



Members of the jury, you have seen and heard all the evidence and arguments of the attorneys. Now I will instruct you on the law that applies to this case.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in this case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

You must perform your duties fairly and impartially. In deciding your verdict, you must not allow sympathy, bias, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex. The parties to this case and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law that I give you, and reach a just verdict regardless of the consequences.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be. It is not my function to determine the facts in this case. That function belongs to you.

You should consider and decide this case as an action between persons of equal standing in the community and holding the same or similar stations in life. Each party is entitled to the same fair consideration. All persons stand equal before the law and are to be dealt with as equals in a court of justice.

As I stated earlier, it is your duty to determine the facts. In determining the facts, you must consider only the evidence that I have admitted in the case. The evidence consists of the testimony of the witnesses, testimony that was read to you from depositions, the exhibits admitted in evidence, and stipulations.

A stipulation is an agreement between both sides that certain facts are true or that a person would have given certain testimony.

Certain things are not to be considered as evidence. I will list them for you:

First, if I told you to disregard any testimony or exhibits or struck any testimony or exhibits from the record, such testimony or exhibits are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, Internet or television reports you may have seen or heard. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the lawyers' opening statements, interim statements, and closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it is different from what the lawyers said, your memory is what counts.

You may have heard the phrases "direct evidence" and "circumstantial evidence." Direct evidence is proof of a fact that does not require an inference, such as testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

You are to consider all of the evidence in determining your verdict. However, this does not mean that you must accept all of the evidence as true or accurate.

You should use common sense in considering the evidence, and you should consider the evidence in light of your own observations in life.

In our lives, we sometimes look at one fact and conclude from that fact that another fact exists. In law we call this an "inference." You are allowed to make reasonable inferences. Any inferences that you make must be reasonable and must be based on the evidence in the case.

In determining the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. You will also have to decide the weight, if any, to give to the testimony of each witness.

In considering the testimony of any witness, you may take into account:

- the opportunity and ability of the witness to see or hear or know the things that the witness testified about;
- the witness's memory;
- the witness's intelligence;
- any interest the witness may have in the outcome of the case, and any bias or prejudice the witness may have;
- the witness's manner while testifying;
- the reasonableness of the witness's testimony in light of all the evidence in the case; and
- any other factors that bear on believability.

The weight of the evidence as to a particular fact does not necessarily depend on the number of witnesses who testify. You may find the testimony of a smaller number of witnesses to be more persuasive than that of a greater number.

A witness may be discredited or "impeached" by contradictory evidence, by, among other things, a showing that he or she testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something that is inconsistent with the witness's testimony. If you believe that any witness has been impeached, then you must determine whether to believe the witness's testimony in whole, in part, or not at all, and how much weight to give to that testimony.

You may consider statements given by a party or by a witness under oath before trial as evidence of the truth of what he said in the earlier statements, as well as in deciding what weight to give his testimony.

If a witness made a statement before the trial that was not under oath and was inconsistent with the witness's trial testimony or if a witness acted in a manner before the trial that is inconsistent with the witness's testimony here in court, you may consider the earlier statement or earlier conduct only in deciding whether the testimony of that witness here in court was true and what weight to give to that witness's testimony here in court.

You have heard evidence that Plaintiff Coprez Coffie and certain of the other witnesses have each been convicted of a crime. You may consider this evidence only in deciding whether their testimony is truthful in whole, in part, or not at all. You may not consider this evidence for any other purpose.

It is proper for an attorney to interview a witness for the purpose of learning what testimony the witness will give. The fact that the witness has talked to an attorney does not, by itself, reflect negatively on the truth of the witness's testimony.

You have heard a witness give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such a person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness's qualifications, and all of the other evidence in the case.

During the trial, certain testimony was presented to you by the reading of a deposition and the playing of a videotaped deposition. You should give this testimony the same consideration you would give it had the witnesses appeared and testified here in court.

During the trial, some of you from time to time may have made notes. If you did make notes, please remember in using the notes during your deliberations that the notes are not evidence. Your notes are merely an aid to you in remembering the evidence. Also, you should not be unduly influenced by the notes of other jurors. A juror's notes are not entitled to any weight if the notes are inconsistent with the collective recollections of the members of the jury as to the evidence in the case. You as the jury should rely on your collective recollections of the evidence in reaching your verdict in this case.

During the trial, written questions by some members of the jury have been submitted to be asked of certain witnesses. Testimony answering a question submitted by a juror should be considered in the same manner as any other evidence in the case. If you submitted a question that was not asked, that is because I determined that under the rules of evidence the answer would not be admissible, just as when I sustained any objection to questions posed by counsel. You should draw no conclusion or inference from my ruling on any question, and you should not speculate about the possible answer to any question that was not asked or to which I sustained an objection.

Plaintiff Coprez Coffie brings two claims in this case.

