

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

SCOTT BLEVINS and LISA BLEVINS,)

)

Plaintiffs,)

)

v.)

Case No. 3:11-cv-093-PPS

TOWN OF MENTONE,)

)

OFFICER JIM EADS, and)

)

OFFICER TERRY ENGSTRAND)

)

Defendants.)

THE COURT'S FINAL JURY INSTRUCTIONS

Date: December 7, 2012

s/ Philip P. Simon

PHILIP P. SIMON, CHIEF JUDGE

UNITED STATES DISTRICT COURT

FINAL INSTRUCTION NO. 1

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. Do not allow sympathy, prejudice or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

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.

FINAL INSTRUCTION NO. 2

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.

FINAL INSTRUCTION NO. 3

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

FINAL INSTRUCTION NO. 4

During the trial, certain testimony was presented to you by a videotaped deposition. You should give this testimony the same consideration you would give it had the witnesses appeared and testified here in court.

FINAL INSTRUCTION NO. 5

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. This includes any press, radio, Internet or television reports you may have seen or heard. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

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.

FINAL INSTRUCTION NO. 6

In determining whether any fact has been proved, you should consider all of the evidence bearing on the question regardless of who introduced it.

FINAL INSTRUCTION NO. 7

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.

FINAL INSTRUCTION NO. 8

Each party is entitled to have the case decided solely on the evidence that applies to that party. You must consider the evidence concerning Officer Eads only in the case against him. You must not consider it against any other party.

Similarly, you must consider the evidence concerning Officer Engstrand only in the case against him. You must not consider it against any other party.

FINAL INSTRUCTION NO. 9

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.

FINAL INSTRUCTION NO. 10

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.

FINAL INSTRUCTION NO. 11

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

FINAL INSTRUCTION NO. 12

You may consider statements given by a party 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 otherwise 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 prior inconsistent statements 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.

FINAL INSTRUCTION NO. 13

You have heard evidence that Scott Blevins has been previously convicted of crimes within the last ten years. You may consider this evidence only in deciding whether Scott Blevins's testimony is truthful in whole, in part, or not at all. You may not consider this evidence for any other purpose.

You also have heard evidence that the Officers went to the Blevinses' residence to arrest Scott Blevins in connection with criminal charges that were being brought against him. You may consider this evidence only for the purpose of evaluating the Officers' state of mind when they arrested the Blevinses. You may not consider this evidence for any other purpose.

FINAL INSTRUCTION NO. 14

You have heard evidence that the charges brought against Scott Blevins in connection with his arrest on March 5, 2009 were eventually dismissed. The fact that the charges against Scott Blevins were later dismissed is not relevant to whether Officers Eads and Engstrand used excessive force when taking Scott Blevins into custody.

FINAL INSTRUCTION NO. 15

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.

FINAL INSTRUCTION NO. 16

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.

FINAL INSTRUCTION NO. 17

Certain demonstrative exhibits have been shown to you. They are used for convenience and to help explain the facts of the case. They are not themselves evidence or proof of any facts.

FINAL INSTRUCTION NO. 18

You must give separate consideration to each claim and each party in this case. Although there are two defendants, it does not follow that if one is liable, any of the others is also liable. Similarly, although there are two plaintiffs, it does not follow that if one is successful, the other one is, too.

FINAL INSTRUCTION NO. 19

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

FINAL INSTRUCTION NO. 20

The Blevinses must prove by a preponderance of the evidence that Officer Eads was personally involved in the conduct that they complain about. You may not hold Officer Eads liable for what other individuals did or did not do.

Similarly, the Blevinses must prove by a preponderance of the evidence that Officer Engstrand was personally involved in the conduct that they complain about. You may not hold Officer Engstrand liable for what other individuals did or did not do.

FINAL INSTRUCTION NO. 21

In this case, Lisa Blevins claims that Officer Eads used excessive force against her when he took her into custody at the Blevinses' residence. To succeed on this claim, she must prove each of the following things by a preponderance of the evidence:

1. Officer Eads used unreasonable force against Lisa Blevins;
2. Because of Officer Eads's unreasonable force, Lisa Blevins was harmed.

If you find that Lisa Blevins has proved each of these things by a preponderance of the evidence, then you should find for her, and go on to consider the question of damages. If, on the other hand, you find that Lisa Blevins did not prove any one of these things by a preponderance of the evidence, then you should find for Officer Eads, and you will not consider the question of damages.

FINAL INSTRUCTION NO. 22

In this case, Scott Blevins claims that Officer Engstrand used excessive force against him when he took Scott Blevins into custody at the Blevinses' residence. To succeed on this claim, he must prove each of the following things by a preponderance of the evidence:

1. Officer Engstrand used unreasonable force against Scott Blevins;
2. Because of Officer Engstrand's unreasonable force, Scott Blevins was harmed.

If you find that Scott Blevins has proved each of these things by a preponderance of the evidence, then you should find for him, and go on to consider the question of damages. If, on the other hand, you find that Scott Blevins did not prove any one of these things by a preponderance of the evidence, then you should find for Officer Engstrand, and you will not consider the question of damages.

