

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JOSE SOTO,

Plaintiff,

v.

[DRAFT] POST-TRIAL
JURY INSTRUCTIONS

KELLY RICKEY, MATTHEW GRANT,
RICK DONOVAN, WILLIAM GEE,
JASON KROCKER, and WILLIAM LEFEVRE,

14-cv-514-jdp

Defendants.

Members of the Jury:

Now that you have heard the evidence and the arguments, I will give you the instructions that will govern your deliberations in the jury room. It is my job to decide what rules of law apply to the case and to explain those rules to you.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear, or public opinion to influence you.

The verdict must represent the considered judgment of each juror. Your verdict, whether for or against any party, must be unanimous. You should make every

reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of other jurors or for the purpose of returning a unanimous verdict. All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts.

Your deliberations will be secret. You will never have to explain your verdict to anyone.

If you have formed any idea that I have an opinion about how the case should be decided, disregard that idea. It is your job, not mine, to decide the facts of this case.

The case will be submitted to you in the form of a special verdict on liability and damages, consisting of 4 questions. In answering the questions, you should consider only the evidence that has been received at this trial. Do not concern yourselves with whether your answers will be favorable to one side or another, or with what the final result of this lawsuit may be.

Burden of Proof

As I told you at the beginning of the trial, plaintiff has the burden of proving that each defendant violated his Eighth Amendment rights by a preponderance of the evidence. A “preponderance of the evidence” means that when you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true that the defendant violated plaintiff’s rights.

All Litigants Equal Before the Law

In this case, plaintiff is a prisoner. All parties are equal before the law. A prisoner is entitled to the same fair consideration that you would give any individual person.

Answers Not Based on Guesswork

If, after you have discussed the testimony and all other evidence that bears upon a particular question, you find that the evidence is so uncertain or inadequate that you have to guess what the answer should be, then the party with the burden of proof as to that question has not met the required burden of proof. Your answers are not to be based on guesswork or speculation. They are to be based upon credible evidence from which you can find the existence of the facts that the party must prove to satisfy the burden of proof on the question under consideration.

Absence of Evidence

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

Multiple Claims; Multiple Defendants

You must give separate consideration to each claim and each party in this case. Although there are six defendants, Kelly Rickey, Matthew Grant, Rick Donovan, William Gee, Jason Krockner, and William LeFevre, it does not follow that if one is liable, any of the others is also liable.

LIABILITY

I will now instruct you more specifically on the law you must apply to this case. To succeed on his claim of excessive use of force against each defendant, plaintiff must prove each of the following things by a preponderance of the evidence:

1. Defendant intentionally used force on plaintiff.
2. Defendant used force for the purpose of harming plaintiff, and not in a good faith effort to maintain or restore security or discipline.
3. Defendant's conduct harmed plaintiff. Plaintiff does not need to prove that he suffered a serious injury. If defendant's use of force caused pain to plaintiff, that is sufficient harm, even if plaintiff did not require medical attention or did not have long lasting injuries.

If you find that, as to any individual defendant, plaintiff has proved each of these things by a preponderance of the evidence, then you must find for plaintiff as to that defendant, and go on to consider the question of damages.

If, on the other hand, you find that, as to any individual defendant, plaintiff has failed to prove any one of these elements by a preponderance of the evidence, then you must find for that defendant, and you will not consider the question of damages.

In deciding whether plaintiff has proved that the defendant used force for the purpose of harming plaintiff, you should consider all of the circumstances. When considering all of the circumstances, among the factors you may consider are the need to use force, the relationship between the need to use force and the amount of force used, the extent of plaintiff's injury, whether defendant reasonably believed there was a threat to the safety of staff or prisoners, any efforts made by defendant to limit the amount of force used, and whether defendant was acting pursuant to a policy or practice of the prison that in the reasonable judgment of prison officials was needed to preserve order, discipline and security.

An officer is entitled to use some force if a prisoner disobeys a valid command. You may still consider, however, whether the amount of force used was excessive.

Requirement of Personal Involvement

Plaintiff must prove by a preponderance of the evidence that each defendant was personally involved in the conduct that plaintiff complains about. You may not hold a defendant liable for what other employees did or did not do.

Evidence of Statutes, Administrative Rules, Regulations, and Policies

You have heard evidence about whether defendants' conduct complied with policies or procedures. You may consider this evidence in your deliberations. But remember that the issues are whether each defendant used excessive force on plaintiff, not whether a policy or procedure might have been complied with.

