

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

_____)	
LYNN DICRISTOFARO,)	
Plaintiff,)	
)	
v.)	C.A. No. 13-213-M
)	
DAVID RANDALL, et al.,)	
Defendants.)	
_____)	

JURY INSTRUCTIONS

I. GENERAL INSTRUCTIONS

Now that you have heard all of the evidence and the arguments of counsel, it is my job to instruct you on the law that is applicable to this case.

I will send a written copy of my instructions into the jury room.

A. PROVINCE OF THE COURT AND JURY

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 be concerned with the wisdom of any rule of law stated by me. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Further, nothing I say in these instructions and nothing that I have said or done during the trial is to be taken as an indication that I have any opinion about the facts of the case. I do not. It is not my role to determine the facts, that is your role.

You must perform your duties as jurors without bias or prejudice to any party. The law does not permit you to be governed by sympathy, prejudice, or public opinion. All parties — and the law — 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.

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 parties are entitled to the same fair trial at your hands. All parties stand equal before the law, and are to be dealt with as equals in a court of justice.

B. EVIDENCE IN THE CASE

In determining the facts of this case, you are to consider only the evidence that has been properly put before you. That evidence consists of the sworn testimony of witnesses and the exhibits that have been received into evidence. Evidence that the court admits in full is properly before you for your consideration; evidence that this Court has refused to admit is not a proper subject for your deliberations and you should not consider it when reaching a verdict. Admitted evidence will be available to you in the jury room for your 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 the evidence was admitted.

Certain things are not evidence, and you may not consider them in deciding what the facts are.

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements and closing arguments, and at other times, may 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 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.

C. CREDIBILITY OF WITNESSES

You are the sole judges of the credibility of the witnesses and the weight their testimony deserves. In deciding the facts of this case, you may have to decide which testimony to believe and which testimony not to believe. 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 that witness testified about;
2. the witness' memory;
3. the witness' manner while testifying;
4. the witness' interest in the outcome of the case and any bias or prejudice the witness may have;
5. whether other evidence contradicted the witness' testimony; and
6. the reasonableness of the witness' testimony in light of all the evidence.

After making your own judgment, you may believe everything a witness says, or part of it, or none of it at all. 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.

D. EVIDENCE – DIRECT AND CIRCUMSTANTIAL

There are two types of evidence from which you may properly find the facts of this 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 and circumstantial evidence. You are simply required to find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

In your consideration of the evidence in this case, you are allowed to make reasonable inferences from witnesses' testimony and the admitted exhibits. Inferences are deductions that reason and common sense lead you to draw from facts that have been established by the evidence in this case. Inferences, however, may not be based on pure speculation or conjecture.

Let me give you an example of a reasonable inference. If your mailbox was empty when you left home this morning, and you find mail in it when you go home tonight, you may infer that the letter carrier delivered the mail. Now, obviously, you didn't see the letter carrier deliver the mail, but from the facts that the mailbox was empty this morning and it is filled tonight, you can properly infer that the letter carrier came by in the interim and delivered the mail. That is all that we mean by an inference.

E. OPINION EVIDENCE - EXPERT WITNESS

While the rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions, an exception exists for expert witnesses. These are witnesses who, by education

and experience, have become experts in some art, science, profession, or calling. Expert witnesses may state their opinions, and the reasons for their opinions, on the subjects of their expertise, about matters that are relevant and material to the case before you.

If testimony from an expert witness is to have any evidentiary value, it must speak in terms of “probabilities” rather than mere “possibilities.” Although absolute certainty is not required, the conclusions of an expert must be reached to a reasonable degree of certainty — that is, to a probability. In order for an expert’s opinion to be considered by you, it must have substantial probative value and not be based on speculation, conjecture, or surmise.

You should give an expert opinion such weight as you think it deserves. If you conclude that the reasons given in support of the expert’s opinion are not sound, or if you feel that the expert’s opinion is outweighed by other evidence, you may disregard the opinion entirely.

F. BURDEN OF PROOF: PREPONDERANCE OF THE EVIDENCE

The burden is on the Plaintiff in a civil action, such as this, to prove every essential element of her claims 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, then you should find for the Defendants on that claim. The Defendants do not have any obligation to disprove that which the Plaintiff asserts or claims.

To establish by “a preponderance of the evidence” means to prove that something is more probably true than not true. In other words, if you were looking at opposite ends of a scale, the Plaintiff’s evidence would have to make one end of the scale tip to its side.

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. This rule does not, of course, require proof to an absolute certainty or even a near certainty.

II. CASE-SPECIFIC INSTRUCTIONS

A. NATURE OF THE PLAINTIFF'S CLAIMS

In this case, Ms. DiCristofaro makes two claims:

1. **Unconstitutional Seizure:** She asserts that Defendants Catherine Ochs of the West Warwick Police Department, David Randall and Ian Noonan of the Scituate Police Department and Graham McCoy, Alexander DeMolles and Bryan Ricci of the Coventry Police Department unconstitutionally seized her during a well-being check in violation of her civil rights; and
2. **Excessive Force:** Ms. DiCristofaro asserts that Defendants Graham McCoy, Alexander DeMolles and Bryan Ricci of the Coventry Police Department violated her civil rights by using excessive force during the seizure, specifically by throwing her to the ground, getting on top of her, and handcuffing her.