FINAL INSTRUCTION NO. 23

In this case, Scott Blevins claims that Officer Eads used excessive force against him when he took Scott Blevins into custody in a Warsaw, Indiana grocery store parking lot. To succeed on this claim, Scott Blevins must prove each of the following things by a preponderance of the evidence:

1. Officer Eads used unreasonable force against Scott Blevins;
2. Because of Officer Eads's unreasonable force, Scott Blevins was harmed.

If you find that Scott Blevins has proved each of these things by a preponderance of the evidence for his claim, then you should find for him, and go on to consider the question of damages. If, on the other hand, you find that Scott Blevins did not prove any one of these things by a preponderance of the evidence, then you should find for Officer Eads, and you will not consider the question of damages.

FINAL INSTRUCTION NO. 24

You must decide whether the Officers' use of force was unreasonable from the perspective of a reasonable officer facing the same circumstances that the Officers 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 the Officers' use of force was unreasonable, you must not consider whether the Officers' intentions were good or bad.

You must consider all circumstances facing the Officers. Some factors that you may want to consider are:

- the need for the use of force;
- the relationship between the need for the use of force and the amount of force used;
- the extent of the Blevinses' injuries;
- any efforts made by the Officers to temper or limit the amount of force;
- the severity of the crime at issue;
- the threat reasonably perceived by the Officers; and
- whether the Blevinses were actively resisting arrest or attempting to evade arrest by fleeing.

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

FINAL INSTRUCTION NO. 25

A law enforcement officer's right to make an arrest necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.

FINAL INSTRUCTION NO. 26

If you find that either Lisa Blevins or Scott Blevins have proved a claim against Officer Eads, then you must determine what amount of damages, if any, the Blevinses are entitled to recover from him.

Similarly, if you find that Scott Blevins has proved his claim against Officer Engstrand, then you must determine what amount of damages, if any, he is entitled to recover from him.

If you find that one or both of the Blevinses have failed to prove all of their claims, then you will not consider the question of damages as to that claim or claims.

FINAL INSTRUCTION NO. 27

If you find in favor of either Scott Blevins or Lisa Blevins, then you must determine the amount of money that will fairly compensate either Scott Blevins or Lisa Blevins for any injury that you find that the particular plaintiff sustained as a direct result of the Officers' use of excessive force. These are called "compensatory damages."

The Blevinses must prove their 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 they are not easy to measure. You should consider the following types of compensatory damages, and no others:

1. The reasonable value of medical care and supplies that the Blevinses 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 wages, salary, profits, or earning capacity that the Blevinses have lost and the present value of the wages, salary, profits, or earning capacity that the Blevinses are reasonably certain to lose in the future because of their inability or diminished ability to work. When I say "present value," I mean the sum of money needed now which, together with what that sum may reasonably be expected to earn in

the future, will equal the amounts of those monetary losses at the times in the future when they will be sustained.

3. The physical and mental/emotional pain and suffering and disability/loss of a normal life that the Blevinses have experienced and are 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 Blevinses for the injury they has sustained.

If you find in favor of either of the Blevinses but find that they have failed to prove compensatory damages on that claim, you must return a verdict for them in the amount of one dollar on that claim.

FINAL INSTRUCTION NO. 28

If you find for either of the Blevinses on one of their claims, you may, but are not required to, assess punitive damages against the Officers. The purposes of punitive damages are to punish a defendant for his conduct and to serve as an example or warning to the Officers and others not to engage in similar conduct in the future.

The Blevinses must prove by a preponderance of the evidence that punitive damages should be assessed against the Officers. You may assess punitive damages only if you find that his conduct was malicious or in reckless disregard of the Blevinses' rights. Conduct is malicious if it is accompanied by ill will or spite, or is done for the purpose of injuring the Blevinses. Conduct is in reckless disregard of the Blevinses' rights if, under the circumstances, it reflects complete indifference to the Blevinses' safety or 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 either/any party. In determining the amount of any punitive damages, you should consider the following factors:

- the reprehensibility of the Officers' conduct;
- the impact of the Officers' conduct on the Blevinses;
- the relationship between the Officers and the Blevinses;

- the likelihood that the Officers would repeat the conduct if an award of punitive damages is not made;
- the relationship of any award of punitive damages to the amount of actual harm the Blevinses suffered.

FINAL INSTRUCTION NO. 29

Upon retiring to the jury room, you must select a presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court.

Forms of verdict have been prepared for you.

[Forms of verdict read.]

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your presiding juror will fill in, date, and sign the appropriate form.

FINAL INSTRUCTION NO. 30

I do not anticipate that you will need to communicate with me. If you do need to communicate with me, the only proper way is in writing. The writing must be signed by the presiding juror, or, if he or she is unwilling to do so, by some other juror. The writing should be given to the marshal, who will give it to me. I will respond either in writing or by having you return to the courtroom so that I can respond orally.

FINAL INSTRUCTION NO. 31

The verdicts must represent the considered judgment of each juror. Your verdicts, whether for or against the parties, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of other jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts.