

Members of the jury, you have seen and heard all of the evidence and the 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. 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.

It is your duty to determine the facts of this case. 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, and exhibits admitted in evidence.

Some evidence has been admitted for a limited purpose only. When I instructed you that the item of evidence was admitted for a limited purpose, you must consider it only for that limited purpose and for no other.

Certain things are not evidence. I will list them for you.

First, testimony that I struck from the record, or that I told you to disregard, is 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.

Third, questions and objections by the lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements and arguments to you are not evidence. The purposes of these statements and arguments 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 are to consider all of the evidence in determining your verdict. However, that 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 often 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.

Some of you may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, in other words it is proof of one or more facts that point to the existence or non-existence of another fact. You are to consider both direct and circumstantial evidence. The law allows you to give equal weight to both types of evidence, but it is up to you to decide how much weight to give to any 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 what 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, or has failed to say or do something, that is inconsistent with the witness’ 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.

The law does not require any party to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned in the evidence in the case.

Plaintiff Paul Oh has made two claims in this case. First, Oh claims that Defendant William Rochotte used excessive force against him in the events leading up to Oh being handcuffed.

Second, Plaintiff Oh claims that Defendant William Rochotte's actions against him constituted an unlawful arrest.

Defendant Rochotte admits that he arrested Oh but denies that he used excessive force in doing so. Defendant Rochotte claims he had probable cause to arrest Oh.

In a civil lawsuit like this one, the burden is on the plaintiff, Paul Oh, to prove every essential element of his 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 likely true than not true.

In deciding whether any fact has been proved 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 essential element of Oh’s claim by a preponderance of the evidence, then you should find for him as to that claim.

If the proof fails to establish any essential element of Oh’s claim by a preponderance of the evidence, then you should find for the defendant as to that claim.

For Oh to prevail on his excessive force claim against Rochotte, he must prove the following elements by a preponderance of the evidence;

1. That Rochotte intentionally used force against Oh;
2. That the force Rochotte used exceeded the degree of force that a reasonable officer would have used under the circumstances; and
3. That, as a direct result of Rochotte's force, Oh suffered some harm.

The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, without the benefit of 20/20 hindsight. The reasonableness inquiry is an objective one: the question is whether the officer's actions are objectively reasonable in light of the facts and circumstances confronting him, without regard to his underlying intent or motivation.

If you find from your consideration of all of the evidence that each of these propositions has been proved by a preponderance of the evidence, then you must find in favor of Oh against Rochotte.

If on the other hand, you find from your consideration of all of the evidence that any one of these propositions has not been proved by a preponderance of the evidence, then you must find in favor of Rochotte against Oh.

Plaintiff Paul Oh also claims that Defendant William Rochotte violated his constitutional right to be free from unreasonable seizure by arresting him without probable cause.

Defendant William Rochotte admits that he arrested Paul Oh, but denies that he did so without probable cause.

To prevail on this claim, Plaintiff Paul Oh must prove by a preponderance of the evidence that Defendant Rochotte did not have probable cause to arrest him.

If you find that Plaintiff Oh has proved this by a preponderance of the evidence, then you should find for Plaintiff Paul Oh, and go on to consider the question of damages if you find that Plaintiff was injured as a result of his unlawful arrest.

If you find that Plaintiff has failed to prove this by a preponderance of the evidence, then you should find for Defendant William Rochotte, and you will not consider the question of damages.

There is probable cause for an arrest if at the moment the arrest was made, a prudent person would have believed that Plaintiff had committed a crime. Probable cause is evaluated not on the facts as an omniscient observer would perceive them but on the facts as they would have appeared to a reasonable person in the position of the arresting officer.

Probable cause requires more than just a suspicion. But it does not need to be based on evidence that would support a conviction, or even a showing that the officer's belief was probably right. The fact that Plaintiff was later released from prosecution does not mean that probable cause did not exist at the time of his arrest.

A citizen-police officer encounter rises to the level of an arrest when, based on the totality of the circumstances, a reasonable person would believe his freedom of movement is restrained, as opposed to believing he is at liberty to disregard a police officer's request for information.

A police officer can seek the voluntary cooperation of a citizen by questioning him, including asking for identification, without needing any justification so long as the citizen remains free to walk away and ignore the questions.

The reasonable suspicion necessary for an investigatory stop must be grounded in specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the stop. The existence of reasonable suspicion is determined upon the totality of the circumstances known to the officer at the time of the stop, and may include inferences drawn from the officer's experience.

A peace officer need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force he reasonably believes to be necessary to defend himself from bodily harm while making the arrest.

A person is not authorized to use force to resist an arrest which he knows is being made by a peace officer, even if he believes that the arrest is unlawful and the arrest in fact is unlawful.

A person is justified in the use of force against a police officer when and to the extent that he reasonably believes that such conduct is necessary to defend himself against such police officer's imminent use of excessive force.

A police officer whose observations lead him to reasonably suspect that a person has committed a crime may detain that person briefly in order to investigate the circumstances that provoke suspicion. Any such stop and inquiry must be reasonably related in scope to the justification for their initiation.

Under Illinois law, a person commits battery if he intentionally or knowingly without legal justification and by any means causes bodily harm to an individual.

