UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

JAMES J. KENNEY

Plaintiff,

v.

C.A. No. 09-349 ML

OFFICER JASON T. HEAD

Defendant.

JURY INSTRUCTIONS

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PART I -THE EVIDENCE

1. PROVINCE OF THE COURT AND JURY

Members of the Jury, now that you have heard the evidence and the arguments of counsel, it becomes my duty to give you instructions as to the law applicable to this case.

It is your duty as jurors to follow the law as I shall state it to you, and to apply that law to the facts of the case as you determine those facts to be from the evidence in this case. You are not to single out any one instruction alone as stating the law, but must consider the instructions as a whole. Neither are you to be concerned with the wisdom of any rule of law stated by me.

Counsel have quite properly referred to some of the governing rules of law in their arguments. If, however, any difference appears to you between the law as stated by counsel and that stated by the Court in these instructions, you are to adhere to the Court's instructions.

Further, nothing I say in these instructions is to be taken as an indication that I have any opinion about the facts of the case, or what that opinion is. It is not my function to determine the facts, but rather that is yours.

You must perform your duties as jurors without bias or prejudice as to any party. The law does not permit you to be governed by sympathy, prejudice, or public opinion. All parties expect that you will carefully and impartially consider all the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

2. ALL PERSONS EQUAL BEFORE THE LAW

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations of life. All

persons stand equal before the law and are to be dealt with as equals in a court of justice.

3. EVIDENCE IN THE CASE

The evidence in this case consists of the sworn testimony of the witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

In determining the facts in this case, you are to consider only the evidence that properly has been put before you. It is the duty of the Court, during the course of trial, to pass upon the admissibility of proffered evidence, that is, to decide whether or not you should consider proffered evidence. Such evidence as the Court admits is properly before you for your consideration; such evidence as the Court has refused to admit is not a proper subject for your deliberations and should not be given consideration by you.

Papers, documents, and other objects admitted into evidence by the Court are a part of the evidence properly before you and will be available to you in the jury room for consideration during your deliberations.

The fact that the Court admitted evidence over objection should not influence you in determining the weight you should give such evidence. Nor should statements made by counsel, either for or against the admission of such evidence, influence your determination of the weight you will give the evidence, if admitted. In other words, you should determine the weight you will give such evidence on the basis of your own consideration of it and without regard to the ruling of the Court or the statements of counsel concerning the admissibility of such evidence.

Nor should you permit objection by counsel to the admission of evidence, or the rulings

of the Court thereon, to create any bias or prejudice in your minds with respect to counsel or the party he or she represents. It is the duty of counsel to protect the rights and interests of his or her client, and in the performance of that duty he or she freely may make objection to the admission of proffered evidence and should not, in any manner, be penalized for doing so.

4. PREPONDERANCE OF THE EVIDENCE

The burden is on the plaintiff in a civil action, such as this, to prove every essential element of his claim by a preponderance of the evidence. If the proof should fail to establish any essential element of the plaintiff's claim by a preponderance of the evidence in this case, you should find for the Defendant.

To "establish by a preponderance of the evidence" means to prove that something is more likely so than not so. In other words, a preponderance of the evidence in the case means such evidence as, when considered and compared with that opposed to it, has more convincing force, and produces in your minds the belief that what is sought to be proved is more likely true than not true. This rule does not, of course, require proof to an absolute certainty, since proof to an absolute certainty is seldom possible in any case.

In determining whether any fact in issue has been proved by a preponderance of the evidence in this case, you may, unless otherwise instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

5. "IF YOU FIND"

When I say in these instructions that a party has the burden of proof on any proposition,

or use the expression "if you find," I mean you must be persuaded, considering all the evidence in the case, that the proposition is more probably true than not true.

6. EVIDENCE – DIRECT, INDIRECT OR CIRCUMSTANTIAL

As I told you at the beginning of the case, there are two types of evidence from which you may properly find the truth as to the facts of a case. One is direct evidence—such as the testimony of an eyewitness. The other is indirect or circumstantial evidence—that is, the proof of a chain of circumstances pointing to the existence or non-existence of certain facts.