DAMAGES

Prefatory Instruction

If you find that plaintiff has proved any of his claims against any defendants, then you must determine what amount of damages, if any, plaintiff is entitled to recover. If you find that plaintiff has failed to prove all of his claims, then you will not consider the damages questions.

Compensatory

If you find in favor of plaintiff, then you must determine the amount of money that will fairly compensate plaintiff for any injury that you find he sustained and is reasonably certain to sustain in the future as a direct result of defendants' excessive force. These are called "compensatory damages."

Plaintiff must prove his damages by a preponderance of the evidence. Your award must be based on evidence and not speculation or guesswork. This does not mean, however, that compensatory damages are restricted to the actual loss of money; they include both the physical and mental aspects of injury, even if they are not easy to measure.

You should consider the follow types of compensatory damages, and no others:

1. The reasonable value of medical care and supplies that plaintiff reasonably needed and actually received as well as the present value of the care and supplies that he is reasonably certain to need and receive in the future.
2. The physical and mental/emotional pain and suffering and disability/loss of a normal life that plaintiff has experienced and is reasonably certain to experience in the future. No evidence of the dollar value of physical or mental/emotional pain and suffering or disability/loss of a normal life has been or needs to be introduced. There is no exact standard for setting the damages to be awarded on account of pain and suffering. You are to determine an amount that will fairly compensate the plaintiff for the injury he has sustained.

If you find in favor of plaintiff but find that the plaintiff has failed to prove compensatory damages, you must return a verdict for plaintiff in the amount of one dollar (\$1.00).

Punitive Damages

If you find for plaintiff, you may, but are not required to, assess punitive damages against defendants. The purposes of punitive damages are to punish a defendant for his conduct and to serve as an example or warning to defendant and others not to engage in similar conduct in the future.

Plaintiff must prove by a preponderance of the evidence that punitive damages should be assessed against defendants. You may assess punitive damages only if you find that at least one of the defendant's conduct was malicious or in reckless disregard of plaintiff's rights. Conduct is malicious if it is accompanied by ill will or spite, or is done for the purpose of injuring plaintiff. Conduct is in reckless disregard of plaintiff's rights if, under the circumstances, it reflects complete indifference to plaintiff's safety or rights.

If you find that punitive damages are appropriate, then you must use sound reason in setting the amount of those damages. Punitive damages, if any, should be in an amount sufficient to fulfill the purposes that I have described to you, but should not reflect bias, prejudice, or sympathy toward any party. In determining the amount of any punitive damages, you should consider the following factors:

- the reprehensibility of defendants' conduct;
- the impact of defendants' conduct on plaintiff;
- the relationship between plaintiff and defendants;
- the likelihood that defendants would repeat the conduct if an award of punitive damages is not made; and

- the relationship of any award of punitive damages to the amount of actual harm plaintiff suffered.

Taxes

You must not consider the impact of taxes on your award of damages.

INSTRUCTIONS AFTER CLOSING ARGUMENTS

Selection of Presiding Juror; Communication with the Judge; Verdict

When you go to the jury room to begin considering the evidence in this case you should first select one of the members of the jury to act as your presiding juror. This person will help to guide your discussions in the jury room.

You are free to deliberate in any way you decide, or select whomever you like as the presiding juror. When thinking about who should be presiding juror, you may want to consider the role that a presiding juror usually plays. He or she serves as the chairperson during the deliberations and has the responsibility of ensuring that all jurors who desire to speak have a chance to do so before any vote. The presiding juror should guide the discussion and encourage all jurors to participate. I encourage you at all times to keep an open mind if you ever disagree or come to conclusions that are different from those of your fellow jurors. Listening carefully and thinking about the other juror's point of view may help you understand that juror's position better or give you a better way to explain why you think your position is correct.

Once you are in the jury room, if you need to communicate with me, the presiding juror will send a written message to me. However, do not tell me how you stand as to your verdict.

As I have mentioned before, the decision you reach must be unanimous; you must all agree.

Suggestions for Conducting Deliberations:

To help you determine the facts, you may want to consider discussing one question at a time, and use my instructions to the jury as a guide to determine whether there is sufficient evidence to prove all the necessary legal elements for each claim or defense. I also suggest that any public votes on a verdict be delayed until everyone can have a chance to say what they think without worrying what others on the panel might think of their opinion. I also suggest that you assign separate tasks, such as note taking, time keeping, and recording votes to more than one person to help break up the workload during your deliberations. I encourage you at all times to keep an open mind if you ever disagree or come to conclusions that are different from those of your fellow jurors. Listening carefully and thinking about the other juror's point of view may help you understand that juror's position better or give you a better way to explain why you think your position is correct.