

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

VICTORIA J. DITTRICH,)
INDIVIDUALLY,) Civil Action
CANDACE DITTRICH, INDIVIDUALLY,) No. 03-CV-6128
SUEANN KLINE, INDIVIDUALLY AND)
AS THE PARENT AND NATURAL)
GUARDIAN OF THE THREE MINOR)
CHILDREN, SHYLA KLINE,)
SERRIA KLINE AND)
MONTEZ JACKSON,)
GREGORY GLASS, INDIVIDUALLY, and)
JEREMIAH M. HARTMAN,)
INDIVIDUALLY,)

Plaintiffs)

vs.)

RICHARD J. SEEDS, IN HIS OWN)
PERSON AND IN HIS OFFICIAL)
CAPACITY AS CONSTABLE OF THE)
COMMONWEALTH OF PENNSYLVANIA,)
GREG BALLIET, IN HIS OWN PERSON)
AND IN HIS OFFICIAL CAPACITY)
AS CONSTABLE OF THE)
COMMONWEALTH OF PENNSYLVANIA,)
VINCENT A. STAHL, IN HIS OWN)
PERSON AND IN HIS OFFICIAL)
CAPACITY AS CONSTABLE OF THE)
COMMONWEALTH OF PENNSYLVANIA,)

Defendants)

DAVID JONES,)
Plaintiff) Civil Action
No. 04-CV-1302)

vs.)

RICHARD J. SEEDS;)
GREG BALLIET; and)
VINCENT A. STAHL,)

Defendants)

APPEARANCES:

RICHARD F. STEVENS, ESQUIRE
On behalf of Plaintiffs

LEIGH J. BECHTLE, ESQUIRE
On behalf of Defendants Richard J. Seeds and
Vincent A. Stahl

CHARLES J. FONZONE, ESQUIRE
On behalf of Defendant Gregg Balliet

* * *

O P I N I O N

JAMES KNOLL GARDNER,
United States District Judge

This matter is before the court on five motions in limine, each of which was filed by defendants Richard J. Seeds and Vincent A. Stahl in each of these two consolidated cases¹ on November 22, 2004. Plaintiffs filed responses in opposition to each motion in limine on December 6, 2004. The parties briefed the matters. Oral argument on the motions was conducted March 22, 2005.

For the reasons discussed below, we grant in part and deny in part one of the motions (in each case), we deny in part and dismiss in part another motion (in each case), and we deny the remaining three motions (in each case). More specifically, we grant in part and deny in part defendants' motion in limine to preclude plaintiffs from pursuing a claim for punitive damages; we

¹ By Order of the undersigned dated May 20, 2004, we approved the Stipulation of all parties to consolidate these two actions for all purposes.

deny in part and dismiss as moot in part defendants' motion in limine to preclude plaintiffs from pursuing a claim for intentional infliction of emotional distress; we deny defendants' motion in limine to preclude evidence of a statement made by defendant Seeds; we deny defendants' motion in limine to preclude evidence suggesting that defendant Seeds entered the premises in violation of any state or federal law; and we deny defendants' motion in limine to preclude evidence that defendant Seeds had engaged in a search, or an illegal or warrantless search.²

The Complaint

The Complaint of plaintiffs Victoria J. Dittrich; Candace Dittrich; Sueann Kline, individually and as the Parent and Natural Guardian of Three Minor Children: Shyla Kline, Serria Kline, and Montez Jackson; Gregory Glass; and Jeremiah M. Hartman ("Dittrich Complaint") alleges that defendants' activity, under color of state law, violated plaintiffs' rights pursuant to the

² By Rule 16 Conference Order dated April 14, 2004, we directed all motions in limine to be filed on or before November 22, 2004. Defendant Greg Balliet filed four separate motions in limine. One was filed November 23, 2004 (with accompanying brief filed November 24, 2004) seeking to preclude evidence pertaining to the death of the puppies owned by plaintiff David Jones. Another was filed November 26, 2004 seeking to exclude photographs taken by the Allentown Police Department.

Two other motions in limine were filed by defendant Balliet on November 30, 2004, each seeking to exclude photographs. One of those November 30 motions concerned photographs of the injured pit bull dog owned by plaintiff Jones. The other concerned photographs taken by the Lehigh County Humane Society.

On December 13, 2004, we entered four Orders, filed December 16, 2004. Each Order denied the accompanying motion in limine filed after the deadline by defendant Balliet, without prejudice for defendant to object to the admission of this evidence at trial.

Fourth and Fourteenth Amendments of the United States Constitution. Further, plaintiffs assert that these alleged constitutional violations are actionable under 42 U.S.C. § 1983. Plaintiffs also allege violations of state law.

More specifically, Count One of the Dittrich Complaint avers a state-law cause of action for unlawful trespass in violation of 18 Pa.C.S.A. § 3503 and the Fourth Amendment to the United States Constitution.³ Count Two asserts a state-law cause of action for "intrusion upon seclusion invasion of privacy".⁴ Count Three asserts a cause of action for conspiracy.⁵ Count Four avers a cause of action for "Reckless Endangerment".⁶

Count Five claims a cause of action for "Excessive and Unreasonable Force", presumably in violation of 42 U.S.C. § 1983. Count Six avers a state-law cause of action for Cruelty to animals

³ Section 3503 of Title 18 of the Pennsylvania Consolidated Statutes Annotated defines the crime of Criminal trespass, not "unlawful trespass". Plaintiffs do not explain how they can attempt to prosecute a state crime in a Federal civil action, nor do they explain how the Fourth Amendment relates to this count.

⁴ Pennsylvania recognizes a tort for invasion of privacy. There are at least four different types of the tort of invasion of privacy. One of them is called "intrusion upon seclusion". Presumably, Count Two is asserting this state-law cause of action. However, because both the subheading and language of Count Two refer to Fourth Amendment Constitutional rights concerning illegal search and seizure, it is unclear whether plaintiffs are averring a state-law or federal claim, or both, in Count Two.

⁵ Presumably, Count Three is alleging a state-law cause of action for Civil Conspiracy, but it is not clear from the Complaint.

⁶ It is not clear from Count Four of the Complaint whether plaintiffs are averring a federal or state, civil or criminal, cause of action, or what is the legal basis of the claim.

in violation of 18 Pa.C.S.A. § 5511.⁷ Count Seven states a cause of action for deprivation of property interest pursuant to the Fourteenth Amendment of the United States Constitution, presumably actionable under 42 U.S.C. § 1983.

Count Eight avers a cause of action for an unlawful search and seizure and unlawful deprivation of liberty interests in violation of the Fourth Amendment of the United States Constitution, presumably actionable under 42 U.S.C. § 1983. Count Nine avers a state-law cause of action for intentional infliction of emotional distress. Count Ten consists of allegations concerning relief and remedies pursuant to 42 U.S.C. §§ 1981-1988.

