

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

OSCAR GARNER,

Plaintiff,

POST-TRIAL AND DAMAGES
JURY INSTRUCTIONS

v.

JEFFREY JOPP,

11-cv-719-slc

Defendant.

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 6 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.

Elements of Plaintiff's Claim

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

1. Plaintiff had a serious medical need;
2. The defendant consciously disregarded plaintiff's serious medical need; and
3. The defendant's conduct caused harm to plaintiff.

If you find that plaintiff has proved each of these three elements by a preponderance of the evidence, then you should find for plaintiff against 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 three elements by a preponderance of the evidence, then you should find for defendant, and you will not consider the question of damages.

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. On the liability questions in the special verdict, the burden of proof is on the party contending that the answer to a question should be "yes." You should base your decision on all of the evidence, regardless of which party presented it.

Special Verdict Questions

Question No. 1 asks whether plaintiff Oscar Garner had a serious medical need on May 30, 2011.

A “serious medical need” is a condition that a doctor has recognized as needing treatment or something so obvious that even someone who is not a doctor would recognize it as requiring treatment. The condition does not have to be life threatening. A medical need may be serious if it significantly affects an individual’s daily activities, if it causes pain or if it otherwise subjects the individual to a substantial risk of serious harm.

In deciding whether a medical need is serious, you should consider the severity of the condition; the harm (including pain and suffering) that could result from a lack of medical care; whether providing treatment was feasible; and the actual harm caused by the lack of medical care.

Question No. 2 asks whether defendant Jeffrey Jopp was aware that plaintiff had a serious medical need on May 30, 2011.

It is not enough that you believe that defendant *should have been* aware of a serious medical need. Rather, to answer “yes” to Question No. 2, you must find that defendant actually *was aware* that plaintiff had a serious medical need.

Question No. 3 asks whether defendant consciously disregarded plaintiff’s need.

In answering this question, you may consider whether it was practical for defendant to take corrective action. If the defendant took reasonable measures to respond, then he did not consciously disregard plaintiff’s serious medical need.

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.

III. JURY INSTRUCTIONS ON DAMAGES

General

Questions No. 4 and No. 6 relate to damages. Plaintiff has the burden of convincing you, by the 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 lawyers ask 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

In answering Question No. 4, 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 result of defendant's failure to provide him with medical assistance for his asthma attack. 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 these are not easy to measure. You should consider the physical, mental and emotional pain and suffering that plaintiff 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 the plaintiff for the pain and suffering that he has sustained. If you find in favor of plaintiff but find that he has failed to prove compensatory damages, you must return a verdict for plaintiff in the amount of one dollar.

Punitive Damages

Question No. 5 asks whether defendant's conduct demonstrated a willful or reckless disregard for the plaintiff's constitutional rights. If you answer "yes" to Question No. 5, you may award punitive damages in Question No. 6.

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 defendant's actions.

The purposes of punitive damages are to punish the defendant for his conduct and to serve as an example or warning to the 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.

You may assess punitive damages only if you find that 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 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 he 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 defendant's conduct;
- the impact of a defendant's conduct on plaintiff;
- the relationship between the plaintiff and defendant;
- the likelihood that defendant would repeat the conduct if an award of punitive damages is not made;
- 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 verdict form, put a date on it, and all of you will return with the verdict into the court.