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

JOSEPH W. SBARBORO,	)	
	)	
Plaintiff,	)	**No. 04 C 2888**
	)	
vs.	)	
	)	
GRAYSLAKE POLICE OFFICER GUY FIASCHE,	)	**MAGISTRATE JUDGE DENLOW**
	)	
	)	
Defendant.	)	

JURY INSTRUCTIONS

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.

The evidence consists of the testimony of the witnesses and the exhibits admitted in 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 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 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.

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;

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

You may consider statements given by a party or a 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 not under oath 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 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.

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

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 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 has given 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' qualifications, and all of the other evidence in the case.

The parties agree that Exhibit 6 accurately summarizes the bills from the Veteran Administration for the medical treatment received by the plaintiff after August 29, 2003. You should consider this summary just like all of the other evidence in the case.

CLAIMS IN THIS CASE

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

When I say a particular party must prove something by "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.

Guy Fiasche is being sued as an individual. The Village of Grayslake and the Grayslake Police Department are not parties to this lawsuit.

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

You have heard evidence about whether Defendant's conduct violated a Grayslake Police Department regulation. You may consider this evidence in your deliberations. But remember that the issue is whether Defendant falsely arrested Plaintiff, and used excessive force on Plaintiff, not whether a departmental regulation might have been violated.

FIRST CLAIM

FOURTH AMENDMENT: FALSE ARREST - ELEMENTS

In this case, Plaintiff claims that Defendant falsely arrested him. To succeed on this claim, Plaintiff must prove each of the following things by a preponderance of the evidence:

1. Defendant arrested Plaintiff; In this case you are instructed that Defendant Guy Fiasche arrested the Plaintiff and you must accept this fact as proven; and

2. Defendant did not have probable cause to arrest Plaintiff.

If you find that Plaintiff has proved by a preponderance of the evidence that Defendant did not have probable cause to arrest Plaintiff, 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 by a preponderance of the evidence that Defendant did not have probable cause to arrest Plaintiff, then you should find for Defendant, and you will not consider the question of damages.

DEFINITION OF "PROBABLE CAUSE"

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 knew and what reasonably trustworthy information Defendant had received.

It is not necessary that Defendant had probable cause to arrest Plaintiff for both Eavesdropping and Obstructing, so long as Defendant had probable cause to arrest him for one of those offenses. It is not necessary for Plaintiff to be charged with a criminal offense so long as there was probable cause to arrest Plaintiff for one of those crimes.

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.

SECOND CLAIM

CLAIM FOR EXCESSIVE FORCE

In this case, Plaintiff's second claim is that Defendant used excessive force against him. To succeed on this claim, Plaintiff must prove each of the following things by a preponderance of the evidence:

1. Defendant used unreasonable force against Plaintiff; and,

2. Because of Defendant's unreasonable force, Plaintiff was harmed.

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 did not prove any one of these things by a preponderance of the evidence, then you should find for Defendant, and you will not consider the question of damages.

DEFINITION OF "UNREASONABLE"

You must decide whether 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 of the arrest, not based on what you know now. In deciding whether Defendant's use of force was unreasonable, you must not consider whether Defendant's intentions were good or bad.

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

DAMAGES

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

If you find that Plaintiff has proved only one of his two claims, then you should consider only the damages instructions for that claim.

DAMAGES: FALSE ARREST - FIRST CLAIM

If you find in favor of Plaintiff on his claim for false arrest, 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 false arrest.

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 the damages are restricted to the actual loss of money, even if they are not easy to measure.

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

1. Emotional pain, suffering, inconvenience, humiliation and mental anguish incurred as a result of the false arrest.

2. No evidence of the dollar value of such damages needs to be introduced. There is no exact standard for awarding such damages. You are to determine an amount that will fairly compensate the Plaintiff for the injury he has sustained.

DAMAGES: EXCESSIVE FORCE - SECOND CLAIM

If you find in favor of Plaintiff on his claim for excessive force, then you must determine the amount of money that will fairly compensate Plaintiff for any injury that you find he sustained and is reasonably certain to sustain in the future as a direct result of the use of excessive force.

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 the 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 damages, and no others:

1. The reasonable value of medical care and supplies that Plaintiff reasonably needed and actually received, as well as the present value of the care and supplies that he is reasonably certain to need and receive in the future.

2. The physical and mental/emotional pain and suffering and disability/loss of a normal life that Plaintiff has experienced and is reasonably certain to experience in the future. No evidence of the dollar value of physical or mental/emotional pain and suffering or disability/loss of a normal life 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 sustained.

3. Aggravation of a pre-existing condition that was made worse as a direct result of the excessive use of force.

DEFINITIONS

DEFINITION OF OFFENSE OF EAVESDROPPING

A person commits the offense of Eavesdropping when he knowingly and intentionally uses a tape recorder to record all or any part of any conversation unless he does so with the consent of all parties to such conversation.

