

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LAWRENCE THOMPSON,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 03 C 7172
)	
COUNTY OF COOK and MICHAEL)	
SHEAHAN, Sheriff of Cook County,)	
)	
Defendants.)	

INSTRUCTIONS GIVEN TO THE JURY

Date: February 7, 2006

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.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the 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.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

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.

During this trial, I have asked a witness a question myself. Do not assume that because I asked questions I hold any opinion on the matters I asked about, or on what the outcome of the case should be.

In this case the defendants are governmental entities. All parties are equal before the law. A governmental entity is entitled to the same fair consideration that you would give any individual person.

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations. A stipulation is an agreement between both sides that certain facts are true.

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 or comments 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 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 differs from what the lawyers said, your memory is what counts.

Any notes you have taken during this trial are only aids to your memory. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

In determining whether any fact has been proved, you should consider all of the evidence bearing on the question, regardless of who introduced it.

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

In our lives, we sometimes look at one fact and conclude from it that another fact exists. In law we call this “inference.” A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

You may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is proof that does not require an inference, such as the 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.

As an example, direct evidence that it is raining is testimony from a witness who says, “I was outside a minute ago and I saw it raining.” Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

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 must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

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

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

In considering a prior inconsistent statement, you should consider whether it was simply an innocent error or an intentional falsehood and whether it concerns an important fact or an unimportant detail.

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

You must give separate consideration to each claim and to each defendant in this case.

Cermak Health Services is a department within the Cook County Bureau of Health Services, which is part of Cook County.

The plaintiff in this case, Lawrence Thompson, has made one claim against the Sheriff of Cook County and two claims against the County of Cook. The defendants deny each of these claims.

In the instructions that follow, when I say that Thompson must prove something by “a preponderance of the evidence,” or when I use the expression “if you find,” or “if you decide,” this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

First claim - against Sheriff - visual body cavity search

In his first claim, Thompson contends that because of the Sheriff's policy, he was subjected to an unreasonable visual body cavity search, in violation of his right to be free from unreasonable searches and seizures. A visual body cavity search of a person detained for civil contempt of court is unreasonable unless there is reasonable suspicion that the person being searched is concealing a weapon or contraband on his person.

To succeed on this claim, Thompson must prove that there was no reasonable suspicion that he was concealing a weapon or contraband on his person. "Reasonable suspicion" exists when a reasonably prudent person would be warranted, based on specific and articulable facts, in believing that the person being searched was concealing a weapon or contraband. In determining whether reasonable suspicion existed, you are to consider all of the circumstances that existed at the time.

If you find that Thompson has proved this, then you must find for him on this claim. If, however, you find that Thompson did not prove this, then you must find for the defendants on this claim.

Second claim - against Cook County - urethral swabbing - unreasonable search & seizure

In his second claim, Thompson contends that because of Cook County's policy, he was unreasonably subjected to a urethral swabbing procedure, in violation of his right to be free from unreasonable searches and seizures.

To succeed on this claim, Thompson must prove two things:

- 1) it was unreasonable to subject him to this procedure;
- 2) that he did not consent to the procedure, or if he did consent, his consent was involuntary.

To determine whether the procedure was unreasonable, you must consider several factors:

- a) the nature of Thompson's privacy interest that was affected;
- b) the character of the intrusion;
- c) the defendants' interest in establishing and maintaining the policy; and
- d) how effective the policy was in achieving the defendant's interest.

If you reach the issue of the involuntariness of any consent to the procedure by Thompson, to determine that issue, you must decide whether his consent was the product of duress or coercion, express or implied. In deciding this, you must consider the totality of the circumstances, including, but not limited to, the following:

- a) Thompson's age, intelligence, and education;
- b) whether he was advised of his right to refuse the test;
- c) how long he was detained before giving consent;
- d) whether his consent was immediate, or was prompted by repeated requests;

- e) whether physical coercion was used; and
- f) whether he was in custody when he gave his consent.

The presence or absence of any one of these factors is not determinative.

If you find that Thompson has proved each of the things required of him on this claim, then you must find for him on this claim. If, however, you find that Thompson failed to prove any one of the things required of him, then you must find for the defendants on this claim.

Third claim - against Cook County - urethral swabbing - due process of law

In his third claim, Thompson contends that because of Cook County's policy, he was subjected to an unreasonable urethral swabbing procedure, in violation of his right to due process of law.

To succeed on this claim, Thompson must prove the following things:

- 1) he was subjected to a urethral swabbing procedure because it was defendants' policy to administer this procedure to new prisoners at the Cook County Jail;
- 2) the policy was not reasonably related to a legitimate penological interest, that is, a legitimate interest of jail or prisoner management;
- 3) the procedure was conducted without Thompson's consent, or that his consent was not knowing and voluntary.

In determining whether a policy is reasonably related to a legitimate penological interest, you should consider several factors:

- a) whether there is a rational connection between the policy and the governmental interest offered to justify it;
- b) the impact that accommodation of the prisoner's right to refuse the procedure would have on guards, other inmates, and jail resources; and
- c) whether there is a reasonably available alternative that would accommodate the prisoner's right to refuse treatment, at a minimal cost to legitimate penological interests.

