

*Excessive force
Failure to protect*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

COREY HEATH,

Plaintiff,

v.

**9:96-CV-1998
(FJS/RFT)**

**C.O. SADDLEMIRE, C.O. FOLEY,
C.O. REYES, C.O. PILATICH, C.O. DARLING,
C.O. MESSINA, C.O. HOTALING,
C.O. HODGES, C.O. SUPINA,
C.O. STROUD, C.O. ANGERAMI, C.O. CHEWENS,
C.O. CHASE, and SGT. PALMER,**

Defendants.

JURY INSTRUCTIONS

I. INTRODUCTION

Now that you have heard all the evidence and the arguments of counsel, it is my duty to instruct you on the law applicable to this case.

Your duty as jurors is to determine the facts of this case on the basis of the admitted evidence. Once you have determined the facts, you must follow the law as I am now instructing you and apply that law to the facts as you find them. In doing so, you are not allowed to select some instructions and reject others, rather you are required to consider all the instructions together as stating the law. In that regard, you should not concern yourself with the wisdom of any rule of law. You are bound to accept and apply the law as I give it to you, whether or not you agree with it.

In deciding the facts of this case, you must not be swayed by feelings of bias, prejudice or sympathy towards either party. The plaintiff and the defendants, as well as the general public, expect you to carefully and impartially consider all the evidence in this case, follow the law as stated by the Court, and reach a decision regardless of the consequences.

Nothing I say in these instructions is to be taken as an indication that I have any opinion about the facts of the case, or what that opinion may be. It is not my function to determine the facts, that is your function.

II. ROLE OF ATTORNEYS

Our courts operate under an adversary system in which we hope that the truth will emerge through the competing presentations of adverse parties. The function of the attorneys is to call your attention to those facts that are most helpful to their side of the case. It is their role to press as hard as they can for their respective positions.

In that regard, one can easily become involved with the personalities and styles of the attorneys, but it is important for you as jurors to recognize that this is not a contest between attorneys. You are to decide this case solely on the basis of the evidence. Remember, the attorneys' statements and characterizations of the evidence are not evidence. Insofar as you find their opening and/or closing arguments helpful, take advantage of them; but it is your memory and your evaluation of the evidence in the case

that counts.

III. OBJECTIONS

In fulfilling their role, attorneys have the obligation to make objections to the introduction of evidence they feel is improper. The application of the rules of evidence is not always clear, and attorneys often disagree. It has been my job as the judge to resolve these disputes. It is important for you to realize, however, that my rulings on evidentiary matters have nothing to do with the ultimate merits of the case and are not to be considered as points scored for one side or the other.

In addition, you must not infer from anything I have said during this trial that I hold any views for or against either the plaintiff or the defendants. In any event, any opinion I might have is irrelevant. You are the judges of the facts.

IV. EVIDENCE

As I stated earlier, your duty is to determine the facts based on the evidence I have admitted. The term "evidence" includes the sworn testimony of witnesses and exhibits that I have received during trial. In addition, on occasion, I sustained objections to questions and either prevented a witness from answering or ordered an answer stricken from the record. You may not draw inferences from unanswered questions and you may not consider any responses which I ordered stricken from the record.

A. Multiple Defendants

Although there are multiple Defendants in this action, it does not follow from that fact alone that if one is liable the others are liable as well. Each Defendant is entitled to a fair consideration of his own defense, and a Defendant may not be prejudiced by the fact, if it should become a fact, that you find against another Defendant. Unless otherwise stated, all instructions I give to you govern the case as to each Defendant.

B. Direct and Circumstantial Evidence

While you should consider only the admitted evidence, you may draw inferences from the testimony and exhibits which are justified in light of common sense and experience. The law recognizes two types of evidence -- direct and circumstantial. Direct evidence is the testimony of one who asserts personal knowledge, such as an eyewitness. Circumstantial or indirect evidence is proof of a chain of events which points to the existence or nonexistence of certain facts. (SNOW EXAMPLE)

The law does not distinguish between the weight to be given to direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You may rely on either type of evidence in reaching your decision.