If you find in favor of the defendant on Oh's claims, you will have no occasion to consider the question of damages. If you conclude, however, that Oh has proved any of his two claims, you must determine what amount of damages, if any, Oh is entitled to recover. You should not interpret the fact that I am giving instructions about damages as an indication in any way that I believe Oh should or should not win this case. It is up to you to decide that question. I am instructing you on damages only so that you will have guidance in the event you find in favor of Oh on any of his claims.

There are two types of damages for you to consider in this case: compensatory damages and punitive damages.

The purpose of compensatory damages is to make the plaintiff whole, that is, to compensate him for the damages he has suffered. If you find in favor of Oh, you should award him the amount that you find to be justified by a preponderance of the evidence as full, just, and reasonable compensation for all of his damages – no more and no less. Damages must not be based on speculation. On the other hand, compensatory damages are not restricted to actual loss of time or money; they cover both the mental and physical aspects of injury, both tangible and intangible.

You should consider the following elements of damage, to the extent you find them proved by a preponderance of the evidence, and no others:

- Any bodily injury sustained by Oh. Such injury need not be severe to be compensable; the injury need only be more than negligible.
- Any pain and suffering, disability, and mental anguish that Oh has experienced since the incident in question;
- Any mental anguish that Oh is reasonably certain to suffer in the future;
- Any income or earnings that Oh has lost as a result of the incident in question.

No evidence of the value of such intangible things as mental or physical pain and suffering need be introduced. In that respect, it is not the value that you are trying to determine, but an amount that will fairly compensate the plaintiff for damages he has suffered. In considering the above elements of damage, you may take into account the nature, extent, and duration of the injury. There is no exact standard for fixing the compensation to be awarded on account of such elements of damage. Any such award should be reasonable, fair, and just in light of the evidence.

In addition to compensatory damages, the law permits the jury, under certain circumstances, to award punitive damages. The purpose of punitive damages is to punish the defendant for his conduct and to serve as an example or warning that will deter others from engaging in such conduct in the future.

In this case, punitive damages may be assessed against Rochotte only. You may award punitive damages if, and only if, Oh has proved his claim against Rochotte and has also proved by a preponderance of the evidence that Rochotte acted maliciously, wantonly or oppressively.

An act or a failure to act is “maliciously” done if it is prompted or accompanied by ill will, spite, or grudge, either toward the injured person individually or toward all persons in any group or category of which the injured person is a member.

An act or a failure to act is “wantonly” done if it is done in reckless or callous disregard of or in indifference to the rights of another person.

An act or failure to act is “oppressively” done if done in a way or manner that injured, 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.

If you do decide to award punitive damages, you must use sound reason and calm discretion in reaching that decision and in deciding the amount. Your decision must not be guided by bias, sympathy, or prejudice toward any party. In fixing the amount of punitive damages, you may consider the following factors: (1) the nature of Rochotte’s conduct; (2) the degree of reprehensibility of Rochotte’s conduct; (3) the impact of Rochotte’s conduct on Oh; (4) the likelihood that Rochotte will repeat the conduct if a punitive award is not made; and (5) the relationship of any award of punitive damages to the amount of any actual harm on Oh.

Any money awarded to Plaintiff as compensatory damages for physical injury will not be subject to income tax.

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. A form of verdict has been prepared for you.

[Read the verdict form.]

Take this form to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in and date the form, and each of you will sign it.

VERDICT

We, the jury, unanimously find as to the claims of plaintiff, Paul Oh, in this case as follows:
(For questions 1 and 2, check one and only one of the two choices)

1. Plaintiff Oh’s Excessive Force Claim Against Defendant Rochotte:

For Plaintiff _____

For Defendant _____

2. Plaintiff Oh’s Unlawful Arrest Claim Against Defendant Rochotte

For Plaintiff _____

For Defendant _____

* If you selected “For Plaintiff” in either of the above questions, proceed to questions 3 and 4.

* If you selected “For Defendant” on both questions 1 and 2, do not answer any more questions, but sign the verdict form below.

3. We award the Plaintiff, Paul Oh, compensatory damages in the amount of:

\$ _____

4. We award the Plaintiff, Paul Oh, punitive damages against Defendant William Rochotte in the amount of:

\$ _____

Foreperson

Date: _____

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.

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

The 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 a unanimous verdict.

All of you should give fair consideration to all the evidence and deliberate with the goal of reaching a verdict which 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.

VERDICT

We, the jury, unanimously find as to the claims of plaintiff, Paul Oh, in this case as follows:
(For questions 1 and 2, check one and only one of the two choices)

1. Plaintiff Oh’s Excessive Force Claim Against Defendant Rochotte:

For Plaintiff _____

For Defendant _____

2. Plaintiff Oh’s Unlawful Arrest Claim Against Defendant Rochotte

For Plaintiff _____

For Defendant _____

* If you selected “For Plaintiff” in either of the above questions, proceed to questions 3 and 4.

* If you selected “For Defendant” on both questions 1 and 2, do not answer any more questions, but sign the verdict form below.

3. We award the Plaintiff, Paul Oh, compensatory damages in the amount of:

\$ _____

4. We award the Plaintiff, Paul Oh, punitive damages against Defendant William Rochotte in the amount of:

\$ _____

Date: _____

Foreperson
