MARROQUIN V. JARVIS - JURY INSTRUCTIONS

Duty of Jury to Find Facts and Follow Law

Members of the jury, now that you have heard all the evidence and the arguments of the attorneys, it is my duty to instruct you on the law that applies to this case.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. You must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath promising to do so at the beginning of the case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. Also, you must not read into these instructions or into anything the court may have said or done as giving any suggestion as to what verdict you should return - that is a matter entirely up to you.

You should not worry about memorizing or writing down all of the instructions as I state them, because I will send into the jury room a written copy of my instructions. However, you

must know that the law is as I will give it to you from the bench; the written copy is merely a guide to assist you.

What Is Evidence

I want to review with you what you can consider as evidence for making your decision. The evidence from which you are able to decide what the facts are consists of:

1. the sworn testimony of witnesses;
1. the exhibits which have been received into evidence; and
2. any facts to which the lawyers have agreed or stipulated.

What Is Not Evidence

Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their openings statements and closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory controls.

2. Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court=s ruling on it.

3. Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered.

4. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at trial.

Direct and Circumstantial Evidence

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as the testimony of an eye witness. Circumstantial evidence is proof of one or more facts from which you could find another fact.

You should consider both kinds of evidence. As a general rule, the law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

Direct evidence can prove a material fact by itself. It does not require any other evidence. It does not require you to draw any inferences. A witness's testimony is direct evidence when the witness testifies to what she saw, heard, or felt. In other words, when a witness testifies about what is known from her own personal knowledge by virtue of her own senses, what she sees, touches, or hears–that is direct evidence. The only question is whether you believe the witness's testimony. A document or physical object may also be direct evidence when it can prove a material fact by itself, without any other evidence or inference. You may, of course, have to determine the genuineness of the document or object.

Circumstantial evidence is the opposite of direct evidence. It cannot prove a material fact by itself. Rather,

it is evidence that tends to prove a material fact when considered together with other evidence and by drawing inferences. There is a simple example of circumstantial evidence that I used at the beginning of this trial that you may recall.

Assume that when you got up this morning it was a nice, sunny day. But when you looked around you noticed that the streets and sidewalks were very wet. You had no direct evidence that it rained during the night. But, on the combination of facts that I have asked you to assume, it would be reasonable and logical for you to infer that it had rained during the night.

Not all circumstantial evidence presents such a clear compelling inference; the strength of the inferences arising from circumstantial evidence is for you to determine. It is for you to decide how much weight to give to any evidence.

Inference from circumstantial evidence may be drawn on the basis of reason, experience, and common sense. Inferences may not, however, be drawn by guesswork, speculation, or conjecture.

The law does not require a party to introduce direct evidence. A party may prove a fact entirely on circumstantial evidence or upon a combination of direct and circumstantial

evidence. Circumstantial evidence is not less valuable than direct evidence.

You are to consider all the evidence in the case, both direct and circumstantial, in determining what the facts are, and in arriving at your verdict.

Deposition Testimony

During the trial, you have heard reference to the terms "examination under oath" and "deposition." As it applies in this case, these terms mean sworn testimony, under oath, given by a witness before this trial began. To the extent that you have heard reference to and quotations from a "deposition" or "examination under oath," you may give it the same credibility or weight as live witness testimony, if any, as you think it may deserve.

[AND/OR:]

Some of the testimony before you was presented in the form of depositions which have been received into evidence. A deposition is a procedure whereby a lawyer for a party questions a witness under oath in the presence of a court stenographer. You may consider the testimony of a witness at a deposition according to the same standards you would use to evaluate the testimony of a witness at trial.

Credibility of Witnesses

In deciding the facts of this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it at all. In considering the testimony of any witness, you may take into account:

1. the opportunity and ability of the witness to see or hear or know the things testified to;
2. the witness's memory;
3. the witness's manner while testifying;
4. the witness's interest in the outcome of the case and any bias or prejudice the witness may have;
5. whether other evidence contradicted the witness's testimony; and
6. the reasonableness of the witness's testimony in light of all the evidence.

