

FILED

FEB 27 2004

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

At _____ M
STEPHEN R. LUDWIG, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

ANTHONY SMITH,

Plaintiff,

v.

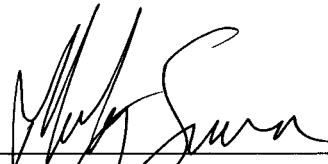
CECIL DAVIS, et al.,

Defendants.

CAUSE NO. 3:02-CV-0233 PS

COURT'S FINAL JURY INSTRUCTIONS

Date: February 26, 2004



Philip P. Simon, Judge
United States District Court

Court Instruction No. 1

Now that you have heard all of the evidence and the arguments, it becomes my duty to give you instructions concerning the law applicable to this case.

It is your duty as jurors to follow the law as I shall state it to you, and to apply the law to the facts as you find them from the evidence in the case. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. You are not to be concerned with the wisdom of any rule of law stated by me.

Neither by these instructions, nor by any ruling or remark I have made, do I mean to indicate any opinion as to the facts or as to what your verdict should be. You are the sole judges of the facts.

Court Instruction No. 2

Regardless of any opinion you may have as to what the law is or ought to be, it would be a violation of your sworn duty to base a verdict upon any view of the law other than that given in the instructions of the court, just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything other than the evidence in this case.

In deciding the facts of this case, you must not be swayed by bias or prejudice or favor as to any party. Our system of law does not permit jurors to be governed by prejudice or sympathy or public opinion. Both the parties and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law as stated by the court, and reach a just verdict regardless of the consequences.

This case should be considered and decided by you as an action between persons of equal standing in the community, and holding the same or similar stations in life. Each party is entitled to the same fair trial at your hands. The law respects all persons equally; all persons stand equal before the law and are to be dealt with as equals in a court of justice.

Court Instruction No. 3

As stated earlier, it is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in the case. The term "evidence" includes sworn testimony of the witnesses and the exhibits admitted into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you.

First, arguments and statements not made from the witness stand or by a video conference witness. What Mr. Smith and Mr. Dixon have said in their opening statements, closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way Mr. Smith and Mr. Dixon have stated them, your memory of them controls.

Second, questions and objections by Mr. Smith and Mr. Dixon are not evidence. Mr. Smith and Mr. Dixon were entitled to object when they believed a question was improper under the rules of evidence. You should not be influenced by the objection or by my ruling on it. Whenever I have sustained an objection to a question addressed to a witness you must disregard the question entirely, and draw no inference from the wording of it, or speculate as to what the witness would have said if he or she had been permitted to answer the question. You should also disregard any answer the witness may have given prior to my ruling on the objection.

Any testimony that I excluded, or ordered stricken, or told you to disregard, is not evidence and must not be considered. In addition, if testimony and exhibits have been received only for a limited purpose; where I have given a limiting instruction, you must follow it.

Finally, anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

So while you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions that reason and common sense lead you to draw from the facts that have been established by the testimony and evidence in the case.

In determining any fact in issue you may consider the testimony of all witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them.

Court Instruction No. 4

There are two types of evidence: direct and circumstantial. Direct evidence is the direct proof of a fact, such as the testimony of an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances that tend to show whether or not an asserted fact is true. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Court Instruction No. 5

Now, I have said that you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You are the sole judges of the credibility or "believability" of each witness and the weight to be given to his or her testimony. In weighing the testimony of a witness you should consider: the witness's relationship to any of the parties; the witness's interest, if any, in the outcome of the case; the witness's manner of testifying; the witness's opportunity to observe or acquire knowledge concerning the facts about which he or she testified; the witness's candor, fairness and intelligence; and the extent to which the witness's testimony has been supported or contradicted by other credible evidence. You may, in short, accept or reject the testimony of any witness in whole or in part.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or non-existence of any fact. You may find that the testimony of a smaller number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary. The testimony of a single witness that produces in your minds a belief in the likelihood of its truth is sufficient for the proof of any fact, and would justify a verdict in accordance with such testimony, even though a number of witnesses may have testified to the contrary if, after consideration of all the evidence in the case, you hold greater belief in the accuracy and reliability of the one witness.

