

FILED

JAN 26 2001

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

(22)

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

ROBIN HILL,)	
)	
Plaintiff,)	Civil No. 4-98-cv-30102
)	
vs.)	
)	
KEVIN McKINLEY, MICHAEL)	
MILLER, TIMOTHY SHOPPE, BARRY)	
THOMAS, JENNIFER HOLMES,)	INSTRUCTIONS TO THE JURY
MICHELLE BAHR and PAUL)	
FITZGERALD, Sheriff of Story)	
County, Iowa,)	
)	
Defendants.)	

MEMBERS OF THE JURY, THE COURT NOW GIVES YOU THE FOLLOWING
INSTRUCTIONS:

In this case, plaintiff Robin Hill was arrested and incarcerated in the Story County Jail in Nevada, Iowa, on August 17, 1996. She contends that while she was lawfully incarcerated, she was placed on a restraint board while she was nude and viewed by both male and female deputies. The facts and circumstances surrounding these events are in dispute.

Plaintiff claims defendants' actions in restraining her violated her right to privacy under federal and state law. Defendants deny their conduct violated any of plaintiff's rights.

PAGE TWO OF STATEMENT OF THE CASE

Do not consider this summary as proof of any claim.
Decide the facts from the evidence and apply the law which I will
now give you.

INSTRUCTION NO. 1

Members of the jury, the instructions I gave at the beginning of 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 the trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed. In considering the instructions, you will attach no importance or significance whatever to the order in which they are given.

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.

You must follow the instructions now given you regardless of your opinion of what the law ought to be. You need not be concerned with the wisdom of any rule of law.

PAGE TWO OF INSTRUCTION NO. 1

Finally, as judges of the facts your duty is to decide all fact questions. In doing so, do not be influenced by any personal likes or dislikes, sympathy, bias, prejudice or emotions.

INSTRUCTION NO. 2

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition;
2. Exhibits received by the court; and
3. Stipulations which are agreements between the parties. If the parties stipulate to a fact, you should treat that fact as having been proved.

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence.

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

INSTRUCTION NO. 3

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence, but if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part, or none of any witness' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witness' appearance, conduct, age, intelligence, memory, and knowledge of the facts;
3. The witness' interest in the trial, their motive, candor, bias, and prejudice; and
4. Whether the witness said something different at an earlier time.

INSTRUCTION NO. 4

You have heard evidence of statements made by parties before this trial in depositions, and otherwise. Such statements are called admissions. If you find an admission was made by a party, you may consider it as if made during this trial. Decide whether to consider the admission for any purpose and what weight to give it.

INSTRUCTION NO. 5

Whenever a party must prove something, they must do so by a preponderance of the evidence unless I instruct you differently.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

INSTRUCTION NO. 6

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. All persons stand equal before the law, and are to be dealt with as equals in a court of law.

INSTRUCTION NO. 7

You are instructed that the federal civil rights statute under which plaintiff sues provides that a person may seek relief in this court by way of damages against any person or persons who, under color of any state law or custom, subjects such person to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States. The Fourth Amendment to the United States Constitution recognizes the right of the people to be secure in their persons against unreasonable searches and seizures. This right includes a right of personal privacy.

In addition, under Iowa law a person or persons who intentionally and without justification intrudes physically or otherwise upon another's affairs, concerns, or person, may be liable to that person for the invasion of his or her privacy, if the intrusion would be highly offensive to a reasonable person.

INSTRUCTION NO. 8

In order for plaintiff Robin Hill to prove her federal and state claims of a violation of her privacy, the burden is upon plaintiff to establish by a preponderance of the evidence each of the following numbered elements:

1. Defendants, after having taken custody of plaintiff following her arrest:

- a. Required plaintiff to disrobe in the presence of a male officer. Consider this specification only with respect to defendants Miller and Holmes; or
- b. Required plaintiff to walk through the jail while nude in the presence of male officers; or
- c. Restrained plaintiff nude on a restraint board in the presence of male officers; and

2. Defendants' conduct was not reasonably necessary to protect the security of the Story County Jail, or the safety of plaintiff, defendants or other jail personnel.

3. The conduct would have been highly offensive to a reasonable woman.

4. As a direct result, plaintiff was damaged.

Consider this instruction separately with respect to each defendant.

If you find plaintiff has failed to prove any one or more of the above numbered propositions concerning a defendant, plaintiff is not entitled to recover damages against that defendant. If plaintiff has proved all of the propositions as to a defendant, then she is entitled to recover damages in some amount against that defendant.