The Complaint of plaintiff David Jones (the "Jones Complaint") alleges that defendants' activity, under color of state law, violated plaintiff's rights pursuant to the Fourth and Fourteenth Amendments of the United States Constitution. Plaintiff Jones presumably asserts that these alleged constitutional violations are actionable under 42 U.S.C. § 1983. Plaintiff also alleges a violation of the state criminal law.

Specifically, Count One of plaintiff Jones' Complaint avers a state-law cause of action for violating 18 Pa.C.S.A. § 5511 alleging cruelty to animals, and an unlawful seizure of Plaintiff

⁷ Section 5511 of Title 18 of the Pennsylvania Consolidated Statutes Annotated defines the crime of Cruelty to animals. Plaintiffs do not explain how they can prosecute a state crime in a federal civil action, nor the relationship of the Fourth Amendment to the United States Constitution, which they also include in the heading of Count Six, to this cause of action.

Jones' dog in violation of the Fourth Amendment to the United States Constitution.⁸ Count Two avers a federal cause of action for deprivation of private property interests in violation of the Fourteenth Amendment of the United States Constitution.

Count Three alleges that defendants' actions warrant punitive damages. We note that punitive damages are not an independent cause of action. Rather, punitive damages are a remedy. See Waltman v. Fanestock & Co., Inc., 792 F.Supp. 31, 33 (E.D.Pa. 1992).

Summary Judgment

All of the parties, except plaintiff David Jones, filed motions for summary judgment which are intertwined with the within motions in limine. On October 27, 2004 defendant Greg Balliet filed a motion for summary judgment. On October 29 defendants Richard J. Seeds and Vincent A. Stahl filed a joint motion for summary judgment and on October 29 the eight plaintiffs who are parties to the Dittrich Complaint filed a joint motion for summary judgment.

By our Order and accompanying Opinion dated September 28, 2005, we disposed of these summary judgment motions as follows.

⁸ This averment is identical to Count Six in the Dittrich Complaint. See footnote 7, above.

Defendants' Summary Judgment Motions

All three defendants moved for dismissal of all of plaintiffs' federal claims on the grounds of qualified immunity, and dismissal of all of plaintiffs' federal and state claims on the grounds of derivative immunity.

Qualified immunity shields state officials performing discretionary functions from federal suits allegedly violating a constitutional right if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. DeBellis v. Kulp, 166 F.Supp.2d 255 (E.D. Pa. 2001).

Therefore, each defendant constable would be entitled to qualified immunity unless he violated a clearly established constitutional right of plaintiffs. In other words, there is a two-part test. If the constable did not violate a constitutional right, he will have qualified immunity. Even if he did violate a constitutional right, the constable would have qualified immunity if the constitutional right were not clearly established. The dispositive inquiry is whether it would be clear to a reasonable constable that his conduct was unlawful in the situation he confronted. DeBellis, supra.

We denied defendants' motion for summary judgment because plaintiffs' facts, if believed, would establish that defendants violated plaintiffs' constitutional rights by entering a home where

Jeremiah Hartman did not reside without either permission or a reasonable belief that Mr. Hartman resided there and without a reasonable belief that he was there at the time. Steagald v. United States, 451 U.S. 204, 214, 101 S.Ct. 1642, 1648, 68 L.Ed.2d 38, 46 (1981).

It is black letter law that a constable may not enter the premises of a suspect to serve an arrest warrant without a search warrant unless prior to entry the constable has probable cause (a reasonable belief) that the suspect resides there and that the suspect is home. Steagald, supra. Therefore, defendants are not entitled to qualified immunity as a matter of law.

Concerning the doctrine of derivative immunity, any public official acting pursuant to a court directive for which the judge has judicial immunity is also immune from suit. Lockhart v. Hoenstine, 411 F.2d 455 (3d Cir. 1969). We concluded that District Justice Michele A. Varricchio has judicial immunity for her official actions in issuing an arrest warrant for plaintiff Jeremiah Hartman. In order for Judge Varricchio to have issued this arrest warrant, she must have determined that there was sufficient probable cause to believe that a crime had been committed, and that Jeremiah Hartman probably committed it.

Judge Varricchio is immune from being sued for making this determination and issuing an arrest warrant, even if she were incorrect. The constables in executing the arrest warrant at the

direction of Judge Varricchio have the same immunity (known as derivative immunity) as Judge Varricchio.

However, neither Judge Varricchio, nor the constables, derivatively, have immunity from suit for matters concerning how the warrant is served and executed. Therefore, there is no immunity for such matters as to how many constables participated in serving the warrant, where they were positioned, whether or not they drew their guns, whether or not they fired shots, the amount of force used by them, whether or not they obtained permission to enter the house and so forth.

Because Judge Varricchio does not have judicial immunity for these matters (which are in the purview of executive branch law enforcement officials), neither do the law enforcement officers have derivative immunity for their actions in carrying out those functions. Accordingly, because defendants are not entitled to derivative immunity, we denied their motion for summary judgment.

Moreover, defendants sought summary judgment on the grounds that plaintiffs failed to produce sufficient evidence to establish any violation of their Fourth and Fourteenth Amendment Constitutional rights. In their lawsuit, plaintiffs seek civil damages against defendants for conducting an unreasonable search and seizure, unlawfully depriving them of their liberty, and use of excessive force, all in violation of the Fourth Amendment, and for

deprivation of their property interests in violation of the Fourteenth Amendment.

We denied defendants' motion for summary judgment concerning plaintiffs' Fourth Amendment claims because we concluded there were factual disputes concerning material issues surrounding these claims, rendering summary judgment inappropriate. In addition, plaintiffs argue they were deprived of their property interests without due process of law in violation of the Fourteenth Amendment.

Under facts similar to the facts in this case, the United States Court of Appeals for the Third Circuit in Brown v. Muhlenberg Township, 269 F.3d 205 (3d Cir. 2001) found no deprivation of due process. Therefore, we granted defendants' motion for summary judgment and dismissed Count Seven of the Dittrich Complaint and Count Two of the Jones Complaint.

Defendants also sought summary judgment on the grounds that plaintiffs failed to produce sufficient evidence to establish their causes of action for civil conspiracy and intentional infliction of emotional distress. We denied the motion for summary judgment concerning civil conspiracy because we determined there were factual disputes concerning material issues related to the civil conspiracy claims.

Concerning the claims of the eight plaintiffs in the Dittrich Complaint, we concluded that all plaintiffs except

Victoria Dittrich failed to produce sufficient evidence to establish a cause of action for intentional infliction of emotional distress. Concerning plaintiff Dittrich, we concluded that there are factual disputes concerning material issues regarding her emotional distress claim, which render inappropriate defendants' motion for summary judgment attacking it. Therefore, we denied defendants' motion for summary judgment concerning Victoria Dittrich's emotional distress claim.

