

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

	)	
JONATHAN WHEELER,	)	
Plaintiff,	)	
	)	
v.	)	
	)	
	)	C.A. No. 18-cv-00687-MSM-PAS
ROBERT NELSON, individually and	)	
the CITY OF WARWICK, by and	)	
through its Finance Director Brian M.	)	
Silva, in his Professional Capacity	)	
only,	)	
Defendant.	)	

JURY INSTRUCTIONS

I. GENERAL INSTRUCTIONS

Now that you have heard all the evidence and will soon hear 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 to the jury room so there is no need to write them down.

A. PROVINCE OF THE COURT AND JURY

It is your duty as jurors to follow the law 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 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 the witness[es] and the exhibits that have been received into evidence.

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.
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. 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 witnesses and the weight their testimony deserves. In deciding the facts of this case, you may have to decide whether or not to believe a witness's testimony. 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 testifies about;
2. the witness's memory;
3. the witness's manner while testifying;
4. the witness's interest in the outcome of the case and any bias or prejudice the witness may have; and

5. the reasonableness of the witness' testimony in light of all the evidence.

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

D. WITNESS – IMPEACHMENT – PRIOR STATEMENTS

In assessing the credibility of a witness, you may consider whether, on some prior occasion, the witness made statements that contradict the testimony he or she gave at the time of trial. If you conclude that a witness did, at some prior time, make statements that were materially different from what the witness said during this trial, you may take this into account in assessing the credibility of such witness, or determining the weight that you will give to such witness's testimony.

E. 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 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 this case, both direct and circumstantial.

In your consideration of the evidence in this case, you are allowed to make reasonable inferences from witness testimony and 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.

F. BURDEN OF PROOF: PREPONDERANCE OF THE EVIDENCE

Mr. Wheeler has the burden of proving each and every element of his claim by a preponderance of the evidence, which is another way of saying that he must prove them by the greater weight of the evidence. To put it another way, you must be satisfied that the evidence shows that what Mr. Wheeler is claiming is more probably true than not. In other words, if you were looking at opposite ends of a scale. Mr. Wheeler's evidence would have to make one end of the scale tip to his side. The Defendant has no obligation to disprove that which is asserted by Mr. Wheeler.

There is one exception to the applicable burden of proof in this case with respect to verbally reported allegations made under the Whistleblowers' Protection Act. I will explain that to you in the next section of these instructions.

II. CASE SPECIFIC INSTRUCTIONS

G. NATURE OF THE PLAINTIFF'S CLAIMS

The Plaintiff in this case, Jonathan Wheeler, alleges that the City of Warwick ("City") fired him because he made various complaints of misconduct, including that John Benoit, a co-worker, was taking home a city-owned vehicle. The Defendant denies Mr. Wheeler's allegations and claims that the Plaintiff was terminated not because of these reports, but for legitimate reasons including, but not limited to, insubordination and creating a hostile work environment.

H. RHODE ISLAND WHISTLEBLOWER'S PROTECTION ACT R.I.G.L. § 28-

50-1 & 28-50-3

The Plaintiff has asserted a claim under the Rhode Island Whistleblower's Protection Act. Mr. Wheeler alleges that the Defendant terminated him because he made reports about co-workers, alleging misconduct and corruption. The Whistleblower's Protection Act provides relief to an employee who is terminated because he reports or is about to report unlawful conduct to a public body or to their employer. To recover on this claim, the Plaintiff must establish by a preponderance of the evidence:

First, that he reported or threatened to report, either verbally or in writing to the City of Warwick or his supervisor a violation of a federal, state, or local law or regulation which the Plaintiff knew or reasonably believed had occurred or was about to occur

Second, that he was discharged, threatened, or otherwise discriminated against by the Defendant; and

Third, that his report caused his discharge.

If, with regard to the first element, you find that the Plaintiff made a verbal report to his employer or supervisor, the Plaintiff bears the burden of proving such an allegation by clear and convincing evidence. Clear and convincing evidence is an intermediate standard between the preponderance of the evidence standard and the beyond a reasonable doubt standard. Clear and convincing evidence is evidence that produces in your mind a firm belief or conviction that the allegations sought to

be proved by the evidence are true. Clear and convincing evidence involves a higher degree of persuasion than is necessary to meet the preponderance of the evidence standard. But it does not require proof beyond a reasonable doubt, the standard applied in criminal cases. For the Plaintiff to meet this heightened standard, you must be satisfied that what Mr. Wheeler is claiming is highly probable. But with respect to the second and third elements, the burden of proof is a preponderance of the evidence.

I. CAUSAL CONNECTION

A causal connection exists where the Plaintiff has established that Mr. Wheeler's reporting of alleged misconduct was a motivating factor in the adverse employment action. A causal connection may be established in part by a close temporal connection between the protected activity and the adverse employment action, however, causation cannot be established by a close temporal proximity alone.

