

JN

Lane

Jury Instructions Given
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Salgado

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/public opinion to influence you. You should not be influenced by any person's race, color, 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.

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Judge Thomas M. Durkin
United States District Court

During this trial, I have asked a few questions of witnesses 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 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 parties stand equal before the law and are to be dealt with as equals in a court of justice.

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 or that a person would have given certain testimony.

The parties have stipulated, or agreed, to certain facts that were read to you by the attorneys. You must now treat these facts as having been proved for the purpose of this case.

Evidence was presented to you in the form of responses to the Plaintiff's Requests for Admissions. You must treat the facts admitted in those responses as 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.

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 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.

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;

the witness's age;

and the reasonableness of the witness's testimony in light of all the evidence in the case.

You should consider the testimony of police officers just as you would consider any other evidence in this case.

You should not give any more or less credibility to statements made by witnesses because they are police officers or because they are not police officers.

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

With respect to other witnesses, the law is different. If you decide that, before the trial, one of these witnesses made a statement not under oath, or acted in a manner that is inconsistent with his or her testimony here in court, you may consider the earlier statement or conduct only in deciding whether his or her testimony here in court was true and what weight to give to his or her testimony here in court.

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.

You have heard evidence that Corey Lindsey has been convicted of a crime. You may consider this evidence only in deciding whether his testimony is truthful in whole, in part, or not at all. You may not consider this evidence for any other purpose.

You heard a recording that has been received in evidence. This recording is proper evidence and you may consider it, just as any other evidence.

You had a transcript to use as a guide to help you follow as you listen to the recording. The transcript is not evidence of what was actually said or who said it. It is up to you to decide whether the transcript correctly reflects what was said and who said it. If you notice any difference between what you heard on the recording and what you read in the transcript, you must rely on what you heard, not what you read. And if after careful listening, you cannot hear or understand certain parts of the recording, you must ignore the transcript as far as those parts are concerned.

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

Plaintiff contends that Defendant Salgado was required to record events on his in-car camera during all arrests, pursuits, and transports, and to preserve those recordings. Plaintiff also contends that Defendant Salgado was required to submit a repair ticket for the in-car camera if it was not working.

You may assume that such a video would have been unfavorable to Salgado only if you find by a preponderance of the evidence that:

- (1) Defendant Salgado intentionally caused the camera to not operate, or failed to preserve any recordings; and
- (2) Defendant Salgado's action in that regard were in bad faith.

You have heard evidence about whether certain aspects of Defendant Salgado's conduct complied with Chicago Police Department rules and regulations. You may consider this evidence in your deliberations. But remember that the issue is whether Defendant Salgado committed the violations alleged in the complaint, not whether Chicago Police Department rules and regulations might have been violated.

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.

Certain diagrams have been shown to you. Those diagrams are used for convenience and to help explain the facts of the case. They are not themselves evidence or proof of any facts.

You have heard evidence that, less than a month before Defendant Salgado arrested Mr. Lane, a civil rights case was pending in federal court accusing Defendant Salgado of excessive force, and also accusing Defendant Salgado of illegally searching and seizing an individual.

You may consider this as evidence of Defendant Salgado's motives in this case. You may not consider this evidence for any other purpose. To be more specific, you may not infer that, because Defendant Salgado had a case pending in the past, Defendant Salgado must have committed any civil rights violations in the present case. The reason that Defendant Salgado is on trial here is for the specific charges brought in this case. Mr. Lane has the burden to prove the specific charges brought here by a preponderance of the evidence. He may not meet his burden by inviting you to infer that Defendant Salgado is a person whose past acts suggest he has a bad character or a tendency to violate people's civil rights.

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.

Mr. Lane brings four charges against Defendant Salgado in this case:

First, Defendant Salgado arrested Mr. Lane to prevent Mr. Lane's exercise of his right to photograph police activity, in violation of the First Amendment to the United States Constitution.

Second, Defendant Salgado falsely arrested Mr. Lane in violation of the Fourth Amendment to the United States Constitution.

Third, Defendant Salgado maliciously prosecuted Mr. Lane in violation of Illinois law.

Fourth, Defendant Salgado took Mr. Lane's personal property, including his camera memory card, and in doing so committed the tort of conversion in violation of Illinois law.

Defendant Salgado denies each of these charges.

The First Amendment to the United States Constitution protects freedom of speech and freedom of the press. As part of those protections, individuals have the First Amendment right to photograph and record the police in public places and to gather information about their actions.

As a result, it is illegal to arrest a person simply for photographing or videotaping the police in public places. Such activity, however, may not obstruct or interfere with effective law enforcement or the protection of public safety.

In this case, Plaintiff Travles Lane claims that Defendant Danny Salgado violated his First Amendment right to photograph the police. To succeed on this claim, Mr. Lane must prove each of the following by a preponderance of the evidence:

- (1) Mr. Lane was photographing police activity.
- (2) Defendant Salgado arrested Mr. Lane.
- (3) Mr. Lane's action in photographing police activity was the reason that Defendant Salgado relied on when he arrested Mr. Lane.

If you find that Plaintiff Travles Lane has proved each of these things by a preponderance of the evidence, then you should find for Plaintiff Travles Lane, 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 by a preponderance of the evidence, then you should find for Defendant Danny Salgado, and you will not consider the question of damages.

The Fourth Amendment to the United States Constitution protects all people from unreasonable searches and seizures of their person, home and belongings.

In this case, Plaintiff claims that Defendant Salgado falsely arrested him in violation of the Fourth Amendment to the United States Constitution. To succeed on this claim, Plaintiff must prove each of the following things by a preponderance of the evidence:

- (1) Defendant Salgado arrested Mr. Lane; and
- (2) Defendant Salgado did not have probable cause to arrest Mr. Lane.

