

## INSTRUCTION NO. 1

Members of the Jury, the instructions I gave you at the beginning of the trial and during the trial are still in effect. Now I'm going to give you some additional instructions.

You have to follow all of my instructions – the ones I gave you earlier, as well as those I give you now. Do not single out some instructions and ignore others. They're all important. This is true even though I am not going to repeat some of the instructions I gave you before and during the trial.

You will have copies of the instructions I am about to give you now in the jury room. This does not mean they are more important than my earlier instructions. Remember, you have to follow all instructions, no matter when I give them, whether or not you have written copies.

## INSTRUCTION NO. 2

There are rules you must follow when you go to the jury room to deliberate and return with your verdict:

*First*, you must select a 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 this without going against what you believe to be the truth, because all jurors have to agree on the verdict.

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

Do not be afraid to change your mind if the discussion persuades you that you should. But do not come to a decision just because other jurors think it is right, or just to reach a verdict.

Remember you are not for or against a party. You are judges—judges of the facts. Your only job is to study the evidence and decide what is true.

*Third*, if you need to communicate with me during your deliberations, send me a note signed by one or more of you. Give the note to the court security officer; and I will answer you as soon as I can, either in writing or here in court. But while you are deliberating, do not tell anyone—including me—how many jurors are voting for any side.

*Fourth*, your verdicts must be based solely on the evidence and on the law given in my instructions. Nothing I have said or done was meant to suggest what I think your verdicts should be. Those verdicts are entirely up to you.

### INSTRUCTION NO. 3

I haven't intended to suggest what I think your verdicts should be by any of my rulings or comments during the trial. During the trial, I have asked some witnesses questions. Do not try to guess my opinion about any issues in the case based on the questions I asked.

## INSTRUCTION NO. 4

In deciding what the facts are, you will have to decide what testimony you believe and what testimony you don't 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, consider several things: the witnesses' intelligence; their opportunity to have seen or heard the things they testify about; their memories; any motives they may have for testifying a certain way; their demeanor while testifying; whether they said something different at an earlier time; the general reasonableness of their testimony; and the extent to which their testimony is consistent with other evidence that you believe.

A caution about considering a witness's demeanor while testifying. Many folks are nervous just being in court. And there are bold liars and shy truth tellers. Use your common sense and be

discerning when judging someone's credibility based on their demeanor on the stand.

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 will have to decide whether any contradiction is an innocent misrecollection, a lapse of memory, or a lie. That may depend on whether the contradiction has to do with an important fact or only a small detail.

## INSTRUCTION NO. 5

In considering the evidence in this case, you aren't required to set aside your common sense or common knowledge. Consider the evidence in light of your own observations and experiences in the affairs of life. Use your common sense.

## INSTRUCTION NO. 6

You will have to decide whether certain facts have been proved by the greater weight of the evidence. A fact has been proved if you find that it is more likely true than not true. You decide that by considering all the evidence, and then deciding what evidence is more believable. The greater weight of the evidence is not established by who has the most witnesses or exhibits. You are, instead, looking for the truth in the whole case.

You have probably heard the phrase “proof beyond a reasonable doubt.” That is a stricter standard than “more likely true than not true.” The standard of “proof beyond a reasonable doubt” applies in criminal cases, but not in this civil case; so put it out of your minds.

## INSTRUCTION NO. 6A

Maxwell/G-Doffee, Clark, and Cooksey have stipulated – that is, they have agreed – to certain facts. No party has to prove these facts. They are established as the truth for purposes of this trial. I’m going to read you the list of agreed facts now.

- On 22 April 2013, Robert Maxwell/G-Doffee was incarcerated. He was housed at the Tucker Unit of the Arkansas Department of Correction.
- On that date, Richard Clark and Roderick Cooksey were employed at the Tucker Unit of the Arkansas Department of Correction.
- On that date, Clark and Cooksey were escorting Maxwell/G-Doffee from his cell to the shower after his cell was flooded.
- On that date, Maxwell/G-Doffee received a disciplinary violation from Cooksey for spitting in Cooksey’s face, failing to obey orders, and failing to keep his person or quarters within regulations.