As a general rule, the law makes no distinction between direct or circumstantial evidence, but simply requires that you find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

7. INFERENCES – DEFINED

You are to consider only the evidence in the case. In your consideration of the evidence, however, you are not limited to the bald statements of the witnesses. In other words, you are not limited to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proved, such reasonable inferences as seem justified in light of your experience.

Inferences are deductions or conclusions which reason and common sense lead you to draw from facts which have been established by the evidence in this case. Inferences may not be based on speculation or conjecture.

8. CREDIBILITY OF WITNESSES – DISCREPANCIES IN TESTIMONY

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witnesses, the manner in which the witness testified, the character of the testimony given, or evidence to the contrary of the testimony given.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness's intelligence, motive, state of mind, and demeanor or manner while on the stand. Consider the witness's ability to observe the matters as to which he or she has testified, and whether he or she impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case—including statements that he or she may have made on some prior occasion.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such

weight, if any, as you may think it deserves. You may, in short, accept or reject the testimony of any witness in whole or in part. Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or non-existence of any fact. You may find that the testimony of a small number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

PART II - PLAINTIFF'S CLAIMS

9. NATURE OF THE PLAINTIFF'S CLAIMS

Mr. Kenney makes two claims. First, he alleges that Defendant, Jason Head, acted without probable cause when he arrested him and that, therefore, his arrest was in violation of his civil rights as protected by 42 U.S.C. § 1983. This federal statute provides that persons acting under the authority of state law may not deprive citizens of their constitutional rights. Second, Mr. Kenney alleges that Jason Head maliciously prosecuted him.

You are instructed that only Mr. Kenney's claims as to Jason Head are to be considered and decided by you. Stephen Head is no longer a defendant in this case.

10. PROBABLE CAUSE FOR ARREST

Probable cause for arrest exists where the arresting officer, acting upon apparently trustworthy information, reasonably concludes that a crime has been committed and that the arrestee is likely a perpetrator. Probable cause determinations are based on objective facts and not the officer's subjective intent. You must make your probable cause determination by looking at the facts and the circumstances that were known to the officer at the time of Mr. Kenney's

arrest and consider whether the officer reasonably relied on that information in concluding that Mr. Kenney had committed an offense.

Whether Mr. Kenney was ultimately found guilty or not guilty with regard to the crime for which he was arrested is irrelevant in determining whether his arrest was made based on probable cause. There is no constitutional guaranty that only the guilty will be arrested. Therefore, the focus of your inquiry is upon the facts and circumstances known at the time of Mr. Kenney's arrest. The existence of probable cause is based on the facts and circumstances that were known to the officer at the time of Mr. Kenney's arrest rather than in hindsight.

11. THE ARREST OF MR. KENNEY

Mr. Kenney was arrested on a charge that he was obstructing a police officer. An arrest for obstruction is proper if:

First, the arrestee, here, Mr. Kenney, acted knowingly;

Second, the arrestee resisted or obstructed a police officer;

Third, the arrestee was in fact aware that the police officer was a police officer; and

Fourth, the police officer was performing an authorized act in his official capacity.

In order to succeed on his claims for false arrest and malicious prosecution, Mr. Kenney must prove by a preponderance of evidence that the Defendant did not have probable cause to believe that he was obstructing a police officer at the time of his arrest.

12. SECTION 1983 - CONSTITUTIONAL RIGHT TO BE FREE FROM ARREST WITHOUT PROBABLE CAUSE

In order to prove his Section 1983 false arrest claim, Mr. Kenney must prove by a

preponderance of evidence:

First, that the Defendant was acting under color of state law; and

Second, that his arrest was without probable cause in violation of his constitutionally protected right to be free from an unreasonable seizure – here, the seizure was his arrest.

In this case, you are instructed that the Defendant is a police officer in the city of Newport and was acting under color of state law for purposes of Section 1983. The focus of your inquiry into Mr. Kenney's false arrest claim is whether or not the Defendant acted with probable cause when he arrested Mr. Kenney.

The Fourth Amendment of the United States Constitution establishes the right to be free from unreasonable searches and seizures. An arrest is a seizure under the Fourth Amendment, and in order to protect against unreasonable seizures/arrests, the Constitution requires that an arrest be supported by probable cause.

