

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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DARRIN A. GRUENBERG,

Plaintiff,

v.

POST-TRIAL JURY INSTRUCTIONS

11-cv-574-slc

DUSTIN KINGSLAND and  
STEVEN MUELLER,

Defendants.

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**II. POST-TRIAL JURY INSTRUCTIONS**

**Introduction**

Ladies and Gentlemen of the Jury:

Now that you have heard the evidence and the arguments, I will give you the instructions that will govern your deliberations in the jury room. It is my job to decide what rules of law apply to the case and to explain those rules to you. It is your job to follow the rules, even if you disagree with them or don't understand the reasons for them. You must follow all of the rules; you may not follow some and ignore others.

The decision you reach in the jury room must be unanimous. In other words, you must all agree on the answer to each question.

Your deliberations will be secret. You will never have to explain your verdict to anyone.

If you have formed any idea that I have an opinion about how the case should be decided, disregard that idea. It is your job, not mine, to decide the facts of this case.

The case will be submitted to you in the form of a special verdict consisting of four questions. In answering the questions, you should consider only the evidence that has been received at this trial. Do not concern yourselves with whether your answers will be favorable to one side or another, or with what the final result of this lawsuit may be.

Note that certain questions in the verdict are to be answered only if you answer a preceding question in a certain manner. Read the introductory portion of each question very carefully before you undertake to answer it. Do not answer questions needlessly.

### **Burden of Proof**

When a party has the burden to prove any matter by a preponderance of the evidence, it means that you must be persuaded by the testimony and exhibits that the matter sought to be proved is more probably true than not true. You should base your decision on all of the evidence, regardless of which party presented it.

### **Answers Not Based on Guesswork**

If, after you have discussed the testimony and all other evidence that bears upon a particular question, you find that the evidence is so uncertain or inadequate that you have to guess what the answer should be, then the party having the burden of proof as to that question has not met the required burden of proof. Your answers are not to be based on guesswork or speculation. They are to be based upon credible evidence from which you can find the existence of the facts that the party must prove in order to satisfy the burden of proof on the question under consideration.

### **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.

### **Evidence of Statutes, Administrative Rules, Regulations, and Policies**

You have heard evidence about whether one or more of the defendants' conduct complied with a certain prison policies. You may consider this evidence in your deliberations; however, you should remember that the issue is whether one of the defendants was deliberately indifferent to plaintiff's serious medical need, not whether a particular prison policy might have been breached.

### **Special Verdict Liability Question**

Plaintiff alleges that defendants used excessive force against him.

Question No. 1 asks whether on September 30, 2007, either of the defendants used excessive force against plaintiff.

Excessive force means force used for the purpose of harming plaintiff and not in a good faith effort to maintain or restore security or discipline.

To succeed on his claim against either defendant, plaintiff must prove each of the following elements by a preponderance of the evidence:

- (1) The defendant you are considering used force on plaintiff;
- (2) In using this force on plaintiff, the defendant intentionally used extreme or excessive cruelty toward plaintiff for the purpose of harming him, and not in a good faith effort to maintain or restore security or discipline; and
- (3) The defendant's conduct caused harm to plaintiff.

If you find that plaintiff has proved each of these things by a preponderance of the evidence as to the defendant you are considering, then you should answer Question No. 1 "Yes" as to this defendant, then go on to consider the question of damages in Question Nos. 2 through 4 for this defendant.

If, on the other hand, you find that plaintiff has failed to prove any one of these things by a preponderance of the evidence as to the defendant you are considering, then

you should answer the Question No. 1 “No,” and you will not consider the question of damages in the remaining questions for this defendant.

In deciding whether plaintiff has proven that any defendant used force against him for the purpose of harming him, you may consider such factors as:

- The need to use force;
- The relationship between the need to use force and the amount of force used;
- The extent of plaintiff’s injury;
- Whether defendants reasonably believed there was a threat to the safety of staff or prisoners; and
- Any efforts made by defendants to limit the amount of force used.

When considering these factors, you must give prison officials leeway to adopt and carry out policies and practices that in their reasonable judgment are needed to preserve order and discipline and to maintain security in the prison.

In using force against a prisoner, officers cannot realistically be expected to consider every contingency or minimize every possible risk. On the other hand, officers cannot use force against a prisoner simply because the prisoner has made the officers angry.

### **Multiple Defendants**

You must give separate consideration to each defendant in this case. Although there are two defendants, it does not follow that if one is liable, the others is also liable.

In considering a claim against one defendant, you must not consider any evidence that was admitted only against the other defendant.

