UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

MICHAEL A. STANLEY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	2:08-cv-195
	)	
CHRISTIAN IRSA and EMERITO BELTRAN,	)	
	)	
	)	
Defendants.	)	

COURT'S FINAL INSTRUCTIONS

Date: April 14, 2011 /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.

I have taken judicial notice of certain facts. You must accept those facts as proved.

FINAL INSTRUCTION NO. 4

During the trial, certain testimony was presented to you by the reading of depositions. 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 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. 8

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. 9

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

FINAL INSTRUCTION NO. 10

You may consider statements given by a witness 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 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 a 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. 11

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. 12

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. 13

You have heard witnesses give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness's qualifications, and all of the other evidence in the case.

FINAL INSTRUCTION NO. 14

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, the others is also liable.

In considering a claim against one of the defendants, you must not consider evidence admitted only against the other defendant.

FINAL INSTRUCTION NO. 15

In this case, Plaintiff claims that Christian Irsa and Emerito Beltran used excessive force against him. To succeed on this claim, Plaintiff must prove each of the following things by a preponderance of the evidence:

1. Christian Irsa or Emerito Beltran intentionally used force against Plaintiff;

2. The force Christian Irsa or Emerito Beltran used was unreasonable;

3. Because of Christian Irsa's or Emerito Beltran's unreasonable force, Plaintiff was harmed.

If you find that Plaintiff has proved each of these things as to either Christian Irsa or Emerito Beltran (or both) by a preponderance of the evidence, then you should find for Plaintiff, and go on to consider the question of damages.

If, on the other hand, you find that Plaintiff did not prove any one of these things by a preponderance of the evidence, then you should find for Defendants, and you will not consider the question of damages.

FINAL INSTRUCTION NO. 16

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. 17

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

In performing his job, an officer can use force that is reasonably necessary under the circumstances. In determining whether a Defendant's use of force was unreasonable, you may consider:

- 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 plaintiff's injury;
- any efforts made by the defendant to temper or limit the amount of force;
- the severity of the crime at issue;
- the threat reasonably perceived by the officer(s);
- whether the plaintiff was actively resisting arrest or was attempting to evade arrest by fleeing.

FINAL INSTRUCTION NO. 18

You have heard evidence that Michael Stanley was convicted of misdemeanor resisting arrest based on the events of the night of July 2, 2006. You may consider this evidence only as part of the facts and circumstances in deciding whether a Defendant's use of force was reasonable. You may not consider this evidence for any other purposes.

Under the law of the State of Indiana, resisting law enforcement is a criminal offense against authority. If a person is charged with multiple counts of resisting law enforcement that arise out of the same incident or transaction, he can be convicted of only one (1) charge.

You are not to speculate as to why or how the jury in the criminal case reached the decision it did.

FINAL INSTRUCTION NO. 19

For Christian Irsa to be liable, Plaintiff must prove by a preponderance of the evidence that Irsa was personally involved in the conduct that Plaintiff complains about. You may not hold Irsa liable for what other police officers did or did not do.

For Emerito Beltran to be liable, Plaintiff must prove by a preponderance of the evidence that Beltran was personally involved in the conduct that Plaintiff complains about. You may not hold Beltran liable for what other police officers did or did not do.

FINAL INSTRUCTION NO. 20

Defendants are being sued as individuals. Neither the Portage City Police Department nor the City of Portage is a party to this lawsuit.

FINAL INSTRUCTION NO. 21

If you find that Plaintiff has proved his claim against either of the Defendants, then you must determine what amount of damages, if any, Plaintiff is entitled to recover.

If you find that Plaintiff has failed to prove his claims, then you will not consider the question of damages.

FINAL INSTRUCTION NO. 22

If you find in favor of Plaintiff, then 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 direct result of the use of excessive force. 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 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 Plaintiff 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, and earning capacity that Plaintiff has lost and the present value of the wages, salary, and earning capacity that Plaintiff is reasonably certain to lose in the future because of his diminished ability to work.

3. The physical and mental/emotional pain and suffering and disability that Plaintiff has experienced and is reasonably certain to experience in the future. No evidence of the dollar value of physical or mental/emotional pain and suffering or disability 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 injury he has sustained.

If you find in favor of Plaintiff but find that the Plaintiff has failed to prove compensatory damages, you must return a verdict for Plaintiff in the amount of one dollar ($1.00).

FINAL INSTRUCTION NO. 23

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.

FINAL INSTRUCTION NO. 24

If you find for Plaintiff, you may, but are not required to, assess punitive damages against a Defendant (or Defendants). The purposes of punitive damages are to punish a defendant for his conduct and to serve as an example or warning to a Defendant (or Defendants) 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 a Defendant (or Defendants). You may assess punitive damages only if you find that his conduct was malicious or in reckless disregard of Plaintiff's rights. Conduct is malicious if it is accompanied by ill will or spite, or is done for the purpose of injuring Plaintiff. Conduct 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 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 a Defendant's conduct;
- the impact of a Defendant's conduct on Plaintiff;
- the relationship between Plaintiff and Defendant;
- the likelihood that a Defendant would repeat the conduct if an award of punitive damages is not made;
- a Defendant's financial condition;
- the relationship of any award of punitive damages to the amount of actual harm the Plaintiff suffered.

FINAL INSTRUCTION NO. 25

Michael Stanley has asked you to award money based upon his life expectancy. According to the United States Life Tables, 2006, the life expectancy of a white male person of 50 years of age is 30.9 years and the life expectancy of a white male person of 55 years of age is 26.6 years.

Mortality tables are merely estimates of life expectancy. They are based on statistical averages of the remaining length of life of all persons in our country of a given age and sex. In considering the life expectancy of Michael Stanley, you may evaluate all facts and circumstances that bear on the life expectancy of Michael Stanley, including the mortality table and his occupations, health history, state of health and habits.

This evidence you may consider in determining the amount of damages to award.

FINAL INSTRUCTION NO. 26

In deciding this case, you must not consider or speculate about whether any party has or does not have insurance regarding this claim.

FINAL INSTRUCTION NO. 27

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

FINAL INSTRUCTION NO. 28

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.

If you do communicate with me, you should not indicate in your note what your numerical division is, if any.

FINAL INSTRUCTION NO. 29

The verdict must represent the considered judgment of each juror. Your verdict, 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.