Witness - Impeachment - Prior Statements

In assessing the credibility of a witness, you may also consider whether, on some prior occasion, the witness made statements that contradict the testimony he or she gave at the time of trial. If you conclude that a witness did, at some prior time, make statements that were materially different from what the witness said during this trial, you may take this into account in assessing the credibility of such witness, or determining the weight that you will give to such witness's testimony.

Witnesses - Number - Weight of Testimony

In evaluating the testimonial evidence, remember that you are not required to believe something to be a fact simply because a witness has stated it to be a fact and no one has contradicted what that witness said. If, in the light of all of the evidence, you believe that the witness is mistaken or has testified falsely or that he or she is proposing something that is inherently impossible or unworthy of belief, you may disregard that witness' testimony even in the absence of any contradictory evidence.

You should also bear in mind that it is not the number of witnesses testifying on either side of a particular issue that determines where the weight of the evidence lies. Rather, it is the quality of the witnesses' testimony that counts.

Thus, just because one witness testifies on one side of an issue and one witness testifies on the other side does not necessarily mean that you must consider the evidence evenly balanced. If you feel that one of the witnesses was more credible than the other, for whatever reason, you may find that the weight of the evidence lies on the side of that witness.

Similarly, just because there may be more witnesses testifying on one side of an issue than on the other does not mean that the weight of the evidence lies in favor of the greater number of witnesses. Once again, it is the credibility or quality of the testimony that determines where the weight of the evidence lies.

Burden of Proof

The law imposes on the Plaintiff the responsibility or burden of proving her claim. It is not up to the Defendant to disprove the claim. Furthermore, the Plaintiff must prove the things she claims by what is called a fair preponderance of the evidence, which I will now define in more detail.

Burden of Proof - Fair Preponderance

I have just told you that the burden of proof in this case is on the party making the claim in question, and in a few minutes I am going to describe in detail just what the Plaintiff must prove in order to prevail on her claim.

The Plaintiff must prove her claim by what the law refers to as "a fair preponderance of the evidence" which is another way of saying that the party must prove them by "the greater weight of the evidence."

To put it another way, you must be satisfied that the evidence shows that what the party making a claim is claiming is "more probably true than not."

Do not confuse the burden of proving something by a fair preponderance of the evidence with the burden of proving something beyond a reasonable doubt. As most of you probably know or have heard, in a criminal case the prosecution must prove the defendant is guilty beyond a reasonable doubt. That is a very stringent standard of proof. However, this is not a criminal case. Therefore, in order to prevail, the Plaintiff need not prove her claim beyond a reasonable doubt; she need only prove it by a fair preponderance of the evidence.

Perhaps the best way to explain what is meant by a fair preponderance of the evidence is to ask you to

visualize an old fashioned scale with two counter balancing arms and use it to mentally weigh the evidence with respect to the claim being made by the Plaintiff.

If, after you have heard all the evidence relevant to the claim, you determine that the scale tips in favor of the Plaintiff, no matter how slightly it may tip, then the Plaintiff has sustained her burden of proving that particular claim to you by a fair preponderance of the evidence because she has made the scale tip in her favor.

If, on the other hand, you determine that the scale tips in favor of the Defendant, or that the scale is so evenly balanced that you cannot say whether it tips one way or the other, then the Plaintiff has failed to prove her claim by a fair preponderance of the evidence because she has not made the scale tip in her favor.

Specific Claims

I am now going to instruct you on the specific law that applies to this case. The law will guide you as to the factual determinations you must make. You must accept the law that I give you, whether you agree with it or not.

In this case, the Plaintiff asserts two claims. The first is that the Defendant Jarvis violated her civil right to be free from unreasonable seizure. Specifically, she asserts that Jarvis used excessive force in arresting her. This claim is known as a "section 1983" claim. Section 1983 is a federal statute that allows individuals to bring lawsuits if they believe state employees have violated their civil rights.

