

INSTRUCTION NO. 1

Members of the Jury, the instructions I gave you at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions on the law that applies to this case. You must, of course, continue to follow all the instructions I gave you earlier, as well those I give you now.

The instructions I am about to give you now are in writing and will be available to you in writing in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all my instructions, whether given in writing or spoken from this bench, must be followed.

It is your duty as jurors to follow the law as stated in the instructions, and to apply the given rules of law to the facts as you find them to be from the evidence in this case.

You are not to single out 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 as stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict

upon any other view of the law other than that given in the instructions of the Court; just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in the case.

Nothing I say in the 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. You will determine the facts. During this trial I have occasionally asked questions of witnesses. Do not assume that because I asked questions I hold any opinion on the matters to which my questions related.

Justice through trial by jury must always depend on the willingness of each individual juror to seek the truth about the facts from the same evidence presented to all the jurors; and to arrive at a verdict by applying the same rules of law as given in the Court's instructions.

Statements and arguments of counsel are not evidence in the case. When the lawyers on both sides stipulate or agree on the existence of a fact, however, the Jury must accept the stipulation and regard that fact as proved. The evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may have called them and any documents,

photographs, or other items that are received by the Court, and all facts that may have been admitted or stipulated. Any evidence on which an objection was sustained by the Court – and any witness statement or tangible item that was stricken by the Court – must be entirely disregarded.

Anything you may have seen or heard outside this courtroom is not evidence, and it must be entirely disregarded.

INSTRUCTION NO. 2

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you all here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Third, if you need to communicate with me during your deliberations, you may send a note to me, through the court security officer, that is signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should never tell anyone – including me – how your votes stand numerically.

Fourth, your verdict must be based solely on the evidence and on the law that I have given to you in my instructions. The verdict must be unanimous. Again, nothing I have said or done is intended to suggest what your verdict should be – that is entirely for you to decide.

INSTRUCTION NO. 3

This case should be considered and decided by you as a series of disputes between persons of equal worth. All persons stand equal before the law and are to be treated as equals.

INSTRUCTION NO. 4

You are the sole judges of the credibility of the witnesses and the weight and value to be given to their testimony. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, you may consider the witness's intelligence; the opportunity the witness had to see or hear the things about which he or she testified; the witness's memory; any motives a witness may have for testifying a certain way; the manner and demeanor of the witness while testifying; whether the witness said something different at an earlier time; the general reasonableness or unreasonableness of the testimony; and the extent to which the testimony is consistent with any other evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent

misrecollection, lapse of memory, or an intentional falsehood – and that may depend on whether it has to do with an important fact or only a small detail.

You have heard evidence that plaintiff Keith Moore, and witnesses Robert Humphrey and Jeffrey Kronnick, have been convicted of crimes. You may use that evidence only to help you decide whether to believe Moore, Humphrey, and Kronnick, and how much weight to give their testimony.

INSTRUCTION NO. 5

A witness may be discredited or impeached by contradictory evidence or by evidence that at some other time the witness has said or done something, or has failed to say or do something that is inconsistent with the witness's present testimony.

If you believe any witness has been impeached and thus discredited, you may give the testimony of that witness whatever credibility, if any, you think it deserves.

If a witness is shown knowingly to have testified falsely about any material matter, you have a right to distrust that witness's other testimony and you may reject all the testimony of that witness or give it whatever credibility you think it deserves.

An act or omission is "knowingly" done, if the act is done voluntarily or intentionally, and not because of mistake or accident or other innocent reason.

INSTRUCTION NO. 6

In considering the evidence in this case you are not required to set aside your common sense or common knowledge. You have the right to consider all the evidence in light of your own observations and experiences in the affairs of life.

INSTRUCTION NO. 7

In these instructions you are told that one or the other party has the burden to prove certain facts. The burden of proving a fact is placed upon the party whose claim or defense depends upon that fact. The party who has the burden of proving a fact must prove it by a preponderance of the evidence. To prove something by the “preponderance of the evidence” is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable.

If, on any issue of fact in the case, the evidence is equally balanced, you cannot find that fact has been proved. The preponderance of the evidence is not necessarily established by the greater number of witnesses or exhibits a party has presented.

You may have heard of the term “proof beyond a reasonable doubt.” This is a stricter standard, which applies in criminal cases. It does not apply in civil cases like this one. You should, therefore, put it out of your minds.

INSTRUCTION NO. 8

You must consider each of Moore's claims against each defendant guard separately. Each defendant is entitled to have the case decided solely about the claim or claims brought against that guard and based only on the evidence which applies to that party.

INSTRUCTION NO. 9

Your verdict must be for Keith Moore and against James Hill, Lantz Goforth, Richard Lee, or Charles Poole on Moore's claim of excessive use of force if Moore has proved all the following elements:

First, the guard hit, kneed, punched, kicked, or sprayed Moore with MK-4 OC spray; and

Second, the force used was excessive and applied maliciously and sadistically for the purpose of causing harm, not in a good faith effort to achieve a legitimate purpose; and

Third, as a direct result, Moore was injured.