Defendants filed motions for summary judgment seeking to strike all of plaintiffs' punitive damages claims. We concluded that punitive damages are not available under Section 1983 federal actions against local government officials acting in their official capacity. Therefore, we granted defendants' motion for summary judgment and dismissed plaintiffs' punitive damage claims in their federal causes of action.

Because we found the existence of disputes of fact on material issues concerning entitlement to punitive damages in plaintiffs' remaining pendent state-law causes of action, we denied defendants' motion for summary judgment concerning those punitive damages.

Defendant Vincent A. Stahl seeks summary judgment dismissing all counts against him on the grounds that because he never entered the Dittrich house he is not liable for anything. If the jury believes plaintiffs' version that defendants met and

jointly agreed to violate plaintiffs' constitutional rights by conducting an illegal entry, search, and arrest, defendant Stahl would be liable to plaintiffs for civil conspiracy.

In other words, we found factual disputes on material issues concerning civil conspiracy, rendering summary judgment inappropriate on that count. If, however, defendant Stahl is liable to plaintiffs for civil conspiracy, he may also be liable for all actions of his co-conspirators done or taken within the scope of conspiracy. Therefore, we denied defendant Stahl's motion for summary judgment.

Plaintiffs' Summary Judgment Motions

Plaintiff Jones did not seek summary judgment.

Plaintiffs in the Dittrich Complaint moved for summary judgment in their favor on Count One of their Complaint alleging unlawful trespass, Count Two alleging civil conspiracy, and on all Fourth and Fourteenth Amendment claims.

Regarding plaintiffs' motion for summary judgment concerning unlawful trespass, we denied the motion because plaintiffs rely on a Pennsylvania criminal statute to support their unlawful trespass claim, and this court has no jurisdiction over state criminal matters. If, however, plaintiffs' trespass claim can be construed as a civil trespass claim, there are factual disputes on material issues involving this claim, rendering summary

judgment inappropriate. We also denied plaintiffs' motion for summary judgment on their civil conspiracy claims and Fourth and Fourteenth Amendment federal claims. In each case we found factual disputes on material issues involving those claims, rendering summary judgment inappropriate.

Contentions of the Parties

Based upon the written contentions of facts submitted by all parties at the request of the court, and upon the record produced by the parties in support of their cross-motions for summary judgment, including depositions, affidavits and exhibits, the factual contentions of the parties are as follows.

There are nine plaintiffs in these two consolidated cases: Victoria J. Dittrich and her adult daughter Candace Dittrich; Sueann Kline and her minor daughters Shyla Kline (age 3), Montez Jackson (20 months old) and Serria Kline (5 months old); Gregory Glass, Jeremiah M. Hartman and David Jones. Victoria Dittrich owned a German Shepherd dog named Teryn. David Jones owned a 50-pound pit bull dog named Tapanga. Gregory Glass owned a Boxer dog named Wizard.

Defendants Richard J. Seeds, Greg Balliet and Vincent A. Stahl each serve as Constables in the Commonwealth of Pennsylvania.

On May 8, 2003 at approximately 1:30 p.m., the date and time of the incident which is the subject of this lawsuit, Victoria

Dittrich was in her private home at 312 South Franklin Street, Allentown, Lehigh County, Pennsylvania. Victoria Dittrich was in her room upstairs with the three dogs with the door closed. Her daughter Candace was in another room with Mr. Hartman, who did not live at the residence. Sueann Kline lived on the first floor of that residence with her three children. At the time of the incident Mrs. Kline was in a room on the first floor with her three children.

Gregory Glass was not present, but his dog was. It is unclear whether David Jones was present, but his dog was.

Plaintiff's Factual Contentions

Plaintiffs contend that the Constables had an arrest warrant for Mr. Hartman for parking violations but did not have a search warrant for the Dittrich home. In going to 312 South Franklin Street, the Constables were acting on an anonymous tip received by District Justice Michele A. Varricchio that Mr. Hartman was present, which the Constables never verified, investigated or corroborated.

Prior to going to the home, the Constables met and "formulated their plan of attack", agreeing that Constable Stahl would go to the back alley of the residence in his car looking for "anyone who came running out", and that Constables Seeds and Balliet would approach the front entrance.

Before leaving, defendant Seeds said, "I have to get something to eat or I am going to shoot somebody."

Constables Seeds and Balliet knocked on the front door and Susan Kline opened the door. They identified themselves, said they had a warrant and entered the home. Miss Kline did not invite them in or agree to a search.

The Constables asked Ms. Kline who was at home, and she recited the names of the inhabitants. They ordered her to bring everyone downstairs to sit on the couch. Defendant Seeds asked Ms. Kline if they had any dogs. She responded that they did. Defendant Seeds ordered her to secure the dogs. Ms. Kline went upstairs to comply with the directives.

When she was gone, defendant Balliet conducted an illegal search, and without request or consent opened Ms. Kline's first floor bedroom door, looked into her room and noted the presence of three small children. Constable Balliet then walked down a hallway into the kitchen and attempted to open the back door of the house to let defendant Stahl in.

When Sueann Kline knocked on Victoria Dittrich's upstairs door, Mrs. Dittrich could not hear her and opened the door to find out what Sueann Kline was trying to tell her.

At this time the dogs, who had no history of dangerous propensity or aggression, ran to greet the visitors at the front door as they usually did in their normal, friendly, happy manner.

Constable Seeds immediately drew his weapon and fired at the three dogs. The dogs tried to escape. Two of them ran to the kitchen where they were "met with a hail of gunshots" by Constable Balliet. The two dogs fled back down the hallway toward Constable Seeds trying to escape from Constable Balliet, and were met with more shots from Constable Seeds.

As Wizard lay wounded, Constable Seeds shot the animal at point blank range in front of the "hysterical women." Wizard died at the house.

Allentown Police officers arrived at the scene and assisted Mr. Hartman and Mrs. Dittrich with the two surviving wounded animals, and transported them and the two dogs to the veterinary clinic for emergency surgery, where Teryn died. Tapanga survived for many months after the incident. Tapanga was pregnant at the time of the shooting. Five of her puppies were lost by miscarriage because of the injuries, and a sixth puppy survived.

Mr. Hartman was arrested at the veterinary clinic by one of the Allentown Police officers. At no time did he resist arrest or attempt to flee.

Defendants' Factual Contentions

Defendants contend that plaintiff Jeremiah Hartman owed the City of Allentown \$2600 in fines for 24 parking tickets in the year 2000 for which he received 120 notices which he ignored. At a

summary trial before District Justice Varricchio in 2001, the Judge gave him a break and told him she would drop everything if he got a job and his GED high school equivalency diploma and kept in telephone contact with the District Justice. Instead, he accumulated 15 more parking tickets in 2001 for which he received 75 additional notices.

