

*Medical Indifference  
Retaliation*

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

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**AMADO BRITO,**

**Plaintiff,**

**v.**

**9:02-CV-1410  
(FJS/RFT)**

**Superintendent Hollins, Oneida  
Correctional Facility; Burge,  
Superintendent, Auburn Correctional  
Facility; H. Moss, Correctional Officer  
at Oneida Correctional Facility;  
Amina Ahsan, Facility Health Services  
Director at Auburn Correctional  
Facility; and Ann Driscoll, Acting Nurse  
Administrator at Auburn,**

**Defendants.**

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**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 or her 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**

Although 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.

**C. All Available Evidence Need Not Be Produced**

The law does not require any party to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned in the evidence in this case.

**D. 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.

You may consider the testimony of a Corrections Officer just as you would with any other witness from whom you heard testimony.

**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.

## **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 First Amendment to the United States Constitution to be free from retaliation for exercising his right to file grievances about his conditions of confinement. He also seeks to recover damages for alleged violations of his rights under the Eighth Amendment to the United States Constitution to receive adequate medical attention for his serious medical needs. Finally, Plaintiff seeks to recover damages that he suffered as a result of Defendant Moss allegedly slapping him several times in the face.

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 CLAIMS**

### **A. Deliberate indifference to serious medical needs claim**

Plaintiff claims that Defendants Hollis, Burge, Ahsan and Driscoll violated the

Eighth Amendment by denying him medical treatment with deliberate indifference to his serious medical needs, following the incident that occurred on March 7, 2002.

Specifically, he contends that Defendants Hollins, Burge and Ahsan were deliberately indifferent to his serious medical needs by failing to take corrective measures to stop the staff from denying him and/or delaying his receipt of adequate medical treatment for his serious medical needs. He also claims that Defendant Ahsan was deliberately indifferent to his serious medical needs by placing the responsibility for his medical treatment with an individual she knew, or should have known, was falsifying Plaintiff's medical records and was denying Plaintiff adequate medical attention. Finally, Plaintiff asserts that Defendant Driscoll was deliberately indifferent to his serious medical needs by denying him adequate medical attention for his serious medical needs and falsifying his medical records.

I instruct you that in the context of a prisoner's medical needs, an inmate who is the subject of the State's care and custody is entitled to have his medical needs addressed in a manner consistent with his rights under the United States Constitution.

To succeed on his claim that Defendants were deliberately indifferent to his serious medical needs, 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 Plaintiff's condition presented a "serious medical need;" and

(3) that the Defendant you are considering acted with "deliberate indifference" to Plaintiff's serious medical need; and

(4) that the acts or omissions of the Defendant you are considering were the proximate cause of the injuries and consequent damages that Plaintiff sustained.

I shall now examine each of these elements in greater detail.

***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: Serious Medical Need***

In evaluating this element of Plaintiff's claim, you must determine whether Plaintiff's condition presented a "serious medical need." A serious medical need is one that contemplates a condition of urgency, one that may produce death, degeneration, or extreme pain.

In evaluating whether Plaintiff has established this element by a preponderance of the evidence, you should consider the testimony of the witnesses and the documentation and medical records that both sides produced in this case.

If you find that Plaintiff did not have a serious medical need, then your deliberations are to go no further and you must find in favor of Defendants. If, however, you find that Plaintiff's condition did, in fact, present a serious medical need, you must

then consider whether Defendants acted with the required culpable state of mind.

***Third Element: Deliberate Indifference***

The third element Plaintiff must prove by a preponderance of the evidence concerns Defendants' state of mind. To prevail on this element of his claim, Plaintiff must establish that the Defendant under consideration acted with "deliberate indifference" to Plaintiff's serious medical needs.

In this regard, I will instruct you that society does not expect that prisoners will have unqualified access to health care. Moreover, it is equally recognized that routine discomfort is part of the penalty that criminal offenders pay for their offenses against society and only those deprivations denying the minimal civilized measure of life's necessities are sufficiently grave to form the basis of an Eighth Amendment violation.

In considering this element of Plaintiff's claim, you must consider the "contemporary standards of decency" in the context of a penal setting. Deliberate indifference to an inmate's serious medical needs is either conduct that involves an unnecessary and wanton or reckless infliction of pain, or conduct that shocks the conscience, in other words, conduct that violates the contemporary standards of decency.

A merely inadvertent failure to adequately address Plaintiff's medical condition might be sufficient to make Defendant liable in a negligence action. However, such an inadvertent failure is not sufficiently reckless to establish a claim under the Eighth Amendment. Thus, if you find that the actions of the Defendant under consideration

reflect a simple lack of due care or negligence with respect to Plaintiff, then you must find in favor of that Defendant.

***Fourth Element: Proximate Cause***

If you find that Plaintiff suffered an injury, it is necessary for you to determine whether the injury that occurred resulted from the acts or omissions of one or more of the named Defendants. Plaintiff must prove, by a preponderance of the evidence, that the acts or omissions of the Defendant you are considering was the proximate cause of Plaintiff's injury or injuries. 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 Defendants' conduct.

