Judges Copy

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

FILED
JUL 18 2000
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

K. MICHAEL MARK,	*	
	*	
Plaintiff,	*	4-99-CV-90301
	*	
v.	*	
	*	
MAURICE HUFF, DAN GUTMAN, and LOWELL DAVIS,	*	
	*	
	*	JURY INSTRUCTIONS & Verdict
Defendants.	*	
	*	

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Pleading # 52

PRELIMINARY INSTRUCTION NO. 1
PRELIMINARY INSTRUCTIONS

Ladies and gentlemen: I will take a few moments now to give you some initial instructions about this case and about your duties as jurors. At the end of the trial I will give you further instructions. I may also give you instructions during the trial. Unless I specifically tell you otherwise, all such instructions – both those I give you now and those I give you later – are equally binding on you and must be followed. In considering these instructions, the order in which they are given is not important.

PRELIMINARY INSTRUCTION NO. 2
STATEMENT OF THE CASE

The following brief summary of the case is not to be considered evidence or proof of any facts or events in the case. It simply informs you of the factual disputes between the parties.

On March 2, 1999, the Plaintiff, Kim Michael Mark, was an inmate incarcerated at the Iowa State Penitentiary in Fort Madison, Iowa. The Plaintiff contends that Defendants Maurice Huff, Dan Gutman, and Lowell Davis used excessive force against him during an incident in violation of the Plaintiff's Eighth Amendment constitutional right to be free from cruel and unusual punishment. The Defendants, all correctional officers within the Iowa Department of Corrections, deny the Plaintiff's allegations of excessive force. Defendants assert that any force used against the Plaintiff was reasonable under the circumstances.

PRELIMINARY INSTRUCTION NO. 3
DUTY OF JURORS

It will be your duty to decide from the evidence what the facts are. You, and you alone, are the judges of the facts. You will hear the evidence, decide what the facts are and then apply those facts to the law which I will give you in these preliminary instructions, any instructions given during the trial, and in the final instructions at the conclusion of the case. You will then deliberate and reach your verdict. You are the sole judges of the facts; but you must follow the law as stated in my instructions, whether you agree with it or not.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the parties. Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I will give it to you.

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. An individual, such as Mr. Mark, and correctional officers such as Maurice Huff, Dan Gutman, and Lowell Davis, stand equal before the law, and are entitled to the same fair consideration by you.

You should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be.

PRELIMINARY INSTRUCTION NO. 4
ORDER OF TRIAL

Before I give you further instructions, let me tell you how this trial will proceed.

First, the plaintiff's attorney will make an opening statement. Next, the defendants' attorney will make an opening statement. An opening statement is not evidence but is simply a summary of what the attorney expects the evidence to be.

The plaintiff will then present evidence and witnesses and the defendants may cross-examine. Following the plaintiff's case, the defendants may present evidence and witnesses and the plaintiff may cross-examine. Following the defendants' case, the plaintiff may take further opportunity to present additional evidence.

After the presentation of evidence is completed, I will give you the final instructions on the law that you are to apply in reaching your verdict. The attorneys will make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence. I will then give you some final instructions on deliberations. After that you will retire to deliberate on your verdict.

PRELIMINARY INSTRUCTION NO. 5
DEFINITION OF EVIDENCE

You shall base your verdict only upon the evidence, these instructions, and other instructions that I may give you during trial.

"Evidence" is:

1. Testimony in person or testimony previously given, which includes depositions or videotaped depositions.
2. Exhibits admitted into evidence by the court.
3. Stipulations, which are agreements between the parties.
4. Any other matter admitted into evidence.

Evidence may be direct or circumstantial. The law makes no distinction between the weight to be given to direct and circumstantial evidence. The weight to be given any evidence is for you to decide.

The following are not evidence:

1. Statements, arguments, questions and comments by lawyers are not evidence.
2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustain an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
3. Testimony that I strike from the record, or tell you to disregard, is not evidence and must not be considered.
4. Anything you see or hear about this case outside the courtroom is not evidence.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I shall tell you when that occurs, and instruct you on the purposes for which the item can and cannot be used.

PRELIMINARY INSTRUCTION NO. 6
CREDIBILITY OF WITNESSES

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, only part of it, or none of it.