B. CIVIL RIGHTS - 42 U.S.C. § 1983

The federal statute upon which Ms. DiCristofaro's claim is based is known as the Civil Rights Act or 42 U.S.C. § 1983. Its purpose is to protect the constitutional rights of individuals.

The relevant portion of that statute states:

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 . . . to the deprivation of any rights, privileges or immunities secured by the Constitution . . . shall be liable to the party injured.

1. ELEMENTS

In order to prove a section 1983 claim, Ms. DiCristofaro must prove three elements:

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

Second, that the Defendants' acts or conduct deprived Ms. DiCristofaro of her federal constitutional rights; and

Third, that the Defendants' acts or conduct were the proximate cause of damages resulting to Ms. DiCristofaro.

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

a. "COLOR OF LAW"

The first element of the Plaintiff's claim is that the Defendants were 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 Defendants do not dispute that they were, in fact, acting "under color" of state law when responding to the Ms. DiCristofaro's house and during their interaction with her. That is, they were acting as police officers performing their official duties. Therefore, I instruct you that the first element of the Plaintiff's section 1983 claim has been met. You should begin your deliberations by considering the second element, which I will now explain.

b. "VIOLATION OF CONSTITUTIONAL RIGHTS"

For the second element, Ms. DiCristofaro must prove that the Defendants violated a constitutional right. In this case, she argues that the Defendants violated two constitutional rights – first, her right to be free from unconstitutional seizure when her freedom was restrained on May 28, 2010; and second, her right to be free from excessive force on the same date.

I will now give you some instructions as to each of her § 1983 claims.

i. UNCONSTITUTIONAL SEIZURE

The first violation of a constitutional right Ms. DiCristofaro asserts is an alleged unconstitutional seizure. The seizure of a person occurs when, by means of physical force or a show of authority, a police officer 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.

In order to prove a Section 1983 unreasonable seizure claim, Ms. DiCristofaro must prove by a preponderance of evidence that her seizure was unreasonable. The focus of your inquiry into this claim is whether Defendants Ochs, Randall, Noonan, McCoy, DeMolles, and/or Ricci acted unreasonably when they caused Ms. DiCristofaro to be handcuffed, removed from her house, and kept her handcuffed while outside of the house. The reasonableness inquiry is twofold: first, the officer's action must be justified at its inception; and second, the seizure must be reasonably related in scope to the circumstances that justified the interference in the first place. In other words, a seizure can be unreasonable if there was no reason for it; or if it was not proportional in length or manner to the circumstances that permitted it. You may also find a Defendant liable, even if he or she was not personally involved in the seizure, if by his or her statements and/or actions he or she instigated or directed the seizure; meaning that by such statements and/or actions, any Defendant knew a seizure would occur or was likely to occur and further that as a substantial result of his or her conduct the seizure actually did occur.

a. SEIZURE- SAFETY REASONS

Police officers may exercise "community caretaking functions" — that is, functions aside from criminal enforcement, where they are expected to aid those in distress, combat actual

hazards, prevent potential hazards from materializing, and provide a variety of services to preserve and protect community safety.

The law allows, under certain circumstances, that a police officer may have occasion to seize a person in order to ensure the safety of the public or that individual. The reasonableness of such a seizure depends on the specific facts and the balance between the community caretaking function of the officer and the individual's interest in being free from arbitrary government interference. You may take the community caretaking functions of the police into consideration when determining whether a seizure was reasonable. It has no application to the claim of excessive force.

Now I will talk to you about Ms. DiCristofaro's second constitutional claim under Section 1983.

ii. EXCESSIVE FORCE

The second violation of a constitutional right that Ms. DiCristofaro asserts is the alleged use of excessive force.

a. DEFINITION -- "EXCESSIVE FORCE"

Every person has the constitutional right to be free from excessive force by law enforcement officers. On the other hand, in making a seizure, an officer has the right to use such force as a reasonable officer would believe is necessary under the circumstances to effectuate what a reasonable officer would believe appropriate in the circumstances. Whether the force used was unnecessary, unreasonable, or excessively violent is an issue for you to decide based on that degree of force that a reasonable and prudent law enforcement officer would have applied under the same circumstances disclosed in this case. The test of reasonableness requires careful attention to the facts and circumstances, including but not limited to: whether Ms. DiCristofaro

posed an immediate threat to the safety of an officer, herself, or others; and the severity of any injury suffered by Ms. DiCristofaro. The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. With respect to a claim of excessive force, the standard of reasonableness at that moment applies. Not every push or shove, even if it may later seem unnecessary, violates the Constitution. 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.

