

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Hobart P. Drake, Jr.) C/A No.: 6:09-908-JFA
)
)
Plaintiff,)
)
)
v.) COURT'S INSTRUCTIONS TO THE JURY
)
)
Sergeant Scott Jones; Sgt. Brian Taylor;)
Officer Natasha Alston; Officer Harry Perez;)
John Does,)
)
)
Defendants.)
)

Duties of Jury to Find Facts & Follow Law

Members of the jury, now that you have heard all the evidence and the arguments of the lawyers, it is my duty to instruct you on the law which applies to this case.

These instructions will be in three parts: first, the instructions on general rules that define and control the jury's duties; second, the instructions that state the rules of law you must apply, that is, what the plaintiff must prove to make the case; and third, some rules for your deliberations.

It is your duty to find the facts from all the evidence in the case. To those facts you must apply the law as I give it to you. You are bound to accept the rules of law as I give them to you whether you agree with them or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices or sympathy. That means that you must decide the case solely on the evidence before you and according to the law. You will recall that you took an oath promising to do so at the beginning of the case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. And you must not read into these instructions or into anything I may have said or done any suggestion as to what verdict you should return - that is a matter entirely for you to decide.

Burden of Proof

At the beginning of the case, I told you that the plaintiff, Mr. Drake, has the burden of proving the case by a preponderance of the evidence. That means that the plaintiff has to produce evidence which, considered in the light of all the facts, leads you to believe that what the plaintiff claims is more likely true than not. To put it differently, if you were to put the plaintiff's and defendant's evidence on opposite sides of the scales, the plaintiff would have to make the scales tip slightly on that side. If the plaintiff fails to meet this burden, the verdict must be for the defendant.

Those of you who have sat on criminal cases will have heard of proof beyond a reasonable doubt. That is a stricter standard, that is, it requires more proof than a preponderance of evidence. The reasonable doubt standard does not apply to a civil case and you should therefore put it out of your mind.

Evidence

The evidence from which you are to decide what the facts are consists of:

- (1) the sworn testimony of witnesses, both on direct and cross-examination,
regardless of who called the witness; and
- (2) the exhibits which have been received into evidence.

What Is Not Evidence

In reaching your verdict, you may consider only the testimony and exhibits received into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

- (1) Opening statements, questions to witnesses, and closing arguments are not evidence.
- (2) Objections are not evidence.
- (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 the trial.

Direct and Circumstantial Evidence

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is, proof of a chain of facts from which you could find that another fact exists, even though it has not been proved directly. You are entitled to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

It is for you to decide whether a fact has been proved by circumstantial evidence. In making that decision, you must consider all the evidence in the light of reason, common sense, and experience.

Credibility of Witnesses

In deciding what the facts are, you must consider all the evidence. In doing this, you must decide which testimony to believe and which testimony not to believe. You are the sole judges of the credibility, or believability, of each witness. You must decide for yourselves whether to believe the testimony of any witness. You may believe all or any part or nothing of what a witness said while on the stand. In determining whether to believe any witness, you should apply the same tests of truthfulness which you apply in your own everyday affairs. In doing this, you may take into account a number of factors including the following:

- (1) Was the witness able to see, or hear, or know the things about which that witness testified?
- (2) How well was the witness able to recall and describe those things?
- (3) What was the witness's manner while testifying?
- (4) Did the witness have an interest in the outcome of this case or any bias or prejudice concerning any party or any matter involved in the case?
- (5) How reasonable was the witness's testimony considered in light of all the evidence in the case?
- (6) Was the witness's testimony contradicted by what that witness has said or done at another time, or by the testimony of other witnesses, or by other evidence?

In deciding whether or not to believe a witness, keep in mind that people sometimes forget things. You need to consider therefore whether a contradiction is an innocent lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an

important fact or with only a small detail.

These are some of the factors you may consider in deciding whether to believe testimony.

The weight of the evidence presented by each side does not necessarily depend on the number of witnesses testifying on one side or the other. You must consider all the evidence in the case, and you may decide that the testimony of a smaller number of witnesses on one side has greater weight than that of a larger number on the other.

All of these are matters for you to consider in finding the facts.

Separate Consideration of Each Defendant

Although there is more than one defendant in this action, it does not follow that if one is liable, all are liable. Each defendant is entitled to a fair consideration of that defendant's own defense, and is not to be prejudiced by the fact, if it should become a fact, that you find against another. Unless otherwise stated, all instructions given apply to the case against each defendant.