INSTRUCTION NO. 9

With respect to the second element in Instruction No. 8, in determining whether plaintiff has proved this element of her claim, you may consider such factors as the need to restrain plaintiff, the need to have her remove her clothing, the need for a defendant to be present with plaintiff, the length of time plaintiff remained nude and uncovered, the relationship between the need to restrain plaintiff and the manner in which it was accomplished, the extent and nature of the intrusion on plaintiff's privacy, and whether a defendant acted in an environment that was tense, uncertain, or rapidly evolving.

The jury must consider whether a defendant's actions were reasonable in the light of all the facts and circumstances confronting the defendant, without regard to the defendant's own state of mind, intention or motivation.

INSTRUCTION NO. 10

Defendant Paul Fitzgerald, the Sheriff of Story County, did not personally participate in or direct the events involving plaintiff. In order to establish her claim against defendant Fitzgerald, plaintiff must prove all of the elements of Instruction No. 8 against another defendant, and prove that the violation of her federal constitutional right of personal privacy resulted from defendant Fitzgerald's deliberate indifference to the rights of persons in the custody of the Story County Jail.

Deliberate indifference is established only if defendant Fitzgerald had actual knowledge of a substantial risk that jail policies and practices would unjustifiably deprive arrested persons of their personal privacy, and he disregarded that risk by intentionally refusing or failing to change jail policies and practices to deal with the problem. Mere negligence or inadvertence does not constitute deliberate indifference.

INSTRUCTION NO. 11

If you find plaintiff is entitled to recover damages, it is your duty to determine the amount. In so doing, you shall consider the physical pain and suffering caused by the invasion of plaintiff's privacy. Physical pain and suffering may include, but is not limited to bodily suffering or discomfort.

The amount you assess for this item cannot be measured by an exact or mathematical standard. You must use your sound judgment based upon impartial consideration of the evidence. Your judgment must not be exercised arbitrarily or out of sympathy or prejudice for or against any party. The amount you assess must not exceed the amount caused by a defendant as proved by the evidence.

INSTRUCTION NO. 12

If you find in favor of plaintiff 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).

INSTRUCTION NO. 13

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 and against a defendant and if you find the conduct of that defendant was recklessly and callously indifferent to plaintiff's constitutional 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 the defendant or deter the defendant and others from like conduct in the future. Whether to award plaintiff punitive damages and the amount of those damages are within your sound discretion.

Factors you may consider in awarding punitive damages include, but are not limited to:

1. The nature of a defendant's conduct;
2. The impact of a defendant's conduct on plaintiff;
3. The relationship between plaintiff and the defendant;
4. The likelihood that the defendant would repeat the conduct if a punitive award is not made;

PAGE TWO OF INSTRUCTION NO. 13

5. The defendant's financial condition; and
6. Any other circumstances shown by the evidence.

INSTRUCTION NO. 14

In arriving at an item of damage you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage and agreeing in advance that the average of those estimates shall be your item of damage.

INSTRUCTION NO. 15

Your first duty upon retiring to the jury room for your deliberations is to elect one of your members foreperson of the jury. The person so elected is responsible for the orderly, proper and free discussion of the issues by any juror who wishes to express his or her views. The foreperson will supervise the balloting and sign the interrogatories that are in accord with your decision and will also sign any written inquiries addressed to the court.

Requests regarding instructions are not encouraged. Experience teaches that questions regarding the law are normally covered in the instructions, and the jury is encouraged to examine them very carefully before making any further requests of the court.

The attitude of jurors at the outset of their deliberations is important. It is seldom helpful for a juror, upon entering the jury room, to announce an emphatic opinion in a case or determination to stand for a certain verdict. When a juror does that at the outset, individual pride may become involved, and the juror may later hesitate to recede from an announced position even when it is incorrect. You are not partisans or advocates. You are judges--judges of the facts. Your sole interest is to ascertain the truth.

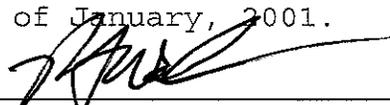
INSTRUCTION NO. 16

The verdict must represent the considered judgment of each juror. 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. An inconclusive trial is always undesirable. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine 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.

Submitted to you with these instructions is the special verdict form. After you have agreed and appropriately signed the verdict form in accordance with the directions contained therein, inform the jury officer outside the room. You will have the verdict signed only by one of your number whom you will have selected as your foreperson and return with it into court.

Dated this 25th day of January, 2001.



ROSS A. WALTERS
CHIEF UNITED STATES MAGISTRATE JUDGE