

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO. 3:95-CV-741-H

MITCHELL D. CUNNINGHAM

PLAINTIFF

V.

TERESA SPELLMAN et al.

DEFENDANTS

JURY INSTRUCTIONS

Members of the Jury, now that you have heard all of the evidence and the argument of the attorneys, it is my duty to give you instructions as to the law applicable in this case.

It is your duty as jurors to follow the law as stated in the instructions, and to apply that law to the facts you find from the evidence. You should not single out one instruction alone as stating the law; rather, you should consider the instructions as a whole. Nor should you be concerned with the wisdom of any rule of law stated by the Court. You must apply the law given in these instructions whether you agree with it or not.

It is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in the case. The term “evidence” includes the sworn testimony of the witnesses and the exhibits admitted in the record. It is your own interpretation and recollection of the evidence that controls. The statements, objections, and arguments made by the lawyers are not evidence. What the lawyers have said to you is not binding upon you. You are permitted to draw reasonable inferences, deductions, and conclusions from the testimony and exhibits which you feel are justified in the light of your own common sense.

In saying that you must consider all the evidence, I do not mean to suggest that you must necessarily accept all of the evidence as true or accurate. You are the sole judges of the credibility or believability of each witness and the weight to be given to the testimony of each witness. In determining the credibility of any witness, you may properly consider the demeanor of the witness while testifying, the witness's frankness or lack of it, and his or her interest in the outcome of the case, if any.

Along with other evidence, you have heard expert testimony. The rules of evidence permit a witness who by education and experience has become expert in any art, science, or profession to state an opinion and the reasons for such an opinion. You should consider this evidence and give it such weight as you, in the application of your common sense, may think it deserves. If you should conclude that the reasons given by an expert witness in support of an opinion are not sound, or that the opinion is outweighed by other credible evidence in the case, then you may reject the opinion of such expert in whole or in part.

You have heard the testimony of police officers. The testimony of a police officer is not entitled to special consideration. You should not give the officer's testimony greater or lesser weight merely because she is a police officer. You should treat the testimony of a police officer the same as that of any other witness, and you should weigh and balance this testimony along with all the other evidence.

The weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or nonexistence of any fact. You should be guided in your deliberations by the quality and credibility of the evidence you have heard.

In this case, Plaintiff must persuade you that his claim is more likely true than not. If Plaintiff fails to persuade you on every essential element of any specific claim, then you should

find for Defendant on that claim. You must consider each Defendant and each claim separately from the others.

INSTRUCTION NO. 1

The Plaintiff claims that the Defendants, by using excessive force in making an arrest, deprived the Plaintiff of his Fourth Amendment constitutional rights. Every person has a constitutional right not to be subjected to unreasonable or excessive force, even though the arrest is otherwise made in accordance with the law. On the other hand, a law enforcement officer has the right to use such force as is reasonably necessary under the circumstances to make a lawful arrest, to protect her own safety or the safety of others, or to overcome resistance to a lawful arrest.

Whether force is excessive is measured by the force a reasonable and prudent law enforcement officer would use under the circumstances. You should take into account the need for the application of force, the amount of force used, and the relationship between the need and the amount used. You should not judge the issue on the basis of hindsight, but rather from the perspective of a reasonable officer at the scene, taking into consideration the circumstances that the officers reasonably believed existed at the time of the incident. Your determination of reasonableness must allow for the fact that police officers may be forced to make split-second judgments about the amount of force necessary in a particular situation. Whether the officers' actions were reasonable is an objective question, and you should not take into consideration their underlying intent or motivation, be it good or evil.

The Plaintiff also claims that the Defendant Chappell failed to prevent Defendant Spellman from using excessive force on the Plaintiff, and *vice versa*. If you find that one of the Defendants was in a position and had the ability to stop the other from using excessive force, but did nothing to prevent such use, you may hold her liable for the other's use of that force.

The Plaintiff must prove each of the following:

- (1) that the Defendants, Terry Spellman and Shari Chappell, intentionally committed acts or omissions which deprived the Plaintiff of his Fourth Amendment right to be free of excessive force;
- (2) that the Defendants acted under color of law; and
- (3) that the Defendants's acts were the factual and legal cause of the deprivation of Plaintiff's rights.

As to the first element, an act is intentional if it is done knowingly, that is, if it is done voluntarily and deliberately and not because of mistake, accident, or negligence.

As to the second element, the parties have agreed that Defendants were acting under color of law at the time of this incident.