Plaintiff's second claim is that the Defendant Jarvis violated her rights under the Rhode Island Constitution, which also prohibits unreasonable seizures. The basis for this claim is the same as for the section 1983 claim: the Plaintiff asserts that the Defendant used excessive force in arresting her.

Section 1983 elements

The first claim is that the Defendant Jarvis violated Plaintiff's civil rights, and is therefore liable to her under section 1983. In order to win this claim, the Plaintiff must prove three elements:

One, that the Defendant acted under the color of some law, custom or policy of a state, city, or town;

Two, that the Defendant's acts or conduct deprived the Plaintiff of one of her federal constitutional rights; and

Three, that the Defendant's acts or conduct were the proximate cause of damages resulting to the Plaintiff.

I am now going to explain each of these elements in more detail.

Section 1983: Color of law

The first element of the Plaintiff's claim is that the Defendant was acting, in legal terminology, "under color of state law." This means that a public employee or official was acting, or appeared to be acting, in connection with the performance of his or her official duties. In this case, the Defendant Jarvis does not dispute that he was, in fact, acting "under color" of state law when making the Plaintiff's arrest, that is, he was acting as a police officer enforcing the laws of the state and the city. Therefore, I instruct you that the first element of the Plaintiff's section 1983 claim has been met. You should begin your deliberations then by considering the second element, which I will now explain.

Section 1983: Violation of Constitutional Right

For the second element, the Plaintiff must prove that the Defendant violated one of her constitutional rights. In this case, the Plaintiff argues that the Defendant made an unconstitutional seizure, because he used excessive force when taking her into custody.

Under the Constitution, a seizure by the police is unlawful when it is carried out in an unreasonable manner. Accordingly, the use of force and / or the tactics used by the police in a seizure must be reasonable. Here, the uses of force at issue are the physical restraints and / or tactics used by the Defendant Jarvis upon the Plaintiff. The question for you to resolve is this: would a reasonable officer, acting in the same situation, have utilized the restraints or tactics used by Officer Jarvis on the Plaintiff?

I will now give you some considerations to keep in mind when answering that question.

Section 1983 – Excessive Force

In general, a police officer may use that amount of force which is reasonable to make an arrest, or to defend himself or another from bodily harm.

Thus, if you find that the Defendant used force in this case, you should then consider whether the force was reasonable. To do so, you must consider all the surrounding circumstances established by the evidence in this case. This will allow you to determine what degree of force a reasonable officer would have applied in making the arrest under those conditions. Note that this has nothing to do with the Defendant's motives or state of mind. It depends only on whether the actions of the Defendant were objectively reasonable in light of the facts and circumstances confronting him, without regard to his underlying intent or motivation.

In deciding whether the Defendant's actions were reasonable, you can keep in mind that not every push or shove rises to the level of a constitutional violation. Police officers are often forced to make judgments about how much force to use in circumstances that are tense, uncertain, and rapidly evolving. However, just because this is so does not give police officers an unlimited right to abuse or harm people to enforce their commands. You

must balance all of these considerations in assessing whether the force used here was reasonable or excessive.

In this case, you must also accept as a fact that the Plaintiff was convicted of resisting arrest under state law in connection with the incident in question. In Rhode Island, it is unlawful for any person to use force in resisting arrest if the person has reasonable grounds to believe that he or she is being arrested, and that the arrest is being made by a police officer.

Section 1983 – Proximate Cause and Damages

The third element to be proved is that the Defendant's violation of Plaintiff's constitutional rights caused her harm. If you find the Defendant used excessive force, the next question is whether that force caused the Plaintiff to suffer an injury or injuries. You must determine whether the excessive force was the "proximate cause," meaning the direct cause, of the injury.

An injury or damage is proximately caused by an act whenever it appears from the evidence that the act played a substantial part in bringing about or actually causing the injury or damage, and that the injury or damage was either a direct result or a reasonably probable consequence of the act.

Unreasonable Seizure - Rhode Island Constitution

The Plaintiff's second claim is that the Defendant Jarvis violated her right to be free from unreasonable seizures under the Rhode Island Constitution. Like the United States Constitution, the Rhode Island Constitution requires that police officers use only that amount of force which is reasonable to make an arrest. Thus, the standard for the Plaintiff's state constitutional claim is identical to the standard for the section 1983 claim. As a result, your verdict on the section 1983 claim will essentially determine your verdict on the claim under the Rhode Island Constitution.

I instruct you that if you find for the Plaintiff on her section 1983 claim, you must also rule in her favor on her state constitutional claim. On the other hand, if you find that the Plaintiff has not proved her section 1983 claim, you must also deny her claim under the Rhode Island Constitution.

Damages - Introductory

I will now turn to the question of damages. In discussing damages, I do not, in any way, mean to suggest an opinion that either of the Defendants is legally responsible or liable for the damages being claimed. That is a matter for you to decide.

Since I do not know how you are going to decide the case, I am instructing you about damages only so that if you find that a Defendant is liable, you will know what principles govern an award of damages.

You are instructed on damages in order that you may reach a sound and proper determination of the amount you will award as damages, if any, in the event that you find a Defendant is liable. You need consider the question of damages only if you find that a Defendant is liable. If you do not find liability, no award of damages can be made.

Since damages are an element of her claim, damages must be proven. The burden of proof as to the existence and extent of damages is on the party claiming to have suffered those damages and is the same as to the other elements of her claim - a fair preponderance of the evidence. In other words, you may make an award for damages only to the extent that you find damages have been proven by the evidence. You may not base an award of

damages or the amount of any such award on speculation or guesswork. You must base any award of damages on the evidence presented and on what you consider to be fair and adequate compensation for such damages as you find have been proven.

Damages - Compensatory

If you find the Defendant Jarvis liable to the Plaintiff for an unreasonable seizure, then you must consider the question of damages. Damages are defined in law as that amount of money that will compensate an injured party for the harm or loss that he/she has sustained. The rationale behind compensatory damages is to restore a person to the position he/she was in prior to the harm or the loss. Compensatory damages, then, are the amount of money which will replace, as near as possible, the loss or harm caused to a person. In this regard, you may consider the previous instructions I have given on the matter of damages.

When you assess damages, you must not be oppressive or unconscionable, and you may assess only such damages as will fairly and reasonably compensate the Plaintiff insofar as the same may be computed in money. You must confine your deliberations to the evidence, and you must not indulge in guesswork, speculation or conjecture.

Damages - Compensatory - Pain & Suffering

If you find the Defendant liable, you also may award the Plaintiff damages for any bodily injuries and for any physical or emotional pain and suffering she experienced as a result of the Defendant's wrongful conduct.

Any amount awarded for bodily injuries or pain and suffering should be based upon your consideration of the nature, extent and duration of such injuries and such pain and suffering. In addition, you may compensate a Plaintiff for mental suffering, which may include nervousness, anxiety, worry, shock, humiliation, embarrassment or indignity.

It is difficult to measure bodily injuries and pain and suffering in terms of money. Nevertheless, you may not speculate or guess as to what constitutes fair compensation for bodily injuries or for pain and suffering.

Any award must be based on the evidence and what in your considered judgment constitutes fair and adequate compensation for such injuries and pain and suffering as have been proved.

The determination of that amount, if any, is solely for you the jury to make. Suggestions of the attorneys as to how that amount might be computed are not binding upon

you. You may, however, consider them if you find them helpful.

Damages – Collateral Source

In this case, there is some evidence that the Plaintiff received medical treatment at no cost to her. This should not affect your assessment of damages against the Defendant, if you find the defendant liable to the Plaintiff. In other words, any damages that you find the Plaintiff is entitled to recover from the Defendant should not be reduced by the value of treatment she has already received.

Nominal Damages

If you find that the Plaintiff is entitled to a verdict because she has proved all the elements of one of the claims I explained above, but do not find that the Plaintiff has proved compensatory damages, you should return a verdict for the Plaintiff in some nominal sum such as one dollar ($1.00). The mere fact that a constitutional deprivation has been shown to have occurred is an injury to the person entitled to enjoy that right, even when no actual damages flow from the deprivation.

