

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

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THOMAS J. GOOD,

Plaintiff,

v.

NATHAN ADAMS, GREG CISNEROS,  
and CITY OF BELOIT,

Defendants.

POSTTRIAL JURY  
INSTRUCTIONS  
[8/23/19 DRAFT]

18-cv-461-jdp

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### Introduction

Now that you have heard the evidence and the arguments, I will take about 15 minutes to 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.

During this trial, I have asked questions of witnesses. Do not assume that because I asked questions I hold any opinions on the matters I asked about, or on what the outcome of the case should be. 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 on a special verdict form consisting of 6 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.

Note that certain questions in the verdict are to be answered only if you answer a preceding question in a certain manner. Read the introductory portion of each question very carefully before you answer it. Do not answer questions needlessly.

### **Burden of proof**

When I say a particular party must prove something by “a preponderance of the evidence,” it 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.

### **Considering the evidence**

All parties are equal before the law. The fact that a witness is a law enforcement officer, or a private citizen, does not automatically make that witness’s testimony more or less credible.

You must base your verdict on the evidence presented in the courtroom. But you should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

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.

*SHOW VERDICT FORM*

**LIABILITY INSTRUCTIONS**

**Question 1: Fourth Amendment warrantless blood draw**

A police-ordered blood draw of a person is a search within the meaning of the Fourth Amendment of the United States Constitution. The Fourth Amendment prohibits “unreasonable” government searches. If law enforcement performs a search without first obtaining a search warrant from a judge, the search is presumptively unreasonable. But there are exceptions to the warrant requirement. Two exceptions are relevant to this case: consent and exigent circumstances.

A search is reasonable if the subject consents. The subject may limit the scope of consent to a search, and the search must remain within the scope of the consent

given. Whether a subject consented and the scope of the consent given depends on what a typical reasonable person would have understood by the exchange between the officer and the subject.

The exigent circumstances exception allows a warrantless search if an emergency leaves police officers insufficient time to seek a warrant without undermining the usefulness of the search. Whether an exigency permitted law enforcement to conduct a search without a warrant depends on whether a reasonable police officer would have believed that there was a compelling need to act and no time to obtain a warrant under the totality of the circumstances.

In this case, Good contends that Adams violated his Fourth Amendment rights by ordering a phlebotomist to draw Good's blood without Adams first obtaining a search warrant. To succeed on his claim against Adams, Good must prove *either* of the following things by a preponderance of the evidence:

**1. Good never consented to a blood draw at Beloit Memorial Hospital.**

**OR**

**2. At the time Good revoked his consent to a blood draw at Beloit Memorial Hospital, defendants had time to obtain a warrant for the blood draw without undermining the usefulness of their search.**

If you find that Good has proved either of these things by a preponderance of the evidence, then you must answer "YES" to Question 1. If, on the other hand, you

find that Good has failed to prove either of these things by a preponderance of the evidence, then you must answer “NO” to Question 1.

If you answer “YES” to Question 1, then you should proceed to answer Questions 2, 3, 4, and 5. If you answer “NO” to Question 1, you must not answer any more questions.

### **Question 2: Failure to intervene**

Good contends that defendant Cisneros violated his Fourth Amendment rights by failing to intervene to prevent the forced blood draw ordered by defendant Adams. To succeed on his failure to intervene claim against Cisneros, Good must prove each of the follow things by a preponderance of the evidence:

- 1. Cisneros knew that Adams was about to order an unconstitutional blood draw.**
- 2. Cisneros had a realistic opportunity to do something to prevent the blood draw from occurring.**
- 3. Cisneros failed to take reasonable steps to prevent the blood draw from occurring.**
- 4. Cisneros’s failure to act caused Good to suffer harm.**

If you find that Good has proved each of these 4 things by a preponderance of the evidence, then you must answer “YES” to Question 2. If, on the other hand, you

find that Good has failed to prove either of these things by a preponderance of the evidence, then you must answer “NO” to Question 2.

If you answered “YES” to Question 1, then you should proceed to answer Questions 3, 4, and 5, regardless how you answered Question 2.

