to the first and most important guidepost—the reprehensibility of the defendant's conduct—the district court recognized that Devlin's conduct was reprehensible and malicious. Devlin testified that he *knew* that it was unconstitutional for a police officer to aid a private repossession. Nevertheless, he came to Angela's house, banged on her front door, and threatened to assault and arrest her wife. All so that a repossessor could take her car—a car it wasn't even lawfully entitled to take. The jury's $500,000 punitive-damages award properly reflects the reprehensibility of this abuse of power, and the need to punish and deter such misconduct.

The second guidepost is the relationship between the punitive-damages award and the harm the defendant's misconduct caused and threatened. This guidepost, too, weighs in favor of reinstating the jury's award. In civil rights cases like this one,

the harm—the violation of a constitutional right—is grave, but it is also impossible to value monetarily. So egregious misconduct often results in only small compensable damages. Therefore, the single-digit ratio that typically applies in cases where the harm is primarily economic does not apply here. Furthermore, even if a single-digit ratio were required here, it is satisfied. Taking into account the harm Devlin threatened, as the Supreme Court instructs, the relevant ratio—the ratio between the punitive-damages award and the harm Devlin both caused and threatened—is only 2:1. That's well within the constitutionally permissible range, particularly for civil rights cases, where much higher ratios are both expected and accepted.

Finally, the third guidepost, the civil or criminal penalties that could be imposed for comparable misconduct, also supports the jury's award. Willfully violating civil rights under color of law is a federal crime, punishable by a prison term of up to ten years. This serious sanction is more than sufficient to give Devlin fair notice that violating Angela's constitutional rights was a serious offense that could subject him to severe penalties. The jury's $500,000 punitive-damages award is a perfectly appropriate response to conduct so reprehensible it could lead to a decade in jail. The award should be reinstated in full.

ARGUMENT

I. Devlin is not entitled to qualified immunity for using threats of violence and false arrest to enable Capital One to unlawfully take Angela's car.

Devlin's qualified immunity argument fails from the start: He asks this Court to grant him immunity from the jury's verdict against him based on *his version* of what happened the night Angela's car was taken. But that's not how qualified immunity works. To be entitled to qualified immunity, Devlin was required to demonstrate that based on the evidence, *taken in the light most favorable to Angela*, a reasonable officer would not have known his conduct was unlawful. Devlin did not—and cannot—do so. He is not, therefore, entitled to qualified immunity.

A. Devlin would only be entitled to qualified immunity if, taking the facts in the light most favorable to Angela, he could demonstrate that a reasonable official would not have known his conduct was unlawful.

1. Qualified immunity is an affirmative defense. *Hicks v. Feeney*, 850 F.2d 152, 159 (3d Cir. 1988). Therefore, the burden of establishing the defense "falls to the official claiming it." *Burns v. PA Dep't of Corr.*, 642 F.3d 163, 176 (3d Cir. 2011). To meet this burden, a government official must show "that a reasonable person in their position at the relevant time could have believed, in light of clearly established law, that their conduct" was lawful. *E. D. v. Sharkey*, 928 F.3d 299, 306 (3d Cir. 2019).

This is a two-pronged inquiry. An official is entitled to qualified immunity if either: (1) they did not violate a statutory or constitutional right at all; or (2) even if

they did, that right was not sufficiently "clearly established" at the time such that a reasonable official would have known that the official's conduct was unlawful. *See District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018).

Devlin does not challenge the jury's verdict that he violated Angela's constitutional rights. He, therefore, concedes that he is not entitled to qualified immunity under the first prong. *See* Devlin Opening Br. 8. But, Devlin argues, he is entitled to qualified immunity under the second prong because, he contends, *his own "testimony* at trial clearly demonstrates that, under the facts of this case, it was reasonable for him to believe that his conduct was lawful." Devlin Opening Br. 10 (emphasis added). In other words, Devlin asks this Court not only to grant him immunity from the jury verdict against him, but to do so based on his version of the story—a version of the story the jury rejected. This Court may not do so.

2. A court determining whether to grant judgment as a matter of law to the party that lost a jury trial—or reviewing such a determination on appeal—must view all evidence in the light most favorable to *the party that prevailed*. *Addie*, 737 F.3d at 861. This rule is no different when a government official moves for judgment as a matter of law based on qualified immunity: If the jury found that the official violated the plaintiff's rights, a court deciding whether to grant that official qualified immunity must view the facts in the light most favorable to the plaintiff. *See Karnes v. Skrutski*, 62 F.3d 485, 494 (3d Cir. 1995) ("The standard for granting or denying a motion for

judgment as a matter of law does not change in the qualified immunity context."), *abrogation on other grounds recognized by Curley v. Klem*, 499 F.3d 199, 209 (3d Cir. 2007); *Andrews v. City of Philadelphia*, 895 F.2d 1469, 1478 (3d Cir. 1990) ("[G]iven the jury verdict in favor of the plaintiffs on their section 1983 claims, we must view the evidence in the light most favorable to them, giving them the benefit of all reasonable inferences that the jury might have drawn to support its verdict.").

Here, that means Devlin is only entitled to qualified immunity if he can demonstrate that a reasonable officer would not have known his conduct was unlawful based on the facts taken in the light most favorable to *Angela*—and disregarding any facts favorable to Devlin the jury was not required to believe. *See Reeves,* 530 U.S. at 151.

3. The facts taken in the light most favorable to Angela—and to the jury's verdict—show that Devlin arrived at the scene of an unlawful repossession and used threats of violence and arrest to enable the repossessor to take Angela's car.

Pennsylvania law, like that of many states, permits self-help repossessions—that is, repossessions without a court order—only where they can be accomplished "without breach of the peace." *See* 13 Pa. C.S.A. § 9609. A consumer's objection to the repossession or the use of law enforcement to effectuate the repossession constitutes a breach of the peace, requiring that the repossessor halt the repossession. *See, e.g.*, *Winters v. Corry Fed. Credit Union*, CV 16-57ERIE, 2016 WL 7375042, at *4 (W.D.

Pa. Dec. 20, 2016); *Jackson v. Richards 5 & 10 Inc.*, 433 A.2d 888, 896 n.11 (Pa. Super. 1981).

Here, Angela repeatedly objected to the repossession. And her wife, Shyree, physically obstructed it by locking herself in Angela's car. The continued efforts of Capital One's repo man to take Angela's car, therefore, were unlawful. And Devlin knew it. Devlin testified that the situation was a "breach of the peace" and that he was "aware that a breach of the peace eviscerates a repo man's right to repossess a vehicle." A.409.

Nevertheless, Devlin ignored Angela and her wife's objections to the repossession. He ignored its unlawfulness. And he used his authority as an officer of the state to effectuate the repossession—ordering Angela's wife, Shyree, to get out of the car so the repossession could proceed, and threatening her with violence and arrest if she did not comply.