You may not award the Plaintiff both compensatory and nominal damages. Nominal damages may be awarded only if you find that the Plaintiff has not proved that she is entitled to compensatory damages, but has been harmed in some way.

Punitive Damages

In addition to compensatory damages which attempt to make a plaintiff whole, the law permits you to award a plaintiff punitive damages under certain limited circumstances. The purpose of this kind of damages is to punish a wrongdoer for misconduct, and to serve as a warning to others not to engage in the same or similar conduct.

You may decide to award punitive damages if you find that the Defendant's conduct was shown to be motivated by evil motive or intent, or that it involves reckless or callous indifference to the civil rights of others. You may not award punitive damages against a Defendant unless you find, by a preponderance of the evidence, that a Defendant's actions were maliciously, willfully, wantonly or recklessly done and are found to be so willful, reckless, or wicked that they amount to criminality.

An act, or a failure to act, is done with "malice" if prompted or accompanied by ill will, spite, or grudge toward a plaintiff. You may consider all the evidence in the case in making this determination.

An act is done "willfully" if it is done voluntarily and intentionally, with the specific intent to do something

the law forbids; that is to say, with a purpose either to disobey or to disregard the law.

Any act or omission is "wantonly" done if done in callous or reckless disregard of, or indifference to the rights of one or more persons, including the injured person.

"Recklessly" means with indifference to consequences. If a person acts without regard to possible consequences, he may be found to have acted recklessly.

Intent ordinarily may not be proved directly because there is no way to directly examine the thoughts of another human being. You may, however, infer a person's intent from surrounding circumstances. You may consider any statement made or act done or omitted by a person whose intent is in issue, and all other facts and circumstances which indicate his or her state of mind

You may award the Plaintiff punitive damages whether or not you find that she suffered actual or compensatory damages. That is, you need not find that the Plaintiff incurred an economic or tangible loss in order to award punitive damages. In addition, an award of nominal damages or actual damages will not prevent you from awarding punitive damages.

Selection of Foreman and Duty to Deliberate

When you begin your deliberations, you should elect one member of the jury as your foreperson. The foreperson will preside over the deliberations and speak for you here in court. You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous. Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion during the course of the deliberations if the discussion persuades you that should. Do not come to a decision simply because other jurors think it is right.

Communications with the Court

If it becomes necessary during your deliberations to communicate with me, you may send a note through the marshal, signed by the foreperson. No member of the jury should ever attempt to contact me except by a signed writing; and I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court.

Return of Verdict

A verdict form has been prepared for you by the Court. After you have reached unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign and date it, and advise the Court that you are ready to return to the courtroom.

Verdict - Unanimity Required

In order to return a verdict in this case, all of you must agree as to what that verdict will be. You cannot return a verdict for either party unless your decision is unanimous.

Therefore there are two things that you should keep in mind during the course of your deliberations.

On the one hand, you should listen carefully as to what your fellow jurors have to say and should be open minded enough to change your opinion if you become convinced that it was incorrect.

On the other hand, you must recognize that each of you has an individual responsibility to vote for the verdict that you believe is the correct one based on the evidence that has been presented and the law as I have explained it. Accordingly, you should have the courage to stick to your opinion even though some or all of the other jurors may disagree as long as you have listened to their views with an open mind.

Jury Recollection Controls – Rehearing Testimony

If any reference by the court or by counsel to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.

Occasionally, juries want to rehear testimony. Understand that in a short trial, generally, your collective recollection should be sufficient for you to be able to deliberate effectively. However, if you feel that you need to rehear testimony, I will consider your request. However keep in mind that this is a time-consuming and difficult process, so if you think you need this, consider your request carefully and be as specific as possible.

Copy of Instructions

I have instructed you on the law that governs your deliberations. As I mentioned at the beginning, I will send into the jury room a written copy of my instructions. You are reminded, however, that the law is as I have given it to you from the bench; and the written copy is merely a guide to assist you.