V. EVALUATION OF THE EVIDENCE

You have had the opportunity to observe all the witnesses. It is now your job to decide how believable each witness was in his testimony. You are the sole judges of the credibility of each witness and of the importance of his testimony.

In evaluating a witness' testimony, you should use all the tests for truthfulness that you would use in determining matters of importance to you in your everyday life. You should consider any bias or hostility the witness may have shown for or against any party, as well as the interest the witness may have in the outcome of the case. You should consider the opportunity the witness had to see, hear, and know the things about which he testified, the accuracy of the witness' memory, his candor or lack of candor, the reasonableness and probability of the witness' testimony, the testimony's consistency or lack of consistency, and its corroboration or lack of corroboration with other credible testimony.

If you were to find that any witness willfully testified falsely as to any material fact, that is, as to an important matter, the law permits you to disregard completely the entire testimony of that witness upon the theory that one who testifies falsely about one material fact is likely to testify falsely about everything. You are not required, however, to consider such a witness as totally unworthy of belief. You may accept so much of the witness' testimony as you deem true and disregard what you believe is false. By these processes you, as the sole judge of the facts, decide which of the witnesses you will

believe, what portion of their testimony you accept, and what weight you will give it.

Also, as stated earlier, the existence or non-existence of a fact is not determined by the number of witnesses called. Your concern is not with the quantity but the quality of the evidence.

In summary, what you must try to do in deciding credibility is to size up a witness in light of his demeanor, the explanations given, and all of the other evidence in the case. Always remember that you should use your common sense, your good judgment and your own life experience.

A. Impeachment by Prior Inconsistent Statements

You have heard counsel argue that the witnesses made statements on earlier occasions which counsel maintains are inconsistent with those witnesses' trial testimony. Evidence of a prior inconsistent statement is not to be considered by you as affirmative evidence. However, any evidence of a prior inconsistent statement may be considered by you for the more limited purpose of helping you decide whether to believe the trial testimony of the witness who you find contradicted himself. If you find that the witness made an earlier statement that conflicts with his trial testimony, you may consider that fact in deciding how much of his trial testimony, if any, to believe.

In making this determination, you may consider whether the witness purposely made a false statement or whether it was an innocent mistake; whether the inconsistency

concerns an important fact, or whether it had to do with a small detail; whether the witness had an explanation for the inconsistency; and whether that explanation appealed to your common sense.

It is exclusively your duty, based upon all the evidence and your own good judgment, to determine whether the prior statement was inconsistent, and if so, how much, if any, weight should be given to the inconsistent statement in determining whether to believe all or part of the witness' testimony.

B. Impeachment by Witness' conviction

Plaintiff is presently incarcerated as a result of being convicted of the crimes of Murder in the Second Degree and Criminal Possession of a Weapon in the Second Degree. In addition, you have heard evidence that, as a result of the incident that occurred on January 14, 1996, Mr. Heath was convicted of Promoting Prison Contraband in the First Degree, a Class D Felony, for unlawfully possessing a single edge razor blade and Assault in the First Degree, a Class C Felony, for causing serious physical injury to Defendant Saddlemire by cutting him with a single edge razor blade. In weighing the credibility of Mr. Heath's testimony, you may consider the fact that he was convicted of these crimes. However, the fact that Mr. Heath was convicted of these crimes does not necessarily destroy his credibility. It is, however, one of the circumstances you may consider in assessing Mr. Heath's credibility and, therefore, in determining the weight to

give to his testimony.

C. Testimony of Corrections Officers

You have heard the testimony of Corrections Officers. The fact that a witness is employed as a Corrections Officer does not mean that his testimony is deserving of any more or less consideration, or should be given any greater or lesser weight, than that of any other witness from whom you heard testimony.

At the same time, it is quite legitimate for counsel to attempt to attack the credibility of a Corrections Officer witness on the ground that his testimony may be tailored or colored by a professional or personal interest in the outcome of the case. It is your decision, after reviewing all of the evidence, to accept the testimony of the Corrections Officer witness or reject it, or to give it whatever weight you believe it deserves, just as you would with any other witness from whom you heard testimony.