In determining whether Thompson's consent (if any) was knowing and voluntary, you should consider all of the surrounding circumstances, including, among other things, whether

Thompson possessed such information as was reasonably necessary to make an informed decision to accept or reject proposed treatment, and whether his decision was the product of free and deliberate choice rather than intimidation, coercion, or deception.

If you find that Thompson has proved each of the things required of him, then you must find for him on this claim. If, however, you find that Thompson failed to prove any one of the things required of him, then you must find for the defendants on this claim.

What you are to consider on Thompson's second and third claims is the policy regarding urethral swabbing as it existed as of October 9, 2002.

When I use the term “policy” in these instructions, I mean:

- A rule or regulation established by the particular governmental body that is a defendant on the particular claim (the Sheriff for the first claim, Cook County for the second and third claims);
- A decision or policy statement made the Sheriff (as to the first claim) or by the County (as to the second and third claims); or
- A custom that is persistent and widespread, so that it is, in reality, the standard operating procedure of the particular governmental body that is a defendant on the particular claim (the Sheriff for the first claim, Cook County for the second and third claims). A persistent and widespread pattern may be a custom even if the particular governmental body has not formally approved it, so long as a policymaking official knew of the pattern and allowed it to continue. This includes a situation where a policymaking official must have known about a subordinate’s actions or failures to act by virtue of the policy-making official’s position.

Damages

If you find in favor of Thompson on his claim regarding the visual body cavity search, or on one or both of his claims regarding the urethral swabbing, then you must go on to determine the amount of money damages to award to him on the particular claim or claims.

If you find for the defendants on each of the claims, then you should not consider the question of damages.

You must consider separately the question of damages on Thompson's claim regarding the visual body cavity search from the question of damages on his claims regarding the urethral swabbing.

In considering the question of damages, you must determine the amount of money that will fairly compensate Thompson for any injury that you find he sustained as a direct result of the defendants' use of the particular procedure involved in the particular claim you are considering.

Thompson must prove his damages by a preponderance of the evidence. Your award must be based on evidence, and not speculation or guesswork. This does not mean, however, that compensatory damages are restricted to the actual loss of money; they include both the physical and mental or emotional aspects of injury, even if they are not easy to measure.

You should consider only the following type of compensatory damages: the physical and the mental or emotional pain and suffering that plaintiff has experienced, and is reasonably likely to experience in the future. No evidence of the dollar value of physical or mental or emotional pain and suffering has been, or needs to be, introduced. There is no exact standard for setting the damages to be awarded on account of pain and suffering. You are to determine an amount that will reasonably compensate Thompson for his injuries.

If you find in favor of Thompson on a particular claim but find that he has failed to prove compensatory damages for that claim, you must return a verdict in Thompson's favor in the amount of one dollar (\$1.00) on that claim.

Upon retiring to the jury room, you must select a presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court.

You are free to select whomever you wish as the presiding juror. However, I am going to provide some suggestions on the process to help you get started. When thinking about who should be the presiding juror, you may want to consider the role that the presiding juror usually plays. The presiding juror typically serves as the chairperson during the deliberations and should ensure a complete discussion by all jurors who desire to speak before any vote is taken. Each juror should have an opportunity to be heard on every issue and should be encouraged to participate. The presiding juror should help facilitate the discussion and make sure everyone has a chance to say what they want to say.

A verdict form 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 presiding juror will fill in and date the form, and all of you will sign it.

I do not anticipate that you will need to communicate with me. If you do need to communicate with me, the only proper way is in writing. The writing must be signed by the presiding juror, or, if he or she is unwilling to do so, by some other juror. The writing should be given to the court security officer, who will give it to me. I will respond either in writing or by having you return to the courtroom so that I can respond orally.

If you do communicate with me, you should not indicate in your note what your numerical division is, if any.

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 opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine 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 other jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts.

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Plaintiff,)	
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vs.)	Case No. 03 C 7172
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COUNTY OF COOK and MICHAEL)	
SHEAHAN, Sheriff of Cook County,)	
)	
Defendants.)	

Verdict Form

We, the jury, find as follows on the claims of the plaintiff, Lawrence Thompson, against the defendants, the County of Cook and Michael Sheahan, Sheriff of Cook County:

First claim - against Sheriff - visual body cavity search:

_____ For plaintiff _____ For defendant

We award plaintiff compensatory damages in the following amount (to be considered only if you have found for plaintiff on his first claim): \$ _____

Second claim - against Cook County - urethral swabbing - unreasonable search & seizure:

_____ for plaintiff _____ for defendant

Third claim - against Cook County - urethral swabbing - due process of law:

_____ for plaintiff _____ for defendant

Second and third claims - damages:

We award plaintiff compensatory damages in the following amount (to be considered only if you have found for plaintiff on his second and/or third claim): \$_____

_____	_____
Presiding juror	
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Date: _____, 2006