On February 27, 2002 Mr. Hartman appeared before District Justice Varricchio again. He entered into a payment plan and agreed to pay \$40 per month on his unpaid traffic tickets and fines. He made one payment of \$40 and never made another and did not contact the judge for a year. On March 27, 2003 the Allentown Parking Authority learned from the owner of a vehicle which received a parking ticket while Mr. Hartman was driving it, that Mr. Hartman's address was 312 South Franklin Street, Allentown.

Prior to that time the parking authority had an Easton, Pennsylvania address for Mr. Hartman. Constable Seeds contacted the Easton address. Mr. Hartman's mother lived there and told Constable Seeds that her son did not live there. Shortly thereafter, Judge Varricchio's secretary received an anonymous telephone call saying that Mr. Hartman did not live at the Easton address, but he lived at 312 South Franklin Street in Allentown, that Mr. Hartman knows martial arts, that he has a drug problem and that he is using illegal drugs.

As a result, on May 8, 2003 District Justice Varricchio issued a warrant for Mr. Hartman's arrest at 312 South Franklin Street and contacted Constable Seeds to serve the warrant. Judge Varricchio told Constable Seeds about Mr. Hartman's martial arts training and drug usage, provided him with a copy of Mr. Hartman's drivers license, and a note pertaining to Jeremiah Hartman where the judge wrote "Seeds, 312 South Franklin, Jeremiah Hartman, drugged and dangerous."

Constable Seeds asked Judge Varricchio if he could get backup for the arrest. As a result, she also assigned Constables Balliet and Stahl to the matter.

Prior to going to the premises to make the arrest, the three constables met at a Sunoco gas station in Allentown to discuss which of them would go to the front door and rear of the premises on Franklin Street, and how contact was to be made after they get there. At the gas station Constable Seeds showed Constables Balliet and Stahl the valid arrest warrant for Mr. Hartman, his drivers license photograph, and the handwritten note from Judge Varricchio. They agreed that Constable Stahl would not go inside the house, but he would wait in the back to watch if defendant left the rear of the home.

Constable Seeds did not verify that Mr. Hartman lived at the Franklin Street address because he relied on the information provided to him by Judge Varricchio. However, other documents

establish that Mr. Hartman lived there at the time: In paragraphs 15, 16, 18 and 24 of the Complaint, plaintiffs aver that 312 South Franklin Street was Mr. Hartman's home and lawful residence.

Exhibit Balliet 84 is a payment plan application from District Justice Varricchio's court, signed by Mr. Hartman and dated July 16, 2003 where Mr. Hartman stated that he has resided at 312 South Franklin Street for nine months. Exhibit Balliet 89 is a postal return receipt card for mail to Mr. Balliet at the South Franklin Street address. Exhibit Balliet 111 is a witness statement signed by Mr. Balliet and given to an Allentown Police officer dated May 8, 2003, the date of his arrest, giving his address as 312 South Franklin Street.

Defendants also contend that when Constables Balliet and Seeds knocked on the front door, plaintiff Sueann Kline answered. When defendant Seeds identified himself and Greg Balliet as Constables and indicated that they had an arrest warrant for Jeremiah Hartman, Ms. Kline allowed the Constables to enter the home and identified Jeremiah Hartman as being present there.

Ms. Kline was told to have the other occupants of the house come downstairs, and she was also told to keep the three dogs secure. Sueann Kline fully cooperated and went upstairs. The entire time Constable Seeds was in the house he just stood inside the front door.

Defendant Balliet went toward the kitchen area in order to perform a "protective sweep" of the kitchen and backyard and, thereafter, to advise Constable Stahl that everything was alright.

Ms. Kline advised the Constables that the dogs were secure in a back room and that Mr. Hartman was not in that room.

Upstairs, Victoria Dittrich opened her door to hear Sueann Kline, and the dogs escaped the room and went charging down the steps together as a pack, growling and barking. Seeing the pack of three dogs coming at him, growling and barking, Constable Seeds, still at the front door at the bottom of the steps, screamed in fear, grabbed his gun in self-defense and fired shots in the direction of the dogs coming at him.

As Constable Balliet was approaching the back door, he heard the sounds of growling and barking dogs rushing down the stairs, Constable Seeds' screaming, and shots being fired. Defendant Balliet thought that Constable Seeds was being shot at and attacked.

Motion in Limine to Preclude Punitive Damages

The Motion in Limine of Defendants Richard J. Seeds and Vincent A. Stahl, to Preclude Plaintiffs from Pursuing a Claim for Punitive Damages at the Time of Trial and to Refrain from any Reference Thereto was filed on November 22, 2004.

For the reasons expressed below we grant defendants' motion to preclude plaintiffs from pursuing a claim for punitive

damages in plaintiffs' federal causes of action (Counts Five, Seven and Eight of the Dittrich Complaint; and that portion of Count One of the Jones Complaint alleging unlawful seizure of a dog in violation of the Fourth Amendment of the United States Constitution, and Count Two of the Jones Complaint). We deny defendants' motion to preclude plaintiffs from pursuing a claim for punitive damages in plaintiffs' remaining pendent state-law causes of action.

As noted above, plaintiffs only federal causes of action are each based upon 42 U.S.C. § 1983. Count VII alleges a cause of action for deprivation of property interest pursuant to the Fourteenth Amendment of the United States Constitution, actionable under § 1983. Count VIII avers a cause of action for an unlawful search and seizure and unlawful deprivation of liberty interests in violation of the Fourth Amendment of the United States Constitution, also actionable under § 1983. (Count Ten concerns federal relief and remedies, not separate federal causes of action.)

Punitive damages are not available under § 1983 actions against local governmental officials acting in their official capacity. DeBellis v. Kulp, 166 F.Supp.2d 255 (E.D. Pa. 2001). See also, Leipziger v. Township of Falls, No. Civ.A. 2001 WL 111611 (E.D. Pa. Feb. 1, 2001). Although punitive damages are not available against individual defendants acting in their official

capacity, a plaintiff may seek punitive damages against them in their individual capacity. "In order to obtain such damages, a plaintiff must establish facts of record that prove that the individuals knowingly and maliciously deprived plaintiffs of their civil rights." Ruiz v. Philadelphia Housing Authority, No. Civ.A. 96-7853, 1998 WL 159038 (E.D. Pa. March 17, 1998).

The United States Court of Appeals for the Third Circuit has recently stated that for a plaintiff in his § 1983 claim to qualify for a punitive award, the defendant's conduct must be, at a minimum, reckless or callous. Punitive damages might also be allowed if the conduct is intentional or motivated by evil motive, but the defendant's action need not necessarily meet this higher standard. Savarese v. Agriss, 883 F.2d 1194, 1204 (3d Cir. 1989).

In this case, the plaintiffs' Complaint at No. 03-CV-06128, has repeatedly alleged that all of the defendants, at all times material to the within causes of action, acted in their official capacities as constables of the Commonwealth of Pennsylvania. See paragraphs 16, 65, 67, 79, 86, 95 and 117 of plaintiffs' Complaint. Nowhere is it alleged in plaintiffs' Complaint that the defendant, Greg Balliet, was acting other than in his official capacity as to his actions and conduct at the time of the alleged incident on May 8, 2003.

