

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

_____)	
BRANDON DAWKINS,)	
Plaintiff,)	
)	
v.)	C.A. No. 14-004-M-PAS
)	
MICHAEL COSTIGAN and)	
CHRISTOPHER MILLER,)	
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.

A. PROVINCE OF THE COURT AND JURY

It is your duty as jurors to follow the law as I 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;
6. the reasonableness of the witness' testimony in light of all the evidence; and
7. the logic and details surrounding the witness's testimony.

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.

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.

E. 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 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, 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, Mr. Dawkins asserts that Defendants Michael Costigan and Christopher Miller of the Pawtucket Police Department used excessive force in violation of his civil rights. Relatedly, Mr. Dawkins claims that, while the Defendants were arresting him, the Defendants committed an assault and/or a battery.

B. CIVIL RIGHTS - 42 U.S.C. § 1983

The federal statute upon which Mr. Dawkins'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.

In order to prove this civil rights claim, Mr. Dawkins must prove the following three elements by a preponderance of the evidence:

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 Mr. Dawkins of his federal constitutional rights; and

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

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

1. "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." In this case, the Defendants do not dispute that they were, in fact, acting "under color" of state law when they arrested Mr. Dawkins. You should begin your deliberations by considering the second element, which I will now explain.

2. "VIOLATION OF CONSTITUTIONAL RIGHTS"

For the second element, Mr. Dawkins must prove that the Defendants violated a constitutional right. In this case, Mr. Dawkins argues that the Defendants violated his right to be free from the use of excessive force.

I will now give you some instructions as to the violation of a constitutional right in a § 1983 claim.

Mr. Dawkins asserts that the Defendants used excessive force. Every person has the constitutional right not to be subjected to unreasonable or excessive force by a law enforcement officer. On the other hand, in making an arrest or processing an arrest, 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 or not the force used was unnecessary, unreasonable, or excessively violent is an issue for you to decide on the basis of 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: the severity of the crime at issue, whether the Plaintiff posed an immediate threat to the safety of the officer or others; whether he was actively resisting the arrest or attempting to evade the arrest by flight, and the severity of any injury to him.

The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene. 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. But police officers may not use excessive or unreasonable force. 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.

Also, you may find a Defendant liable, even though he did not personally use excessive force against the Plaintiff, if he had reason to know that excessive force was being used by another officer or officers for the purpose of punishment, he had a realistic opportunity to intervene to prevent harm from occurring, and his failure to intervene was intentional.

3. “PROXIMATE CAUSE”

The third element Mr. Dawkins must prove in order to recover compensatory damages is that Defendants’ violation of his constitutional rights proximately caused him harm. If you find that Defendants Costigan and/or Miller used excessive force against Mr. Dawkins, the next question is whether that force caused Mr. Dawkins to suffer an injury or injuries. You must determine whether that force was the “proximate cause,” meaning the direct cause, of the injury.

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

C. ASSAULT

Mr. Dawkins also claims that Defendants Costigan and Miller committed an assault against him. An assault is a physical act of a threatening nature or an offer of bodily injury that puts an individual in reasonable fear of imminent bodily harm. It is the Plaintiff’s apprehension of injury that renders a Defendant’s act compensable. Words alone are never sufficient to establish an assault. However, if

words are accompanied by a physical act that increases the Plaintiff's fear of imminent bodily injury, that is sufficient to establish assault.

D. BATTERY

Mr. Dawkins also claims that Defendants Costigan and Miller committed a battery against him. A battery refers to 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 resulting in the consummation of an assault. An intent to injure a Plaintiff, however, is unnecessary in a situation in which a Defendant willfully set in motion a force that in the ordinary course causes an injury. In order to recover for a battery, a Plaintiff must show that there was an offensive contact with or unconsented touching of the body of another. In order to constitute a battery, a person must intend to cause the offensive contact or unconsented touching of another person. Thus, if a person accidentally and/or inadvertently touches another individual, that would not constitute a battery.

E. ASSAULT & BATTERY – DEFENSE

Police officers are protected from liability for assault and battery if the police officer used reasonable force to effectuate an arrest. If you find that the Defendants used excessive force to effectuate a legal arrest of Plaintiff, then you must return a verdict in favor of the Plaintiff. If, however, you find that the Defendant police officers had an objectively reasonable belief that the use of force was reasonable, then you must return a verdict in favor of the Defendants.

F. 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 Defendant. 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 Defendant.

G. DAMAGES - COMPENSATORY - PAIN & SUFFERING

If you find a Defendant liable, you may award Mr. Dawkins damages for any emotional pain and suffering he 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 Mr. Dawkins is entitled to damages. That is a determination that you must make in the course of your deliberations.

Any amount you award for pain and suffering should be based upon your consideration of the nature, extent and duration such injuries and such pain, suffering, and any scarring. In addition, you may compensate Mr. Dawkins 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.

I have just instructed you regarding compensatory damages. 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.

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 #/as the Foreperson of this jury. Juror #,)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.