

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

ROBIN BOSWORTH

Plaintiff,

v.

C.A. No. 12-509-ML

TIMOTHY BECK, Individually and in his capacity
as a Police Officer of the Town of Middletown,
JAMES GRUCZKA, Individually and in his
capacity as a Fire Fighter/Emergency Medical Technician
of the Town of Middletown, ROBERT MCCALL, Individually and in his
capacity as a Fire Fighter/Emergency Medical Technician
of the Town of Middletown,

Defendants.

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 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 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. 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.

6. 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.

7. 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 CLAIM

8. NATURE OF THE PLAINTIFF'S CLAIM

Plaintiff alleges that Defendants 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, Plaintiff alleges that Defendants unlawfully detained and seized her and caused her to be involuntarily committed to the psychiatric unit of Newport Hospital. Defendants have denied Plaintiff's allegations and have asserted that their actions were justified and authorized by law.

9. 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.

10. 42 U.S.C. § 1983

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.

11. SEIZURE – DEFINED

The seizure of a person occurs when, by means of physical force or a show of authority, a police officer or fire fighter restrains the liberty of a person and such person submits to the restriction feeling that she is not free to leave. A seizure, however, does not amount to a constitutional violation unless it is unreasonable.

12. 42 U.S.C. § 1983 - CONSTITUTIONAL RIGHT TO BE FREE FROM UNREASONABLE SEIZURE

In order to prove her Section 1983 unreasonable seizure claim, Plaintiff must prove by a preponderance of evidence:

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

Second, that her seizure was in violation of her constitutionally protected right to be free from an unreasonable seizure – here, Plaintiff alleges that Defendants seized her by causing her to be transported to Newport Hospital.

In this case, you are instructed that the Defendants are a police officer and fire fighters in

the town of Middletown and they were acting under color of state law for purposes of Section 1983. The focus of your inquiry into Plaintiff's claim is whether or not the Defendants acted unreasonably when they caused Plaintiff to be transported to Newport Hospital.

The Fourth Amendment of the United States Constitution establishes the right to be free from unreasonable searches and seizures. The Fourth Amendment's protections against unreasonable searches and seizures apply to involuntary hospitalizations of persons for psychiatric reasons.

In order to succeed on this claim, Plaintiff must prove by a preponderance of evidence that a Defendant deprived her of her constitutional right to be free from an unreasonable seizure.

13. SEIZURE – SAFETY REASONS

The law allows, under certain circumstances, that a police officer or firefighter may have occasion to seize a person in order to ensure the safety of the public and/or the individual. The reasonableness of such a seizure depends on the specific facts and the balance between the community caretaking function of the officer or firefighter and the individual's interest in being free from arbitrary government interference.

14. EMERGENCY ADMISSION TO MEDICAL FACILITY

You are instructed that a police officer or fire fighter may make an application, on behalf of an individual, for emergency admission to an appropriate medical facility when the officer or fire fighter, acting upon apparently trustworthy information, reasonably concludes that an individual is in need of immediate care and treatment and that her continued unsupervised

presence in the community would create an imminent likelihood of serious harm by reason of mental disability.

This determination is based on objective facts and not the officer's or the fire fighter's subjective intent. You must look at the facts and the circumstances that were known to the police officer or fire fighter at the time of the alleged seizure of Plaintiff and consider whether the officer or fire fighter reasonably relied on that information in concluding that Plaintiff was in need of immediate care and treatment and that her continued unsupervised presence in the community would create an imminent likelihood of serious harm by reason of mental disability.

PART III - DAMAGES

15. 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 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 any of the Defendants liable.

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

16. COMPENSATORY DAMAGES

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 case, Plaintiff has made claims for her medical expenses and emotional distress. 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.

17. NOMINAL DAMAGES

If you return a verdict for Plaintiff, but you find that she 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 she 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 Plaintiff has proved her claim but that she 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 her claim.

18. PUNITIVE DAMAGES

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 Plaintiff has been made whole by compensatory damages, and so you should only award punitive damages if Plaintiff has proven by a preponderance of evidence that the Defendant acted with evil motive, acted intentionally to violate Plaintiff's federally protected right, or acted with reckless or callous indifference toward her

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 Plaintiff of her federal rights or violated her rights in the face of a perceived risk that his actions would violate federal law.

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.

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.