As a result, defendant Greg Balliet cannot be liable in his official capacity for any claim for punitive damages to the

plaintiffs in this case. Similarly, the Complaint filed by plaintiff, David Jones, at No. 04-CV-01302, also alleges in paragraphs 1 and 11 that the defendants at all times relevant to the within claims were acting in their official capacities as constables of the Commonwealth of Pennsylvania.

Despite these averments in plaintiffs' Complaint, plaintiffs now argue⁹ that "[a] constable is an independent contractor and is not an employee of the Commonwealth, the judiciary, the township or the county in which he works." In re Act 147 of 1990, 528 Pa. 460, 463, 598 A.2d 985, 986 (1991). In their summary judgment brief, plaintiffs contend that "Constables are state actors but they cannot be considered an employee of any local jurisdiction, or political subdivision". (Page 21).

Plaintiffs cannot have it both ways. If constables are not state actors, then plaintiffs have no private federal § 1983 cause of action against them for acting under color of state law. But if constables are state actors, then plaintiffs cannot recover punitive damages against them in their § 1983 action.

In In re Act of 1990, supra, the Supreme Court of Pennsylvania struck down as unconstitutional an act of the Pennsylvania legislature declaring constables part of the judicial branch of state government and requiring the Supreme Court of

⁹ See Plaintiffs' Brief in Support of the Response to the Defendant Greg Balliet's Motion for Summary Judgment filed November 10, 2004, at pages 21-22.

Pennsylvania to provide for their training, supervision and certification. The Act was declared unconstitutional because like police officers, sheriffs and other law enforcement officers, constables are members of the executive branch of government; and giving the courts powers and duties concerning them is a violation of the constitutional separation of powers doctrine.

The State Supreme Court succinctly expressed its holding and reasoning as follows:

Simply stated, a constable is a peace officer. A constable is a known officer charged with the conservation of the peace, and whose business it is to arrest those who have violated it....By statute in Pennsylvania, a constable may also serve process in some instances....As a peace officer, and as a process server, a constable belongs analytically to the executive branch of the courts. It is the constable's job to enforce the law and carry it out, just as the same is the job of district attorneys, sheriffs and the police generally. Act 147 is unconstitutional and violates the separation of powers doctrine in our Constitution because it attempts to place constables within the judicial branch of government and under the supervisory authority of the judicial branch. It attempts to make constables "personnel of the [judicial] system" and this can no more be done than attempting to make the governor, members of the legislature, district attorneys or sheriffs "personnel of the system." At most, constables are "related staff" under the Rules of Judicial Administration. They cannot, however, be made part of the judicial branch under our Constitution....To attempt to do so constitutes a gross violation of the separation of powers. Personnel whose central functions and activities partake of exercising executive powers cannot be arbitrarily made part of another branch of government whose functions they do not perform.

528 Pa. at 470-471, 598 A.2d at 990. (Citations and footnotes omitted.)

A constable, as a law enforcement officer or peace officer, who is a member of the executive branch, and who serves legal process, makes arrests and keeps the peace, who is elected (or appointed) pursuant to statutes of the Commonwealth of Pennsylvania, is just as much a state actor, acting under color of law as any other local government official acting in his or her official capacity. Accordingly, they can be sued under § 1983 for violating the federal constitutional, or federal legal, rights of a private citizen, but punitive damages are not available against them under that cause of action.

Plaintiffs also seek punitive damages in their pendent state claims. In appropriate cases under the law of the Commonwealth of Pennsylvania, a plaintiff is entitled to recover punitive or exemplary damages in addition to compensatory damages. While compensatory damages are those damages which compensate a party for actual damage suffered and proved, punitive damages are awarded for no other purpose than to punish the wrongdoer for his outrageous conduct. Restatement (Second) of Torts §908(1) (1977).

Specifically, Pennsylvania Courts have adopted the Restatement (Second) of Torts §908 on punitive damages. Feld v. Merriam, 506 Pa. 383, 485 A.2d 742 (1984); Chambers v. Montgomery, 411 Pa. 339, 192 A.2d 355 (1963); Dean Witter Reynolds, Inc. v.

Genteel, 346 Pa.Super. 336, 499 A.2d 637 (1985), alloc. denied, 514 Pa. 635, 523 A.2d 346 (1987). Section 908(2) of the Restatement provides:

Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. In assessing punitive damages, the trier of the fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and the wealth of the defendant.

The Court has defined a reckless indifference in Smith v. Brown, 283 Pa.Super. 116, 120, 423 A.2d 743, 745 (1980):

"Reckless indifference to the interests of others", or as it is sometimes referred to, "wanton misconduct", means that "the actor has intentionally done an act of an unreasonable character, in disregard of a risk known to him or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow." (Citation omitted.)

In other words, there are three elements of reckless indifference: (1) the actor must have intentionally done an act of unreasonable character; (2) he must have disregarded a risk known to him or so obvious that he must have been aware of it; and (3) the risk must have been so great as to make it highly probable that harm would follow.

If the jury accepts the facts as advanced by plaintiffs and draws inferences therefrom in the light most favorable to plaintiffs, they can conclude that defendants intentionally, maliciously, wantonly or with reckless indifference executed two

friendly, non-threatening dogs, and wounded another, by shooting them point blank, and by continuing to shoot them after they were wounded and harmless in the presence of their caretaker and other adults who were deeply upset by defendants' actions, and at great danger and risk to three small children who were present in close proximity in a small house at the time, where defendants had no right to be. If the jury reaches these conclusions, they may quite properly award punitive damages in the Pennsylvania state-law causes of action.

Accordingly, we grant defendants' motion in limine to preclude evidence of punitive damages in the federal causes of action and deny defendants' motion in the state-law causes of actions.

Motion in Limine to Preclude Intentional Infliction of Emotional Distress

The Motion in Limine and Supporting Brief of Defendants Richard J. Seeds and Vincent A. Stahl, to Preclude Plaintiffs from Pursuing a Claim for Intentional Infliction of Emotional Distress at the Time of Trial and to Refrain from any Reference Thereto was filed November 22, 2004. For the reasons expressed below, we deny the motion concerning the claim of plaintiff Victoria J. Dittrich for intentional infliction of emotional distress, and we dismiss as moot the motions of the remaining plaintiffs concerning their claims for intentional infliction of emotional distress.

Plaintiff David Jones did not include in his Complaint a claim for intentional infliction of emotional distress. The other eight plaintiffs, in Count IX of the Dittrich Complaint, each allege a Pennsylvania-state-law cause of action for intentional infliction of emotional distress.

