

# Jury in excessive force claim awarded excessive damages: judge

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Jurors likely went overboard when they awarded a quarter of a million dollars in punitive damages to a man who was punched in the face while being interrogated by a Chicago police officer, a federal judge says.

Citing a U.S. Supreme Court ruling that "altered the landscape of punitive damages awards in an era in which those damages had begun to look like winning lottery tickets," U.S. District Judge James B. Zagel on Monday said reducing the \$250,000 figure might be the right move.

But Zagel said he needed more information about the financial status of former police officer Richard DeFelice before making a final decision on the size of the cut.

Zagel continued DeFelice's challenge to the punitive damage award pending discovery on DeFelice's finances.

Zagel also asked for additional briefs from DeFelice and plaintiff Jeremy Kunz on the issue of punitive damages.

Following a trial in Zagel's court, a jury found DeFelice liable for using excessive force and awarded Kunz \$10,000 in compensatory damages and \$250,000 in punitive damages.

The jury returned the verdict after Kunz testified that DeFelice punched him in the face while Kunz was handcuffed and seated for interrogation following his arrest in March 1999.

The jury awarded Kunz an additional \$15,000 in compensatory damages after finding that other, unknown officers had also used excessive force against him.

In a motion filed under Federal Rule of Civil Procedure 59, DeFelice sought to amend the judgment against him on the ground that the punitive damage award was unconstitutional.

Zagel indicated that he was open to the argument that the award was too-high.

The guidelines set out in *BMW of North America Inc. v. Gore*, 517 U.S. 559 (1996), "suggest that some remittitur of punitive damages would be appropriate," Zagel said.

"Prior cases had established that punitive damages could be so grossly excessive in relation to the state's interest in punishment and deterrence as to violate the due process clause of the Fourteenth Amendment," Zagel wrote, citing *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443 (1993), and *Pacific Mutual Life Insurance Co. v. Haslip*, 499 U.S. 1 (1991). "In *Gore*, the Supreme Court stepped directly into the fray and offered courts a specific test to determine whether persons subject to punitive damages had fair notice of the potential scope of those damages."

Quoting *Gore*, Zagel said the reasonableness of punitive damages should be measured against factors that include "the degree of reprehensibility" found in the liable party's conduct.

"Intentional, violent conduct is a weighty consideration in evaluating the reasonableness of punitive damages," Zagel wrote, citing *Gore* and *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003).

The fact that DeFelice was a police officer "contributes to the reprehensible nature of the conduct," Zagel continued.

Zagel said the *Gore* test also calls for examining any disparity between the punitive damages that were awarded and the harm that the plaintiff suffered.

Quoting *State Farm*, Zagel acknowledged that the Supreme Court has said that "few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process."

But Zagel noted that both the Supreme Court and the 7th U.S. Circuit Court of Appeals have said there is no exact formula for determining whether a punitive dam-

ages award is excessive.

"No one ratio can be applied to all situations, particularly given the range of harm and suffering eligible for punitive damages," Zagel wrote, citing *Gore*. "Moreover, the 7th Circuit has cautioned against too rigid an application of *State Farm's* suggested 'single-digit ratio' standard."

Citing *Mathias v. Accor Economy Lodging Inc.*, 347 F.3d 672 (7th Cir. 2003), Zagel also said he hesitated to use "mathematical ratios" in civil rights cases "where there may be limited economic damages."

Instead, Zagel said, he has found that looking at cases involving similar types of conduct and similar injuries to be the better practice.

In his case, Kunz testified that he lost consciousness after DeFelice punched him in the face several times, Zagel said.

"Photos of Kunz taken after his arrest show bruising to his face, but he suffered no permanent physical injuries," Zagel wrote. "Kunz testified to long-term emotional damage, but not to the extent that he required psychological or psychiatric care."

Zagel said the awards returned in comparable cases varied widely.

But those awards generally were smaller — both in dollar amount and in the ratio of compensatory to punitive damages — than the award returned in Kunz' case, Zagel said.

Zagel said the third part of the *Gore* test calls for determining whether a "gross disparity" exists between the punitive damages awarded a plaintiff and the civil penalties for similar conduct that are available.

The punitive damages awarded to Kunz were 10 times greater than the \$25,000 fine authorized under Illinois law for felony battery, Zagel said.

"In this case, the third element of the *Gore* analysis does not compel either drastic remittitur of the dam-