In order to succeed on this claim, Mr. Kenney must prove by a preponderance of evidence that the Defendant deprived him of his constitutional right to be free from arrest without probable cause. Again, probable cause for arrest exists where the arresting officer, acting upon apparently trustworthy information, reasonably concludes that a crime has been committed and that the arrestee is likely a perpetrator.

13. MALICIOUS PROSECUTION

In order to prevail on his malicious prosecution claim, Mr. Kenney must prove:

First, that the Defendant initiated a prior criminal proceeding against him;

Second, that the Defendant did not have probable cause to initiate such

proceeding;

Third, that the proceeding was initiated maliciously; and

Fourth, that the proceeding was terminated in Mr. Kenney's favor.

Mr. Kenney must show by a preponderance of evidence that the Defendant lacked probable cause to institute legal proceedings against him. Probable cause for instituting legal proceedings exists where a prudent and careful person would conclude that the accused was guilty. In this case, if the Defendant had probable cause to arrest Mr. Kenney, then Mr. Kenney cannot succeed on his malicious prosecution claim. Probable cause for arrest exists where the arresting officer, acting upon apparently trustworthy information, reasonably concludes that a crime has been committed and that the arrestee is likely a perpetrator.

In addition, Mr. Kenney must show by a preponderance of evidence that the Defendant acted with malice. In order to establish malice, Mr. Kenney must show that the Defendant initiated the criminal proceeding for a bad purpose.

PART III - DAMAGES

14. CONSIDER DAMAGES ONLY IF LIABILITY IS PROVEN

I now turn to the question of damages. In doing so, I do not intend to indicate that I am of the opinion that the Defendant is liable for damages. You are instructed on damages in order that you may reach a sound and proper determination of the amount you will award, if any, in the event that you find the Defendant liable.

Damages must be proven. You need only consider the question of damages if you find that Mr. Kenney has proved all elements of his claims. The burden of proof as to the existence

and the extent of damages is on Mr. Kenney. In other words, you may make an award of damages only to the extent that you find that Mr. Kenney has proved by a preponderance of evidence that the Defendant caused his damages. You may not base an award of damages or the amount of any such award on speculation or conjecture. You must base an 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 proved. In making an award of damages, it is required that you determine the precise amount to be awarded.

15. COMPENSATORY DAMAGES

Compensatory damages may include emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life and other non-economic losses. But, distress arising from this lawsuit or legal expenses incurred in this lawsuit must not be included in this award of damages.

No evidence of the monetary value of intangible things like emotional pain and suffering is available and there is no standard that I can give you for fixing any compensation to be awarded for these injuries. Yet, you must place a money value on this, attempting to come to a conclusion that will be fair and just to both of the parties.

Mental suffering is a type of harm or injury for which you may award compensatory damages. However, in order to make such an award, you must find that Mr. Kenney has proved that he actually incurred such damages. If you find that Mr. Kenney has proved that he did in fact experience emotional pain, then the amount of compensatory damages you award him will depend on your assessment of what Mr. Kenney has proved regarding the nature, extent, duration and consequences of any such suffering and the extent to which any such suffering was directly

caused by the Defendant's conduct.

You must make the best and most reasonable estimate you can of the emotional pain and suffering and other non-economic losses that you find Mr. Kenney has suffered and can probably be expected to suffer in the future. Even though it is obviously difficult to establish a standard of measurement for these damages, that difficulty is not grounds for denying a recovery on this element of damages. This determination must be made from a fair and impartial point of view and must not be premised on a personal point of view. This will be difficult for you to measure in terms of dollars and cents, but there is no other rule I can give you for assessing this element of damages.

16. NOMINAL DAMAGES

If you return a verdict for Mr. Kenney, but you find that he has failed to prove actual injury and therefore is not entitled to compensatory damages, you may consider an award of nominal damages. Nominal damages are essentially symbolic. Their purpose is to prove a point or vindicate a right that a plaintiff can prove was violated when the plaintiff is unable to prove that he sustained any actual loss, harm or injury. In other words, nominal damages are a substitute for compensatory damages. They serve as a tangible indication of a defendant's liability when proof of actual damages is lacking.

