

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FILED
U. S. DISTRICT COURT
DISTRICT OF NEBRASKA

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OFFICE OF THE CLERK

WILFREDO VILLALTA,) 8:04CV386

vs. Plaintiff,)

JONATHAN WALLER;)
CHRISTOPHER DUFFEK;)
JASON SLOSSON;)
DILLON COMPANIES, INC.,)
d/b/a Baker's Supermarkets; and)
THE CITY OF OMAHA,)

Defendants.)

**FINAL JURY
INSTRUCTIONS**

INSTRUCTION NO. 1

Members of the jury, the instructions I gave at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during the trial are not repeated here.

INSTRUCTION NO. 2

Neither in these instructions nor in any ruling, action or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdict should be.

During this trial I may have occasionally asked questions of witnesses in order to bring out facts not then fully covered in the testimony. Do not assume that I hold any opinion on the matters to which my questions related.

INSTRUCTION NO. 3

You are reminded that you are not to engage in any independent investigation of this case. For instance, you are not to consult a dictionary or any other like reference.

INSTRUCTION NO. 4

In these instructions you are told that your verdict depends on whether you find certain facts have been proved. The burden of proving a fact is upon the party whose claim depends upon that fact. The party who has the burden of proving a fact must prove it by the greater weight of the evidence. To prove something by the greater weight of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable. If, on any issue in the case, the evidence is equally balanced, you must resolve that issue against the party who has the burden of proving it.

The greater weight of the evidence is not necessarily determined by the greater number of witnesses or exhibits a party has presented.

INSTRUCTION NO. 5

You have heard evidence that as a result of the events that bring us here today Plaintiff was charged with and convicted of two crimes. That is, Plaintiff was charged with and convicted of resisting arrest and failure to leave. In this instruction, I will outline how to evaluate this evidence.

First, in order to be guilty of resisting arrest pursuant to Section 20-22 of the laws of the City of Omaha it must have been proven beyond a reasonable doubt that Plaintiff was arrested by a police officer and that Plaintiff resisted arrest. For purposes of this civil suit, and as a result of Plaintiff's criminal conviction, Plaintiff may not dispute, and you must assume as a matter of fact, that Plaintiff resisted arrest.

Second, in order to be guilty of failure to leave pursuant to Section 20-155 of the laws of the City of Omaha it must have been proven beyond a reasonable doubt that Plaintiff failed or refused to leave the Baker's store after being notified to do so by an authorized person. For purposes of this civil suit, and as a result of Plaintiff's criminal conviction, Plaintiff may not dispute, and you must assume as a matter of fact, that Plaintiff failed or refused to leave the property after being notified to do so by a person authorized by the owner to give a notification to leave.

Third, the fact that Plaintiff was convicted of these crimes does not bar Plaintiff's claim that he was subjected to excessive force.

Fourth, you may use this evidence only for a limited purpose. That is, and in regard to Plaintiff's excessive use of force claim, you may use this evidence only to

determine the reasonableness of Plaintiff's conduct and the reasonableness of a particular Defendant's conduct.

Remember, you may not render a verdict against Plaintiff merely because he was convicted of these crimes.

INSTRUCTION NO. 6

A witness who has special knowledge, skill, experience, training, or education in a particular area may testify as an expert in that area. You determine what weight, if any, to give to an expert's testimony just as you do with the testimony of any other witness. You should consider the expert's credibility as a witness, the expert's qualifications as an expert, the sources of the expert's information, and the reasons given for any opinions expressed by the expert.

INSTRUCTION NO. 7

Plaintiff and Defendants have stipulated—that is, they have agreed—that certain facts are uncontroverted. You should, therefore, treat these facts as having been proved:

1. Plaintiff, Wilfredo Villalta, is a resident of Omaha, Nebraska.
2. Defendant, Dillon Companies, Inc., doing business as Baker's Supermarket ("Baker's"), conducts business in the State of Nebraska.
3. Defendant, the City of Omaha, is a municipal corporation and a political subdivision of the State of Nebraska.
4. Defendants, Christopher Duffek, Jason Slossen, and Jonathan Waller were employed as police officers for the City of Omaha on July 3, 2003.
5. The incident that is the subject of this lawsuit occurred on July 3, 2003, at the Baker's Supermarket located at 5018 Ames Avenue, Omaha, Douglas County, Nebraska.
6. Defendant Duffek was hired by Defendant Baker's to work as a security guard and was working in such capacity on July 3, 2003, at the Baker's Supermarket located at 5018 Ames Avenue.
7. Defendants Duffek, Slossen, and Waller at all times material were wearing the standard uniform, showing the Omaha Police Department badge, and were armed with the standard firearm.

INSTRUCTION NO. 8

You are instructed that I have dismissed all of Plaintiff's claims against Baker's and the City of Omaha, and, consequently, you need not be concerned with the claims made against those Defendants. Baker's and the City of Omaha are no longer parties to the lawsuit. You should not speculate as to the reasons for my ruling or draw any inferences therefrom.

INSTRUCTION NO. 9

Plaintiff claims that Defendants Waller, Duffek, and Slossen violated the Fourth and Fourteenth Amendments to the United States Constitution by using excessive force when detaining Plaintiff and placing him under arrest. I refer to this claim throughout these instructions as Plaintiff's "excessive use of force" claim.

Defendants each deny using excessive force against Plaintiff.

INSTRUCTION NO. 10

Although there is more than one Defendant in this action, it does not follow from that fact alone that if one Defendant is liable, all Defendants are liable. Each Defendant is entitled to a fair consideration of the evidence, and is not to be prejudiced should you find against another Defendant.

Unless otherwise stated, all instructions I give you govern the case as to each Defendant.