The “reasonableness” inquiry is an objective one. The question is whether an officer’s actions are “objectively reasonable” in light of all the facts and circumstances confronting him, without regard to his underlying intent or motivation. Evil intentions will not make a constitutional violation out of an objectively reasonable use of force; and good intentions will not make an unreasonable use of force proper.

b. ELEMENTS - EXCESSIVE FORCE

In order to prove her claim of unconstitutionally excessive force, Ms. DiCristofaro must prove by a preponderance of the evidence that Defendants McCoy, DeMolles, and/or Ricci intentionally, rather than negligently, used unconstitutionally excessive force as I have defined it. However, it is not necessary to find that Defendants McCoy, DeMolles, and/or Ricci had any specific purpose or desire to deprive her of her constitutional rights in order to find in her favor. Ms. DiCristofaro must prove only that the *action* was deliberate, not that the *consequence* was intended. Mere negligence, however, is not sufficient. Plaintiff is entitled to relief if Defendants McCoy, DeMolles, and/or Ricci intentionally acted in a manner that resulted in a violation of her constitutional rights.

c. **“PROXIMATE CAUSE”**

The third element Ms. DiCristofaro must prove in order to recover compensatory damages is that Defendants’ violation of her constitutional rights proximately caused her harm. If you find that Defendants Ochs, Randall, Noonan, McCoy, DeMolles, and/or Ricci unreasonably seized Ms. DiCristofaro and/or if Defendants McCoy, DeMolles, and/or Ricci used excessive force, the next question is whether that seizure and/or force caused her to suffer an injury or injuries. You must determine whether the seizure and/or excessive force were the “proximate causes,” meaning the direct causes, 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 of or a reasonably probable consequence of the act.

C. **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.

D. **DAMAGES - COMPENSATORY - PAIN & SUFFERING**

If you find a Defendant liable, you may award Ms. DiCristofaro damages for any bodily injuries and for any physical or emotional pain and suffering she experienced as a result of that Defendant’s wrongful conduct. By discussing damages with you, I am not implying that any of

the Defendants acted wrongly, or that Ms. DiCristofaro is entitled to damages. That is a determination that you must make in the course of your deliberations.

Any amount you award 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 the 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.

F. DAMAGES - NOMINAL DAMAGES

I have just instructed you regarding compensatory damages. However, you may not award compensatory damages simply for the violation of a constitutional right. In other words, your award, if any, must be based on actual injuries sustained, if any, and not on some abstract value or importance of the particular constitutional right at issue.

If you find, however, 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 Ms. DiCristofaro both compensatory and nominal damages. Nominal damages may be awarded only if you find that Ms. DiCristofaro has suffered a constitutional violation, but has not proved that she is entitled to compensatory damages.

III. FINAL PROCEDURAL INSTRUCTIONS

Ladies and Gentleman, 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, you must not allow prejudice, sympathy, or compassion to influence you in the course of your deliberations. That does not mean that you should approach this case in an intellectual vacuum. You are not required to put aside 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; and it is your right and duty to consider the evidence in light of such experience and observations. But you must not allow prejudice, sympathy, or compassion to cloud your examination of the evidence or influence your determination of the facts.

During your deliberations, you must not communicate with or provide any information to anyone outside of the jury room by any means about this case. You may not use any electronic device or media, such as a cell phone, a tablet, or a computer. You may not communicate to anyone any information about this case or to conduct any research about this case until I accept

your verdict. You can only discuss the case in the jury room with your fellow jurors during deliberations.

Now, in order for you to return a final verdict, your decision must be unanimous. That means that you cannot return a verdict unless and until all eight of you are in agreement as to the verdict.

Therefore, in the course of your deliberations and in your consideration of the evidence, you should exercise reasonable and intelligent judgment. It is not required that you yield your convictions simply because a majority holds to the contrary view, but in pursuing your deliberations you should keep your minds reasonably open with respect to the point in dispute so that you will not be precluded or prevented from achieving a unanimous verdict by mere stubbornness. It is your right to maintain your convictions. Each vote of each juror is as important as the vote of any other juror, and you need not give up your sincerely held convictions simply because a majority holds to the contrary.

I am designating juror # 1, _____ as the Foreperson of this jury. _____ it will be your responsibility to organize the group and facilitate organized and healthy deliberations. The Foreperson's opinion, voice, or vote, however, is no more meaningful than any other juror.

When you are in the jury room, you will be provided with the evidence that has been admitted in this case. It may take us a few minutes to gather it up, but as soon as we do, it will be brought to the jury room.

You will also be given a verdict form. When you have reached a verdict, the Foreperson will fill out that form and sign it. Once the verdict form is complete, you will inform the Court Security Officer.

[REVIEW OF VERDICT FORM]

If, in the course of your deliberations, you deem it necessary to be further instructed or assisted by the Court in any way, the Foreperson should reduce such request or question to writing, sign it, and give it to the Court Security Officer in whose charge you will now be placed. The Court Security Officer will then bring such written request to me and I, in consultation with the attorneys, will determine an appropriate response. Other than this method, please do not attempt to communicate privately or in any other way with the Court or with anyone outside the jury room.