If you find that Mr. Kenney has proved either of his claims but that he has failed to prove entitlement to compensatory damages, you should award damages in some nominal amount such as one dollar ($1.00).

You may not award both compensatory and nominal damages with respect to any one claim.

You may, however, award compensatory damages on one claim and nominal damages on another if you find that the evidence warrants it.

17. PUNITIVE DAMAGES - SECTION 1983 - FALSE ARREST

Punitive damages are awarded to a plaintiff in order to punish a defendant and to serve as an example to others not to engage in such conduct. It should be presumed that Mr. Kenney has been made whole by compensatory damages, and so you should only award punitive damages if Mr. Kenney has proven by a preponderance of evidence that the Defendant acted with evil motive, acted intentionally to violate Mr. Kenney's federally protected right, or acted with reckless or callous indifference toward his right.

It is within your sound discretion to determine whether to award punitive damages and what amount would be appropriate. Such an award, however, is only proper if the Defendant acted intentionally to deprive Mr. Kenney of his federal rights or violated his rights in the face of a perceived risk that his actions would violate federal law.

18. PUNITIVE DAMAGES - MALICIOUS PROSECUTION

Punitive damages serve to punish a party for malicious or intentional conduct and to deter such party and others from engaging in similar conduct. It should be presumed that Mr. Kenney has been made whole by his compensatory damages, and punitive damages should only be imposed if the Defendant acted maliciously or in bad faith. In order to be entitled to punitive damages, Mr. Kenney must produce evidence of such willfulness, recklessness, or wickedness on the part of the Defendant, as amounts to criminality.

It is within your sound discretion to determine whether to award punitive damages and what amount would be appropriate. Such an award, however, is only proper where a defendant's conduct

warrants deterrence and punishment over and above that provided in an award of compensatory damages.

PART IV - DELIBERATIONS AND VERDICT

19. DELIBERATIONS – GENERAL CONSIDERATIONS

Members of the Jury, in a moment I will dismiss you so that you may commence your deliberations. However, before I do that, I need to give you some instructions about the procedures you must use in the course of your deliberations.

As I said at the beginning of my instructions, it goes without saying that prejudice, sympathy, or compassion should not be permitted to influence you in the course of your deliberations. From what I have said I do not and did not mean to imply that you should approach your consideration of this case in an intellectual vacuum. You are not required to put aside or to disregard your experiences and observations in the ordinary, everyday affairs of life. Indeed, your experiences and observations in the ordinary, everyday affairs of life are essential to your exercise of reasonably sound judgment and discretion in the course of your deliberations; it is your right and duty to consider the evidence in the light of such experience and observations.

20. VERDICT – UNANIMITY & DUTY TO DELIBERATE

In order for you to return a verdict, your decision must be a unanimous decision, that is, all eight of you must concur in the decision. You cannot return a verdict, either for the plaintiff or for the defendant, unless and until you are in unanimous agreement as to what your verdict shall be.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement. Each of you must decide this for yourself, but you should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion

when convinced that it is erroneous. Your verdict must be unanimous, but you are not bound to surrender your honest convictions concerning the effect or weight of the evidence for the mere purpose of returning a verdict or solely because of the opinion of other jurors. Discuss and weigh your respective opinions dispassionately, without regard to sympathy, without regard to prejudice or favor for either party, and adopt that conclusion which in your good conscience appears to be in accordance with the truth.

Again, each of you must make your own decision about the proper outcome of this case based on your consideration of the evidence and your discussions with your fellow jurors. No juror should surrender his or her conscientious beliefs solely for the purpose of returning a unanimous verdict.

21. COMMUNICATIONS BETWEEN COURT AND JURY DURING DELIBERATIONS

During your deliberations, if you need further instruction or assistance by the Court in any way, I ask that, through your foreperson, you reduce such requests or questions as you may have to writing. The foreperson may then hand such written requests or questions to the officer in whose charge you will now be placed. The officer will then bring such written requests to me and I will attempt to fulfill your request or answer the question as the case may be. Other than the method outlined, please do not attempt to communicate privately or in any other way with the Court.

Finally, you are never to reveal to any person – not even to the Court – how you stand, numerically or otherwise, on the questions before you, until you have reached a unanimous verdict.