### **Personal Involvement**

Plaintiff must prove by a preponderance of the evidence that each of the defendants were personally involved in the conduct that plaintiff complains about. You may not hold a defendant liable for what other people did or did not do.

## **III. JURY INSTRUCTIONS ON DAMAGES**

### **General**

Questions Nos. 2 through 4 relate to damages. You are to answer these questions as to a defendant only if you have answered Question No. 1 “Yes” as to that defendant.

Plaintiff has the burden of convincing you, by a preponderance of the evidence, both that he has been injured or damaged and the amount of the damages. Plaintiff need not produce evidence that is as exact as the evidence needed to support findings on other questions in the verdict. Determining damages involves the consideration of many different factors that cannot be measured precisely. In determining the damages you must base your answer on evidence that reasonably supports your determination of damages under all of the circumstances of the case. You should award as damages the amount of money that you find fairly and reasonably compensates plaintiff for his injuries.

Do not measure damages by what the parties may have asked for in their arguments. Their opinions as to what damages should be awarded should not influence you unless their opinions are supported by the evidence. It is your job to determine the amount of the damages sustained from the evidence you have seen and heard. Examine that evidence carefully and impartially. Do not add to the damage award or subtract anything from it because of sympathy to one side or because of hostility to one side. Do

not make any deductions because of a doubt in your minds about the liability of any of the parties.

### **Compensatory Damages**

Question No. 2 of the special verdict asks what amount of money, if any, will fully and fairly compensate plaintiff for the harm caused by defendants. These are called “compensatory damages.”

Compensatory damages are not restricted to the actual loss of money; they include both the physical and mental aspects of injury, even if these are not easy to measure. You should consider the physical, mental and emotional pain and suffering that plaintiff has experienced. However, in order to award compensatory damages, you must find that plaintiff suffered a physical injury. Physical injury means harm or damage to one’s body that is more than trivial. If you find that plaintiff did not suffer a physical injury as a result of a violation of his rights, you may award only nominal damages of \$1.00 for the violation and should proceed to consider whether punitive damages should be awarded.

### **Punitive Damages**

Question No. 3 asks whether either defendant demonstrated a willful or reckless disregard for the plaintiff’s constitutional rights. If you answer “yes” to Question No. 3 as to a defendant, then you may award punitive damages in Question No. 4.

Punitive damages are never a matter of right. This means that you are not required to make any award of punitive damages, but you may do so if you think it is proper under the circumstances. It is in the jury’s discretion to award or withhold them.

Punitive damages may be awarded even if the violation of plaintiff’s rights resulted in only nominal compensatory damages. That is, you may award punitive

damages even if the plaintiff can show no damages or other injury as a result of a defendant's actions.

The purposes of punitive damages are to punish a defendant for his conduct and to serve as an example or warning to the 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 the defendant's conduct was in reckless disregard of plaintiff's constitutional rights. An action 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 a defendant's conduct was motivated by evil motive or intent, such as ill will or spite or grudge either toward plaintiff individually or toward all persons such as plaintiff, then you may find that the defendant deliberately violated the plaintiff's rights. In addition, if the defendant was in a position in which he certainly should have known that his conduct would violate the plaintiff's rights, and proceeded to act in disregard of that knowledge and of the harm or the risk of harm that would result to the plaintiff, then the defendant acted with reckless disregard for the plaintiff's 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 the defendant's conduct;
- the impact of the defendant's conduct on plaintiff;
- the relationship between plaintiff and the defendant;

- the likelihood that the defendant would repeat the conduct if an award of punitive damages is not made;
- the defendant's financial condition; and
- the relationship of any award of punitive damages to the amount of actual harm the plaintiff suffered.

### **Selection of Presiding Juror; Communication with the Judge; Verdict**

When you go to the jury room to begin considering the evidence in this case you should first select one of the members of the jury to act as your presiding juror. This person will help to guide your discussions in the jury room.

You are free to deliberate in any way you decide or select whomever you like as a presiding juror. However, I am going to provide a general suggestion on the process to help you get started. When thinking about who should be presiding juror, you may want to consider the role that the presiding juror usually plays. He or she serves as the chairperson during the deliberations and has the responsibility of insuring that all jurors who desire to speak have a chance to do so before any vote. The presiding juror should guide the discussion and encourage all jurors to participate.

Once you are in the jury room, if you need to communicate with me, the presiding juror will send a written message to me. However, don't tell me how you stand as to your verdict.

As I have mentioned before, the decision you reach must be unanimous; you must all agree.

When you have reached a decision, the presiding juror will sign the end of the verdict form, put a date on it, and all of you will return with the verdict into the courtroom.