If you find that Plaintiff has proved each of these things by a preponderance of the evidence, then you should find for Plaintiff, 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 by a preponderance of the evidence, then you should find for Defendant Salgado, and you will not consider the question of damages.

Let me explain what “probable cause” means. 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 or was committing a crime. In making this decision, you should consider what Defendant Salgado knew and what reasonably trustworthy information Defendant Salgado had received. It is not necessary that Defendant Salgado had probable cause to arrest Mr. Lane for assault, so long as Defendant Salgado had probable cause to arrest him for some criminal offense.

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 Defendant’s belief was probably right. The fact that Mr. Lane was later acquitted of assault does not by itself mean that there was no probable cause at the time of his arrest.

A person commits an assault when, without lawful authority, he or she knowingly engages in conduct which places another in reasonable apprehension of receiving a battery.

A person engages in Obstruction of a Peace Officer when that person knowingly resists or obstructs the performance by one known to the person to be a peace officer of any authorized act within his or her official capacity

Plaintiff also alleges that he was maliciously prosecuted by Defendant Salgado. To succeed on this claim, Plaintiff must prove each of the following by a preponderance of the evidence:

- (1) That Defendant Salgado commenced a criminal proceeding against Mr. Lane, charging Mr. Lane with assault.
- (2) That Defendant Salgado commenced the proceeding without probable cause.
- (3) That Defendant Salgado acted with malice.
- (4) That the proceeding terminated in favor of Mr. Lane;
- (5) That Mr. Lane suffered damages as a result. I will now explain these elements to you.

It is the state of mind of Defendant Salgado, and not the guilt or innocence of Plaintiff, that is at issue. A person acts without probable cause in commencing a criminal proceeding if the circumstances are not sufficient to cause a person of ordinary caution and prudence to hold the honest belief that the person accused is guilty of the offense charged. Probable cause can exist even if Defendant Salgado was mistaken about the facts as long as the mistake was reasonable.

When I use the term "malice" here, it simply means to initiate a prosecution for an improper motive. You should not think of the term "malice" as spite or hatred against an individual. In determining whether Defendant Salgado acted maliciously, you may consider all the circumstances at the time of the conduct complained of, including any lack of probable cause to commence the proceeding. Lack of probable cause does not itself establish malice.

If you find that the Plaintiff has proven each of the elements listed above by a preponderance of the evidence, then you should find in favor of the Plaintiff on his malicious prosecution claim.

If, however, you find that the Plaintiff has failed to prove any of these things by a preponderance of the evidence, then you should find in favor of the Defendant and you will not consider the question of damages.

Plaintiff also alleges that Defendant Salgado committed the Illinois tort of conversion, by wrongfully refusing to return his personal property to him, including his camera memory card. Conversion is an unauthorized act that deprives a person of his property permanently or for an indefinite period of time. In order to establish this claim, Plaintiff must show by a preponderance of the evidence each of the following:

- (1) That the property at issue belonged to the Plaintiff;
- (2) That Defendant Salgado took possession of Mr. Lane's property which deprived him of the property either permanently or for an indefinite period of time; and
- (3) That Defendant Salgado's conduct was unauthorized. In other words, Defendant took control of Mr. Lane's personal property without his permission or any other lawful authority.

If you find that Plaintiff has proved each of these things by a preponderance of the evidence, then you should find Defendant Salgado liable on Plaintiff's claim for conversion and go on to consider damages.

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

I have a duty to caution or warn an attorney who does something that I believe is not in keeping with the rules of evidence or procedure. You are not to draw any inference against the side whom I may caution or warn during the trial.

Plaintiff must prove by a preponderance of the evidence that Defendant Salgado was personally involved in the conduct that Plaintiff complains about. You may not hold Defendant Salgado liable for what other individuals did or did not do.

If you find that Plaintiff has proved any of his claims against Defendant Salgado, 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, then you will not consider the question of damages.

If you find in favor of Plaintiff, then you must determine the amount of money that will fairly compensate Mr. Lane for any injury that you find he sustained and is reasonably certain to sustain in the future as a direct result of the violations. These are called “compensatory damages.”

Plaintiff must prove his damages by a preponderance of the evidence. Your award must be based on evidence and reasonable inferences from that evidence and not on 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 loss of personal freedom that Mr. Lane has experienced, including time away from family.
- (2) The mental and emotional pain, suffering, and humiliation that Mr. Lane has experienced, and is reasonably certain to experience in the future.
- (3) Interference with Mr. Lane’s ability to photograph and publish the resulting photographs of police activity.
- (4) The reasonable value of Plaintiff’s property which has not been returned to him, including his digital camera memory card containing his photographs.

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 Mr. Lane for the injury he has sustained.

If you find in favor of Mr. Lane but find that he has failed to prove compensatory damages, you must return a verdict for Plaintiff in the amount of one dollar (\$1.00).

If you find for Plaintiff, you may, but are not required to, assess punitive damages against Defendant Salgado. The purposes of punitive damages are to punish a defendant for his conduct and to serve as an example or warning to Defendant 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 Defendant Salgado. You may assess punitive damages 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 any party. In determining the amount of any punitive damages, you should consider the following factors:

- the reprehensibility of Defendant Salgado's conduct;
- the impact of Defendant Salgado's conduct on Plaintiff;
- the relationship between Plaintiff and Defendant Salgado;
- 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.

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.

Forms of verdict have been prepared for you.

[Forms of verdict 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.

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 marshal, 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, 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.