



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.

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.

You are the sole and exclusive judges of the facts. It is your duty as the jury to determine the facts from the evidence.

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 and the exhibits admitted in evidence, and stipulations.

A stipulation is an agreement between both sides that certain facts are true.

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 purpose 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 will recall that during the course of this trial I instructed you that I admitted certain evidence for a limited purpose. You must consider this evidence only for the limited purpose for which it was admitted.

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.

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.

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;
- any other factors that bear on believability.

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 any evidence in the case.

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.

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 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.

With respect to other witnesses, the law is different. If you decide that, before the trial, one of these witnesses made a statement or acted in a manner that is inconsistent with his testimony here in court, you may consider the earlier statement or conduct only in deciding whether his testimony here in court was true and what weight to give to his testimony here in court.

In considering a prior inconsistent statements or conduct, 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.

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 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.

In this case, plaintiff D'Shawn Perry has alleged two claims against defendant Sergeant Kedar Jones. Each of these claims must be considered by you separately.

First, plaintiff D'Shawn Perry claims that defendant Sergeant Kedar Jones used excessive force against plaintiff Perry.

Second, plaintiff D'Shawn Perry claims that defendant Sergeant Kedar Jones maliciously prosecuted plaintiff Perry. Defendant Sergeant Kedar Jones denies each of these claims.

In order to succeed on either of his claims, plaintiff D'Shawn Perry must prove the claim by a preponderance of the evidence in the case.

When I say a particular party has the burden of proof or 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.

To succeed on plaintiff D'Shawn Perry's claim that defendant Sergeant Kedar Jones used excessive force against him, plaintiff Perry must prove each of the following elements of that claim by a preponderance of the evidence:

1. Defendant Jones used unreasonable force against plaintiff Perry, and
2. Because of defendant Jones' unreasonable force, plaintiff Perry was harmed as the proximate cause of defendant Jones' use of unreasonable force.

If you find that plaintiff Perry has proved each of these things by a preponderance of the evidence, then you should find for plaintiff Perry, and go on to consider the question of damages.

If, on the other hand, you find that plaintiff Perry did not prove any one of these things by a preponderance of the evidence, then you should find for defendant Jones, and you will not consider the question of damages.

You must decide whether defendant Sergeant Kedar Jones' use of force was unreasonable from the perspective of a reasonable officer facing the same circumstances that defendant Jones faced. You must make this decision based on what the officer knew at the time of the arrest, not based on what you know now. In deciding whether a defendant's use of force was unreasonable, you must not consider whether the defendant's intentions were good or bad.

In performing his job, an arresting police officer can use force that is reasonably necessary under the circumstances.

To succeed on his claim of malicious prosecution, plaintiff D'Shawn Perry has the burden of proving each of the following elements of that claim by a preponderance of the evidence:

1. That defendant Sergeant Kedar Jones commenced or continued a criminal proceeding against plaintiff Perry without probable cause,
2. Defendant Jones acted with malice in commencing or continuing the criminal proceeding,
3. The criminal proceeding terminated in favor of plaintiff Perry in a manner indicating plaintiff Perry was innocent, and
4. Plaintiff Perry suffered damages as the proximate cause of the criminal proceeding.

If you find from your consideration of all of the evidence that each of the propositions required of plaintiff Perry has been proved, then you should find for plaintiff Perry and go on to consider the question of damages.

If, on the other hand, you find from your consideration of all of the evidence that any one of the propositions plaintiff Perry is required to prove has not been proved, then you should find for defendant Jones, and you will not consider the question of damages.

Illinois law defines malice as the intent, without justification or excuse, to commit a wrongful act. In order to find malice, you must find that the criminal proceeding commenced against plaintiff Perry was commenced or continued by defendant Jones for the purpose of injuring plaintiff Perry, or for some purpose other than to prove the plaintiff Perry committed a criminal offense.

A police officer commences or continues a criminal proceeding with malice if the officer commences or continues the criminal proceeding with an improper motive, or a reason other than to bring the person against whom the criminal proceeding is commenced to justice. Malice may be inferred from the absence of probable cause if the circumstances that surrounded the starting of the criminal proceeding are not consistent with good faith, and if the absence of probable cause has been clearly proved. Malice may not be inferred where probable cause exists.

