

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

CIVIL ACTION NO. 3:96-CV-205-H

CLARENCE BREWER

PLAINTIFF

V.

DON HEGSTAD, 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. Do not single out one instruction alone as stating the law but 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, frankness or lack of it, and his or her interest in the outcome of the case, if any.

Along with the 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 the expert witness in support of an opinion are not sound, or that the opinion is outweighed by other credible evidence in the case, or by the opinion of some other expert, then you may reject the opinion of such expert in whole or in part.

You have heard the testimony of several 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 he is a police officer. You should treat the testimony of a police officer the same as that of any other witness. You should recall the officer's demeanor on the stand, his manner of testifying, and the substance of the testimony. 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 it is Plaintiff's responsibility to persuade you that his claim is more likely true than not. If Plaintiff fails to persuade you on every essential element of his claim, then you should find for the Defendant on that claim. The Plaintiff must prove his claim against each Defendant, separately. You may return a verdict against some, all or none of the Defendants.

INSTRUCTION NO. 1

Plaintiff claims he was subjected to excessive force by the Defendants when they arrested him. Every person has the constitutional right not to be subjected to unreasonable or excessive force while being arrested, even though the arrest is otherwise made in accordance with the law. On the other hand, a law enforcement officer making a lawful arrest has the right to use the amount of force that is reasonably necessary under the circumstances to complete the arrest. This may include physical force to subdue a person who is struggling with the officer. However, an officer may not use force beyond that which is reasonably necessary to make an arrest. Whether or not the force used in making an arrest was excessive is an issue for you to decide.

You should base your decision on the degree of force that a reasonable law enforcement officer would have applied under the same circumstances disclosed in this case. You also should keep in mind that the issue should not be judged 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, including time or space limitations, emergency conditions, or other circumstances that might have affected an officer's ability to react in a perfect manner.

If you are satisfied from the evidence that one or more Defendants used excessive force when arresting the Plaintiff, then you should find for the Plaintiff as to that Defendant or those Defendants.

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

Please enter your answers to Instruction No.1 on Interrogatory No. 1 of the Verdict Form.

INSTRUCTION NO. 2

If you should find for the Plaintiff as to any Defendant, then you must decide the issue of damages. You may award compensatory damages only for injuries that the Plaintiff proves from the evidence were caused by the wrongful conduct of one or more of the Defendants. The damages you award must be fair compensation for all of the Plaintiff's injuries, no more and no less. You should not award compensatory damages for speculative injuries, but only for those harms that the Plaintiff actually suffered.

You may award compensatory damages only for injuries you find were caused by any Defendant's use of excessive force in arresting Plaintiff after the end of the chase on April 16, 1995. You may not award damages for any of the injuries Plaintiff may have suffered during the chase or from conduct of persons other than these Defendants.

The mere fact that a constitutional deprivation 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 constitutional deprivation by use of excessive force but has suffered no actual injury or damages as a result of one of the Defendant's conduct, you must award nominal damages.

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

INSTRUCTION NO. 3

The law permits the jury, under certain circumstances, to award punitive damages to an injured person. The purpose of such punitive damages is to punish the wrongdoer for some extraordinary misconduct, or to deter a defendant or others like him or her from committing such conduct in the future.

If you find that the Plaintiff is entitled to a verdict and you further find that the acts or omissions of one of the Defendants were maliciously, or wantonly, or oppressively done, then you may add to the award of damages such amount as you shall unanimously agree to be proper, as punitive damages.

An act or a failure to act is “maliciously” done, if prompted or accompanied by ill will, or 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 a 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 injured person.

An act or a failure to act is “oppressively” done, if done in a way or manner which injures, or 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, or disability, or misfortune of another person.

Bear in mind that punitive damages are allowed only if you should first unanimously award the Plaintiff a verdict against a particular Defendant. Also bear in mind, not only the conditions under which and the purposes for which the law permits an award for punitive

damages to be made, but also the requirement of the law that the amount of such extraordinary damages, when awarded, 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 to the case.

If you are satisfied that any one of the Defendants using excessive force acted maliciously, wantonly, or oppressively as described in this instruction, then you may award punitive damages.

Please record your 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.

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 as defined in Instruction No. 1?

Hayden	NO _____	YES _____
Hegstad	NO _____	YES _____
Smith	NO _____	YES _____

If you answered "NO" as to all Defendants in Interrogatory No. 1, please sign the Verdict Form now and return to the courtroom. If you answered "YES" as to any Defendant in Interrogatory No. 1, please proceed to Interrogatory No. 2.

INTERROGATORY NO. 2:

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

Hayden \$ _____
Hegstad \$ _____
Smith \$ _____

INTERROGATORY NO. 3:

If you determine to award punitive damages against any Defendant, determine the amount of damages as to that Defendant in the manner set forth in Instruction No. 3:

Hayden \$ _____
Hegstad \$ _____
Smith \$ _____

FOREPERSON

Date: _____