DEFINITION OF OFFENSE OF OBSTRUCTION

A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer of any authorized act including a refusal to comply with a lawful order commits the offense of Obstruction of a Peace Officer.

FIRST AMENDMENT

Verbally protesting or verbally objecting to the action of Government officials, without more, is speech protected by the First Amendment to the Constitution of the United States and is not in and of itself a violation of any criminal statute.

VERDICT - UNANIMOUS - DUTY TO DELIBERATE

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

EFFECT OF INSTRUCTION AS TO DAMAGES

The fact that the Court has instructed you as to the proper measure of damages should not be considered as intimating any view of the Court as to which party is entitled to your verdict in this case. Instructions as to the measure of damages are given for your guidance, in the event you should find in favor of the Plaintiff from a preponderance of the evidence in the case, in accordance with the other instructions.

SELECTION OF A FOREPERSON

Upon retiring to the jury room, you will select one of your number to act as foreperson. The foreperson will preside over your deliberations, and will be your spokesperson here in court.

VERDICT FORMS

Verdict forms have been prepared for your convenience. You will take the verdict forms to the jury room, and when you have reached unanimous agreement as to your verdict, you will all sign and date the form which sets forth the verdict upon which you unanimously agree, and then return with your verdict to the courtroom.

VERDICT FORMS - JURY'S RESPONSIBILITY

It is proper to add the caution that nothing said in these instructions and nothing in any form of verdict prepared for your convenience is meant to suggest or convey in any way or manner any intimation as to what verdict the Court thinks you should find. What the verdict shall be is your sole and exclusive duty and responsibility.

COMMUNICATIONS BETWEEN COURT AND JURY DURING DELIBERATIONS

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by the bailiff, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing, and the Court will never communicate with any member of the jury on any subject touching the merits of the case otherwise than in writing, or orally here in open court.

You will note from the oath about to be taken by the bailiff that [s]he too, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind that you are never to reveal to any person – not even to the Court – how the jury stands, numerically or otherwise, on the questions before you, until after you have reached a unanimous verdict.

JURY VERDICT FORM 1 - FALSE ARREST

WE, THE JURY, FIND IN FAVOR OF PLAINTIFF JOSEPH W. SBARBORO AND AGAINST DEFENDANT GRAYSLAKE POLICE OFFICER GUY FIASCHE FOR FALSE ARREST IN VIOLATION OF PLAINTIFF'S CONSTITUTIONAL RIGHTS. HAVING FOUND IN FAVOR OF PLAINTIFF JOSEPH W. SBARBORO AND AGAINST DEFENDANT GRAYSLAKE POLICE OFFICER GUY FIASCHE, WE ASSESS:

DAMAGES IN THE FOLLOWING AMOUNT:

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DATE FOREPERSON

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JURY VERDICT FORM 2 - FALSE ARREST

WE, THE JURY, FIND THAT THE PLAINTIFF, JOSEPH W. SBARBORO, HAS NOT PROVEN THAT THE DEFENDANT GRAYSLAKE POLICE OFFICER GUY FIASCHE FALSELY ARRESTED PLAINTIFF IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS, AND THEREFORE, WE FIND FOR THE DEFENDANT, GRAYSLAKE POLICE OFFICER GUY FIASCHE, AND AGAINST THE PLAINTIFF, JOSEPH W. SBARBORO.

_____ _____

DATE FOREPERSON

JURY VERDICT FORM 3 - EXCESSIVE FORCE

WE, THE JURY, FIND IN FAVOR OF PLAINTIFF JOSEPH W. SBARBORO AND AGAINST DEFENDANT GRAYSLAKE POLICE OFFICER GUY FIASCHE FOR EXCESSIVE FORCE IN VIOLATION OF PLAINTIFF'S CONSTITUTIONAL RIGHTS. HAVING FOUND IN FAVOR OF PLAINTIFF JOSEPH W. SBARBORO AND AGAINST DEFENDANT GRAYSLAKE POLICE OFFICER GUY FIASCHE, WE ASSESS:

DAMAGES IN THE FOLLOWING AMOUNT:

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DATE FOREPERSON

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JURY VERDICT FORM 4 - EXCESSIVE FORCE

WE, THE JURY, FIND THAT THE PLAINTIFF, JOSEPH W. SBARBORO, HAS NOT PROVEN THAT THE DEFENDANT OFFICER GRAYSLAKE POLICE OFFICER GUY FIASCHE USED EXCESSIVE FORCE IN VIOLATION OF PLAINTIFF'S CONSTITUTIONAL RIGHTS, AND THEREFORE, WE FIND FOR THE DEFENDANT, GRAYSLAKE POLICE OFFICER GUY FIASCHE, AND AGAINST THE PLAINTIFF, JOSEPH W. SBARBORO.

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DATE FOREPERSON

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