In deciding on the second element, you must consider several things:

- the need for the application of force;
- the relationship between the need and the amount of force that was used;
- the extent of the injury inflicted;
- the extent of the threat to the safety of staff and inmates, as reasonably perceived by the responsible officials on the basis of the facts known to them;
- any efforts made to temper the severity of a forceful response; and

- whether the force was used to achieve a legitimate purpose, or was used maliciously and sadistically to cause harm.

“Maliciously” means intentionally injuring another without just cause or reason. “Sadistically” means engaging in extreme or excessive cruelty or delighting in cruelty.

If Moore has not proved all three elements about a particular defendant guard, then your verdict must be for that guard.

INSTRUCTION NO. 10

Your verdict must be for Moore and against James Hill, Lantz Goforth, Richard Lee, or Charles Poole on Moore's failure to protect claim if Moore has proved all the following elements:

First, Moore was struck, hit, kicked, or sprayed by one or more of the defendant guards;

Second, a particular guard was aware of the substantial risk of an attack;

Third, the particular guard, with deliberate indifference to Moore's need to be protected from such an attack, failed to protect Moore; and

Fourth, as a direct result, Moore was injured.

Deliberate indifference can be established only if a particular guard had actual knowledge of a substantial risk that Moore faced from another guard and if the particular guard disregarded that risk by intentionally refusing or intentionally failing to take reasonable measures to deal with the problem. Negligence or inadvertence does not constitute deliberate indifference.

If Moore has not proved all four elements about a particular guard, then your verdict must be for that guard.

INSTRUCTION NO. 11

If you find in favor of Moore, then you must award him an amount of money that will fairly compensate him for any damages you find he sustained and is reasonably certain to sustain in the future as a direct result of a particular defendant guard's conduct that violated Moore's constitutional rights. You should consider the following elements of damages:

- the physical pain and mental emotional suffering Moore has experienced and is reasonably certain to experience in the future;
- the nature and extent of the injury; and
- whether the injury is temporary or permanent.

Remember, throughout your deliberations you must not engage in any speculation, guess, or conjecture, and you must not award any damages under this Instruction by way of punishment or through sympathy.

INSTRUCTION NO. 12

If you find in favor of Moore under Instruction No. 11, but you find that his damages have no monetary value, then you must return a verdict for Moore in the nominal amount of \$1.00.

INSTRUCTION NO. 13

In addition to the damages mentioned in other instructions, the law permits the jury under certain circumstances to award punitive damages.

If you find in favor of Moore under Instructions No. 9 or 10, and if it has been proved that the conduct of any of the defendant guards as submitted in Instructions No. 9 or 10 was malicious or with reckless or callous indifference to Moore's rights, then you may, but are not required to, award Moore an additional amount as punitive damages against that defendant. These damages have two purposes: punishing the defendant for engaging in this misconduct and deterring the defendant and others from engaging in misconduct in the future. You should presume that Moore has been made whole for his injuries by the damages awarded under Instruction No. 11.

If you decide to award punitive damages, you should consider the following in deciding the amount of punitive damages to award:

1. How reprehensible the guard's conduct was. In this regard, you may consider whether the harm suffered by Moore was physical, whether there was violence, deceit, intentional malice, or reckless disregard for human health or safety.

2. How much harm the guard's wrongful conduct caused Moore and could cause Moore in the future.

3. What amount of punitive damages, in addition to the other damages already awarded, is needed, considering the guard's financial condition, to punish the guard for his or her wrongful conduct toward Moore, and to deter the guard and others from similar wrongful conduct in the future.

"Malicious" means intentionally injuring another without just cause or reason.

The amount of any punitive damages award should bear a reasonable relationship to the harm caused to Moore.

You may assess punitive damages against one or more of the defendants or you may refuse to assess punitive damages.

INSTRUCTION NO. 14

The verdict forms are simply the written notice of your decisions. See the attached questions.

You will take the verdict forms to the Jury room, and when each of you has agreed on the answers, your foreperson will fill in the forms for each question that you are called upon to answer to reflect your unanimous decision, sign and date it, and then advise the court security officer that you are ready to return to the Courtroom.

I add the caution that nothing said in the instructions – nothing in the form of the verdict forms prepared for your convenience – is or was intended to suggest or convey in any way or manner any intimation as to what answers I think you should find. How you choose to answer the verdict form shall be the sole and exclusive responsibility of you, the Jury.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by the court security officer, signed by your foreperson, or by one or more members of the Jury. No member of the Jury should ever attempt to communicate with the Court by any means other than a signed writing; and the Court will never communicate with any member of

the Jury on any subject touching the merits of the case, other than in writing, or orally here in open Court.

You will note from the oath about to be taken by the court security officer to act as bailiff that he, and all other persons, are forbidden to communicate in any way or manner with any member of the Jury on any subject touching the merits of the case. Bear in mind also that you are never to reveal to any person, not even to the Court, how the Jury stands, numerically or otherwise, on the issues presented to you unless or until you reach a unanimous verdict.

Court security officer, do you solemnly swear to keep this Jury together in the jury room, and not to permit any person to speak to or communicate with them, concerning this case, nor to do so yourself unless by order of the Court or to ask whether they have agreed on a verdict, and to return them into the Courtroom when they have so agreed, or when otherwise ordered by the Court, so help you God?