J.. CONSIDER DAMAGES ONLY IF LIABILITY IS PROVEN

I will now instruct you on the law of damages. The mere fact that I am charging you on the law of damages does not indicate that I feel you should find in favor of Mr. Wheeler. 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 that the Defendant is liable.

You must consider the question of damages only if you find that Mr. Wheeler has proved his claim against the Defendant. If you do not find the Defendant liable, then no award of damages can be made.

Damages must be proven. The burden of proof as to the existence and extent of damages is on the Plaintiff. In other words, you may make an award for damages only to the extent that you find damages have been proved by a preponderance of the evidence. 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. Mr. Wheeler must prove all elements of his claim by a preponderance of evidence in order to be entitled to an award of damages.

K. DAMAGES

1. COMPENSATORY DAMAGES

Compensatory damages are composed of economic loss and mental suffering. To recover economic damages, Mr. Wheeler must prove out-of-pocket losses and other economic harm that he has experienced. Compensatory damages are defined as the amount of money that will compensate an injured party for the harm or loss sustained because of a defendant's conduct. Compensatory damages, then, is the amount of money that will put a plaintiff back, as closely as possible, in the position she was in before the injury was sustained. It is meant to restore a plaintiff back to a pre-injury state.

In order to recover compensatory damages, Mr. Wheeler must prove that the Defendant's conduct proximately caused his harm. If you find that the Defendant is

liable for retaliation, the next question is whether that conduct caused Mr. Wheeler to suffer an injury. An injury or damage is proximately caused by conduct whenever it appears from the evidence that the conduct 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 or reasonably probable consequence of that conduct.

You may award Mr. Wheeler the amount of wages, employment benefits, or other compensation he would have earned in his employment at the Warwick Police Department if he had not been terminated on February 11, 2016, minus the amount of earnings and benefits from other employment received by the Plaintiff. You may award compensatory damages for monetary loss the Plaintiff suffered, if any, and you may award compensatory damages for emotional pain and suffering, mental anguish, loss of enjoyment of life, inconvenience, and emotional injuries. It may include anxiety, embarrassment, or humiliation.

An award for pain and suffering must be fair and reasonable. It must be based on the evidence and not on speculation or conjecture. You are the sole judges of what, if anything, should be awarded for pain and suffering. There is no formula by which to compute damages for pain and suffering. If a plaintiff has a pre-existing condition that a defendant's conduct exacerbated, you may award damages for the making of that condition more painful or for aggravating it.

Any award of damages must be based on the evidence and what in your considered judgment constitutes fair, adequate, and just 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 on you. You may, however, consider them if you find them helpful.

2. MITIGATION

Any person who claims damages as a result of an alleged wrongful act on the part of another has a duty under the law to mitigate those damages. For purposes of this case, the duty to mitigate damages requires Mr. Wheeler to be reasonably diligent in seeking substantially equivalent employment to the position he held with the City of Warwick.

To prove that Mr. Wheeler failed to mitigate damages, the Defendant must prove by a preponderance of the evidence that:

- (1) Work comparable to the position Mr. Wheeler held with the City was available; and
- (2) Mr. Wheeler did not make reasonably diligent efforts to obtain it.

If, however, the Defendant shows that Mr. Wheeler did not make reasonable efforts to obtain work, then the Defendant does not need to prove that comparable work was available. If you find that the Defendant proved by a preponderance of the evidence that Mr. Wheeler failed to mitigate damages, then you should reduce the amount of his damages by the amount that could have been reasonably realized if he had taken advantage of an opportunity for substantially equivalent employment.

3. NOMINAL DAMAGES

If you find that Mr. Wheeler is entitled to a verdict because he has proved all the elements of his claim that I explained above, but do not find that he has proved actual damages, you may return a verdict for Mr. Wheeler in some nominal sum such as one dollar (\$1.00). You may not award Mr. Wheeler both compensatory *and* nominal damages. Nominal damages may be awarded only if you find that Mr. Wheeler suffered a violation but has not proved that he is entitled to compensatory damages.

III. FINAL PROCEDURAL INSTRUCTIONS

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, you must not allow prejudice, sympathy, or compassion to influence you as you deliberate. 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 about this case to anyone outside of the jury room by any means. You may not use any electronic device or media, such as a mobile 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, 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.

During your deliberations and in your consideration of the evidence, you should exercise reasonable and intelligent judgment.

I am designating juror #[X], [INSERT NAME], as the Foreperson of this jury. [Mr./Mrs./Ms. Last Name], 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 exhibits that have been admitted in this case. It may take us a few minutes to gather them up, but as soon as we do, they 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 the form and sign it. Once the verdict form is complete, you will inform the Court Security Officer.

[REVIEW VERDICT FORM]

If, during 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.