

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

APRIL LIMA

Plaintiff,

v.

C.A. No. 10-524-ML

TOWN OF LINCOLN et al.

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 it. Evidence the Court admits is properly before you for your consideration; evidence 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, to create any bias or prejudice in your minds with respect to counsel or the party he represents. It is the duty of counsel to protect the rights and interests of his client, and in the performance of that duty he 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 her 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 defendants. A defendant in a civil case is under no obligation to prove anything.

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.

9. STIPULATION - DEFINED

The evidence in this case includes facts to which the lawyers have agreed or stipulated. A stipulation means simply that the plaintiff and the defendant accept the truth of a particular proposition or fact. Since there is no disagreement, there is no need for evidence apart from the stipulation. You may give this evidence whatever weight you choose.

**PART II - PLAINTIFF'S CLAIMS**

10. NATURE OF THE PLAINTIFF'S CLAIMS

Ms. Lima alleges that Officers Marcoux and Laboissonniere violated her federal constitutional right to be free from an unreasonable seizure and that she is entitled to recover damages under section 1983, title 42 of the United States Code. Specifically, Ms. Lima alleges that she was subjected to the use of excessive force during an arrest by Officers Marcoux and Laboissonniere. Officers Marcoux and Laboissonniere have denied plaintiff's allegations and have asserted that their actions were justified and authorized by law.

Ms. Lima also alleges that Mr. Nelson committed a battery against her. Specifically, Ms. Lima alleges that Mr. Nelson touched her forcefully, causing her to suffer a physical injury.

11. CONSIDER EACH DEFENDANT SEPARATELY

It is your duty to give separate and personal consideration to each defendant. When you do so, you should analyze what the evidence in the case shows with respect to that particular defendant, leaving out of consideration entirely any evidence admitted solely against the other defendants. The fact that you return a verdict for or against a defendant on any claim should not, in any way, affect your verdict regarding the other defendants.

12. 42 U.S.C. § 1983 – DEFINED

Section 1983, title 42 of the United States Code provides in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured . . . .

You are instructed as a matter of law that under the Constitution of the United States the Fourth Amendment guarantees every citizen the right to be secure in his or her person against an unreasonable seizure.

13. 42 U.S.C. § 1983 – UNREASONABLE SEIZURE ELEMENTS

The burden is on the plaintiff to prove each of the following elements by a preponderance of the evidence:

*First*, that the defendant's actions deprived the plaintiff of her federal constitutional right to be free from an unreasonable seizure of her person; (a seizure includes the use of force by a police officer),

*Second*, that the defendant acted under the color of some law of the State of Rhode Island;

*Third*, that the defendant's acts were the proximate cause of damages sustained by the plaintiff.

14. STANDARD – 42 U.S.C. § 1983

Under Section 1983, a defendant may be held liable only for intentional or reckless acts that violate someone's constitutional rights. In this case the plaintiff claims that defendants Marcoux and Laboissonniere violated her Fourth Amendment right to be free from an unreasonable seizure. The Fourth Amendment prohibits police officers from unreasonably seizing the person of an individual. It is not a violation of the Fourth Amendment for a police officer to use reasonable force in order to arrest an individual, even if it later turns out that there was insufficient reason for making the arrest. The use of force is an expected, necessary part of a law enforcement officer's tasks of subduing and securing individuals suspected of committing crimes. If a police officer uses excessive force in arresting an individual, then that is considered to be an unreasonable seizure and that action would violate the Fourth Amendment.

15. UNREASONABLE SEIZURE – EXCESSIVE FORCE

In order to prove that the defendant's use of force was unreasonable under the Fourth Amendment, the plaintiff must demonstrate that the defendant's actions were not objectively reasonable, viewed in light of the facts and circumstances confronting him and without regard to his underlying intent or motivation. An officer's bad intentions will not make a Fourth

Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional. In assessing whether the defendant's actions were objectively reasonable, you should analyze his actions from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The determination of reasonableness must allow for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain and rapidly evolving – about the amount of force that is necessary in a particular situation. To determine whether the amount of force used was objectively reasonable, you should consider whether the plaintiff posed an immediate threat to the defendant's safety or to the safety of others, and whether the plaintiff was actively resisting arrest. In other words, the test is not what may appear to be reasonable in the calm atmosphere of a courtroom after there has been a great deal of opportunity for reflection and for deliberation, and perhaps to learn facts that were not known at the time the officer acted, but, rather, the test is what was reasonable in the context of the information that was available to the officer at the time and the circumstance that confronted the officer at that particular time. If you find that the plaintiff has proven by a preponderance of the evidence that a defendant's use of force was not objectively reasonable, then the seizure was unreasonable under the Fourth Amendment.