To prove a claim for intentional infliction of emotional distress, the following elements must be established: (1) the conduct must be extreme and outrageous; (2) it must be intentional or reckless; (3) it must cause emotional distress; and (4) that distress must be severe. Hoy v. Angelone, 456 Pa.Super. 596, 609-610, 691 A.2d 476, 482 (1997), aff'd 554 Pa. 134, 720 A.2d 745 (1998), citing Hooter v. Pennsylvania College of Optometry, 601 F.Supp. 1151, 1155 (E.D. Pa. 1984) and Section 46 of the Restatement (Second) of Torts.

In order to state a claim under which relief can be granted for the tort of intentional infliction of emotional distress, the plaintiffs must allege physical injury. Rolla v. Westmoreland Health System, 438 Pa.Super. 33, 38, 651 A.2d 160, 163 (1994). To recover for intentional infliction of emotional distress in Pennsylvania, a plaintiff must support the claim of emotional distress with competent medical evidence, in the form of expert medical evidence. DeBellis v. Kulp, 166 F.Supp.2d 255, 281 (E.D. Pa. 2001) (VanAntwerpen, J.).

Given the advanced state of medical science, it is unwise and unnecessary to permit recovery to be predicted on an inference based on the defendant's "outrageousness" without expert medical confirmation that the plaintiff actually suffered the claimed distress. Kazatsky v. King David Memorial Park, Inc., 515 Pa. 183, 197, 527 A.2d 988, 995 (1987).

At oral argument, counsel for plaintiffs conceded that the claims of plaintiffs Shyla Kline, Serria Kline, Montez Jackson and Jeremiah M. Hartman for intentional infliction of emotional distress could be dismissed because those plaintiffs introduced no medical evidence to support their claims.¹⁰ Accordingly, those claims were dismissed by our separate Order dated September 28, 2005 granting in part and denying in part defendants' motions for summary judgment.

Plaintiffs' counsel stated that plaintiffs would produce medical testimony to support the intentional infliction of emotional distress claims of plaintiffs Sueann Kline, Victoria Dittrich, Candace Dittrich and Gregory Glass.¹¹ However, plaintiffs

¹⁰ See the Notes of Testimony of the oral argument on defendants' motions in limine and the cross-motions of plaintiffs and defendants for summary judgment held before the undersigned March 22, 2005, Argument of Plaintiffs' Counsel, Richard F. Stevens, Esquire, at page 30.

¹¹ At oral argument plaintiffs' counsel stated "Greg Jones". This was a slip of the tongue. One of the plaintiffs is Gregory Glass, and one of the plaintiffs is David Jones. Because plaintiff David Jones did not assert a claim for intentional infliction of emotional distress, because plaintiff Gregory Glass did assert such a cause of action, and because plaintiff Glass produced a psychologists report, we assume that Attorney Stevens was referring to plaintiff Gregory D. Glass.

have not indicated where in the record there is any medical evidence to support the intentional-in infliction-of-emotional-distress claims of plaintiffs Sueann Kline or Candace Dittrich. Accordingly, by our September 28, 2005 Order, we granted defendants' motion for summary judgment on those two claims.

Plaintiff Gregory Glass produced a written psychological report of Deborah Derrickson-Kossman, Psy.D., dated August 31, 2004.¹² Mr. Glass has been treated and hospitalized for psychiatric symptoms for more than 20 years. Dr. Derrickson-Kossman has been seeing Mr. Glass for intensive psychotherapy for 15 of those years, commencing 1989. Prior to the incident involved in this lawsuit, she diagnosed him with Chronic, Complex Post-Traumatic Stress Disorder, as the result of his childhood and adolescent history of physical and sexual abuse and neglect, and with Bipolar Disorder.

In her report, Dr. Derrickson-Kossman rendered the opinion that Mr. Glass' traumatic loss of his dog, Wizard, on May 8, 2003 "exacerbated his psychiatric symptoms." These symptoms include suicidal and homicidal ideation, major depression, depressed mood, loss of interest in daily activities, tearfulness and hopelessness. The report contains no medical evidence of any physical injuries, or any physical manifestations of the emotional

¹² Dr. Derrickson-Kossman's August 31, 2004 psychological report can be found in the record as Exhibit G to the Motion on Behalf of Defendant Greg Balliet to Compel Plaintiffs to Sign Authorizations and to Extend the Deadline for Submission of Defense Expert Reports ("Balliet motion to compel"), filed September 28, 2004.

injuries. Therefore, Mr. Glass cannot sustain his claim for intentional infliction of emotional distress. Accordingly, our September 28, 2005 Order, granted defendants' motion for summary judgment on this claim.

As a result of our granting summary judgment on the intentional-infliction-of-emotional-distress claims of plaintiffs Candace Dittrich, Sueann Kline, Shyla Kline, Serria Kline, Montez Jackson, Gregory Glass and Jeremiah M. Hartman, we dismiss as moot defendants' motion in limine to preclude evidence in those cases.

Plaintiff Victoria J. Dittrich also produced a written psychological report. She produced a report dated September 1, 2004 of Licensed Psychologist Simone Gorko, M.S.¹³ As a result of the May 8, 2003 shooting of the dogs, Ms. Gorko diagnosed Victoria Dittrich with Post-Traumatic Stress Disorder--Chronic and Major Depressive Disorder, Recurrent, Severe without Psychotic Features. Her symptoms include panic attacks each of which is a "Physiological reactivity" which is present when Mrs. Dittrich is exposed to cues that resemble the event. This constitutes sufficient medical evidence of a physical injury, to create at least a factual dispute on a material issue, rendering summary judgment inappropriate on Victoria Dittrich's claim for intentional infliction of emotional distress. Therefore, we deny defendants'

¹³ See Exhibit F to Balliet motion to compel.

motion in limine to preclude evidence of such cause of action by Mrs. Dittrich.

Motion in Limine to Preclude Defendant Seeds' Statement

The Motion in Limine and Supporting Brief of Defendants Richard J. Seeds and Vincent A. Stahl, to Preclude Evidence of the Statement of Richard J. Seeds: "If I don't get something to eat, I'm going to shoot somebody" at the Time of Trial and to Refrain from any Reference Thereto was filed November 22, 2004. For the following reasons, the motion in limine is denied.

Plaintiffs contend that Constable Seeds made the statement to Constables Balliet and Stahl at their May 8, 2003 planning meeting at the Sunoco Gas Station before attempting to serve the arrest warrant on Jeremiah Hartman. In his deposition, defendant Seeds admits making a joking comment to the other constables, but he does not remember exactly what was said.

He recalls the statement being made to the other constables, not in person, but over the non-repeater section of their police communication radios as a joke response to something one of the other constables said. Constable Seeds stated that this conversation occurred an hour or two before the incident.

Defendants seek to preclude introduction of any evidence about the alleged statement on the basis that it is irrelevant, in violation of Fed.R.Evid. 401; or if relevant, that its relevance is outweighed by the prejudicial effect the statement would have,

under the Fed.R.Evid. 403 balancing test. Plaintiffs contend that it is relevant and admissible.