LIABILITY

Introduction to Liability

The plaintiff, Hobart P. Drake, Jr., contends that defendants, Sergeant Scott Jones, Sergeant Brian Taylor, Officer Natasha Alston, and Officer Harry Perez violated his federal constitutional rights by using excessive force against him on January 21, 2008 at the Leiber Correctional Institute.

Federal Claim — Section 1983 Excessive Force Claim

Plaintiff's claim is brought under federal law, known generally as "Section 1983" seeking to recover damages for a deprivation of his federal constitutional rights. Specifically, the plaintiff alleges that while the defendants was acting under color of the authority of the State of South Carolina, the defendants subjected the plaintiff to the deprivation of rights and privileges secured and protected by the Constitution of the United States.

Under the U.S. Constitution, every incarcerated person has the right not to be subjected to excessive force as I will explain it to you below.

In order to prove his claim, the burden is on the plaintiff to establish by a preponderance of the evidence each of the following elements:

First: That at the time of the events complained of, the defendants were acting under the color of the authority of the State of South Carolina.

Whether the defendants committed the act(s) alleged by the plaintiff is a question of fact for you, the jury, to decide. I will instruct you in a moment on how you will decide that issue. For now, assuming that the defendants did commit those acts, I instruct you that because the defendants were officials of the South Carolina Department of Corrections at the time of the acts in question, he was acting under color of state law. In other words, the first statutory requirement is satisfied.

Second: That the defendants performed acts which operated to deprive the plaintiff of his federal constitutional rights, as defined and explained in these instructions, by using excessive force against the plaintiff.

Third: That the defendants' acts were a proximate cause of damages sustained by the plaintiff.

Defendants are being sued as individuals. Neither the State of South Carolina or the South Carolina Department of Corrections is a party to this lawsuit.

Excessive Force — Prison Setting

Plaintiff claims that he was subjected to excessive force by the defendants on January 21, 2008. I instruct you that every prison inmate has a right not to be subjected to excessive force or unreasonable force by prison officials. In order to prove that the force used was excessive or unreasonable under the circumstances, the plaintiff, Mr. Drake, must prove that the defendants applied the force “maliciously or sadistically” for the very purpose of causing harm and not in a good faith effort to maintain or restore discipline.

To act “maliciously” means to intentionally do a wrongful act without just cause or excuse, with an intent to inflict injury or under circumstances that show an evil intent. In deciding whether this element has been proved, I remind you that you must give correctional officials wide ranging deference in the adoption and execution of policies and practices that in the exercise of reasonable judgment are needed to preserve internal order and discipline and to maintain internal security in the correctional facility.

I instruct you that several factors should be considered by you in determining whether the defendants acted maliciously or sadistically. These factors are:

- (1) the need for application of force;
- (2) the relationship between that need and the amount of force used;
- (3) the threat “reasonably perceived by the responsible officials;” and
- (4) any efforts made to temper the severity of a forceful response.

Negligent or careless conduct is not sufficient to form the basis of a claim under Section 1983.

Use of Chemical Munition

The plaintiff's claim for excessive force is based in part on the plaintiff's allegation that the defendants' use of chemical munitions or pepper spray, violated his constitutional right against the use of excessive or unreasonable force by prison officials. It is a violation of the Constitution for prison officials to use mace, tear gas, or other chemical agents, including pepper spray, in quantities greater than necessary or for the sole purpose of infliction of pain. However, the use of pepper spray by itself is not necessarily unconstitutional. It is up to you, the jury, to examine the totality of the circumstances and to decide whether the pepper spray was used maliciously or sadistically.

Proximate Cause

As to the plaintiff's asserted claim, the plaintiff must prove that the defendants' acts were a proximate cause of the damages sustained by the plaintiff. A proximate cause is the efficient, or direct, cause—the thing which brings about the damage complained of. In other words, the law provides that there can be no liability unless there is some affirmative link between the acts of the defendants and the harm suffered.

D E F E N S E S

Defenses

In response to these allegations, the defendants have denied the material allegations of the complaint against them. This general denial places the burden on the plaintiff to come forward with evidence to prove the material allegations of his complaint.

D A M A G E S

Transition to Damages

If you should find in accordance with these instructions that the plaintiff has failed to establish the essential elements of his cause of action by a preponderance of the evidence, then your verdict should be for the defendants.

