Adamik v Motylka

12C3810

JURY INSTRUCTIONS GIVEN

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1. FUNCTIONS OF THE COURT AND THE JURY

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.

Nothing I say now, and nothing I will say or do during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

2. NO INFERENCE FROM JUDGE'S QUESTIONS

During this trial, I asked witnesses questions 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.

Likewise, I have allowed you to ask questions of witnesses if you so choose. There should be no negative inference drawn or derived from any failure to respond to your question or questions.

3. LAWYER INTERVIEWING WITNESS

It is proper for a lawyer to meet with any witness in preparation for trial.

4. EVIDENCE

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.

5. WHAT IS NOT EVIDENCE

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 strike any testimony or exhibits from the record, such testimony or exhibits are not evidence and must not be considered. Similarly, if I told you that certain facts or issues were not relevant to the claims to be decided than such facts and issues must play no role in your decision.

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 saw or heard. Such reports are not evidence and your verdict may 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.

6. DEMONSTRATIVE EXHIBITS

Certain demonstrative exhibits were shown to you. These exhibits were used for convenience and to help explain the facts of the case. They are not themselves evidence or proof of any facts.

7. NOTE TAKING

Any notes you took during this trial are only aids to your memory. The notes are not evidence. If you did not take 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.

8. WEIGHING THE EVIDENCE

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 often 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.

9. DEFINITION OF "DIRECT" AND "CIRCUMSTANTIAL" EVIDENCE

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.

10. TESTIMONY OF WITNESSES

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.

11. PRIOR INCONSISTENT STATEMENT

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

In considering a prior inconsistent statement 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.

12. NUMBER OF WITNESSES

You may have found 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.

13. ABSENCE OF EVIDENCE

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.

14. OPINION WITNESSES

You have heard witnesses 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 person gave 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.

15. CONSIDERATION OF ALL EVIDENCE REGARDLESS OF WHO PRODUCED

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

16. MULTIPLE CLAIMS; MULTIPLE DEFENDANTS

You must give separate consideration to each claim and each party in this case. Although there are three individual defendants, it does not follow that if one is liable, any of the others is also liable.

17. ALL LITIGANTS EQUAL BEFORE THE LAW

In this case, Defendants Motyka, Tunzi, and Rubio are sworn officers with the Chicago Police Department and Plaintiff Adamik is a private citizen. All parties are equal before the law. Plaintiff and Defendants are entitled to the same fair consideration.

18. ISSUES

Federal law provides that Plaintiff Adamik may recover damages if Defendants Motyka, Tunzi, and Rubio deprived him of a right guaranteed by the Constitution.

The Plaintiff alleges that he was deprived of his civil rights in two ways 1) the right to be free from the use of excessive force; and 2) that each Defendant failed to intervene to prevent another one of the Defendants from using excessive force.

19. BURDEN OF PROOF

When I say a particular party 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.

20. FOURTH AMENDMENT / FOURTEENTH AMENDMENT EXCESSIVE FORCE CLAIM: ELEMENTS

In this case, Plaintiff claims that Defendants Motyka, Tunzi, and Rubio used excessive force on him. To succeed on this claim, Plaintiff must prove by a preponderance of the evidence that a Defendant used unreasonable force on him.

If you find that Plaintiff has proved by a preponderance of the evidence that a Defendant used unreasonable force on him, then you should find for Plaintiff and against that Defendant, and go on to consider the question of damages.

If, on the other hand, you find that Plaintiff did not prove by a preponderance of the evidence that a Defendant used unreasonable force on him, then you should find for that Defendant, and you will not consider the question of damages at to that Defendant.

21. FOURTH AMENDMENT/FOURTEENTH AMENDMENT: EXCESSIVE FORCE - DEFINITION OF UNREASONABLE

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

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

22. FOURTH AMENDMENT: CLAIM FOR FAILURE OF BYSTANDER OFFICER TO INTERVENE – ELEMENTS

To succeed on his failure to intervene claim, Plaintiff must prove each of the following things by a preponderance of the evidence:

1. One or more of the officers used excessive force on Plaintiff;
2. That a Defendant knew that the force used on Plaintiff by the other officer(s) was excessive;
3. That the Defendant had a realistic opportunity to do something to prevent harm from occurring;
4. That the Defendant failed to take reasonable steps to prevent harm from occurring;
5. That the Defendant's failure to act caused Plaintiff to suffer harm.