At the time, Devlin repeatedly stated (on video) that the reason Shyree needed to get out of the car was so the tow-truck driver could take it. *See, e.g.*, Video at 00:49-00:53. But, now, Devlin claims that he had to get Shyree out of the car for "safety." *See* Devlin Opening Br. 19. Not once during the repossession did Devlin mention any concern about safety. *See generally* Video. Indeed, Devlin himself testified that neither Angela nor Shyree posed any threat. *See* A.416-17.

Devlin's newfound safety claim rests on facts that were contradicted at trial, even by Devlin's fellow officers, facts the jury was not required to believe—and, given its verdict, apparently didn't. Devlin's safety argument is this: The tow truck, he says, was "partially obstructing" the street. Devlin Opening Br. 6. Devlin contends the tow-truck driver could not move the truck out of the street because it was already hooked up to Angela's car, and the car was raised off the ground—with Angela's wife, Shyree, still in it. *See id.* at 17-18. With Shyree in the car, Devlin asserts, it would be unsafe for the repossessor to either drive away with the car attached or to lower the car and unhook it. *See id.* So, Devlin's argument goes, he *had* to order Shyree out of the car, and, apparently, threaten violence and arrest if she did not comply—for safety. *See id.*

But, on the version of the facts construed most favorably to Angela (and the jury's verdict in her favor), almost none of this is true. Although it seems the tow truck may have extended into the street "a little," Angela testified it was not "really blocking" anything. A.524. And there is no reason to think that it posed any threat to safety. After all, presumably if it did, Devlin or one of the other officers on the scene at the time would have mentioned it. Nobody did.

More importantly, on the version of events this Court is required to accept, Shyree's presence in Angela's car posed no obstacle to the tow-truck driver moving his truck. Devlin's fellow officers testified that, contrary to Devlin's assertions,

Angela's car was *not* raised in the air when Devlin arrived. A.257, 318-19. And Angela and her wife both testified that the car was not hooked up to the tow truck at all. A.475-76; Dep. Shyree Johnson, Dkt. No. 97-4, at 9.[7] Devlin didn't need to get Shyree out of Angela's car to allow the tow truck to move, because Angela's car was not attached. The only reason for Devlin to order Shyree out of Angela's car is the reason Devlin himself gave, repeatedly, on video at the time: to enable Capital One to take it.

It is this version of the facts that this Court must rely on in determining whether Devlin is entitled to qualified immunity.

B. Any reasonable officer would know it's unconstitutional to threaten violence and arrest to facilitate a private repossession.

The night Devlin helped Capital One repossess Angela's car, any reasonable officer would have known that the Constitution forbids police officers from using their authority to enable a private repossessor to take a car without a court order; and certainly that officers may not do so by threatening to assault and arrest anyone who gets in the way.

1. The constitutional principles at issue in this case are not in dispute. It has long been clearly established that using the power of the state to enable one private party to take another's property without a court order violates the Fourth

[7] Shyree testified at trial via video deposition. A.382-83.

Amendment's prohibition on unreasonable seizures and the Fourteenth Amendment's prohibition on deprivations of property without due process. *See Harvey v. Plains Twp. Police Dep't ("Harvey I")*, 421 F.3d 185, 187 (3d Cir. 2005) (Fourth Amendment); *Abbott v. Latshaw*, 164 F.3d 141, 146-47 (3d Cir. 1998) (Fourteenth Amendment). It has also long been clear that when police officers aid in a private repossession, that is precisely what they are doing—using the power of the state to unconstitutionally deprive a person of their property. *See Harvey I*, 421 F.3d at 187; *Abbott*, 164 F.3d at 146-47.

As this Court explained over twenty years ago in *Abbott*, "it is not for law enforcement officers to decide who is entitled to possession of property." *Id.* at 149. Determining rightful possession is "the domain of the courts," where citizens can be "given a meaningful opportunity to be heard as to their rights before they are finally deprived of possession of property." *Id.* Police officers conducting "curbside courtroom[s]," deciding for themselves at the scene who is entitled to possession—and using the authority of the state to effectuate repossessions—this Court explained, "is precisely the situation and deprivation of rights to be avoided." *Id.*

Therefore, *Abbott* held, although police officers may keep the peace at the scene of a private repossession, if their role transitions from "protector of the peace" to "enforcer" of the repossession—that is, if they affirmatively aid the repossessor—then they transform the private repossession into a state deprivation of property

without due process. *See id.* at 147, 149. And, *Abbott* held, any reasonable officer would *know* that's unlawful. *See id.* at 149. In other words, this Court held over twenty years ago that it was *already* clearly established that police officers may not aid private repossessors.

And, if that weren't enough, the Court laid out the rules even more clearly a decade ago in *Harvey*. Police officers, keeping the peace at the scene of a private repossession, the Court held, must "remain[ ] neutral"; they may not "take[] an active role and assist[] in the repossession." *Harvey v. Plains Twp. Police Dep't ("Harvey II")*, 635 F.3d 606, 609–10 (3d Cir. 2011). The Court explained that unconstitutional aid to a repossessor may take many forms: "facilitation, encouragement, direction, compulsion, or other affirmative assistance in the repossession." *Id.* But, regardless of what form the aid takes, the "test" for constitutionality is straightforward: An officer that "maintains neutrality" acts permissibly. *Id.* at 609-610. One who takes "an active role in the repossession" does not. *Id.* at 610.[8]

[8] This rule is not limited to the Third Circuit. There's a robust consensus amongst the Courts of Appeals that "officers are not state actors during a private repossession if they act only to keep the peace, but they cross the line if they affirmatively intervene to aid the repossessor." *Cochran v. Gilliam*, 656 F.3d 300, 310–11 (6th Cir. 2011) (citing cases); *see, e.g.*, *Hensley v. Gassman*, 693 F.3d 681, 689 (6th Cir. 2012); *Marcus v. McCollum*, 394 F.3d 813, 818–19 (10th Cir. 2004) (citing several decisions from other Courts of Appeals and stating that the "circuits are in agreement as to the law").

2. Devlin doesn't dispute that at the time he enabled Capital One to repossess Angela's car, it was clearly established that police officers may not "affirmatively aid in a private repossession"—Devlin even acknowledges that "he was trained as such." Devlin Opening Br. 10, 19.[9] Instead, Devlin argues that the facts of this Court's prior cases were not similar enough to the facts of this case to "put [him] on notice that his actions could be considered affirmatively aiding in the repossession." *Id.* at 10.