As to the third element, an act or failure to act is the factual and legal cause of the injury or damage if it appears from the evidence that the act or failure to act played a substantial part in bringing about or actually causing the injury or damage.

If you are satisfied from the evidence that one or more Defendant used excessive force when arresting Plaintiff, you should find for Plaintiff as to that Defendant or those Defendants. If you are not satisfied from the evidence that one or more Defendant used excessive force, then you should find for that Defendant or those Defendants.

Please enter your answer to this instruction on Interrogatory No. 1 of the Verdict Form.

INSTRUCTION NO. 2

If you answer “Yes” to any of the previous Interrogatories, then you must determine the amount of damages each Defendant has caused the Plaintiff by her actions. If you answer “No” to all of the previous Interrogatories, ignore this instruction and Instruction No. 3.

You may award compensatory damages only for any actual injuries or damages that were caused by the wrongful conduct of one of the Defendants. You should not award compensatory damages for speculative injuries, but only for those injuries that the Plaintiff actually suffered or is likely to suffer in the future.

The mere fact that a deprivation of a constitutional right occurred is an injury to the Plaintiff, even when no actual injury or damages flow from the deprivation. Therefore, if you find that the Plaintiff has suffered a deprivation by the use of excessive force but has suffered no actual injury or damages as a result of the Defendants’ conduct, you must award nominal damages.

Please record your verdict on Interrogatory No. 2 of the Verdict Form.

INSTRUCTION NO. 3

In addition to compensatory damages, the law permits the jury, under certain circumstances, to award punitive damages to an injured person. Punitive damages are awarded, in the discretion of the jury, to punish a defendant for extreme or outrageous conduct, or to deter or prevent a defendant and others like her from committing such conduct in the future. If you find that the Plaintiff is entitled to a verdict and that one or both Defendants acted maliciously, wantonly, or oppressively, then you may award punitive damages.

An act or failure to act is “maliciously” done, if prompted or accompanied by ill will, spite, or grudge, either toward the injured person individually, or toward all persons in one or more groups or categories of which the injured person is a member. An act or failure to act is “wantonly” done, if done in reckless or callous disregard of, or indifference to, the rights of one or more persons, including the Plaintiff. An act or failure to act is “oppressively” done, if done in a way or manner which injures, damages, or otherwise violates the rights of another person with unnecessary harshness or severity, as by misuse or abuse of authority or power, or by taking advantage of some weakness, disability, or misfortune of another person.

The decision whether or not to award punitive damages is exclusively within the discretion of the jury. If you are satisfied from the evidence that the Defendants acted maliciously, wantonly, or oppressively, then you may decide to award punitive damages, or you may decide not to award them.

If you decide to award punitive damages, you must determine the appropriate sum of money. In doing so, you should consider the degree to which the Defendants should be punished for wrongful conduct, and the degree to which such an award will deter the Defendants or persons like them from committing wrongful acts in the future. When awarded, punitive

damages must be fixed with calm discretion and sound reason, and must never be either awarded or fixed in amount because of any sympathy, bias, or prejudice with respect to any part of the case.

Please record you verdict on Interrogatory No. 3 of the Verdict Form.

Any verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with a view to reach an agreement, if you can do so without violence to individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Some of you have taken notes during the trial. An individual juror may use notes to refresh his or her memory of evidence presented at trial, but the notes should not be relied upon as definitive fact or as evidence. Juror notes have no greater weight than memory, and note-aided and nonaided memory are of equal significance. Jurors should not be influenced by another juror's notes.

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in Court. A verdict form has been prepared for your convenience. You will take this form to the jury room and, when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in, date, and sign the verdict upon which you unanimously agree with respect to each issue in this case; you will then return with your verdict to the courtroom.

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VERDICT FORM

INTERROGATORY NO. 1:

Please answer with regard to each Defendant. Did the Defendant use excessive force on the Plaintiff as defined in Instruction No. 1?

Chappell YES _____ NO _____

Spellman YES _____ NO _____

INTERROGATORY NO. 2:

If you answered YES to Interrogatory No. 1 as to either Defendant, you must determine the amount of damages as to that Defendant in the manner set forth in Instruction No. 2:

Chappell \$ _____

Spellman \$ _____

INTERROGATORY NO. 3:

If you answered YES to Interrogatory No. 1 as to either Defendant and you determine to award punitive damages as to that Defendant, determine the amount of damages as to that Defendant in the manner set forth in Instruction No. 3:

Chappell \$ _____

Spellman \$ _____

FOREPERSON

DATE: _____