Federal Rule of Evidence 401 defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

Rule 403 provides: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Fed.R.Evid. 403.

Applying the Rule 401 definition of relevance, we conclude that Constable Seeds' statement, if he made it, is relevant. If the jury concludes that Constable Seeds said it, they could conclude either that he said it in jest, in a joking, figurative tongue-in-cheek, non-literal fashion; or they could conclude that he literally intended to shoot somebody.

Accordingly, the statement is relevant to Constable Seeds' state of mind. If he meant it literally, the jury could conclude that he was in an aggressive, combative, threatening state of mind, which in turn would be relevant to his intent and attitude when entering the Dittrich house and shooting the dogs. If he made the statement in a joking fashion, the jury could conclude that he

was in a relaxed, jovial, happy, non-threatening state of mind when he entered the house.

Therefore, Constable Seeds' state of mind, in turn, has relevance for a number of issues in the case, including whether or not he acted in self defense when he shot the dogs. His state of mind has relevance to the cause of action for unlawful trespass-- that is, whether he waited for an invitation to enter, or he barged in uninvited. For similar reasons, his state of mind is relevant to the invasion-of-privacy count.

Constable Seeds' state of mind at the planning session at the Sunoco station is relevant on the charge of civil conspiracy. His recklessness, or absence thereof, is relevant to the reckless endangerment count. Whether or not he entered the house wanting to kill someone is relevant to the cruelty-to-animals count.

Whether he intended to violate someone's federal constitutional or other federal legal rights is relevant to the Section 1983 actions. His mind set and intentions are relevant to whether or not he intentionally inflicted emotional distress upon Victoria Dittrich. And whether he was acting wantonly and willfully, with evil motives is relevant to the punitive damages request.

Therefore, because Constable Seeds' alleged statement reflects on his state of mind, and because his state of mind is pertinent to a number of issues in the case, the statement

constitutes evidence having a tendency to make the existence of a number of facts of consequences to the determination of this action more or less probable than it would be without the evidence. As a result, the statement is relevant under Fed.R.Evid. 401.

Next, we apply the Rule 403 balancing test. Even though evidence of the Seeds statement is relevant, it may be excluded under Rule 403 if its probative value is substantially outweighed by the danger of unfair prejudice. We conclude that its probative value is not thus outweighed.

Initially, we note that defendants have not identified any specific prejudice other than the conclusionary observation that the statement will prejudice defendants. We find that evidence that defendant Seeds made the statement does not constitute prejudice as that concept is contemplated by Rule 403.

If the jury determines that defendant Seeds made the statement and literally intended to shoot somebody, they are more likely to find against defendant Seeds than in his favor. That, however, does not make the evidence prejudicial. That merely makes the evidence relevant and admissible under Rule 401.

If the meaning of prejudicial evidence were evidence that makes it more likely that a party will lose the case, then all relevant evidence would be prejudicial. That's not what is meant by "prejudice" in Rule 403. What Rule 403 requires us to balance

against probative value is not "prejudice", it is "unfair prejudice". (Emphasis added.)

Unfair prejudice as used in the rule means that the evidence is so inflammatory that it will blind the jury to the true, rational facts, and will inflame their passions and prejudices to the degree that they will be swayed by their emotions, rather than by a dispassionate evaluation of the evidence. In our view, the Seeds' statement is not capable of inflaming unfair prejudice. Or in the terms of the rule, there is no "danger of unfair prejudice". (Emphasis added.)

Even if there were some danger of unfair prejudice inherent in the evidence, that is not sufficient to exclude it under Rule 403. Under the rule, the probative value of the evidence must be "outweighed" by the danger of unfair prejudice. (Emphasis added.) We find that it is not.

However, even if the probative value of the evidence is outweighed by the danger of unfair prejudice, that is not even enough to exclude the evidence under Rule 403. Under the rule the probative value of the evidence must be "substantially" outweighed by the danger of unfair prejudice". (Emphasis added.) We find that even if the jury believes that Constable Seeds intended the statement literally, while it would be powerful relevant evidence for plaintiffs, that statement's probative value would nevertheless not be substantially outweighed by the danger of unfair prejudice.

As a result the evidence is not excludable under Fed.R.Evid. 403. Therefore, we deny defendants' motion in limine to preclude the statement.¹⁴

Motion in Limine to Preclude Evidence of Illegal Entry

The Motion in Limine and Supporting Brief of Defendants Richard J. Seeds and Vincent A. Stahl, to Preclude Plaintiffs from the Introduction of any Evidence Proffered to Improperly Suggest that Richard J. Seeds Had Entered the Premises and/or Had Been Inside the Premises in Violation of Any State or Federal Law was filed November 22, 2004. For the following reasons, the motion in limine is denied.

Defendants seek to preclude plaintiffs from offering evidence that defendant Richard J. Seeds had entered the premise at 312 South Franklin Street in violation of any state or federal law. Specifically, defendants argue that there is no relevant or properly admissible evidence regarding this claim.

It appears that the defendants are rearguing their summary judgment motion through this motion in limine. This is evidenced by the fact that they incorporate portions of their brief from their motion for summary judgment. More specifically, we conclude that defendants are arguing that the evidence establishes

¹⁴ Nothing contained in this Opinion will preclude any party from requesting a limiting instruction at trial to be given to the jury concerning how the jury shall consider the evidence of the Seeds' statement after they receive it.

that Richard J. Seeds did not enter the premise in violation of Federal or State law.

On the other hand, plaintiffs contend that the evidence is relevant to establish their claims; and is, accordingly, admissible.

As noted above, by our Order and accompanying Opinion of September 28, 2005, we concluded there were genuine issues of material fact regarding these issues, and denied defendants' motion for summary judgment regarding them. Therefore, we agree with plaintiffs that evidence of defendants' conduct regarding plaintiffs' claim for an unlawful entry is relevant and must be determined by a jury.

A blanket prohibition of any evidence suggesting an unlawful search is not appropriate because the jury must determine, among other things, whether defendant Seeds believed he was entering the premises in violation of Federal or State law. Therefore, defendants' motion in limine is denied.

Motion in Limine to Preclude Evidence of Illegal Search

The Motion in Limine and Supporting Brief of Defendants Richard J. Seeds and Vincent A. Stahl, to Preclude Plaintiffs From the Introduction of any Evidence Proffered to Improperly Suggest that Richard J. Seeds Had Engaged in a Search of any Sort of Illegal, Unlawful, or Warrantless Search of any Kind was filed November 22, 2004.

In their motion, defendants seek to preclude plaintiffs from offering any evidence that defendants conducted a search of the premises at 312 South Franklin Street, Allentown, Pennsylvania, or that they conducted a search without a search warrant, or that they conducted an illegal search of the home.

Defendants argue that there is no relevant or properly admissible evidence regarding these claims. Specifically, defendants argue that no evidence exists to suggest that defendant Seeds searched the premises, and therefore any reference to a search would be irrelevant. Once again, it appears that defendants are attempting to re-argue their summary judgment motion.