This argument is meritless. As an initial matter, Devlin overstates the need for factual similarity. Officials can "be on notice that their conduct violates established law even in novel factual circumstances." *Kedra v. Schroeter*, 876 F.3d 424, 450 (3d Cir. 2017) (rejecting similar argument that "there was no precedent sufficiently factually similar to the plaintiff's allegations to put him on notice that his conduct was constitutionally prohibited"). "If the unlawfulness of the defendant's conduct would have been apparent to a reasonable official based on the current state of the law, it is not necessary that there be binding precedent from this circuit so advising." *Id.* Rather, all that is required is that "the state of the law" at the time provided "fair warning" that the conduct in question was unconstitutional. *Hope v. Pelzer*, 536 U.S. 730, 741 (2002); *accord Kedra*, 876 F.3d at 450. Indeed, even "general statements of the law" can be sufficient to deny qualified immunity if they "apply with obvious clarity

[9] Devlin's fellow officers likewise each testified that they knew that it is "not the Pennsylvania State Police's job to determine who is right or who is wrong in a civil dispute." A.38 n.15 (citing and quoting trial testimony).

to a specific set of facts so as to put a police officer on notice that his conduct is unlawful." *United States v. Lanier*, 520 U.S. 259, 271 (1997).

In other words, the question is not whether there is a previous case that factually mirrors this one; it's whether prior case law—factually identical or not—was sufficient to put a reasonable officer on notice that Devlin's conduct was unlawful. *See Kedra*, 876 F.3d at 450. The answer to that question is yes.

The well-established rule that officers may not affirmatively aid a repossessor applies with "obvious clarity" to Devlin's conduct here. Any reasonable officer would understand that threatening a person blocking a repossession with violence and arrest if they do not comply aids the repossessor. After all, "an objection, particularly when it is accompanied by physical obstruction, is the . . . most powerful (and lawful) tool in fending off an improper repossession." *Hensley*, 693 F.3d at 688. Removing such objection by threat of force and arrest enables the repossession to proceed, when it otherwise couldn't. *See Goard v. Crown Auto, Inc.*, No. 6:15-CV-00035, 2017 WL 2423521, at *10 (W.D. Va. June 2, 2017) ("Threatening arrest unless the property in dispute is surrendered is unequivocally supportive of the repossession; the thing practically speaks for itself.").

But even if more specific guidance were required, this Court's case law provides it. Beginning with its decision over twenty years ago in *Abbott*, this Court has repeatedly made clear that threatening arrest for failure to comply with a

repossession constitutes affirmative aid to a repossessor. In *Abbott*, three police officers were called to the scene of a woman trying to repossess a van from her ex-husband. *Abbott*, 164 F.3d at 147. The ex-husband's attorney arrived around the same time as the officers and protested the repossession, first verbally and then physically—by attempting to block the van in with his car. *See id.* In response, two of the police officers did nothing other than the "routine police procedures of checking the vehicle registration." *Id.* They did not "take sides or assist the private repossessor in any way." *Id.* The Court held that these officers could not "be said to have used state action to deprive [the ex-husband] of his due process rights." *Id.*

The third police officer, however, "advised" the private repossessor that she had the right to repossess the van; ignored the attorney's "ardent protests"; and "threatened to arrest" the attorney "if he did not move his car to make way for" the repossession. *Id.* These actions, this Court held, constituted "affirmative intervention and aid" in the repossession. *Id.* at 147. Moreover, a "reasonable officer . . . *would have known* that such behavior crossed the line," for it transformed the officer's role from "protector of the peace" to "enforcer." *Id.* at 149 (emphasis added).[10]

[10] Contrary to Devlin's assertion (at 18), this officer was not called to the scene by the repossessor. *See Abbott*, 164 F.3d at 144. He was called to the scene by another officer, who was already there. *Id.* More generally, in discussing *Abbott*, Devlin focuses not on this officer, whose conduct is similar to Devlin's in this case, but on another officer involved in the repossession—a constable who arrived on the scene with the repossessor (before the three officers discussed above were called in), whose conduct Devlin argues was more egregious than his. *See* Devlin Opening Br. 12. But this

Devlin's conduct here is nearly identical to the conduct this Court held constituted "affirmative intervention and aid" in *Abbott*. Devlin ignored the "ardent protests" of Angela, her daughter, and her wife against the repossession of Angela's car. Despite the fact that neither Angela nor her wife Shyree posed any threat, Devlin threatened to break Angela's car window, pull her wife Shyree out of the car, and arrest her—all so that repossessors could "do their job" and take Angela's car. *See* Video at 00:49-00:53. And, having accomplished that, he told the tow-truck driver that he could "go ahead and take" Angela's car from her own driveway. A.490. Following *Abbott*, any reasonable officer would have known that doing so constitutes affirmative aid to a repossessor.

This Court has twice reiterated *Abbott*'s holding, further making clear that threatening to arrest one who objects to a repossession constitutes unlawful aid to the repossessor. *See, e.g.*, *Harvey I*, 421 F.3d at 190 (directly quoting the passage from *Abbott* holding that ignoring protests and threatening arrest constitutes affirmative intervention); *Mitchell v. Gieda*, 215 F. App'x 163, 166 (3d Cir. 2007) (citing *Abbott* for the proposition that "threatening to arrest one who resists repossession . . . rise[s] to the level of critical involvement which would support a finding of state action").

Court held that *both* officers affirmatively aided in the repossession and denied both officers qualified immunity. *See Abbott*, 164 F.3d at 149.

Perplexingly, Devlin cites this Court's decision in *Mitchell* as support for his contention that a reasonable officer would not know that his conduct constituted affirmative aid to the repossessor. But *Mitchell* specifically identifies "threatening to arrest one who resists repossession" as conduct that *does* constitute affirmative aid. *See Mitchell*, 215 F. App'x at 166. Other Courts of Appeal have done the same. *See, e.g.*, *Price-Cornelison v. Brooks*, 524 F.3d 1103, 1117 (10th Cir. 2008); *Moore v. Carpenter*, 404 F.3d 1043, 1046 (8th Cir. 2005).

In light of this longstanding case law, Devlin does not—and cannot—seriously argue that a reasonable officer would believe it was lawful to threaten a person objecting to a repossession with violence and arrest so that the repossession could proceed. Instead, Devlin argues that this case law did not provide sufficient notice that it was unlawful to threaten a person objecting to a repossession with violence and arrest "to promote safety." *See* Devlin Opening Br. 19. As explained above, Devlin's "safety" rationale relies entirely on *his* version of disputed facts. But taking the facts in the light most favorable to *Angela*, as this Court must, Shyree's presence in Angela's car was not unsafe. It was merely in the way of Capital One's efforts to take the car. And Devlin's threats of violence and false arrest were, as Devlin himself said that night, to enable the repossession to proceed.

Decades of this Court's case law establish that the Constitution forbids a police officer in that situation from aiding the repossessor by ordering Shyree to get out of

the way—let alone doing so through threats of violence and arrest. No reasonable officer could have believed otherwise. Devlin, therefore, is not entitled to qualified immunity.

II. There was no constitutional basis for the district court to override the jury's punitive-damages award.

Awarding punitive damages is—and always has been—the province of the jury. *See, e.g.*, *Day v. Woodworth*, 54 U.S. 363, 371 (1851). It is the jury, not the judge, that serves as "the voice of the community." *Gore*, 517 U.S. at 600 (Scalia, J., dissenting). It is, therefore, the jury's role, not the court's, to determine the punishment a defendant deserves.