In deciding what testimony to believe, you may consider the witness' intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

You may hear testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinions on matters in that field and the reasons for their opinions. Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

Also, an expert witness may be asked to assume certain facts are true and to give an opinion based on that assumption. This is called a hypothetical question. If any facts assumed in the question are not proved by the evidence, you should decide if that omission affects the value of the expert's opinion.

PRELIMINARY INSTRUCTION NO. 7
STIPULATED FACTS

The plaintiff and defendant have agreed or "stipulated" to certain facts and have reduced these facts to a written agreement or stipulation. Any counsel may, throughout the trial, read to you all or a portion of the stipulated facts. You should treat these stipulated facts has having been proved.

PRELIMINARY INSTRUCTION NO. 8
DEPOSITIONS

Certain testimony from a deposition may be read into evidence or played from a videotape. A deposition is testimony taken under oath before the trial and preserved in writing or on videotape. Consider that testimony as if it had been given in court.

PRELIMINARY INSTRUCTION NO. 9
INTERROGATORIES

During this trial, you may hear the word "interrogatory." An interrogatory is a written question asked by one party of another, who must answer it under oath and in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

PRELIMINARY INSTRUCTION NO. 10
OBJECTIONS

From time to time during the trial I may be called upon to make rulings of law on objections or motions made by the lawyers. It is the duty of the lawyer for each party to object when another party offers testimony or other evidence that the lawyer believes is not properly admissible. You should not show prejudice against a lawyer or the party the lawyer represents because the lawyer has made objections. You should not infer or conclude from any ruling or other comment I may make that I have any opinions on the merits of the case favoring one side or the other. Also, if I sustain an objection to a question that goes unanswered by the witness, you should not draw any inferences or conclusions from the question itself.

PRELIMINARY INSTRUCTION NO. 11
BENCH CONFERENCES

During the trial it may be necessary for me to talk with the lawyers out of your hearing, either by having a bench conference here while you are present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

PRELIMINARY INSTRUCTION NO. 12
NOTE-TAKING

If you want to take notes during the trial, you may. However, it is difficult to take detailed notes and pay attention to what the witnesses are saying. If you do take notes, be sure that your note-taking does not interfere with listening to and considering all the evidence. Also, if you take notes, do not discuss them with anyone before you begin your deliberations. Do not take your notes with you at the end of the day. Be sure to leave them on your chair in the courtroom. The court attendant will safeguard the notes. No one will read them. The notes will remain confidential throughout the trial and will be destroyed at the conclusion of the trial.

If you choose not to take notes, remember it is your own individual responsibility to listen carefully to the evidence. You cannot give this responsibility to someone who is taking notes. We depend on the judgment of all members of the jury; you must all remember and consider the evidence in this case.

Whether or not you take notes, you should rely on your own memory regarding what was said. Your notes are not evidence. A juror's notes are not more reliable than the memory of another juror who chooses to consider the evidence carefully without taking notes.

You will notice that we do have an official court reporter making a record of the trial. However, we will have not typewritten transcripts of this record available for your use in reaching your verdict.

PRELIMINARY INSTRUCTION NO. 13
BURDEN OF PROOF

In these instructions you are told that your verdict depends on whether you find certain facts have been proved. Plaintiff Kim Michael Mark has the burden of proving his claims of excessive force by the greater weight of the evidence. To prove something by the greater weight of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable. If, on any issue in the case, the evidence is equally balanced, then you must conclude that issue has not been proved.

The "greater weight of the evidence" is not necessarily determined by the greater number of witnesses or exhibits a party has presented. The testimony of a single witness that produces a belief in the likelihood of truth is sufficient for proof of any fact and would justify a verdict in accordance with such testimony. This is so, even though a number of witnesses may have testified to the contrary, if after consideration of all of the evidence in the case, you hold a greater belief in the accuracy and reliability of that one witness.

You may have heard of the term "proof beyond a reasonable doubt." That is a stricter standard which applies in criminal cases. That standard does not apply in civil cases such as this. You should, therefore, put that standard out of your minds.

PRELIMINARY INSTRUCTION NO. 14
ADMONITION

To ensure fairness, you as jurors must obey the following rules:

First, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict.

Second, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

Third, when you are outside the courtroom, do not let anyone tell you anything about the case, or about anyone involved with it until the trial has ended and your verdict has been accepted by me. If someone should try to talk to you about the case during the trial, please report it to me.