D. Stipulated Facts

The parties also have presented some stipulated facts. A stipulated fact is simply one that all parties agree is true. You must accept any such stipulated facts as true.

VI. BURDEN OF PROOF

When a party has the burden of proof on a particular issue that means that

considering all the evidence in the case, that party's contention on that issue must be established by a fair preponderance of the credible evidence. The credible evidence means the testimony or exhibits that you find worthy to be believed. A preponderance means the greater part of it. It does not mean the greater number of witnesses or the greater length of time taken by either side. The phrase refers to the quality of the evidence, its weight, and the effect that it has on your minds. The law requires that, in order for a party to prevail on an issue on which he has the burden of proof, the evidence that supports his claim on that issue must appeal to you as more nearly representing what took place than the evidence opposed to his claim. (SCALE EXAMPLE) If it does not, or if it weighs so evenly that you are unable to say that there is a preponderance on either side, you must resolve the question against the party who has the burden of proof and in favor of the opposing party.

In this case Plaintiff seeks to recover damages for alleged violations of his rights under the Eighth Amendment to the United States Constitution to be free from the use of excessive force and to be protected from the use of excessive force by others. Plaintiff has the burden of proving by a fair preponderance of the evidence the elements of the claims which I will describe to you. For Plaintiff to prevail, you must find that the evidence that supports his claims is the more likely version of what occurred. If, however, you find the evidence supporting Defendants' case more persuasive, or if you are unable to find a preponderance of evidence on either side, then you must resolve the

question in favor of Defendants. You may only find in favor of Plaintiff if the evidence supporting his claims outweighs the evidence opposing them.

VII. SUBSTANTIVE LAW

A. 42 U.S.C. § 1983

Plaintiff Corey Heath alleges constitutional claims pursuant to 42 U.S.C. § 1983, which provides that

Every person who, under color of any statute, ordinance, regulation, custom or usage, or any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured

I will refer to this statute simply as "Section 1983."

Section 1983 does not create any substantive rights in and of itself but rather serves as a means by which individuals can seek redress in this Court for alleged violations of their substantive rights under the United States Constitution. The constitutional right that Plaintiff alleges Defendants violated is his right to be free from cruel and unusual punishment pursuant to the Eighth Amendment of the United States Constitution.

Defendants in this case are corrections officers, who, at the time of the incident in question, were Corrections Officers at the Coxsackie Correctional Facility. They are being sued in their individual capacities. However, neither the State nor the Department of Correctional Services is a Defendant in this case.

B. Elements of Plaintiff's Eighth Amendment claims

While inmates in prison have forfeited certain rights and freedoms by virtue of their incarceration, the Eighth Amendment to the United States Constitution protects them from cruel and unusual punishment. When a State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being. Plaintiff Heath alleges that Defendants used excessive and unnecessary force against him and/or failed to intervene to protect him from the use of excessive force by other Corrections Officers in an incident that occurred on January 14, 1996. The use of excessive force and the failure to protect an inmate from the use of excessive force by others may, under some circumstances, constitute cruel and unusual punishment.

1. Use of excessive force claim

To prove his claim of excessive force against Defendants, Plaintiff must prove each of the following elements by a preponderance of the evidence as to each Defendant:

(1) that the Defendant you are considering acted under "color of state law;" and (2) that the Defendant you are considering acted maliciously and sadistically; and (3) that Plaintiff suffered injury as a result of the conduct of the Defendant you are considering.

First Element: Color of State law

The parties agree that Defendants were acting under the "color of state law," i.e., that they were employees of the State at the time of the incident. Therefore, this element has been satisfied.

Second Element: Malicious and sadistic conduct

In the context of an excessive force claim, the key inquiry is whether the Defendant you are considering applied force in a good faith effort to maintain or restore discipline or whether that Defendant acted maliciously and sadistically for the very purpose of causing harm.

An act is maliciously done if it is done to cause pain or injury to another without justification. An act is done sadistically if it is done to obtain gratification by the infliction of physical or mental pain to another.