The jury here had before it a state trooper who *knew* that the Constitution forbids police officers from using the authority of the state on behalf of a private repossessor, yet did so anyway; a trooper who was perfectly willing to use violence against a woman for doing nothing other than peacefully sitting in her own driveway; a trooper who was willing to arrest that woman, despite the fact that she had broken no law; and who testified that if given the chance, he'd do it all over again.

The jury's $500,000 punitive damages award captures the reprehensibility of this conduct. And it serves as a deterrent—to Devlin and to other officers who might otherwise believe they are above the law—making it less likely that they will violate the civil rights of those they are charged with protecting. Nothing in the Constitution authorizes, let alone requires, a court to substitute its judgment for that of the jury.

A. Deterring government officials from abusing their power has long been a core function of punitive damages.

The modern doctrine of punitive damages arose from the need to punish government officials who, like Devlin, violated the civil rights of those they were supposed to protect—and to deter similar violations in the future. Indeed, the two seminal cases that first articulated what would become the Anglo-American punitive-damages doctrine are cases in which the jury imposed punitive damages for the same reason the jury awarded them here: to punish and deter government officials' abuse of power. *See* Jason Taliadoros, *The Roots of Punitive Damages at Common Law: A Longer History*, 64 Cleveland St. L. Rev. 251, 257 (2016) (discussing *Wilkes v. Wood*, Lofft 1, 98 Eng. Rep. 489 (1763); and *Huckle v. Money*, 2 Wils. 205, (1763) 95 Eng. Rep. 768 (K.B.).

The first case, *Wilkes v. Wood*, involved an English politician, John Wilkes, who sued after Crown officials illegally searched his house and seized his papers because he had published a pamphlet critical of the King. *See, e.g., Wilkes v. Wood*, Lofft 1, (1763) 98 Eng. Rep. 489, 489; Taliadoros, *The Roots of Punitive Damages*, at 257-58. Wilkes' lawyer asked the jury for "large and exemplary damages." *Wilkes*, 98 Eng. Rep. at 490. Those who unlawfully searched Wilkes' house, he explained, "by their duty and office should have been the protectors of the constitution, instead of the violators of it." *Id.* "[T]rifling damages," he implored, "would put no stop at all" to these officials' abuse of power. *Id.*

The court instructed the jury that it was indeed within the jury's power to award "damages for more than the injury received." *Id.* at 498. "Damages," the court explained, "are designed not only as a satisfaction to the injured person, but likewise as a punishment to the guilty, to deter from any such proceeding for the future, and as a proof of the detestation of the jury to the action itself." *Id.* at 498-99.

The second case, *Huckle v. Money*, was a lawsuit brought against Crown officials by the printer of Mr. Wilkes' pamphlet: Not only did English officials unlawfully search Mr. Wilkes' house, they wrongfully arrested his printer. Taliadoros, *The Roots of Punitive Damages*, at 258; *Huckle v. Money*, 2 Wils. 205, 95 Eng. Rep. 768 (K.B.1763). Although the printer suffered almost no injury—he was not held long and was treated well—the court approved a large punitive-damages award. *Huckle*, 95 Eng. Rep. at 768.

What mattered, the court explained, was not "the small injury done to the plaintiff, or the inconsiderableness of his station and rank in life." *Id.* at 769. What mattered was a government official "exercising arbitrary power"—violating the civil rights owed to every English citizen. *Id.* The jury, the court held, was "right" to award punitive damages in the face of this abuse of power. *See id.* For a judge to "intermeddle" and alter the jury's award, the court stated, would be "very dangerous" and should only be done where the damages are truly "outrageous." *Id.*

At the heart of both *Wilkes* and *Huckle* is the recognition that government officials who abuse their power pose a grave threat—officials who violate, rather than protect, civil rights inflict serious harm on their victims and on our society. And yet, the actual economic damages caused by such violations are often minimal: The harm is fundamental, but it is also, often, intangible. Compensatory damages alone, therefore, are insufficient to punish such abuses of power, and perhaps more importantly, insufficient to deter them.

The same holds true today. No less now than in eighteenth-century England, an officer acting in the name of the state "possesses a far greater capacity for harm than an individual . . . exercising no authority other than his own." *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 392 (1971). And yet that harm—the violation of fundamental constitutional rights—often cannot be fully measured "in monetary terms." *City of Riverside v. Rivera*, 477 U.S. 561, 562 (1986). Punitive damages, therefore, remain an essential means of punishing and deterring government officials' abuse of power and protecting constitutional rights.

B. The jury's punitive-damages award comports with substantive due process.

Here, after listening to days of testimony about Devlin's misconduct and watching him on video threatening to use violence against an innocent woman and falsely arrest her, a rural Pennsylvania jury determined that $500,000 was the appropriate amount of punitive damages to punish Devlin's egregious abuse of

power and to deter him—and other officers—from repeating it. But the district court held that the Constitution required it to wipe out more than 90% of the jury's award, allowing only $30,000 to stand. A.49-50. The district court was wrong.

Although the Supreme Court has held that substantive due process imposes some limit on punitive-damage awards, it has also made clear that an award exceeds this limit only if it is "grossly excessive," such that it "furthers no legitimate purpose." *State Farm*, 538 U.S. at 417. The jury's well-considered punitive-damages award here was far from "grossly excessive." To the contrary, it was an entirely reasonable award that furthers the legitimate purposes of punishing Devlin's outrageous misconduct and deterring similar abuses in the future.

The Supreme Court has instructed courts reviewing punitive-damages awards to consider three guideposts: (1) "the degree of reprehensibility of the defendant's conduct," (2) "whether there is a reasonable relationship between the punitive damages award and the harm likely to result from the defendant's conduct as well as the harm that actually has occurred," and (3) the difference between "the punitive damages award and the civil or criminal penalties that could be imposed for comparable misconduct." *Gore*, 517 U.S. at 575, 581, 583,. All three guideposts support the jury's punitive-damages award here. The verdict, therefore, should be fully reinstated.

1. It is extremely reprehensible for law enforcement to threaten innocent citizens with violence and false arrest so that a repossessor can unlawfully take their property.

"[T]he most important" factor in determining the reasonableness of a jury's punitive-damages award is the first one—the "degree of reprehensibility of the defendant's conduct." *State Farm*, 538 U.S. at 419. Punitive damages, after all, should "reflect the enormity" of the defendant's offense. *See Gore*, 517 U.S. at 575. In evaluating this factor, courts consider whether: (1) the harm "was physical as opposed to economic"; (2) "the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others"; (3) "the target of the conduct had financial vulnerability"; (4) "the conduct involved repeated actions or was an isolated incident"; and (5) "the harm was the result of intentional malice, trickery, or deceit, or mere accident." *State Farm*, 538 U.S. at 419.