First, Plaintiff Coffie claims that Defendant Scott Korhonen searched his body in a manner that was unreasonable under the Fourth Amendment to the United States Constitution.

Second, Plaintiff Coffie claims that Defendant Gerald Lodwich failed to intervene to prevent Defendant Korhonen from conducting such an unreasonable search.

The Defendants deny these claims.

You should consider the evidence that relates to each Defendant separately from the evidence that relates to the other Defendant and return a separate verdict as to each Defendant.

In a civil lawsuit like this one, the burden is on the Plaintiff to prove every element of the Plaintiff's claim by a "preponderance of the evidence."

A preponderance of the evidence simply means evidence that persuades you that the Plaintiff's claim is more probably true than not true.

In deciding whether any fact has been proven by a preponderance of the evidence, you may, unless otherwise instructed, consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them.

If the proof establishes each element of the Plaintiff's particular claim by a preponderance of the evidence, then you should find for the Plaintiff on that claim.

If the proof fails to establish any element of the Plaintiff's claim by a preponderance of the evidence, then you should find for the Defendant on that claim.

For Plaintiff Coprez Coffie to succeed against Defendant Scott Korhonen on his claim that Defendant Korhonen conducted an Unreasonable Search of his Body, Plaintiff Coffie must prove each of the following by a preponderance of the evidence:

1. That Defendant Korhonen searched him in an unreasonable manner; and
2. Because of that unreasonable search, Plaintiff Coffie was harmed.

If you find that Plaintiff Coffie has proved each of these things by a preponderance of the evidence, then you should find for Plaintiff Coffie on this claim.

If, on the other hand, you find that Plaintiff Coffie did not prove either one of these things by a preponderance of the evidence, then you should find for Defendant Korhonen on this claim.

You must decide whether the manner in which Defendant Korhonen conducted the search of Plaintiff Coffie was unreasonable from the perspective of a reasonable officer facing the same circumstances that Defendant Korhonen faced. You must make this decision based on what Defendant Korhonen knew at the time of the arrest, not based on what you know now. In deciding whether the search of Plaintiff Coffie was unreasonable, you must not consider whether Defendant Korhonen's intentions were good or bad.

In performing his job, an officer can conduct a search that is reasonably necessary under the circumstances.

For Plaintiff Coprez Coffie to succeed against Defendant Lodwich on his Failure to Intervene claim, Plaintiff Coffie must prove each of the following things by a preponderance of the evidence:

1. That Defendant Korhonen searched Plaintiff in an unreasonable manner;
2. That Defendant Lodwich knew that an unreasonable search of Plaintiff was about to occur.
3. That Defendant Lodwich had a realistic opportunity to do something to prevent harm from occurring;

4. That Defendant Lodwich failed to take reasonable steps to prevent harm from occurring;

and

5. That Defendant Lodwich's failure to take reasonable preventive steps caused Plaintiff Coffie to suffer harm.

If you find that Plaintiff Coffie has proved each of these things by a preponderance of the evidence, then you should find for Plaintiff Coffie on this claim.

If, on the other hand, you find that Plaintiff Coffie did not prove any one of these things by a preponderance of the evidence, then you should find for Defendant Lodwich on this claim.

If you find that Plaintiff has proved either of his claims against either of the Defendants, then we will go on to the trial of what damages, if any, Plaintiff is entitled to recover.

If you find that Plaintiff has failed to prove both of his claims, then we will not go on to the trial of damages.

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over your deliberations and will be your representative here in court.

As I stated, verdict forms have been prepared for you.

These forms will be brought to you shortly in the jury room. You should report your unanimous agreement on the verdict on these form, which your foreperson will fill in, date, and each of you will sign it.

In considering each of Plaintiff Coffie's claims, you, as the jury, in reaching your verdict, should consider each claim separately and the verdict form pertaining to that claim separately from the other claim and its verdict form. In other words, consider each claim one at a time and consider each Defendant separately, one at a time. Please follow the instructions pertaining to each claim.

When you have reached unanimous agreement as to each claim and each Defendant, your foreperson should mark that verdict on the official verdict form that accurately states the verdict of the jury. Then each of you should sign that official verdict form and your foreperson should date the verdict form.

You should then notify the marshal in charge of the jury who will be waiting outside your jury room door that you have reached a verdict.

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the court security officer. I will photocopy your communication, give it to counsel, and allow counsel to meet with me here in open court, as required by the law, before I respond to your communication.

If any communication is made, it should not indicate your numerical division.

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.

Your verdict must represent the considered judgment of each juror. Your verdict must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the views of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or solely for the purpose of returning an unanimous verdict.

All of you should give fair consideration to all the evidence and deliberate with the goal of reaching a verdict that is consistent with the individual judgment of each juror. You are impartial judges of the facts. Your sole interest is to determine the truth from the evidence in the case.