If, on the other hand, you find the plaintiff has established the essential elements of his cause of action by a preponderance of the evidence, your verdict should be for the plaintiff and you should next consider the question of damages.

Damages — Two Types

There are two types of damages to which a plaintiff may be entitled in an action of this sort: (1) actual, and (2) punitive. Actual damages are intended to compensate a person for that which he has suffered or lost as a result of another's wrong. Punitive damages are intended to punish the wrongdoer for some extraordinary misconduct and to serve as a warning to the defendants and to others not to engage in such conduct.

Damages — Personal Injury — Elements

Damages are intended to compensate a party for that which he has suffered or lost as a result of another's wrongful act or omission. If you should find that the plaintiff is entitled to a verdict, then, in arriving at the amount of your award you should consider such:

- (1) pain,
- (2) suffering,
- (3) physical injury, and
- (4) permanent impairment or disability

as you might find the plaintiff has suffered or is reasonably certain to suffer in the future as a direct and proximate result of the defendants' wrongful acts. In assessing future damages you should consider such damage or injury as the plaintiff is reasonably certain to suffer in the future, as well as the nature and extent of his injuries and whether or not they are reasonably certain to be permanent.

Damages — Personal Injury — Elements Definitions

As used in these instructions, “pain” means an acute discomfort of mind or body, including mental or bodily suffering or distress, and the term “suffering” can be defined as the undergoing or enduring of pain or distress. Pain and suffering also includes the loss of the ability to enjoy life. “Permanent impairment or disability” means an impairment which substantially and permanently affects a person’s physical or mental well-being. “Permanent impairment or disability” does not mean helplessness or complete disability, but rather disability that is continuing as opposed to temporary, even though it may only be partial.

Damages — Personal Injury — Degree of Proof

A plaintiff need not prove the amount of his damages to a mathematical certainty. The fact that the exact amount of damages may be difficult to ascertain, or that they cannot be measured by a monetary standard, is no reason for denying an award of damages.

Damages — Personal Injury — Reasonableness

Although damages need not be established to a mathematical certainty, they must be reasonable. You are not to award speculative damages or damages for any injury or condition from which the plaintiff may have suffered or may now be suffering unless it has been established by a preponderance of the evidence that such injury was proximately caused by the defendants' conduct. Accordingly, if you should find that the plaintiff is entitled to a verdict, you may award him only such an amount of actual damages as will reasonably compensate him for such injuries and/or losses as he has sustained or is reasonably certain to sustain in the future as a direct and proximate result of the defendants' wrong.

Damages — Speculative

You are not permitted to award speculative damages. So, you are not to include in any verdict compensation for any prospective loss which, although possible, is not reasonably certain to occur in the future.

Punitive Damages – Section 1983 Cases

In addition to requesting actual damages, the plaintiff has also requested punitive damages. You may award punitive damages only if you have awarded the plaintiff actual damages.

Punitive damages are intended to punish the defendants for extreme or outrageous conduct, or to deter the defendants and others like him from committing such egregious conduct in the future. They are awarded for the benefit of society and in the public interest, not to compensate the plaintiff for damages actually sustained.

Punitive damages may not be awarded against a defendant if he was merely negligent in his conduct. Rather, these damages may be awarded against a defendant only if his conduct is shown to be malicious, motivated by evil motive or evil intent, or if it involved reckless or callous indifference to the plaintiff's constitutional rights. An act or failure to act is malicious if it is prompted by ill will or spite toward the plaintiff.

The plaintiff has the burden of proving, by a preponderance of the evidence, that the defendants acted maliciously, with evil motive or intent, or with reckless or callous indifference to the rights of the plaintiff. Even if the plaintiff meets this burden of proof, you, as a jury, have discretion to award or not to award punitive damages. Punitive damages are an extraordinary remedy, and the decision of whether to award them is completely within your discretion.

In making this decision, you should consider the underlying purposes of punitive damages. Remember, they are intended to punish a defendant for outrageous conduct or to deter him and others like him from repeating such conduct. Thus, in deciding whether to

award punitive damages, you should ask yourselves questions such as whether the defendants may be adequately punished by an award of actual damages only, or whether punitive damages are likely to deter the defendants or other persons from performing similar wrongful acts.

Whether or not to make an award of punitive damages and the amount of those damages are matters exclusively within your discretion as the jury. When awarded, the amount of punitive damages must be fixed with calm discretion and sound reason, and must never be determined in amount because of any sympathy, bias, or prejudice.