Devlin's conduct was extremely reprehensible on all counts.

a. *Devlin's threats of violence caused substantial physical and emotional harm.* The threat of violence—particularly the threat of violence at the hands of the state—is "highly reprehensible." *See Romanski v. Detroit Entm't, L.L.C.*, 428 F.3d 629, 644-45 (6th Cir. 2005); *Gore*, 517 U.S. at 575-76 (noting that threats of violence are more serious than nonviolent offenses). Indeed, "threats of violence" are "at the top" of the "hierarchy of reprehensibility." *Swinton v. Potomac Corp.*, 270 F.3d 794, 818 (9th Cir. 2001).

Devlin, a law enforcement officer, threatened to break a car window, forcibly remove Angela's wife from her car, and arrest her if she did not comply with his unconstitutional orders. In other words, he threatened to assault an innocent woman and take her to jail if she did not do what he wanted—threats that were backed by the gun at his side and the power of the Commonwealth behind his badge. *Cf.* A.488 (Devlin repeatedly touched his gun); *Bivens*, 403 U.S. at 394 ("The mere invocation of [government] power by a [government] law enforcement official will normally render futile any attempt to resist.").

These threats are, in and of themselves, extremely reprehensible. *See Romanski*, 428 F.3d at 644-45; *see also id.* at 643-44 (where "threat of physical force" is "apparent," harm is "primarily physical in character").

And they had a devastating impact on Angela, who was forced to stand by and watch, terrified that Devlin would hurt her wife and helpless to prevent it. After that night, Angela lived in fear. She went days without eating or sleeping. A.491-92. She suffered panic attacks and nightmares about being shot by police officers. A.493. Her blood pressure spiked so high she required hospitalization. A.492. And by depriving Angela of her car, Devlin made it difficult for her to seek medical care for her growing aneurysm. *See* A.491; *cf.* Abigail A. Sewell & Kevin A. Jefferson, *Collateral Damage: The Health Effects of Invasive Police Encounters in New York City*, 93 J. Urban Health 542, 543-

44 (2016) (discussing medical research demonstrating the negative health effects of experiencing and witnessing negative interactions with the police).

Eventually, Angela's anxiety, panic attacks, and nightmares became too much for her wife to bear. A.494. They separated, and Angela left Nanty Glo, the town in which she'd hoped to quietly live out the rest of her days. *Id.* Devlin did not just deprive Angela of her car. He threatened her health and took away the security she felt in her own home. That harm, like the threats that caused it, is reprehensible and worthy of severe condemnation. *Cf. Goldsmith v. Bagby Elevator Co. Inc.*, 513 F.3d 1261, 1283 (11th Cir. 2008) (conduct reprehensible where it led to "emotional and psychological harm" and interfered with plaintiff's "relationships with his family").

b. Devlin was indifferent to the health and safety of others. Devlin admitted threatening to break a car window and forcibly remove Angela's wife from the car—despite the fact that she was doing nothing more than peacefully sitting in her own driveway. Devlin's easy willingness to use violence against those who pose no threat, solely to compel compliance with orders that are unconstitutional in the first place, demonstrates a complete disregard for the health and safety of those Devlin is supposed to protect.

The district court downplayed Devlin's threats of violence because he didn't actually carry them out. A.46. But the only reason Devlin didn't make good on his threats is because he didn't need to: Angela's wife gave in to his unconstitutional

order, rather than suffer violence and false arrest at his hand. The fact that, in this case, Devlin's threats worked before he needed to carry them out doesn't diminish the indifference to health and safety his willingness to resort to violence demonstrates.

c. Devlin's target was financially vulnerable. The night Devlin showed up at her house, Angela's financial vulnerability was obvious: A debt collector was trying to repossess her car. Indeed, as the district court explained, the jury could easily have concluded that Devlin targeted Angela *because* she was financially vulnerable—that is, because he thought she was a "deadbeat." A.46. In doing so, Devlin unconstitutionally deprived an extremely ill, obviously financially vulnerable woman of the car she relied on to get the medical care she needed.

d. Devlin is likely to do it again. At trial, Devlin was asked, if he "had to do it all over again," whether he would do anything differently. A.431. Devlin's answer: "Absolutely not." *Id.* Devlin, apparently, sees nothing wrong with his conduct and has shown no remorse. In other words, given the opportunity, he will do it again—unless there's a punitive-damages award sufficient to stop him.

e. Devlin's misconduct was intentional and malicious. Devlin testified that he knew it was unconstitutional for a police officer to aid a private repossessor in taking someone's property. A.38 n.15. He was trained on it. *Id.* And, if that weren't enough, Angela's daughter, a law student, was on the phone with him

during the repossession *telling* him he was acting unlawfully and imploring him to stop. *See, e.g.*, Video at 00:22-00:36, 00:52-00:56, 1:44-2:07. Devlin replied, "That's OK," and then carried on threatening Angela's wife. *Id.* at 00:59-1:16, 1:26-1:32. This wasn't negligence. It was malice. *See Alexander v. Riga*, 208 F.3d 419, 431 (3d. Cir. 2000) (explaining a defendant acts with "malice" if they know they "may be acting in violation of federal law").[11]

And it didn't end that night. Devlin repeatedly lied to cover up his misconduct. *See Davis v. Rennie*, 264 F.3d 86, 115 (1st Cir. 2001) (a "punitive damages award may be justified not only by" a defendant's actions "on the date in question but also by their subsequent behavior"). He claimed, for example, that by the time he got to the scene, Angela's car was attached to the tow truck and lifted into the air. *See supra* page 23. Multiple witnesses testified that it was not. *See id.* at 24. He claimed "nobody knew who" was sitting in Angela's car. A.402. His fellow officers testified otherwise. A.395. He claimed that the reason he threatened Angela's wife with violence and arrest was

[11] The district court stated that the Supreme Court has said that malice requires "an actual evil motive." A.47. That's incorrect. In *Smith v. Wade*, the case the district court cited for this proposition, the Supreme Court, in fact, *rejected* this assertion. *See Smith v. Wade*, 461 U.S. 30, 41 n.8 (1983). Malice, the Court explained, has historically been a "hopelessly versatile and ambiguous term," but in the context of punitive damages, it was typically used to mean "something in between fictional malice"—which is malice that "was conclusively presumed to exist whenever a tort resulted from a voluntary act, even if no harm was intended"—and "actual injurious intent." *Id.* The district court's citation for its assertion to the contrary is from the *Smith* dissent, not the majority opinion. *See* A.47.

to ensure safety. *See* A.439. But that's not what he said, on video, that night. *See supra* page 9.

This "stark clash" between Devlin's testimony and the video, between his testimony and that of every other witness on the scene, suggests that Devlin's testimony was not an "innocent misrecollection" but rather an "intentional" effort to conceal the truth and escape accountability for his actions—an effort that "intensifie[s]" the need for punishment and deterrence. *See Davis*, 264 F.3d at 115.