### **Question 3: City of Beloit’s liability**

If you find that plaintiff Good has proved a constitutional violation by a preponderance of the evidence, you must consider whether the City of Beloit is also liable to Good. The City of Beloit is not responsible simply because it employed defendants Adams and Cisneros.

To succeed on this claim, Good must prove each of the following things by a preponderance of the evidence:

**1. At the time Good’s blood was drawn, the City of Beloit had a policy of drawing a person’s blood without consent and without a warrant, regardless whether there was time to obtain a warrant, if the person gave, and then revoked, consent.**

**2. The policy caused the unconstitutional draw of Good’s blood.**

[“Policy” means a decision or policy statement made by Police Chief Norm Jacobs, who was a policy-making official for the City of Beloit. This includes Chief

Jacobs's approval of a decision or policy made by someone else, even if that person is not a policy-making official.]]<sup>1</sup>

## DAMAGES INSTRUCTIONS

### General

If you decided for defendants on the question of liability (that is, if you answered "NO" to Question 1), then you should not consider the question of damages. If you decide for plaintiff Good on the question of liability (that is, if you answer "YES" to Question 1), then you must determine what amount of damages, if any, Good is entitled to recover. Good must prove his damages by a preponderance of the evidence.

Your verdict must not be based on guesswork. But Good need not prove the amount of his damages with mathematical precision. In determining the amount of damages, you must base your answer on evidence that reasonably supports your determination of damages under all of the circumstances of the case. You should award as damages the amount of money that you find fairly and reasonably compensates Good for his injuries.

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<sup>1</sup> The court may include this instruction, depending on the parties' positions as to whether Chief Jacobs was a policy maker for the City of Beloit.



Do not measure damages by what the parties ask for in their arguments. Their opinions as to what damages should be awarded should not influence you unless their opinions are supported by the evidence. It is your job to determine the amount of the damages sustained from the evidence you have seen and heard. Examine that evidence carefully and impartially. Do not add to the damage award or subtract anything from it because of sympathy to one side or because of hostility to one side. Do not make any deductions because of a doubt in your minds about the liability of any of the parties.

Do not consider the impact of taxes, if any, in your consideration of damages.

#### **Question 4: Compensatory damages**

If you find for Good on Question 1, then you must determine in Question 4 what amount of money, if any, will fairly compensate him for any injury that you find he sustained, or is reasonably certain to sustain in the future, as a direct result of defendant's or defendants' conduct.

As noted above, your award must be based on evidence and not speculation or guesswork. This does not mean, however, that 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 following types of compensatory damages, and no others: Good's out-of-pocket losses [including the legal fees expended to suppress the

evidence of the unconstitutional blood draw in Good's criminal prosecution]<sup>2</sup>, physical, mental, and emotional pain and suffering that Good has experienced or is reasonably certain to experience in the future. No evidence of the dollar value of these injuries has been or needs to be introduced. There is no exact standard for setting the damages to be awarded on account of these factors. You are to determine an amount that will fairly compensate Good for the injury he sustained.

If you return a verdict for Good, but Good has failed to prove compensatory damages, then you must award nominal damages of \$1.00.

#### **Questions 5 and 6: Punitive damages**

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

You may assess punitive damages only if Good has proven that defendants' conduct was malicious or in reckless disregard of Good's rights. Conduct is malicious if it is accompanied by ill will or spite, or is done for the purpose of injuring Good. Conduct is in reckless disregard of Good's rights if, under the circumstances, defendants simply did not care about Good's rights.

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<sup>2</sup> The court might include this instruction, depending on the parties' positions as to whether this type of damages is available after *Martin v. Marinez*, No. 17-2667, 2019 WL 3773761, at \*2 (7th Cir. Aug. 12, 2019).

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 Good;
- the relationship between Good and defendants;
- the likelihood that defendants would repeat the conduct if an award of punitive damages is not made;
- the relationship of any award of punitive damages to the amount of actual harm Good suffered.

## INSTRUCTIONS AFTER CLOSING ARGUMENTS

I have just a couple of final instructions about conducting deliberations.

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.

You should 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 formal 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.

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.