In response, plaintiffs assert that the evidence is relevant to establish their claims. Therefore, plaintiffs argue that the evidence is admissible.

As previously noted, by our Order and accompanying Opinion of September 28, 2005, we concluded that there were genuine issues of material fact regarding these issues, and denied defendants' motion for summary judgment regarding them. Therefore, we agree with plaintiffs that evidence of defendants' conduct regarding plaintiffs' claim involving an illegal search is relevant and must be determined by a jury.

As noted above, a blanket prohibition of any evidence suggesting a search, or an unlawful search, is inappropriate because the jury must determine, among other things, whether

defendant Seeds believed that he was conducting a search, or a warrantless search, or an illegal search of any kind in violation of Federal or state law. Accordingly, defendants' motion in limine is denied.

Conclusion

For all of the forgoing reasons, we grant in part, deny in part, and dismiss in part the motions in limine of each defendant, consistent with this Opinion.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

VICTORIA J. DITTRICH,)
INDIVIDUALLY,) Civil Action
CANDACE DITTRICH, INDIVIDUALLY,) No. 03-CV-6128
SUEANN KLINE, INDIVIDUALLY AND)
AS THE PARENT AND NATURAL)
GUARDIAN OF THE THREE MINOR)
CHILDREN, SHYLA KLINE,)
SERRIA KLINE AND)
MONTEZ JACKSON,)
GREGORY GLASS, INDIVIDUALLY, and)
JEREMIAH M. HARTMAN,)
INDIVIDUALLY,)
)
Plaintiffs)
)
vs.)
)
RICHARD J. SEEDS, IN HIS OWN)
PERSON AND IN HIS OFFICIAL)
CAPACITY AS CONSTABLE OF THE)
COMMONWEALTH OF PENNSYLVANIA,)
GREG BALLIET, IN HIS OWN PERSON)

AND IN HIS OFFICIAL CAPACITY)
AS CONSTABLE OF THE)
COMMONWEALTH OF PENNSYLVANIA,)
VINCENT A. STAHL, IN HIS OWN)
PERSON AND IN HIS OFFICIAL)
CAPACITY AS CONSTABLE OF THE)
COMMONWEALTH OF PENNSYLVANIA,)

Defendants)

DAVID JONES,)

Civil Action)
Plaintiff) No. 04-CV-1302

vs.)

RICHARD J. SEEDS;)

GREG BALLIET; and)

VINCENT A. STAHL,)

Defendants)

O R D E R

NOW, this 28th day of September, 2005, upon consideration of ten motions in limine¹⁵ filed jointly by defendants Richard J. Seeds and Vincent A. Stahl in each of the two above-captioned consolidated¹⁶ cases on November 22, 2004; upon consideration of the briefs of the parties; after oral argument held March 22, 2005; and for the reasons expressed in the accompanying Opinion,

IT IS ORDERED that the joint motions in limine of defendants Seeds and Stahl are granted in part, denied in part, and dismissed in part.

IT IS FURTHER ORDERED that the Motion in Limine of Defendants Richard J. Seeds and Vincent A. Stahl, to Preclude Plaintiffs from Pursuing a Claim for Punitive Damages at the Time of Trial and to Refrain From Any Reference Thereto (docket entry 35, case 06128) (docket entry 19, case 01302) is granted in part and denied in part.

IT IS FURTHER ORDERED that defendants' motion to preclude plaintiffs from introducing evidence in support of a claim for punitive damages in plaintiffs' federal causes of action (Counts Five, Seven and Eight in case number 03-CV-06128 (the "Dittrich

¹⁵ Five separate motions in limine concerning (1) punitive damages; (2) intentional infliction of emotional distress; (3) a statement of defendant Richard J. Seeds; (4) illegal entry; and (5) unlawful search, in two identical sets of five each, were filed in each of the above two cases.

¹⁶ By Order of the undersigned dated May 20, 2004, we approved the Stipulation of all parties to consolidate these two cases for all purposes.

Complaint"); and that portion of Count One alleging unlawful seizure of a dog in violation of the Fourth Amendment of the United States Constitution, and Count Two, in case number 04-CV-01302 (the "Jones Complaint")) is granted.

IT IS FURTHER ORDERED that plaintiffs are precluded from introducing any evidence at trial in support of a claim for punitive damages in any of plaintiffs' foregoing federal causes of action based upon 42 U.S.C. § 1983.

IT IS FURTHER ORDERED that defendants' motion to preclude plaintiffs from introducing evidence in support of a claim for punitive damages in plaintiffs' remaining pendent state-law causes of action is denied.

IT IS FURTHER ORDERED that the Motion in Limine and Supporting Brief of Defendants Richard J. Seeds and Vincent A. Stahl, to Preclude Plaintiffs from Pursuing a Claim for Intentional Infliction of Emotional Distress at the Time of Trial and to Refrain From Any Reference Thereto (docket entry 36, case 06128) (docket entry 20, case 01302) is denied in part and dismissed as moot in part.

IT IS FURTHER ORDERED that defendants' motion to preclude plaintiff Victoria J. Dittrich from introducing evidence in support of a claim for intentional infliction of emotional distress is denied.

IT IS FURTHER ORDERED that defendants' motion to preclude plaintiffs Candace Dittrich, Sueann Kline, Shyla Kline, Serria Kline, Montez Jackson, Gregory Glass and Jeremiah M. Hartman from introducing evidence in support of a claim for intentional infliction of emotional distress is dismissed as moot.

IT IS FURTHER ORDERED that the Motion in Limine and Supporting Brief of Defendants Richard J. Seeds and Vincent A. Stahl, to Preclude Evidence of the Statement of Richard J. Seeds: "If I don't get something to eat, I'm going to shoot somebody" at the Time of Trial and to Refrain from any Reference Thereto (docket entry 37, case 06128) (docket entry 21, case 01302) is denied.

IT IS FURTHER ORDERED that Motion in Limine and Supporting Brief of Defendants Richard J. Seeds and Vincent A. Stahl, to Preclude Plaintiffs from the Introduction of any Evidence Proffered to Improperly Suggest that Richard J. Seeds Had Entered the Premises and/or Had Been Inside the Premises in Violation of Any State or Federal Law (docket entry 38, case 06128) (docket entry 22, case 01302) is denied.

IT IS FURTHER ORDERED that the Motion in Limine and Supporting Brief of Defendants Richard J. Seeds and Vincent A. Stahl, to Preclude Plaintiffs from the Introduction of any Evidence Proffered to Improperly Suggest that Richard J. Seeds Had Engaged in a Search of any Sort of Illegal, Unlawful, or Warrantless Search of any Kind (docket entry 39, case 06128)

(docket entry 23, case 01302) is denied.

BY THE COURT:

/s/ James Knoll Gardner
James Knoll Gardner
United States District Judge