The district court recognized that Devlin's intentional, malicious violation of the constitutional rights he is supposed to safeguard was reprehensible. But, the court asserted, Devlin's conduct, while reprehensible, wasn't "*extremely* reprehensible" because in the court's view, there was "no evidence that he intentionally executed a *premeditated* plan to commit an illegal act." A.48 (emphasis added). In other words, because there was no evidence that Devlin planned to violate Angela's rights *before* he showed up at her house, the district court believed it was not extremely reprehensible for him to intentionally violate her rights once there.

That makes no sense. It is, of course, extremely reprehensible for a law enforcement officer to concoct a plan to target a particular citizen and then go to that person's house and violate her rights. But that doesn't make it less reprehensible for an officer to intentionally violate the rights of whoever happens to be on the scene

once he is called to it—or to lie about it afterwards.[12] A law enforcement officer violating constitutional rights by issuing orders he knows are unlawful and then threatening innocent citizens with violence and arrest if they do not comply is an egregious and dangerous abuse of power. The jury's determination that a $500,000 punitive-damages award was necessary to punish and deter such abuses of power was not "grossly excessive." It was entirely reasonable.

2. The jury's punitive-damages award appropriately captured the harm caused and threatened by Devlin's misconduct.

The second guidepost for evaluating a punitive-damages award is the relationship between the award and the "actual harm" caused by the defendant's misconduct, as well as "any additional potential harm" the defendant's misconduct "threatened." *Gore*, 517 U.S. at 582. The district court held that under this guidepost, the jury's punitive-damages award was impermissible, because, in the court's view,

[12] The district court was also wrong to conclude that there was no evidence of premeditation, simply because there was no evidence that before arriving on the scene, he planned to violate Angela's rights. Upon arriving at her house, Devlin intentionally dispossessed Angela of her car by threatening violence and false arrest, knowing that the Constitution forbids him from doing so. Brief premeditation is still premeditation. *See Gov't of Virgin Islands v. Lake*, 362 F.2d 770, 776 (3d Cir. 1966) (defendant is not required to have "brooded over his plan . . . or entertained it for any considerable period of time. . . . . [A] brief moment of thought may be sufficient to form a fixed, deliberate design.").

the ratio between the punitive damages and the compensatory damages (100:1) was too high. A.49-50.

In so holding, the district court erred twice: First, contrary to the district court's assumption, the single-digit ratio that typically applies in high-damages cases, where the harm is mostly economic, is not required here—a low-damages case in which the primary harm (the invasion of constitutional rights) is impossible to value monetarily. And, second, the relevant ratio is not between punitive and compensatory damages, but rather between punitive damages and the harm the defendant's conduct caused *and threatened*. That ratio is not 100:1; it's 2:1—well within the range of constitutional permissibility, particularly for low-damages civil rights cases.

a. General principles governing the application of this guidepost.

The Supreme Court has repeatedly made clear that there is no "bright-line ratio which a punitive damages award cannot exceed." *State Farm*, 538 U.S. at 425. But although the Court has declined to fashion bright-line rules, three principles emerge from its case law that make clear that the Constitution does not require judicial revision of the jury's award here.

First, a higher ratio is often justified where an "injury is hard to detect or the monetary value of noneconomic harm might have been difficult to determine," *Gore*, 517 U.S. at 582. This principle follows directly from the purpose of the second

guidepost: to ensure a reasonable relationship between the punitive-damages award and the *harm* the defendant caused. *See id.* at 580, 583. Comparing punitive damages to compensatory damages only serves that purpose if the compensatory-damages award accurately reflects the harm caused. If the defendant causes serious harm that is difficult to value monetarily, the compensatory damages will undervalue the harm—often substantially. And so a punitive-damages award that reasonably reflects the magnitude of the *harm* will likely be many times greater than the compensatory damages *award*. *See Jester*, 937 F.3d at 242.

Second, "low awards of compensatory damages may properly support a higher ratio than high compensatory awards." *Gore*, 517 U.S. at 582. And higher ratios are particularly appropriate where an "egregious act has resulted in only a small amount of economic damages." *See id.* This makes good sense: In a "billion-dollar oil case[]," the defendant is already paying a billion dollars for its misconduct. *See Mathias v. Accor Econ. Lodging, Inc.*, 347 F.3d 672, 677 (7th Cir. 2003). That's a substantial amount of punishment and deterrence already baked in to the compensatory-damages award. *See id.* It may not be necessary to *also* impose a punitive-damages award many times the already-substantial compensatory award. *See id.*

Where, however, compensatory damages are small, punitive damages are critical to ensuring that the cost of misconduct is high enough to deter wrongdoers. *See id.* If, in such cases, punitive damages were limited to a single-digit multiplier of

compensatory damages, they "would utterly fail to serve [their] traditional purposes." *Jester*, 937 F.3d at 242. For that reason, "when a jury only awards nominal damages or a small amount of compensatory damages, a punitive damages award may exceed the normal single-digit ratio" without violating the Constitution. *Id.* at 243.

Thus, for example, in *Mathias*, the Seventh Circuit upheld a punitive-damages award of $168,000, even though the compensatory damages were only $5,000. *Mathias*, 347 F.3d at 674. The plaintiffs had suffered bedbug bites after staying in a hotel room the hotel knew was infested. *See id.* at 675. The hotel's conduct, the Court observed was "outrageous," but the "compensable harm done was" both "slight" and "difficult to quantify because a large element of it was emotional." *Id.* at 677. After canvassing the history and purpose of punitive damages, Judge Posner explained that requiring a single-digit ratio in those circumstances—where the harm is difficult to measure and the compensatory damages are necessarily modest—would not satisfy the purposes of punitive damages, for it would not result in damages large enough to deter wrongdoing. *See id.* at 675-78.

Third, in awarding punitive damages, "it is appropriate to consider" not only the actual harm that resulted from the defendant's conduct, but also "the magnitude of the *potential harm* that the defendant's conduct" could have caused. *See TXO*, 509 U.S. at 460. Therefore, when a defendant's conduct threatens—but does not actually

result in—serious harm, a "dramatic disparity between the actual damages and the punitive award" is to be expected. *See id.* at 462. After all, actual damages only reflect actual harm.

In *TXO*, for example, the Supreme Court upheld a punitive-damages award of $10 million, which was 526 times the compensatory-damages award of $19,000—a much greater disparity than that here. *See id.* at 459. It did so because there was substantial harm that could have resulted from the defendant's "wrongful plan," but did not actually come to pass. *See id.* at 460, 462. This potential harm, of course, was not reflected in the compensatory-damages award. *See id.* at 459-62. The "relevant ratio," therefore, was not the ratio between the punitive damages and the compensatory damages, but rather between punitive damages and actual harm as well as "any additional potential harm" the defendant "threatened." *Gore*, 517 U.S. at 582.