Your evaluation of this element involves an evaluation of the force used; that is, was the force reasonable in light of the circumstances of the case.

In deciding this, you should examine such facts as the extent of Plaintiff's injuries,

the need for the application of force, the relationship between that need and the amount of the force used, the threat reasonably perceived by the Defendant you are considering and any efforts made by that Defendant to temper the severity of a forceful response, i.e., to use only that force necessary to meet that threat. Again, in the context of a prison, it is necessary to realize that not every push or shove violates a prisoner's constitutional rights.

If an evaluation of these factors leads you to believe that the Defendant you are considering acted maliciously and sadistically, then Plaintiff has established this element. If, however, you find that the Defendant you are considering acted in a good faith effort to maintain and restore discipline, then Plaintiff has failed to meet this element.

Third Element: Injury caused by Defendant

If you find that the Defendant you are considering used force in a malicious and sadistic manner then you must consider whether such conduct was the proximate cause of an injury to Plaintiff. In an excessive force claim, this element may be established even if the victim does not suffer serious or significant injury, so long as he suffered some injury.

A proximate cause is an act or omission that, in a natural course, produces injury and without this act or omission the injury would not have occurred. Stated another way, before Plaintiff can recover damages for any injuries, he must first show by a preponderance of the evidence that such injury would not have come about were it not for the conduct of the Defendant you are considering.

2. Failure to protect claim

Under the Eighth Amendment, a Corrections Officer may not, with deliberate indifference, fail to intervene to protect the constitutional rights of a prisoner from infringements by another Corrections Officer in his presence. To prove his failure to protect claim, Plaintiff must prove each of the following elements by a preponderance of the evidence as to each Defendant.

First Element: Color of State law

The parties agree that Defendants were acting under the "color of state law," i.e., that they were employees of the State at the time of the incident. Therefore, this element has been satisfied.

Second Element: Other Corrections Officers were using excessive force against Plaintiff

Plaintiff must prove, by a preponderance of the evidence, that Corrections Officers, other than the Defendant you are considering, used excessive force against him during the incident that occurred on January 14, 1996.

In other words, before considering Plaintiff's failure to protect claim, you must have found that one or more of the Defendants used excessive force against Plaintiff.

Third Element: Defendant was deliberately indifferent to excessive force being used against Plaintiff by another Corrections Officer

Plaintiff must prove, by a preponderance of the evidence, that the Defendant you are considering was deliberately indifferent to excessive force being used against Plaintiff by another Corrections Officer. Deliberate indifference is established only if the Defendant you are considering had actual knowledge that another Corrections Officer was using excessive force against Plaintiff and disregarded that risk by intentionally refusing or failing to take reasonable measures to stop the use of excessive force. Mere inattention or inadvertence does not constitute deliberate indifference.

4. Fourth Element: Defendant had a realistic opportunity to intervene and prevent harm to Plaintiff

In addition to proving that the Defendant you are considering was deliberately indifferent to his safety, Plaintiff must also prove that the Defendant you are considering had a realistic opportunity to intervene and prevent the harm from occurring. Therefore, you must find that the Defendant you are considering had sufficient time to intervene and that, had he intervened, he would have been capable of preventing harm to Plaintiff.

5. Fifth Element: Injury caused by Defendant

If you find that the Defendant you are considering failed to protect Plaintiff from

the use of excessive force by another Corrections Officer, you may only find him responsible for the damages that he would have been able to prevent.

VIII. DAMAGES

If you find that Mr. Heath has proven by a preponderance of the credible evidence that the Defendant you are considering is liable on either of his claims, then you must determine the amount of damages to which Mr. Heath is entitled on those claims as to that Defendant. However, you should not infer that Mr. Heath is entitled to recover damages merely because I am instructing you on the elements of damages. It is exclusively your function to decide the issues of liability outlined above, and I am instructing you on damages only so that you will have guidance should you decide that Mr. Heath is entitled to recovery.