## INSTRUCTION NO. 7 – Excessive Force - Clark

Your verdict must be for Maxwell/G-Doffee and against Clark on Maxwell/G-Doffee's excessive force claim against Clark if all the following elements have been proved:

*First*, Clark pepper sprayed, struck, hit, or kissed Maxwell/G-Doffee, or touched him in a sexually explicit manner;

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

*Third*, as a direct result, Maxwell/G-Doffee was injured.

In determining whether the force was excessive, you must consider:

- 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; and

- whether the force was used to achieve a legitimate purpose or maliciously and sadistically for the purpose of causing harm.

“Maliciously” means intentionally injuring another without just cause or reason.

“Sadistically” means engaging in extreme or excessive cruelty or delighting in cruelty.

If any of the three elements has not been proved, then your verdict must be for Defendant Clark on this claim.

## INSTRUCTION NO. 8 – Retaliatory Verbal Threat - Clark

Your verdict must be for Maxwell/G-Doffee and against Clark on Maxwell/G-Doffee’s retaliatory verbal threat claim against Clark if all the following elements have been proved:

*First*, Maxwell/G-Doffee had filed one or more complaints or grievances through the prison’s grievance process;

*Second*, Clark verbally threatened Maxwell/G-Doffee;

*Third*, Clark made the verbal threat in retaliation for Maxwell/G-Doffee’s using the grievance process; and

*Fourth*, Clark’s verbal threat would discourage a person of ordinary firmness from using the grievance process.

If any of the four elements has not been proved, then your verdict must be for Clark on this claim.

## INSTRUCTION NO. 9 – Excessive Force - Cooksey

Your verdict must be for Maxwell/G-Doffee and against Cooksey on Maxwell/G-Doffee's excessive force claim against Cooksey if all the following elements have been proved:

*First*, Cooksey pepper sprayed Maxwell/G-Doffee;

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

*Third*, as a direct result, Maxwell/G-Doffee was injured.

In determining whether the force was excessive, you must consider:

- 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; and
- whether the force was used to achieve a legitimate purpose or maliciously and sadistically for the purpose of causing harm.

“Maliciously” means intentionally injuring another without just cause or reason.

“Sadistically” means engaging in extreme or excessive cruelty or delighting in cruelty.

If any of the three elements has not been proved, then your verdict must be for Defendant Cooksey on this claim.

**INSTRUCTION NO. 10 – Failure to Protect - Cooksey**

Your verdict must be for Maxwell/G-Doffee and against Cooksey on Maxwell/G-Doffee’s failure to protect claim if all the following elements have been proved:

*First*, Defendant Clark used excessive force against Maxwell/G-Doffee by pepper spraying, striking, hitting, or kissing Maxwell/G-Doffee, or by touching him in a sexually explicit manner;

*Second*, Defendant Cooksey was aware of the substantial risk of the excessive force;

*Third*, Cooksey, with deliberate indifference to Maxwell/G-Doffee’s need to be protected from the excessive force, failed to protect Maxwell/G-Doffee; and

*Fourth*, as a direct result, Maxwell/G-Doffee was injured.

“Deliberate indifference” can be established only if Cooksey actually knew of a substantial risk that Maxwell/ G-Doffee faced from Clark and if Cooksey 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 any of the four elements has not been proved, then your verdict must be for Defendant Cooksey on this claim.

## **INSTRUCTION NO. 11 – Retaliatory Verbal Threat - Cooksey**

Your verdict must be for Maxwell/G-Doffee and against Cooksey on Maxwell/G-Doffee’s retaliatory verbal threat claim against Cooksey if all the following elements have been proved:

*First*, Maxwell/G-Doffee had filed one or more complaints or grievances through the prison’s grievance process;

*Second*, Cooksey verbally threatened Maxwell/G-Doffee;

*Third*, Cooksey made the verbal threat in retaliation for Maxwell/G-Doffee’s using the grievance process; and

*Fourth*, Cooksey’s verbal threat would discourage a person of ordinary firmness from using the grievance process.