Similarly, in *Swinton*, the Ninth Circuit upheld a $1 million punitive-damages award, where the compensatory damages were less than $36,000. *See Swinton* 270 F.3d at 799. The plaintiff in that case "was subject[ed] to repeated 'jokes' by co-workers featuring" racial slurs. *Id.* Eventually, the plaintiff quit, rather than suffer further harassment. *See id.* at 800. In considering the ratio of the punitive damages-award to the harm and potential harm, the Ninth Circuit observed that it's only because the plaintiff quit that the harassment stopped. *See id.* at 819. The harassment that the

plaintiff averted by quitting, the Ninth Circuit made clear, was potential harm that should be considered in evaluating the punitive-damages award. *See id.*

Applying these principles here demonstrates that a single-digit ratio is not required, and even if it were, that requirement is satisfied.

b. The Constitution does not require a single-digit ratio here.

Civil rights cases like this one are the paradigmatic example of cases in which "egregious act[s]" result in "low compensatory awards". *See, e.g., Gore,* 517 U.S. at 582; *Romanski*, 428 F.3d at 646. The "invasion[] of constitutional rights" is a harm that is both grievous and impossible to value monetarily. *See id*. The compensatory damages in civil rights cases, therefore, dramatically undervalue the harm caused. *See id.* Indeed, that's why the modern punitive damages doctrine developed in the first place: Outrageous civil rights abuses often result in minimal compensatory damages that are insufficient to deter the abuse. *See supra* pages 33-35.

Imposing a strict single-digit multiplier in this context would thwart this purpose—a core purpose of civil rights law itself. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 268 (1981) ("[T]he deterrence of future abuses of power by persons acting under color of state law is an important purpose of § 1983."). The cost of illegality would simply be too low to discourage future misconduct, and the violation of important rights would continue unabated. That's particularly true in cases of police misconduct, for law-breaking police officers rarely face suit and even more rarely

face other forms of punishment. *See* Joanna C. Schwartz, *What Police Learn from Lawsuits*, 33 Cardozo L. Rev. 841, 863-64 & n.133 (2012).[13] To compensate for the low likelihood of punishment, then, sizeable punitive damages are necessary to deter wrongdoing. *See Mathias*, 347 F.3d at 677; *see also* A. Mitchell Polinsky & Steven Shavell, *Punitive Damages: An Economic Analysis*, 111 Harv. L. Rev. 869, 889 (1998) ("[T]he total damages imposed on an injurer should equal the harm multiplied by the reciprocal of the probability that the injurer will be found liable when he ought to be.").

For these reasons, in civil-rights suits, courts regularly approve ratios in the double, triple, and even quadruple digits—or more. For example, in a § 1983 case concerning a wrongful arrest, the Sixth Circuit held that a punitive-damages award with a ratio of more than 2,000:1 was constitutional. *Romanski*, 428 F.3d at 645-46, 649-50.[14] Indeed, many civil rights cases result in only nominal damages—that is, *no*

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[13] *See also* Arturo Peña Miranda, *"Where There Is A Right (Against Excessive Force), There Is Also A Remedy": Redress for Police Violence Under the Equal Protection Clause*, 65 UCLA L. Rev. 1678, 1745 (2018).

[14] *See also Deters v. Equifax Credit Info. Servs., Inc.*, 202 F.3d 1262, 1272-73 (10th Cir. 2000) (holding in Title VII sexual-harassment case that punitive-damages award of $295,000, where compensatory damages were only $5,000, was constitutional because "firm ratios are most applicable to purely economic injury cases where injury is not hard to detect"); *Argentine v. United Steelworkers of Am., AFL-CIO*, 287 F.3d 476, 487-88 (6th Cir. 2002)(approving $400,000 punitive damages award where compensatory damages were $9,406, explaining "Plaintiffs' reputations and free speech rights were impaired, ... injuries [] without a ready monetary value"); *Johansen v. Combustion Eng'g, Inc.*, 170 F.3d 1320, 1339 (11th Cir. 1999) (approving100:1 ratio for environmental pollution, where compensatory

compensatory damages at all. The ratio of the punitive damages in these cases to the compensatory damages is literally infinite. And yet, punitive damages may still be awarded. *See Riga*, 208 F.3d at 430. That's because it's not the compensatory damages that matter; it's the harm—and the need to deter that harm.

The jury's punitive-damages award here properly reflects the tremendous harm caused by a government official abusing his power to violate the rights of those he is supposed to protect—and the need to deter him and others like him from doing so again. A high ratio between the punitive damages and the compensatory award here is not unconstitutional; it's "expected." *Romanski*, 428 F.3d at 645. Otherwise, the harm Devlin caused—harm that cannot be valued through compensatory damages—would go unpunished, and conduct like his would go undeterred.

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damages were $47,000); *Bryant v. Jeffrey Sand Co.*, 919 F.3d 520, 525 (8th Cir. 2019) (250,000:1 ratio in § 1981 racial harassment case); *Haynes v. Stephenson*, 588 F.3d 1152, 1158 (8th Cir. 2009) (2500:1 ratio for § 1983 suit regarding retaliatory prison discipline); *Abner v. Kansas City S. R.R. Co.*, 513 F.3d 154, 165 (5th Cir. 2008) (approving $125,000 punitive damages award for race discrimination claims brought under Title VII and 42 U.S.C. § 1981 where there were no compensatory damages awarded); *Saunders v. Branch Banking*, 526 F.3d 142, 153-54 (4th Cir. 2008) (80:1 ratio for Fair Credit Reporting Act violation); *Kemp v. Am. Tel. & Tel. Co.*, 393 F.3d 1354, 1364 & n.8 (11th Cir. 2004) (explaining, in consumer class action, that because of the small compensatory-damages award, "a ratio greater than 100-to-1 may be appropriate" and approving ratio greater than 2,000:1).

c. The relevant ratio, between punitive damages and the harm Devlin's misconduct caused and threatened, is 2:1.

Furthermore, the relevant ratio here is not between punitive damages and compensatory damages, but rather between punitive damages and the harm Devlin's conduct caused *and threatened to cause*. *See, e.g., Gore*, 517 U.S. at 582; *TXO*, 509 U.S. at 462. Taking into account the harm Devlin threatened, that ratio is well within the single digits.

Devlin threatened to shatter a car window, drag Angela's wife, Shyree, out of the car, and then arrest her for disorderly conduct—a crime he knew she did not commit. The harm that would have resulted is substantial. Shyree could have been seriously injured: With Devlin shattering the car window, Shyree could have gotten glass in her eyes; she could have suffered facial bruises, cuts, and scarring. And in forcibly removing her from the car, Devlin could have easily broken one of Shyree's bones, sprained her wrist, or bruised her body. And the harm would not have ended there. Once removed from the car, Shyree would have been handcuffed, fingerprinted, and taken to jail. The disorderly conduct charge Devlin threatened to impose is punishable by up to one year in jail. *See, e.g.*, 18 Pa C.S. §1104; 18 Pa C.S. § 5503(b). Shyree would need to make bail—bail that she and Angela could not afford, A.46—and hire a criminal defense lawyer. Angela would have been left alone, extremely ill and without her spouse to take care of her. A.45.