In fixing the amount of punitive damages, you must consider numerous factors including:

- (1) the degree of reprehensibility of the defendants' conduct;
- (2) the relationship between the amount of punitive damages and any actual harm inflicted upon the plaintiff — Stated another way, these first two factors require that you ensure that the amount of punitive damages bears a reasonable relationship to the nature and extent of the wrongful conduct and the harm caused;
- (3) You should also consider whether the wrongful conduct conferred any profit on defendants — In making this determination, you may consider whether the penalty imposed should focus on depriving the defendants of the profits it may have derived from the wrongful conduct;
- (4) You may also consider awarding the plaintiff the costs of prosecuting his claim against the defendants;

(5) You must also consider the defendants' ability to pay the amount of punitive damages which are awarded. In making this determination, the defendants' wealth or lack of it is a relevant factor, and you would therefore award such amount of punitive damages as would punish the defendants but not cause them to suffer economic bankruptcy.

You should also consider the following factors which may overlap with the factors I have just discussed:

- (1) Defendants' degree of culpability;
- (2) The duration of the conduct;
- (3) Defendants' awareness or concealment of the conduct;
- (4) The existence of similar past conduct;
- (5) Likelihood the award will deter the defendants or others like him from similar conduct;
- (6) Whether the award is reasonably related to the harm likely to result from such conduct; and
- (7) Defendants' ability to pay.

While you are required to consider each of the factors I have addressed in deciding whether to award punitive damages and the amount of such damages, you are not limited to these factors. You may also determine that some apply and that some do not. You may not, however, allow your determination of the amount or propriety of punitive damages to be influenced by personal bias, or sympathy.

As with all other issues in this case, any decision you reach on punitive damages must be unanimous.

Damages — Cautionary Instruction

The fact that I have instructed you on the proper measure of damages should not be considered as an indication of any view of mine as to which party is entitled to your verdict in this case. Instructions as to the measure of damages are given only for your guidance, in the event that you should find in favor of the plaintiff on the question of liability, by a preponderance of evidence and in accord with the other instructions.

CLOSING

Duty to Deliberate

When you retire to the jury room, you should first elect one from among you to serve as your foreperson. The foreperson you select will preside over the deliberations and speak for the jury here in court.

After electing your foreperson, you should discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence 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.

Consideration of Evidence

Your verdict must be based solely on the evidence and on the law as I have given it to you in these instructions. However, nothing that I have said or done is intended to suggest what your verdict should be — that is entirely for you to decide.

The arguments and statements of the attorneys are not evidence. If you remember the facts differently from the way the attorneys have stated them, you should base your decision on what you remember.

Return of Verdict

After you have reached a unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign and date it and advise the marshal (or bailiff) outside your door that you are ready to return to the courtroom.

Communicating with the Court

If it becomes necessary during your deliberations to communicate with me, you may send a note through the marshal (or bailiff), signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing; and I will communicate with any member of the jury on anything concerning the case only in writing, or orally here in open court. Remember that you are not to tell anyone — including me — how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Hobart P. Drake, Jr.)	C/A No.: 6:09-908-JFA
)	
Plaintiff,)	
)	
v.)	VERDICT
)	
Sergeant Scott Jones; Sergeant Brian Taylor;)	
Officer Natasha Alston; Officer Harry Perez;)	
)	
Defendants.)	
)	

I. We, the jury, unanimously find for the plaintiff, Hobart P. Drake, Jr., actual damages in the sum of _____ (\$_____) dollars against the following defendant(s):

- Sergeant Scott Jones
- Sergeant Brian Taylor
- Officer Natasha Alston
- Officer Harry Perez

Foreperson

Date: _____

(Note, the following verdict is to be used only if the jury has found for the plaintiff using verdict I above)

II. We, the jury, unanimously find for the plaintiff, Hobart P. Drake, Jr., against the defendants indicated below, punitive damages as indicated:

- Sergeant Scott Jones — punitive damages in the sum of _____
(\$_____) dollars.
- Sergeant Brian Taylor — punitive damages in the sum of _____
(\$_____) dollars.
- Officer Natasha Alston — punitive damages in the sum of _____
(\$_____) dollars.
- Officer Harry Perez — punitive damages in the sum of _____
(\$_____) dollars.

Foreperson

Date: _____

III. We, the jury, unanimously find for the defendants.

Foreperson

Date: _____