Similarly, the weight of the evidence is not necessarily determined by whether the evidence is in the form of a document or the oral testimony of a witness. It is for you to determine based upon the circumstances surrounding each document and each piece of testimony what weight to give to that evidence.

Court Instruction No. 6

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 at issue in this trial. Nor does the law require any party to produce as exhibits all papers and things mentioned during this trial.

Court Instruction No. 7

A witness may be discredited or "impeached" by contradictory evidence, by a showing that he or she testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony.

If you believe that any witness has been so impeached, then it remains your exclusive province to give testimony of that witness such credibility or weight, if any, that you think it deserves.

Court Instruction No. 8

When any witness is questioned about an earlier statement that the witness may have made, or earlier testimony that the witness may have given, such questioning is permitted in order to aid you in evaluating the truth or accuracy of the witness's testimony at the trial. In addition, if that earlier statement was made under oath and is inconsistent with the witness's testimony at the trial, you may consider that earlier sworn statement as evidence of the truth or accuracy of such earlier statement.

Whether or not such prior statements of a witness are, in fact, consistent or inconsistent with the witness's trial testimony is entirely for you to determine.

Court Instruction No. 9

The burden of proof in this case is by a preponderance of the evidence, which means that you must be persuaded considering all of the evidence in the case, that the proposition on which the party has the burden of proof is more probably true than not true. When I say "if you find" or "if you decide" I mean if you find or if you decide by a preponderance of the evidence.

Court Instruction No. 10

During the trial, certain testimony was presented to you by the video conferencing. This testimony is entitled to the same consideration you would give it had the witness personally appeared in court.

Court Instruction No. 11

You have heard evidence that certain witnesses have been convicted of crimes. You may consider this evidence only in deciding whether their testimony is truthful in whole, in part, or not at all. You may not consider this evidence for any other purpose.

Court Instruction No. 12

This is a civil action in which Anthony Smith contends that the defendants — all of whom worked at the Indiana State Prison, where Mr. Smith was housed — violated his federal constitutional rights when they retaliated against him for filing a grievance by transferring him to and holding him on D-East Administrative Segregation. Mr. Smith says that this transfer was intended to punish him for exercising his rights under the First Amendment to file a grievance and he seeks an award of damages to compensate him. The defendants deny having violated Mr. Smith's constitutional rights. They say that Mr. Smith was transferred to D-East Administrative Segregation for legitimate penological reasons.

Court Instruction No. 13

The Constitution does not require that a convicted prisoner receive due process before he is moved or before he is placed in administrative segregation. Prison officials may move a convicted prisoner and house him anywhere they deem appropriate – including administrative segregation. Prison officials may choose to move a convicted prisoner for any reason that is not prohibited by the Constitution.

However, prison officials may not retaliate against a convicted prisoner for exercising his First Amendment rights, even if their actions would not independently violate the Constitution. The Constitution does not permit a prison official to punish a convicted prisoner for exercising his First Amendment right to file a grievance.

Court Instruction No. 14

For a plaintiff to establish a claim of retaliation, he must prove the following elements by a preponderance of evidence:

1. that he was engaged in a constitutionally protected activity;
2. that he was subjected to an adverse action at the time, or after, the protected conduct occurred; and
3. that his protected activity was the determining factor in the defendant's adverse action. In other words, the defendant would not have made the same decision but for the plaintiff's protected activity.

If you find that each of the elements on which the plaintiff has the burden of proof has been proved, your verdict should be for the plaintiff. If on the other hand, the plaintiff has failed to prove any of these elements, your verdict should be for the defendant.