A. Compensatory Damages

The purpose of the law of damages is to award, as far as possible, just and fair compensation for the loss, if any, resulting from the violation of Mr. Heath's rights. If you find that the Defendant you are considering is liable on either of Mr. Heath's claims, as I have explained them, then you must award Mr. Heath sufficient damages to compensate him for any injury proximately caused by that Defendant's conduct. An injury is proximately caused by an act, or a failure to act, whenever it appears from the

evidence in the case, that the act or omission was a substantial contributing factor in causing the injury. Mr. Heath need not prove, however, that the conduct of the Defendant you are considering was the sole cause of his injuries

A prevailing plaintiff is entitled to compensatory damages for the physical injury, pain and suffering, mental anguish, shock and discomfort that he has suffered because of a defendant's unjustified conduct. You should not award compensatory damages for speculative injuries but only for those injuries that Plaintiff has proven resulted from the unjustified conduct. In other words, Plaintiff is not entitled to recover for injuries that resulted from the use of force that did not violate the Eighth Amendment.

B. Nominal Damages

Even if you find that Mr. Heath has failed to provide proof that he is entitled to compensatory damages on his claims, you may still be required to award nominal damages if you find that the Defendant you are considering violated Mr. Heath's constitutional rights, but you do not find that Mr. Heath is entitled to compensatory damages. In such a case, you must award Mr. Heath nominal damages in the amount of one dollar.

You may not award Mr. Heath both nominal and compensatory damages if you find that his constitutional rights were violated. In other words, if you find that Mr. Heath's constitutional rights were violated and that Mr. Heath was measurably injured,

you may award him compensatory damages. On the other hand, if you find that Mr. Heath's constitutional rights were violated but he was not measurably injured, you must award him nominal damages only.

C. Punitive Damages

Mr. Heath also seeks punitive damages. Punitive damages are awarded, in the discretion of the jury, to punish a defendant for extreme or outrageous conduct, or to deter or prevent a defendant and others like him from committing similar acts in the future.

I must emphasize, however, that at this stage of the proceedings, you are only to consider whether or not you will award Mr. Heath punitive damages. If you decide to award punitive damages to Mr. Heath, you will be asked to determine the amount of such an award after a further hearing concerning this issue. Therefore, at this time, you are only to decide whether punitive damages are to be awarded.

IX. CONCLUSION

I have now outlined the rules of law applicable to this case and the processes by which you should weigh the evidence and determine the facts. In a few minutes, you will retire to the jury room for your deliberations. Your first order of business in the jury room will be to elect a foreperson. The foreperson's responsibility is to ensure that deliberations proceed in an orderly manner. The foreperson's vote, however, carries the

same weight as the vote of any other juror.

As jurors, you are required to discuss the issues and the evidence with each other. While you must deliberate with a view to reaching an agreement, you must not violate your individual judgment and conscience in doing so. The proper administration of justice requires you to give full and conscientious consideration to the issues and evidence before you in determining the facts of the case – and then apply the law that the Court gives you to those facts.

To return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

During your deliberations, do not hesitate to re-examine your views and change your mind. Do not, however, surrender your honest convictions because of the opinion of a fellow juror or for the purpose of returning a verdict. Remember you are not partisans. You are the judges -- judges of the facts. Your duty is to seek the truth from the evidence presented to you, while holding the parties to their burdens of proof.

If, in the course of your deliberations, your recollection of any part of the testimony should fail, or if you should find yourself in doubt concerning my instructions, it is your privilege to return to the courtroom to have the testimony read to you or my instructions further explained. I caution you, however, that the read-back of testimony may take some time and effort. You should, therefore, make a conscientious effort to resolve any questions as to testimony through your collective recollections.

Should you desire to communicate with the Court during your deliberations, please put your message or question in writing. The foreperson should sign the note and pass it to the marshal who will bring it to my attention. I will then respond, either in writing or orally, by having you returned to the courtroom.

Once you have reached a unanimous verdict, your foreperson should fill in the verdict form, date and sign it, and inform the marshal that you have reached a verdict. A verdict form has been prepared for you. I will now review it with you.