Fourth, during the trial you should not talk with or speak to any of the parties, lawyers or witnesses involved in this case - you should not even pass the time of day with any of them. It is important not only that you do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the lawsuit sees you talking to a person from the other side - even if it is simply to pass the time of day - an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party or witness does not speak to you when you pass in the hall, ride the elevator or the like, remember it is because they are not supposed to talk or visit with you either.

Fifth, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it. In fact, until the trial is over I suggest that you avoid reading any newspapers or news journals at all, and avoid listening to any TV or radio newscasts at all. I do not know whether there might be any news reports of this case, but if there are you might inadvertently find yourself reading or listening to something before you could do anything about it. If you want, you can have your spouse or a friend clip out any stories and set them aside to give you after the trial is over. I can assure you, however, that by the time you have heard the evidence in this case, you will know more about the matter than anyone will learn through the news media.

Sixth, do not do any research or make any investigation about the case on your own.

Seventh, do not make up your mind during the trial about what the verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

FINAL INSTRUCTION NO. 15
EXPLANATORY

Members of the jury, the instructions I gave at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of, and during, trial are not repeated here.

The instructions I am about to give you now as well as those I gave you earlier are in writing and will be available to you in the jury room. Again, all instructions, whenever given and whether in writing or not, must be followed.

FINAL INSTRUCTION NO. 16
JUDGE'S OPINION

Neither in these instructions nor in any ruling, action or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdict should be.

During this trial I may have asked questions of witnesses or the lawyers in order to clarify certain matters. Do not assume that I hold any opinion on the matters to which my questions related.

FINAL INSTRUCTION NO. 17
EXCESSIVE USE OF FORCE

I will now instruct you on the elements of Mr. Mark's claim of excessive use of force against the Defendants.

Your verdict must be for plaintiff Mr. Mark and against defendants Maurice Huff, Dan Gutman, and Lowell Davis if all the following elements have been proved by the greater weight of the evidence:

- *First*, the defendants twisted the wrist of the plaintiff, and
- *Second*, the use of such force was excessive and applied maliciously and sadistically for the very purpose of causing harm, and not in a good faith effort to achieve a legitimate purpose; and
- *Third*, as a direct result, plaintiff was damaged. (Damages are explained in Final Instruction Nos. 18-20).

In determining whether the force was excessive, you must consider such factors as the need for the application of force, the relationship between the need and the amount of force that was used, the extent of the injury inflicted, and whether the force was used to achieve a legitimate purpose or wantonly for the very purpose of causing harm. "Maliciously" means intentionally injuring another without just cause or reason. "Sadistically" means engaging in extreme or excessive cruelty or delighting in cruelty.

If any of the above three elements has not been proved by the greater weight of the evidence, then your verdict must be for the defendants.

FINAL INSTRUCTION NO. 18
ACTUAL DAMAGES

If you find in favor of plaintiff, then you must award plaintiff such sum as you find from the greater weight of the evidence that will fairly and justly compensate plaintiff for any damages you find plaintiff sustained and is reasonably certain to sustain in the future as a direct result of the conduct of defendant as submitted in Preliminary Instruction No. 2 . You should consider the following elements of damages:

1. The physical pain and emotional suffering the plaintiff has experienced and is reasonably certain to experience in the future; the nature and extent of the injury, whether the injury is temporary or permanent; whether any resulting disability is partial or total; and any aggravation of a pre-existing condition;
2. The reasonable value of the medical (hospital, nursing, and similar) care and supplies reasonably needed by and actually provided to the plaintiff and reasonably certain to be needed and provided in the future;

Remember, throughout your deliberations you must not engage in any speculation, guess, or conjecture and you must not award any damages under this Instruction by way of punishment or through sympathy.

FINAL INSTRUCTION NO. 19
NOMINAL DAMAGES

If you find in favor of plaintiff under Final Instruction No. 17, but you find that plaintiff's damages have no monetary value, then you must return a verdict for plaintiff in the nominal amount of One Dollar ($1.00).

FINAL INSTRUCTION NO. 20
PUNITIVE DAMAGES

In addition to the damages mentioned in other instructions, the law permits the jury under certain circumstances to award the injured person punitive damages in order to punish the defendant for some extraordinary misconduct and to serve as an example or warning to others not to engage in such conduct.