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

If, on the other hand, you find that Plaintiff has failed to prove any one of these things as to a Defendant by a preponderance of the evidence, then you should find for that Defendant, and you will not consider the question of damages as to that Defendant.

23. DAMAGES: GENERAL

If you find that Plaintiff has proved any of his claims against any Defendant, then you must determine what amount of damages, if any, Plaintiff is entitled to recover.

If you find that Plaintiff has failed to prove all of his claims against all of the Defendants, then you will not consider the question of damages.

24. COMPENSATORY DAMAGES

If you find in favor of Plaintiff, then you must determine the amount of money that will fairly compensate Plaintiff for any injury that you find he sustained as a direct result of the excessive force and failure to intervene to prevent excessive force. These are called "compensatory damages."

Plaintiff 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 reasonably needed and actually received.
2. The physical and mental/emotional pain and suffering that Plaintiff has experienced. No evidence of the dollar value of physical or mental/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 the Plaintiff for the injury he has sustained.

25. PUNITIVE DAMAGES

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

Plaintiff must prove by a preponderance of the evidence that punitive damages should be assessed against Defendants. You may assess punitive damages against a Defendant only if you find that his conduct was malicious or in reckless disregard of Plaintiff's rights.

Conduct is malicious if it is accompanied by ill will or spite, or is done for the purpose of injuring Plaintiff. Conduct is in reckless disregard of Plaintiff's rights if, under the circumstances, it reflects complete indifference to Plaintiff'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 Defendants' conduct;
- the impact of Defendants' conduct on Plaintiff;
- the relationship between Plaintiff and Defendants;
- the likelihood that Defendant would repeat the conduct if an award of punitive damages is not made;
- the relationship of any award of punitive damages to the amount of actual harm the Plaintiff suffered.

26. SELECTION OF PRESIDING JUROR; GENERAL VERDICT

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.

The verdict forms have been prepared for you.

[Verdict form read.]

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your presiding juror will fill in and date the appropriate form, and all of you will sign it.

27. COMMUNICATION WITH COURT

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.

28. DISAGREEMENT AMONG JURORS

The verdict must represent the considered judgment of each juror. Your verdict, whether for or against the parties, 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.

VERDICT FORM

We, the jury, find as follows with respect to each of the Plaintiff's claims:

Plaintiff's Excessive Force Claim:

FOR PLAINTIFF _____ FOR DEFENDANT MOTYKA _____

FOR PLAINTIFF _____ FOR DEFENDANT TUNZI _____

FOR PLAINTIFF _____ FOR DEFENDANT RUBIO _____

Plaintiff's Failure to Intervene Claim:

FOR PLAINTIFF _____ FOR DEFENDANT MOTYKA _____

FOR PLAINTIFF _____ FOR DEFENDANT TUNZI _____

FOR PLAINTIFF _____ FOR DEFENDANT RUBIO _____

Please complete the following section only if any of the above findings is in favor of the Plaintiff. If all of the above findings are in favor of Defendants, please sign and date this form as you have completed deliberations on these claims.

Compensatory Damages

$_____

Punitive Damages can only be awarded if there has been a finding against the individual Defendant on a claim.

Punitive Damages: (put an "X" on the YES or NO line)
(if you put an X on the YES line, fill in the dollar amount)

Do you award Plaintiff punitive damages against Officer Jason Motyka?

YES _____ NO _____

$ _____

Do you award Plaintiff punitive damages against Officer Richard Tunzi?

YES _____ NO _____

$ _____

Do you award Plaintiff punitive damages against Sergeant Robert Rubio?

YES _____ NO _____

$ _____

_____ _____

Presiding Juror

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

Dated: _____