If any of the four elements has not been proved, then your verdict must be for Cooksey on this claim.

## INSTRUCTION NO. 12

If you find in favor of Maxwell/G-Doffee, then you must award him an amount of money that will fairly compensate him for any damages you find he sustained as a direct result of Clark's or Cooksey's conduct as submitted in Instructions 7-11. You should consider the following elements of damages:

*First:* Any physical pain and mental or emotional suffering Maxwell/G-Doffee has experienced and is reasonably certain to experience in the future; and

*Second:* The nature and extent of any injury, whether that injury is temporary or permanent;

[*Third:* The reasonable value of the medical (hospital, nursing, and similar) care and supplies reasonably needed by and actually provided to Maxwell/G-Doffee (and reasonably certain to be needed and provided in the future); and]

[*Fourth*: The reasonable value of the working time Maxwell/G-Doffee has lost and the reasonable value of the earning capacity he is reasonably certain to lose in the future because of his diminished ability to work.]

Whether any of these elements of damage has been proved by the evidence is for you to decide. Remember, throughout your deliberations you must not engage in speculation, guesswork, or conjecture. And you must not award any damages under this Instruction by way of punishment or through sympathy.

### INSTRUCTION NO. 13

If you find in favor of Maxwell/G-Doffee on one or more of his claims, but you find that his damages have no monetary value, then you must award Maxwell/G-Doffee \$1.00 in nominal damages.

## INSTRUCTION NO. 14

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 Maxwell/G-Doffee under Instructions 7, 8, 9, 10, or 11, and if it has been proved that Clark's or Cooksey's conduct as submitted in Instructions 7, 8, 9, 10, or 11 was malicious or recklessly indifferent to Maxwell/ G-Doffee's rights, then you may, but are not required to, award Maxwell/G-Doffee an additional amount of money as punitive damages against defendant Clark or defendant Cooksey. These damages have two purposes: punishing the defendant for engaging in this misconduct and discouraging him and others from engaging in similar misconduct in the future. You should presume that Maxwell/G-Doffee has been

made whole for any injuries by any damages awarded under Instructions 12 and 13.

If you decide to award punitive damages against one or both defendants, you should consider the following in deciding the amount:

*First:* How reprehensible the particular defendant's conduct was. Consider (1) whether the harm Maxwell/G-Doffee suffered was physical or economic or both; (2) whether there was violence, deceit, intentional malice, or reckless disregard for human health or safety; (3) whether the defendant's conduct that harmed Maxwell/G-Doffee also posed a risk of harm to others; and (4) whether there was any repetition of the wrongful conduct or past conduct of the sort that harmed Maxwell/G-Doffee.

*Second:* How much harm the defendant's wrongful conduct caused Maxwell/G-Doffee.

*Third:* In light of the defendant's financial condition, what amount of punitive damages, in addition to the other damages already awarded, is needed to punish him for his wrongful conduct toward Maxwell/G-Doffee and to discourage the defendant and others from similar wrongful conduct in the future.

The amount of any punitive damages award must bear a reasonable relationship to the harm caused to Maxwell/G-Doffee.

## INSTRUCTION NO. 15

The fact that I've instructed you on damages is not intended to suggest what I think your liability verdict should be. I've given instructions on damages, as I do in all cases, for your guidance in the event you find for Maxwell/G-Doffee on liability. But the question of damages is entirely distinct and different from the question of liability. Do not consider damages until you have first considered and decided whether Cooksey or Clark violated Maxwell/G-Doffee's rights.

## INSTRUCTION NO. 16

The verdict forms are simply the written notice of your decisions. I'm going to go over them with you now. Each of you will have a copy at the back of your set of final jury instructions.

You will take these verdict forms to the jury room. When each of you has agreed on the verdicts, your foreperson will fill in the forms to reflect your unanimous decisions, sign and date them, 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 – and nothing in the verdict forms – is intended to suggest what answers I think you should give. How you choose to complete the verdict forms is solely and exclusively your responsibility.

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 from communicating 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 must never reveal to any person, not even to the Court, how the Jury stands, numerically or otherwise, on the issue 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?