**B. First Amendment Retaliation Claim**

In this case, Plaintiff claims that Defendants Hollins, Burge, Moss, and Driscoll, while acting "under color" of state law, violated his constitutional rights under the First Amendment to the United States Constitution.

Specifically, Plaintiff claims that Defendant Hollins transferred him out of the facility, thus ending any treatment he was receiving at that facility in retaliation for his having filed grievances concerning the conditions of his confinement. Plaintiff alleges

that Defendant Burge failed to take corrective measures to stop the staff from denying or delaying his receipt of adequate medical treatment in retaliation for his having filed grievances concerning the conditions of his confinement. Plaintiff contends that Defendant Moss slapped him in the face several times and denied him meals in retaliation for his having filed grievances concerning the conditions of his confinement. Finally, Plaintiff asserts that Defendant Driscoll denied him adequate medical care and falsified his medical records in retaliation for his having filed grievances concerning the conditions of his confinement.

Although a convicted prisoner loses some constitutional rights upon being found guilty of an offense, he keeps or retains other constitutional rights. One of the rights he retains is the right, under the First Amendment, to file grievances with the appropriate officials about the conditions of his confinement.

To prevail on his claim, Plaintiff must prove each of the following facts by a preponderance of the evidence. First, that Plaintiff filed his grievances about the conditions of confinement in good faith. Second, that Defendants intentionally retaliated against or punished Plaintiff because he exercised his right to file grievances.

If Plaintiff fails to establish either of these facts by a preponderance of the evidence, you must find in favor of the Defendant you are considering.

### **C. Battery**

If a person intentionally touches another person without that person's consent and causes an offensive bodily contact, he commits a battery and is liable for all damages resulting from his act.

Intent involves the state of mind with which an act is done. The intent required for battery is the intent to cause a bodily contact that a reasonable person would find offensive. An offensive bodily contact is one that is done for the purpose of harming another or one that is otherwise wrongful.

Plaintiff alleges that Defendant Moss slapped him several times in the face. Defendant Moss denies slapping Plaintiff in the face. If you find that Plaintiff has proven, by a preponderance of the evidence, that Defendant Moss slapped him in the face and that Plaintiff found that slap offensive, you will find that Defendant Moss committed a battery. If, however, you find that Plaintiff has not proven, by a preponderance of the evidence, that Defendant Moss intentionally slapped Plaintiff in the face, you will find that Defendant Moss did not commit a battery.

### **VIII. DAMAGES**

If you find that Mr. Brito has proven by a preponderance of the credible evidence that the Defendant you are considering is liable on any of his claims, then you must determine the amount of damages to which Mr. Brito is entitled on those claims as to that

Defendant. However, you should not infer that Mr. Brito 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. Brito 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. Brito's rights. If you find that the Defendant you are considering is liable on any of Mr. Brito's claims, as I have explained them, then you must award Mr. Brito 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. Brito 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.

**B. Nominal Damages**

Even if you find that Mr. Brito 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. Brito's constitutional rights, but you do not find that Mr. Brito is entitled to compensatory damages. In such a case, you must award Mr. Brito nominal damages in the amount of one dollar.

You may not award Mr. Brito both nominal and compensatory damages if you find that his constitutional rights were violated. In other words, if you find that Mr. Brito's constitutional rights were violated and that Mr. Brito was measurably injured, you may award him compensatory damages. On the other hand, if you find that Mr. Brito's constitutional rights were violated but he was not measurably injured, you must award him nominal damages only.

**C. Punitive Damages**

If you find that Plaintiff's constitutional rights were violated and award nominal damages, you may also consider whether Plaintiff is entitled to an award of punitive damages. You may consider the issue of punitive damages whether or not you award

Plaintiff any compensatory damages on his constitutional claims.

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 Plaintiff is **entitled** to such an award of punitive damages. If you determine that Plaintiff is entitled to such an award, you will be asked to determine what amount such an award should be at a separate hearing concerning this issue. Therefore, you are **not** to consider the **amount** of punitive damages, if any, you believe Plaintiff is entitled to receive.

You may conclude that Plaintiff is entitled to punitive damages if you find that Defendants' acts or omissions were done maliciously or wantonly. An act or failure to act is maliciously done if it is prompted by ill will or spite towards the injured person. An act or failure to act is wanton if done in a reckless or callous disregard of, or indifference to, the rights of the injured person. In order to justify an award of punitive damages, Plaintiff has the burden of proving, by a preponderance of the evidence, that Defendants acted maliciously or wantonly with regard to his rights. You may assess punitive damages against any or all Defendants or you may refuse to impose punitive damages.

Please remember that at this stage of the proceedings, you are only to consider whether or not Plaintiff is **entitled** to such an award of punitive damages. If you

determine that Plaintiff is so entitled, a separate hearing will be held at which you will hear evidence relevant to the proper amount of such damages. While many of the same considerations apply to a determination of the amount of a punitive damages award, the Court will have specific instructions for you regarding this determination, should it become necessary.

### **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. Although 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.