Court Instruction No. 15

If Mr. Smith proves that his constitutional right was violated, he must also prove that one or more of the defendants was personally responsible for that violation. An award of damages must be based on personal liability. Mr. Smith must show the defendant's personal involvement or participation, or direct responsibility for the retaliation by demonstrating a causal link between the defendant's conduct and the plaintiff's injury. A defendant is personally involved for these purposes if, for example, he or she participates directly in the constitutional violation, or acts or fails to act with reckless disregard of the plaintiff's constitutional rights, or if the conduct that deprived the plaintiff of his constitutional rights occurred at the defendant's direction or with his or her knowledge and consent. You may not find one defendant liable for the acts of another person simply because he or she was that person's superior.

Mr. Smith must prove by a preponderance of the evidence that the defendant's act or omission played a substantial part in bringing about or actually causing the retaliation against Mr. Smith.

Court Instruction No. 16

If you find in favor of the plaintiff, then you should award him such sum as you believe will fairly and justly compensate him for any damages you believe he sustained as a direct result of the violation of his constitutional rights.

Damages must be reasonable. If you should find that the plaintiff is entitled to a verdict, you may award him only such damages as will reasonably compensate him for such injury and damage as you find, from a preponderance of the evidence in the case, that he has sustained as a proximate result of the constitutional violation. You are not permitted to award speculative damages. So you are not to include in any verdict compensation for any prospective loss which, although possible, is not reasonably certain to occur in the future.

To the extent, if any, that the plaintiff could have prevented any injury by taking reasonable actions under the circumstances, you should not award damages for that injury.

You may not award damages to the plaintiff merely because his constitutional rights were violated. Instead you may award damages only for actual injury suffered by the plaintiff. If you find that the plaintiff is entitled to a verdict, but do not find that he has sustained actual damages, then you may return a verdict for the plaintiff in some nominal sum such as \$1.00.

Court Instruction No. 17

If you find for Mr. Smith and if you award compensatory or nominal damages, you may, but are not required to, award punitive damages. The purposes of punitive damages are to punish a defendant and to deter a defendant and others from committing similar acts in the future.

Mr. Smith has the burden of proving that punitive damages should be awarded, and the amount, by a preponderance of the evidence. You may award punitive damages only if you find that a defendant's conduct was malicious, or in reckless disregard of Mr. Smith's rights. Conduct is malicious if it is accompanied by ill will, or spite, or if it is for the purpose of injuring another. Conduct is in reckless disregard of plaintiff's rights if, under the circumstances, it reflects complete indifference to the safety and rights of others.

If you find that punitive damages are appropriate, you must use reason in setting the amount. Punitive damages, if any, should be in an amount sufficient to fulfill their purposes, but should not reflect bias, prejudice or sympathy toward any party. In considering punitive damages, you may consider the degree of reprehensibility of the defendant's conduct and the relationship of any award of punitive damages to any actual harm inflicted on the plaintiff.

You may impose punitive damages against one or more of the defendants and not others, and may award different amounts against different defendants.

Court Instruction No. 18

Upon retiring to the jury room, you should first select one of your number to act as your foreperson. The foreperson will then preside over your deliberations and act as your spokesperson here in court.

You will take the verdict form with you to the jury room. When you reach unanimous agreement as to your verdict, the foreperson should fill in the verdict form, all of you should sign it, and then you should tell the court security officer to inform me that you have reached a verdict.

If, during deliberations, you should desire to communicate with the court, please reduce your message or question to writing and have the foreperson sign the note and include the date and time. Then, pass the note to the courtroom security officer, who will bring it to my attention. I will respond as promptly as possible, either in writing or by having you return to the courtroom so that I can address you in person.

With respect to any message or question that you provide to the court during your deliberations, please be advised of the following rules. First, do not state or specify, your numerical division at any time; that is, do not inform the court or even hint at how many among you were or are in favor or against reaching any particular verdict. Also, please be advised that the court cannot supply you with transcripts of any of the trial testimony.

Court Instruction No. 19

The verdict must represent the considered judgment of each juror. Your verdict 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 view, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of the evidence solely because of the opinions of your fellow 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. Your sole interest is to seek the truth from the evidence on the case.