

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

JOSEPH COLEMAN

PLAINTIFF

v.

CIVIL ACTION NO. 3:99CV-390-S

CHAD A. KESSINGER, et al.

DEFENDANTS

JURY INSTRUCTIONS

Ladies and Gentlemen:

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 are not to single out one instruction alone as stating the law. You must consider the instructions as a whole.

You are not to 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.

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.

This case should be considered and decided by you as an action between persons of equal standing in the community, and holding the same or similar stations in life. All persons stand equal before the law and are to be dealt with as equals in a court of justice.

The statements, objections, and arguments made by the lawyers are not evidence. What the lawyers have said to you is not binding upon you.

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.

Title 42, United States Code, Section 1983 makes it unlawful for any person or persons acting under color of state law to deprive another person of the rights protected by the Constitution of the United States.

Specifically, in this case, plaintiff, Joseph Coleman, claims that the defendants, Chad Kessinger, Donnie Masden, Paul Foster, Marcus Laytham, Lloyd Baker, and Brian Lucas, deprived him of his federal constitutional rights by using excessive force against him in arresting him.

In order to establish his claim under 42 U.S.C. § 1983, the plaintiff must prove with respect to any defendant and with respect to each of the following elements that it is more likely true than not true that:

First: The defendant deprived the plaintiff of his constitutional rights by using unreasonable force against the plaintiff during the course of arresting him;

Second: Such defendant was acting under color of state law when engaged in the use of unreasonable force; and

Third: The use of unreasonable force was the cause of damages sustained by the plaintiff.

If you find that any one of the above-stated elements has not been proved to be more likely true than not true with respect to a defendant, you must return a verdict for that defendant.

It is a violation of the protections of the United States Constitution for a citizen to be subjected to unreasonable force during the course of being arrested. This means that a police officer has the right to use only such force as is reasonably necessary to restrain a person in the officer's custody. In determining whether the force used in arresting the plaintiff was unreasonable, you must consider what degree of force a reasonable officer would have applied in making the arrest under the circumstances about which you have heard evidence 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 emergency conditions or other circumstances that might have affected an officer's ability to react in a perfect manner. Also, the plaintiff does not have to show that a defendant specifically intended to deprive him of his rights.

In this case, the parties have agreed that the law enforcement officers were “acting under color of state law” at the time of the incident in question, and you must therefore accept that fact as proven.

The plaintiff’s claims against each defendant should be considered separately. Although there are numerous defendants in this action, it does not follow from that fact alone that if one is liable, any or all of the others are liable. Each defendant is entitled to a fair consideration of his own defense, and is not to be prejudiced by the fact, if it should become a fact, that you find against any or all of the others.

Damages are caused by conduct if you believe from the evidence the conduct played a substantial part in bringing about or actually causing the damages claimed, and the damages were either a direct result of or a reasonably probable consequence of the conduct.

You will record your verdicts with respect to each defendant under Interrogatory No. 1 on the Verdict Form, sign and date the form. If you have found for the plaintiff in Interrogatory No. 1, you will continue to the next instruction. If you have found for all defendants in Interrogatory No. 1, you will end your deliberations and return to the courtroom.

If you have found for the plaintiff, Joseph Coleman, against any of the defendants, you will determine what sum or sums of money you believe will fairly and reasonably compensate him for injury, physical and/or mental, if any, you believe from the evidence he sustained as a direct result of the wrongful conduct of such defendant.

If you find the plaintiff was deprived of his constitutional rights but do not find that he sustained any actual damages, you must return a verdict for the plaintiff in some nominal sum such as one dollar. The award of a nominal sum would not preclude your awarding punitive damages in such amount as you deem appropriate, if you find that the award of punitive damages is justified under these instructions.

You will record your verdict under Interrogatory No. 2 on the Verdict Form, sign and date the form. Then you will continue to the next instruction.

If you have awarded the plaintiff a sum of money as actual or nominal damages, you will determine whether to award punitive damages.

The law permits you to award an injured person punitive damages in order to punish a wrongdoer for any extraordinary misconduct, and to serve as an example or warning to others not to engage in such conduct.

If you find from the evidence that the conduct of any specific defendant, which caused damage to the plaintiff, was maliciously, wantonly, or oppressively done, then you may make an additional award of damages in such amount as you unanimously agree to be proper as punitive damages.

“Maliciously” means prompted or accompanied by ill will, spite, or grudge.

“Wantonly” means done in reckless or callous disregard of or indifference to the rights of the plaintiff.

“Oppressively” means 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.

You will record your verdict under Interrogatory No. 3 on the Verdict Form, sign and date the form. You will then end your deliberations and return to the courtroom.

In determining the amount of any damages that you decide to award, whether actual, nominal or punitive, you should be guided by dispassionate common sense. You may use sound discretion in fixing an award of damages, drawing reasonable inferences from the facts in evidence. You may not award damages based on sympathy, speculation, or guesswork. On the other hand, the law does not require that the plaintiff prove the amount of his losses with mathematical precision, but only with as much definiteness and accuracy as circumstances permit.

Your 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 reaching 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 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 speak for you here in court.

Forms of verdict have been prepared for your convenience.

You will take these forms 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 forms which set forth 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.

VERDICT FORM

United States District Court	District Western District of Kentucky Docket No.
Case Title JOSEPH COLEMAN v. CHAD A. KESSINGER, et al	CIVIL ACTION NO. 3:99CV-390-S

INTERROGATORY NO. 1

Please answer with regard to each defendant. Do you find that it is more likely true than not that the defendant used excessive force, as defined in these instructions, in effecting the arrest of Joseph Coleman on the occasion about which you have heard evidence in this case?

Chad Kessinger	Yes _____	No _____
Donnie Masden	Yes _____	No _____
Paul Foster	Yes _____	No _____
Marcus Laytham	Yes _____	No _____
Lloyd Baker	Yes _____	No _____
Brian Lucas	Yes _____	No _____

Foreperson's Signature	Date
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VERDICT FORM

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INTERROGATORY NO. 2

If you answered “yes” as to any defendant in Interrogatory No. 1, you must award damages in at least a nominal amount, as you have been directed by these instructions. What sum or sums do you believe will fairly and reasonably compensate Joseph Coleman for the injury or injuries you believe from the evidence he sustained as a direct result of the wrongful conduct of the defendant or defendants?

Chad Kessinger	\$ _____
Donnie Masden	\$ _____
Paul Foster	\$ _____
Marcus Laytham	\$ _____
Lloyd Baker	\$ _____
Brian Lucas	\$ _____

Foreperson’s Signature	Date
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VERDICT FORM

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INTERROGATORY NO. 3

Having awarded at least nominal damages as to any defendant, do you find that punitive damages should be awarded in this case in order to punish a defendant or defendants for extraordinary misconduct, as that term has been defined in these instructions, on the occasion about which you have heard evidence?

Yes _____ No _____

Chad Kessinger	\$ _____
Donnie Masden	\$ _____
Paul Foster	\$ _____
Marcus Laytham	\$ _____
Lloyd Baker	\$ _____
Brian Lucas	\$ _____

Foreperson's Signature	Date
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