16. “UNDER COLOR” OF LAW – DEFINED

State or local officials act “under color” of the authority of the State when they act within the limits of their lawful authority. In this case, defendants acknowledge that any actions taken by Officers Marcoux and Laboissonniere toward or in relation to the plaintiff on December 30,

2007, were done in their capacities as police officers, and hence, under color of law.

17. BATTERY - DEFINED

A battery is an act that was intended to cause and in fact did cause an offensive contact with or unconsented touching of or trauma upon the body of another. If a person accidentally and/or inadvertently touches another individual, that would not constitute a battery.

18. BATTERY - ELEMENTS

The burden is on the plaintiff to prove each of the following elements by a preponderance of the evidence:

*First*, that there was an offensive contact with, or unconsented touching of, the plaintiff by Mr. Nelson;

*Second*, that Mr. Nelson intended to cause the offensive contact or unconsented touching of the plaintiff; and

*Third*, that Mr. Nelson's acts were the proximate cause of damages sustained by the plaintiff.

19. PROXIMATE CAUSE – DEFINED

As I explained earlier in these instructions, in order to recover compensatory damages, the plaintiff must prove that the violation of her constitutional right to be free from excessive force and/or battery proximately caused those damages. I instruct you that an injury or damage is proximately caused by an act whenever it appears from the evidence in the case that the act played a substantial part in bringing about or causing the injury or damage, and that the injury or damage

was either a direct result or a reasonably probable consequence of the act. The plaintiff must prove that the injury or damage would not have occurred but for the unreasonable use of force by Officer Marcoux and/or Officer Laboissonniere and/or the battery by Mr. Nelson. The unreasonable use of force by Officer Marcoux and/or Officer Laboissonniere and/or the battery by Mr. Nelson must be shown to have been a direct, rather than a remote, cause of the injury.

### **PART III - DAMAGES**

#### **20. 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 Defendants are liable. 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 Defendants liable.

Damages must be proven. You need only consider the question of damages if you find that The plaintiff has proved all elements of her claim. The burden of proof as to the existence and the extent of damages is on the plaintiff. In other words, you may make an award of damages only to the extent that you find that the plaintiff has proved by a preponderance of evidence that the Defendant caused her 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.

21. COMPENSATORY DAMAGES – EXCESSIVE FORCE - BATTERY

If you find that a defendant is liable to the plaintiff, then you must determine an amount that is fair compensation for all of the plaintiff's damages. These damages are called compensatory damages. In this matter, plaintiff claims personal injuries, emotional distress, and economic harm. The purpose of compensatory damages is to make the plaintiff whole – that is, to compensate the plaintiff for the damage that the plaintiff has suffered.

You may award compensatory damages only for injuries that the plaintiff proves were proximately caused by a defendant's allegedly wrongful conduct. The damages that you award must be fair compensation for all of the plaintiff's damages, no more and no less. You should not award compensatory damages for speculative injuries, but only for those injuries which the plaintiff has actually suffered. Your assessment of the amount of damages to be awarded, if any, may not be based on the abstract value or importance of the plaintiff's right to be free from an unreasonable seizure.

If you decide to award compensatory damages, you should be guided by dispassionate common sense. Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary guesswork. On the other hand, the law does not require that the plaintiff prove the amount of losses with mathematical certainty, but only with as much definiteness and accuracy as the circumstances permit.

I instruct you to use sound discretion in fixing an award of damages, drawing reasonable inferences where you find them appropriate from the facts and circumstances in evidence.

22. NOMINAL DAMAGES – EXCESSIVE FORCE

If you find that the plaintiff has proven that Officer Marcoux and/or Officer

Laboissonniere violated plaintiff's right to be free from an unreasonable seizure, but that she has not proven compensatory damages, then you may return a verdict for the plaintiff in some nominal sum such as one dollar. You may not award both nominal and compensatory damages if you find Officer Marcoux and/or Officer Laboissonniere liable on the claim of excessive force.

#### **PART IV - DELIBERATIONS AND VERDICT**

##### **23. 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.

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.

##### **24. 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.

25. 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.