The only reason Devlin did not carry out his plan, the only reason this harm did not come to pass, was that Shyree was willing to comply with his unconstitutional orders. Had she not done so, had she remained sitting peacefully in her wife's car in her own driveway, Devlin would have assaulted and then falsely arrested her.[15]

Taking into account this potential harm, the relevant ratio here is comfortably within the single digits. Juries commonly value false arrests, similar to what Devlin threatened to inflict here, at $250,000, sometimes more. Of particular relevance, in *McKinon v. Bolden*, a jury considered a case similar to this one, in which police officers unconstitutionally aided one private party in taking property from another without a court order. *See McKinon v. Bolden*, 8:05-cv-1258-T-26TBM, 2006 WL 4665656 (M.D. Fla. October 4, 2006). But in that case, unlike here, the person who objected to the repossession did not give in, and the officers arrested him. *See id.* In other words, the officers in *McKinon* did precisely what Devlin would have done here if Angela's wife had not given in to his unconstitutional orders—though, unlike Devlin, the *McKinon* officers did not use violence to effectuate the arrest. *See id.* For that false arrest, the jury in *McKinon* awarded $253,350 in compensatory damages. *Id.* This award is well within the norm. *See, e.g.*, *Newkirk v. South Carolina Dept. of Public Safety*, 1000 WL 286054

[15] The district court stated that there was "not significant unrealized potential harm in this case." A.49. The basis for this statement is unclear—the court did not elaborate. But, as demonstrated above, that's incorrect. Devlin planned and repeatedly assured Angela and Shyree that there would be grave harm, using unwarranted force against Shyree and then unlawfully arresting her.

(D.S.C. 2018) ($1.3 million false arrest verdict); *Becker v. Crank*, 2014 WL 6264639 (E.D. Mo. July 23, 2014) ($250,000 false arrest verdict); *Moore v. City of Chicago*, 2008 WL 3249634 (N.D. Ill. April 1, 2008) ($250,000 false arrest verdict); *Green v. City & Cnty. San Francisco*, 2015 WL 12839043 (N.D. Cal. Oct. 6, 2015) ($450,000 false arrest settlement).

Thus, the potential harm Devlin could have caused—the harm he *planned* to cause—could easily be valued at $250,000 or more. The jury was not required to ignore the harm Devlin promised to inflict on an innocent citizen, simply because she managed to avert that harm by giving in to his unconstitutional orders. The need to punish Devlin and to deter him—and other officers—from inflicting this harm in the future remains, even if it was narrowly averted in this case. The "relevant ratio," therefore, between the jury's $500,000 punitive-damages award and the harm and potential harm is not 100:1, as the district court believed, but rather 2:1—a ratio that is comfortably within the realm of reasonableness, even if a strict single-digit ratio were required. *See, e.g., Gore*, 517 U.S. at 581; *TXO*, 509 U.S. at 462. Nothing in the Constitution requires displacing the jury's considered judgment.

3. The jury's award is consistent with criminal penalties for comparable conduct.

The final guidepost considers "civil or criminal penalties that could be imposed for comparable misconduct," *Gore* 517 U.S. at 583.[16] The availability of

[16] This guidepost is "accorded less weight" than the first two guideposts. *Kerrivan v. R.J. Reynolds Tobacco Co.*, 953 F.3d 1196, 1210 (11th Cir. 2020); *see also Willow*

comparable civil or criminal sanctions is not necessary to uphold a punitive-damages award. *See, e.g.*, *Jester*, 937 F.3d at 241 n.1 (holding that this factor was "not instructive" in case of defamation). But if substantial sanctions could be imposed, that supports the award, for they provide "fair notice" that a defendant's conduct is "an offense with formidable consequences." *Myers v. Cent. Fla. Investments, Inc.*, 592 F.3d 1201, 1223 (11th Cir. 2010).

Here, Devlin could have faced severe criminal sanction. Under the criminal counterpart to § 1983, the civil rights statute Angela sued under, it's a federal crime to willfully violate someone's constitutional rights under color of law—a crime punishable by up to ten years in prison. *See* 18 U.S.C. § 242; *Cito v. Bridgewater Twp. Police Dep't*, 892 F.2d 23, 24 n.3 (3d Cir. 1989) ("Section 1983 is the civil counterpart of 18 U.S.C. § 242.").

In *Myers*, the Eleventh Circuit approved a $500,000 punitive-damages award—the same amount as the jury awarded here—where the defendants' conduct could have subjected them to a *one*-year prison term. *Myers*, 592 F.3d at 1223. A year in prison, the court explained, "is a serious sanction." *Id.* And the defendants, therefore, had "fair notice" of the "magnitude of the punitive sanctions" they could face. *Id.*; *see also Willow Inn*, 399 F.3d at 238 (upholding $150,000 punitive-damages

Inn, 399 F.3d at 237–38. ("We are similarly unsure as to how to properly apply this guidepost, and we are reluctant to overturn the punitive damages award on this basis alone.").

award under the third guidepost, where "most applicable civil penalty" was $5,000, but statute also provided for "escalating civil penalties for repeat violations, up to and including the suspension and revocation of one's license to issue insurance policies"); *Mathias*, 347 F.3d at 678 (upholding $186,000 punitive-damages award under third guidepost, where defendant could have lost its business license).

So too here. The possibility of a ten-year prison term is more than sufficient to put Devlin on notice that abusing his power as a police officer to violate Angela's civil rights is a serious offense with serious consequences. Moreover, it reflects the reprehensibility of Devlin's conduct. It was entirely reasonable for the jury to decide that Devlin's reprehensible conduct—conduct that potentially could have sent him to prison for a decade—warranted a $500,000 punitive-damages award. That decision should be reinstated.

CONCLUSION

The jury's verdict should be upheld in its entirety. This Court should affirm the district court's denial of Devlin's motion for judgment as a matter of law based on qualified immunity. And it should reverse the district court's remittitur of the jury's punitive-damages award and remand for the district court to reinstate the original jury verdict of $500,000 to punish and deter Devlin's lawless conduct.

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Respectfully submitted,

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COMBINED CERTIFICATIONS

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2. Word Count, Typeface, and Type Style: I certify that this brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 32(a)(7)(B) because the brief (as indicated by my word processing program, Microsoft Word) contains 13,993 words, excluding those portions excluded under Rule 32(a)(7)(B)(iii). I also certify that this brief complies with the typeface requirements of Rule 32(a)(5) and type style requirements of Rule 32(a)(6) because this brief has been prepared in the proportionally spaced typeface of 14-point Baskerville.

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May 4, 2020 *<u>/s/ Jennifer D. Bennett</u>*
Jennifer D. Bennett