If you find in favor of plaintiff Kim Michael Mark and against defendants Maurice Huff, Dan Gutman, or Lowell Davis, and if you find by the greater weight of the evidence the defendants' conduct was recklessly and callously indifferent to plaintiff's rights, then, in addition to any other damages to which you find plaintiff entitled, you may, but are not required to, award plaintiff an additional amount as punitive damages if you find it is appropriate to punish or deter the defendants from like conduct in the future. Whether to award plaintiff punitive damages and the amount of those damages are within your sound discretion.

You may assess punitive damages against any or all defendants or you may refuse to impose punitive damages. If punitive damages are assessed against more than one defendant, the amounts assessed against such defendants may be the same or they may be different. The following are factors which you may consider in awarding punitive damages:

1. The nature of the defendants' conduct;
2. The impact of the defendants' conduct on the plaintiff;
3. The relationship between the plaintiff and defendants;
4. The likelihood that the defendants would repeat the conduct if a punitive award is not made;
5. The defendants' financial condition; and
6. Any other circumstances shown by the evidence, including any circumstances of mitigation, that bear on the question of the size of any punitive award.

FINAL INSTRUCTION NO. 21
DUTY TO DELIBERATE

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

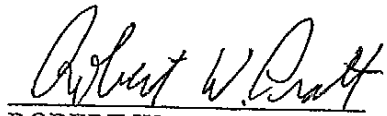
Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges - judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the marshal, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone - including me - how your votes stand numerically.

Fourth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be - that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decision that you reach in this case.

Dated this 17th day of July, 2000.



ROBERT W. PRATT
U.S. DISTRICT JUDGE

VERDICT FORM

K. Michael Mark v. Maurice Huff, Dan Gutman, and Lowell Davis

4-99-CV-90301

Question No. 1: Did any of the defendants use force against the plaintiff on March 2, 1999 as defined in Final Instruction No. 17 ? (Please put a checkmark in the appropriate space).

Maurice Huff:	Yes ____	No ✓
Dan Gutman:	Yes ____	No ✓
Lowell Davis:	Yes ____	No ✓

If your answer is "No" for all three defendants, **DO NOT ANSWER ANY MORE QUESTIONS. DO NOT AWARD ANY DAMAGES. PLEASE SIGN THE VERDICT FORM AT THE BOTTOM AND NOTIFY THE COURT SECURITY OFFICER YOU ARE THROUGH WITH YOUR DELIBERATIONS.**

If your answer is "Yes" to any defendant, please continue to Question No. 2 with respect to that or those defendant(s).

Question No. 2: Was the use of force by the defendant(s) against the plaintiff excessive and applied maliciously and sadistically for the very purpose of causing harm as defined in Final Instruction No. 17 . (Please put a checkmark in the appropriate space next to the name of the applicable defendant(s)).

Maurice Huff:	Yes ____	No ____
Dan Gutman:	Yes ____	No ____
Lowell Davis:	Yes ____	No ____

If your answer is "No" for all applicable defendants, **DO NOT ANSWER ANY MORE QUESTIONS. DO NOT AWARD ANY DAMAGES. PLEASE SIGN THE VERDICT FORM AT THE BOTTOM AND NOTIFY THE COURT SECURITY OFFICER YOU ARE THROUGH WITH YOUR DELIBERATIONS.**

If your answer is "Yes" for any applicable defendant, proceed to Question No. 3.

Question No. 3: What amount of actual damages as defined in Final Instruction No. 18 do you award plaintiff?

$ ____ physical pain and emotional suffering;

$ ____ medical care;

$ ____ TOTAL

Note: If you find plaintiff's damages have no monetary value as explained in Final Instruction No. 19, enter the nominal amount of one dollar ($1.00) next to the word TOTAL.

Note: As explained in Final Instruction No. 20, you may not award punitive damages against any defendant unless you have first found against that defendant and awarded plaintiff either actual or nominal damages. Do you find punitive damages should be awarded to plaintiff? Answer "Yes" or "No" with respect to each defendant and state the amount of punitive damages where indicated. If you answer "No" do not state an amount of punitive damages for that defendant.

Defendant Huff: ____ Amount: $ ____

Defendant Gutman: ____ Amount: $ ____

Defendant Davis: ____ Amount: $ ____

Sarah J. Andersen

Signature of Foreperson*

* To be signed only if your verdict is unanimous.