

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO. 3:96-CV-436-H

TIMOTHY C. VALENZUELA

PLAINTIFF

V.

BRAD JEFFREY

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.

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 his claim, then you should find for the Defendant.

INSTRUCTION NO. 1

The Plaintiff claims that the Defendant, Brad Jeffrey, 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 his own safety or the safety of others, or to overcome resistance to a lawful arrest. The Plaintiff does not claim that his arrest was unlawful, and the lawfulness of the arrest is not at issue. Plaintiff had a duty to submit peacefully and without resistance to the lawful arrest.

To succeed on his claim, Plaintiff must prove each of the following:

- (1) that the Defendant, Brad Jeffrey, intentionally committed acts which deprived the Plaintiff of his Fourth Amendment right to be free of excessive force;
- (2) that the Defendant acted under color of law; and
- (3) that the Defendant'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 is the factual and legal cause of the injury or damage if it appears from the evidence that the act played a substantial part in bringing about or actually causing the injury or damage.

In this case, in order to find that Defendant used excessive force, you must be satisfied from the evidence that Defendant struck Plaintiff's head, that Plaintiff was handcuffed at the time of the strike, and that Plaintiff was not resisting arrest at the time of the strike. If you are not satisfied from the evidence that Defendant used excessive force, then you should find for Defendant.

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

INSTRUCTION NO. 2

If you answer “Yes” to Interrogatory No. 1, then you must determine the amount of damages that Defendant has caused Plaintiff by his actions. If you answer “No” to Interrogatory No. 1, 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 the Defendant. 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 damage flows 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 Defendant’s conduct, you should award nominal damages.

Please record you 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 him from committing such conduct in the future. If you answer “Yes” to Interrogatory No. 1 and you find that the Defendant acted maliciously, wantonly, or oppressively, then you may award punitive damages. If you answer “No” to Interrogatory No. 1, ignore this Instruction.

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 Defendant 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 Defendant should be punished

for wrongful conduct, and the degree to which such an award will deter the Defendant or persons like him 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 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:

Did the Defendant, Brad Jeffrey, use excessive force on the Plaintiff as defined in Instruction No. 1?

YES _____ NO _____

INTERROGATORY NO. 2:

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

\$ _____

INTERROGATORY NO. 3:

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

\$ _____

FOREPERSON

DATE: _____