Let me explain further what “probable cause” means. There is probable cause for commencement or continuation of a criminal proceeding if at the moment the proceeding was commenced or continued, a prudent person in the police officer’s position would have believed that the person against whom the proceeding was commenced or continued had committed a crime. In making this decision, you should consider what the arresting officer knew and what reasonably trustworthy information the arresting officer had received.

It is not necessary that defendant Sergeant Kedar Jones had probable cause to commence or continue proceedings against plaintiff D’Shawn Perry for the specific criminal offense of obstructing a peace officer, so long as defendant Jones had probable cause to commence or continue proceedings for some criminal offense against plaintiff Perry.

Probable cause requires more than just a suspicion. But it does not need to be based on evidence that would be sufficient to support a conviction, or even a showing that the arresting officer’s belief was probably right. The fact that plaintiff D’Shawn Perry was later acquitted of the offense with which he had been charged does not by itself mean that there was no probable cause at the time the criminal proceedings were commenced or continued against plaintiff Perry.

If there was probable cause to commence or continue the criminal proceeding against plaintiff Perry, defendant Jones did not need to do more investigation to uncover evidence that the plaintiff Perry was innocent.

A police officer commences or continues a criminal proceeding against another person without probable cause if the circumstances are not sufficient to cause a person of ordinary reason, caution and prudence in the officer’s position to hold the honest belief that there is reason to believe the person against whom the criminal proceeding was commenced or continued had committed a criminal offense.

Let me explain further the meaning of the term “proximate cause” as used in these instructions, specifically in the last element of each of plaintiff Perry’s claims. The meaning of “proximate cause” is the legal cause. It need not be the only cause or the first cause. A defendant’s actions are the proximate cause of a plaintiff’s damages if, but for the defendant’s actions, that the plaintiff claims were wrongful, the plaintiff would not have suffered damages.

If you find that plaintiff D’Shawn Perry has proved either or both of his claims against defendant Sergeant Kedar Jones, then you must determine what amount of damages, if any, plaintiff Perry is entitled to recover as a result of that claim or claims.

If you find that plaintiff Perry has failed to prove both his claims, then you will not consider the question of damages at all.

If you find in favor of plaintiff D'Shawn Perry on either of his claims, then you must determine the amount of money that will fairly compensate plaintiff Perry for any injury that you find he sustained as a direct result of defendant Sergeant Kedar Jones' wrongful conduct. These are called compensatory damages.

Plaintiff Perry 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 aspects of injury, even if they are not easy to measure.

You should consider the following types of compensatory damages, and no others:

1. The reasonable value of medical care and supplies that plaintiff Perry reasonably needed and actually received.

2. The physical and mental or emotional pain and suffering that plaintiff Perry has experienced. No evidence of the dollar value of physical, 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 fairly compensate plaintiff Perry for the injury he has sustained.

If you find in favor of plaintiff Perry but find that the plaintiff has failed to prove any compensatory damages, you must return a verdict for plaintiff in the amount of one dollar.

If you find for plaintiff Perry, you may, but are not required to, assess punitive damages against defendant Jones. The purposes of punitive damages are to punish a defendant for his conduct and to serve as an example or warning to defendant Jones and others not to engage in similar conduct in the future.

Plaintiff Perry must prove by a preponderance of the evidence that punitive damages should be assessed against defendant Jones. You may assess punitive damages only if you find that his conduct was malicious or in reckless disregard of plaintiff Perry's rights. Conduct is malicious if it is accompanied by ill will or spite, or is done for the purpose of injuring plaintiff Perry. Conduct is in reckless disregard of plaintiff Perry's rights if, under the circumstances, it reflects complete indifference to plaintiff Perry's safety or rights.

If you find that punitive damages are appropriate, then you must use sound reason in setting the amount of those damages. Punitive damages, if any, should be in an amount sufficient to fulfill the purposes that I have described to you, but should not reflect bias, prejudice, or sympathy toward either/any party. In determining the amount of any punitive damages, you should consider the following factors:

- the reprehensibility of defendant Jones conduct;
- the impact of defendant Jones conduct on plaintiff Perry;
- the relationship between plaintiff Perry and defendant Jones;
- the likelihood that defendant Jones would repeat the conduct if an award of punitive damages is not made; and
- the relationship of any award of punitive damages to the amount of actual harm the Plaintiff Perry suffered.

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.

Forms of verdict have been prepared for you.

These forms will be brought to you shortly in the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in and date the appropriate form, and each of you will sign it.

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 an 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.