

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

DEYONTAE CORNAIL STINSON,

Plaintiff,

v.

EDWARD ROTHBAUER,

Defendant.

(draft 8/15/22)
POST-TRIAL JURY
INSTRUCTIONS

20-cv-762-jdp

Introduction

Now that you have heard the evidence, 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 case will be submitted to you on a special verdict form with multiple questions. 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.

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.

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.

Considering the evidence

All parties are equal before the law. The fact that a witness is a prisoner, or a prison official, 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.

During this trial, I have asked questions of witnesses. Do not assume that because I asked questions that 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.

Burden of proof

When I say that 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.

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.

INSTRUCTIONS ON THE CLAIMS AND DAMAGES

Stinson's claims arise under the Eighth Amendment to the United States Constitution.

Stinson contends that Rothbauer violated Stinson's Eighth Amendment rights by allowing Stinson to leave a physical therapy session with burns from an electrical stimulation or "TENS unit" treatment without informing Stinson about his burns or treating them.

SHOW THE VERDICT FORM

The verdict form contains three questions, but you will not necessarily have to answer every question. After each question, there are instructions about what question you should answer next. Do not answer questions needlessly.

Question 1: Eighth Amendment failure to provide adequate medical care

Question 1 asks whether defendant Rothbauer violated Stinson's rights under the Eighth Amendment to the United States Constitution. To succeed on his Eighth Amendment claim, Stinson must prove each of the following four things, which we call elements, by a preponderance of the evidence:

1. **Stinson had a serious medical need.** A serious medical need is a condition that a doctor says requires treatment or something so obvious that even someone who is not a doctor would recognize that it requires treatment.
2. **Rothbauer was aware that Stinson had a serious medical need or strongly suspected facts showing a strong likelihood that Stinson has a serious medical need but refused to confirm whether these facts were true.** You may infer this from the fact that the need was obvious.
3. **Rothbauer consciously failed to take reasonable measures to provide treatment for the serious medical need.** Stinson does not have to show that Rothbauer ignored him or provided no care. You may infer that the Rothbauer consciously failed to take reasonable measures if Rothbauer's action or failure to act was such a substantial departure from accepted professional judgment, practice or standards that it showed a complete abandonment of medical judgment. In deciding whether Rothbauer acted reasonably, you may consider the seriousness of Stinson's medical need, how difficult it would have been for Rothbauer to provide treatment, and whether Rothbauer had legitimate reasons related to safety or security for failing to provide treatment
4. **As a result of Rothbauer's action or inaction, Stinson was harmed.** Stinson may prove that Rothbauer harmed him with evidence that his

condition worsened as a result of Rothbauer's conduct or that he suffered prolonged, unnecessary pain.

If you find that Stinson has proved each of these elements by a preponderance of the evidence for a particular defendant, then you must answer "YES."

If, on the other hand, you find that Stinson has failed to prove any one of these elements against Rothbauer by a preponderance of the evidence, then you must answer "NO."

Question 2: Compensatory damages

If you decide that Rothbauer did not violate Stinson's Eighth Amendment rights, then you should not consider the damages questions. If you decide that Rothbauer violated Stinson's rights, then you must determine what amount of damages, if any, Stinson is entitled to recover. Stinson bears the burden to prove his damages by a preponderance of the evidence.

Your verdict must not be based on guesswork. But Stinson 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 Stinson for his injuries.

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.

Damages are not 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: The physical, mental, and emotional pain and suffering, disability, and/or loss of a normal life that Stinson has experienced. 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 Stinson for the injury he sustained.

Question 3: Punitive damages

If you find for Stinson on his Eighth Amendment claim, you may, but are not required to, assess punitive damages against Rothbauer. 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 against Rothbauer only if Stinson has proved that Rothbauer's conduct was malicious or in reckless disregard of Stinson's rights.

Conduct is malicious if it is accompanied by ill will or spite, or is done for the purpose of injuring Stinson. Conduct is in reckless disregard of Stinson's rights if, under the circumstances, Rothbauer simply did not care about Stinson's 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 Rothbauer's conduct;
- the impact of Rothbauer's conduct on Stinson;
- the relationship between Stinson and Rothbauer;
- the likelihood that Rothbauer 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 Stinson suffered.

You will now hear the parties' closing arguments. When they are finished, I will have a few instructions about conducting your deliberations.

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.