UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JESUS FERREIRA,

Plaintiff,

vs. 3:13-CV-107

CITY OF BINGHAMTON,
BINGHAMTON POLICE DEPARTMENT, and
OFFICER KEVIN MILLER

Defendants.

Thomas J. McAvoy,
Sr. U.S. District Judge

DECISION and ORDER

The parties in this matter, which concerns a shooting of the unarmed Plaintiff by a member of the Binghamton, New York, Police Department, have filed post-trial motions. The Court has considered the motions on the filings and without the aid of oral argument.

I. BACKGROUND

In the early morning hours of August 25, 2011, a Binghamton Police Department SWAT team executed a "no-knock" warrant at 11 Vine Street, a residence in that city. Plaintiff, an overnight guest, was sleeping on the couch in the living room, which was located near the front door. After using a battering ram to break through the front door, officers entered the living room. Defendant Kevin Miller, the first member of the SWAT team to enter the building, shot the Plaintiff once. Plaintiff suffered severe injuries,

leading to the removal of his spleen.

Plaintiff sued the City of Binghamton, the Binghamton Police Department, and Officer Miller, among others. Plaintiff alleged that Defendants violated his constitutional rights to be free from excessive force and false arrest, both through the conduct of Defendant Miller and through the policies and practices of the Binghamton Police Department. Plaintiff also raised state-law tort claims. After motion practice, the only remaining Defendants were the Police Department, the City and Officer Miller. After Defendants filed a motion for summary judgment, the case went to trial.

At the close of trial, the jury found that Defendant Miller had not committed battery or used excessive force against the Plaintiff. See dkt. # 170. The jury also found that Officer Miller had not been negligent with respect to the shooting. Id. The jury found, however, that the City of Binghamton had been negligent. Id. The jury awarded Plaintiff $500,000 in past damages and $2.5 million in future damages. The jury also found that Plaintiff was 10% liable for damages.

The parties filed post-trial motions. After the Court provided time for the preparation of the trial record, the parties filed briefs in support of their motions, bringing the case to its present posture.

II. LEGAL STANDARD

Both parties seek judgment as a matter of law pursuant to Federal Rule of Civil Procedure 50. A court may grant judgment notwithstanding the verdict "only if the evidence viewed in the light most favorable to the non-movants, without considering credibility or weight, reasonably permits only a conclusion in the movant's favor." Doctor's Assocs., Inc. v. Weible, 92 F.3d 108, 111-12 (2d Cir. 1996). The Court "may

not weigh evidence, assess credibility, or substitute its opinion of the facts for that of the jury." Vermont Plastics v. Brine, Inc., 79 F.3d 272, 277 (2d Cir. 1996). A trial court may grant the motion only when "there exists such a complete absence of evidence supporting the verdict that the jury's findings could only have been the result of sheer surmise and conjecture, or the evidence in favor of the movant is so overwhelming that reasonable and fair minded [persons] could not arrive at a verdict against [it]." SEC v. Ginder, 752 F.3d 569, 574 (2d Cir. 2014) (quoting Tepperwiev v. Entergy Nuclear Operations, Inc., 663 F.3d 556, 567 (2d Cir. 2011)).

In the alternative, the parties seek a new trial pursuant to Federal Rule of Civil Procedure 59, which provides that "[t]he court may, on motion, grant a new trial on all or some of the issues . . . for any reason for which a new trial has heretofore been granted in an action at law in federal court[.]" FED. R. CIV. P. 59(a)(1)(A). "'[A] decision is against the weight of the evidence . . . if and only if the verdict is [1] seriously erroneous or [2] a miscarriage of justice.'" Raedle v. Credit Agricole Indosuez, 670 F.3d 411, 417-18 (2d Cir. 2012) (quoting Farrior v. Waterford Bd. of Educ., 277 F.3d 633, 635 (2d Cir. 2002)). Such a motion can be granted "even if there is substantial evidence to support the jury's verdict." United States v. Landau, 155 F.3d 93, 104 (2d Cir. 1998). Though a trial judge "is free to weigh the evidence himself, and need not view it in the light most favorable to the verdict winner . . . the court should only grant such a motion when the jury's verdict is 'egregious.'" DLC Mgmt. Corp. v. Town of Hyde Park, 163 F.3d 124, 134 (2d Cir. 1998) (quoting Dunlap-McCuller v. Riese Organization, 980 F.2d 153, 157 (2d Cir. 1992)). Thus, "a court should rarely disturb a jury's evaluation of a witness's credibility." Id.

III. ANALYSIS

A. Plaintiff's Motion

Plaintiff seeks judgment as a matter of law pursuant to Rule 50(b) or, in the alternative, a new trial pursuant to Rule 59(a), arguing that the jury should have found Defendant Officer Kevin Miller liable for shooting him. Though the Court instructed the jury that it could find Defendant liable for battery or negligence in this matter, Plaintiff offers only a generalized argument and does not attempt to explain how Officer Miller could have been specifically liable under either theory. The Court will address each theory, after summarizing the relevant evidence elicited at trial.

i. Evidence

The trial in this matter consumed a number of days. Several police officers involved in executing the warrant that led to Plaintiff's shooting testified, as did the Police Chief and others involved in planning the action. Evidence indicated that Officer Miller shot Plaintiff very quickly after he entered the apartment. Plaintiff's case emphasized that Police botched the execution of the warrant by failing to use a sufficiently large ram to knock down the door, failing to obtain plans for the apartment, and failing to use alternative and less lethal means–other than guns–to incapacitate and subdue anyone in the apartment. Plaintiff contended that he had not been moving towards Officer Miller at the time he was shot, and that he did not have anything in his hands. He also alleged that officers placed an Xbox controller near his hand after the shooting in an effort to make it appear that he had appeared to present a danger to Officer Miller when he shot him. Two medical experts testified about the shooting, offering differing interpretations of Plaintiff's location at the time of the shooting and the

path of the bullet that injured him passed through his body.

Both Officer Miller and the Plaintiff testified about the shooting. Officer Miller testified that he was the first officer in line to enter the apartment. Trial Transcript ("T."), dkt. # 179, at 632. He had "the most dangerous spot" in the line of officers who entered. Id. Officers used a battering ram to enter the apartment. Id. Because the ram was too small, however, several strikes were required before the door could be opened. Id. at 634. For Miller, the delay in getting the door opened "felt like a long time." Id. Miller worried that the banging would wake everyone in the apartment–he feared that the officers had "lost the element of surprise." Id. at 635.

Examined by his attorney, Miller testified that he took "two to three steps" after he entered the apartment and before he shot Plaintiff. T., dkt. # 180, at 773. He estimated that a "[c]ouple [of] seconds" passed between the entry and shooting. Id. at 774. Miller testified that upon entering the apartment he saw "an individual coming off the couch, you know, coming towards me." Id. at 775. He looked towards Plaintiff's hands, "because hands are what will carry a weapon if there is one." Id. Miller testified that he shot Plaintiff because he thought he had something in his hands and was moving towards him, failing to comply with the officer's commands. Id. at 789-90.

Even before he entered the room, Miller testified that he was yelling "[d]own, down, down, down, down," and identifying himself as "Police." Id. at 776. He and other officers began these shouts as soon as they began to use the ram for entry into the apartment. Id. Plaintiff did not comply with this command to get down when Miller entered the apartment. Id. at 777. Miller testified that "[i]f someone's standing up after hearing those [commands] or if they did hear these [commands] and [are] making a

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