INSTRUCTION NO. 11

Your verdict must be for Plaintiff and against Defendants Waller, Duffek, and Slossen on the excessive use of force claim if all the following elements have been proved by the greater weight of the evidence:

First, the particular Defendant used physical force against Plaintiff in the act of detaining or arresting Plaintiff, and

Second, the use of such force was excessive because it was not reasonably necessary to detain or arrest Plaintiff, and

Third, as a direct result, Plaintiff was damaged.

In determining whether the force was "not reasonably necessary," you must consider such factors as the need for the application of force, the relationship between the need and the amount of force that was used, the extent of the injury inflicted, and whether a reasonable officer on the scene, without the benefit of 20/20 hindsight, would have used such force under similar circumstances.

You must consider that police officers are often forced to make judgments about the amount of force that is necessary in circumstances that are tense, uncertain and rapidly evolving.

You must consider whether the officer's actions are reasonable in the light of the facts and circumstances confronting the officer, without regard to the officer's own state of mind, intention or motivation.

If any of the above elements has not been proved by the greater weight of the evidence, then your verdict must be for the particular Defendant.

INSTRUCTION NO. 12

You have heard expert testimony regarding national standards governing the use of force by police. There is also evidence before you concerning the Omaha Police Department official policy regarding the use of force. While you may consider the national standard and the Omaha Policy Department's official policy with all the other evidence in this case, neither a national standard nor police policy is, by itself, determinative of the question before you, that is, whether Defendants, or a particular Defendant, used excessive force against Plaintiff, in violation of Plaintiff's rights as secured by the Fourth and Fourteenth Amendments to the United States Constitution.

INSTRUCTION NO. 13

If you find in favor of Plaintiff on his excessive use of force claim, then you must award Plaintiff such sum as you find from the greater weight of the evidence will fairly and justly compensate Plaintiff for any damages you find Plaintiff sustained and is reasonably certain to sustain in the future as a direct result of the conduct of a particular Defendant as submitted.

You should consider the following elements of damages:

1. The physical pain and mental suffering Plaintiff has experienced and is reasonably certain to experience in the future; the nature and extent of the injury, whether the injury is temporary or permanent, and whether any resulting disability is partial or total;
2. The reasonable value of the medical, hospital, nursing, and similar care and supplies reasonably needed by and actually provided to Plaintiff and reasonably certain to be needed and provided in the future; and
3. The wages Plaintiff has lost and the reasonable value of the earning capacity Plaintiff is reasonably certain to lose in the future because of his diminished ability to work.

Remember, throughout your deliberations you must not engage in any speculation, guess, or conjecture and you must not award damages under this instruction by way of punishment or through sympathy.

INSTRUCTION NO. 14

If you find in favor of Plaintiff as against a particular Defendant, but you find that Plaintiff's damages have no monetary value, then you must return a verdict for Plaintiff in the nominal amount of One Dollar (\$1.00) as against that Defendant.

INSTRUCTION NO. 15

There is evidence that Plaintiff complained of knee pain prior to July 3, 2003. Defendants are liable only for any damages that you find directly resulted from their use of excessive force. If you cannot separate damages directly resulting from the preexisting condition, if any, from those directly resulting from Defendants' conduct, then Defendants are liable for all of those damages.

INSTRUCTION NO. 16

There is evidence before you from life expectancy tables. This evidence may assist you in determining probable life expectancy. This is only an estimate based on average experience. It is not conclusive. You should consider it along with any other evidence bearing on probable life expectancy, such as evidence of health, occupation, habits, and the like.

INSTRUCTION NO. 17

If you decide that Plaintiff is entitled to recover damages for any future losses, then you must reduce those damages to their present cash value. You must decide how much money must be given to Plaintiff today to compensate him fairly for his future losses.

INSTRUCTION NO. 18

The law forbids you to return a verdict determined by chance. You may not, for instance, agree in advance that each juror will state an amount to be awarded in damages, that all those amounts will be added together, that the total will be divided by the number of jurors, and that the result will be returned as the jury's verdict. A verdict determined by chance is invalid.

INSTRUCTION NO. 19

Your verdict must be agreed to by all seven of you, that is, it must be unanimous.

INSTRUCTION NO. 20

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the courtroom deputy, signed by one or more jurors. You may summon the courtroom deputy by using the telephone in the jury room to call my chambers at the number provided by the courtroom deputy. The caller should clearly identify himself or herself as a member of the jury so that my staff will react

accordingly. I will respond to your communication as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me, how your votes stand numerically.

If you do not agree on a verdict by 5:00 o'clock p.m., you may separate and return for deliberation at 9:00 o'clock a.m. on the next business day. You may deliberate after 5:00 o'clock p.m., but, if so, please notify my staff in advance by using the telephone in the jury room to call my chambers at the number provided by the courtroom deputy. Please also notify my chambers staff by telephone whenever you separate during the day or at the end of the day, and advise when you expect to return to the jury room to reconvene your deliberations. If you do separate, then during that time, you are not allowed to discuss this case with anyone, even another juror.

Fourth, your verdict must be based solely on the evidence and law which I have given to you in my instructions. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, complete it pursuant to the instructions on the form, and advise my chambers staff by telephone when you are ready to return to the courtroom to deliver your verdict.

Submitted at 3:56 o'clock a.m. /p.m.

DATED this 1st day of December, 2005.

BY THE COURT:



Richard G. Kopf
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

WILFREDO VILLALTA,) 8:04CV386
)
)
Plaintiff,)
vs.)
)
)
JONATHAN WALLER;)
CHRISTOPHER DUFFEK;)
JASON SLOSSON;)
DILLON COMPANIES, INC.,)
d/b/a Baker's Supermarkets; and)
THE CITY OF OMAHA,)
)
)
Defendants.)

Please answer the following questions in accordance with the jury instructions and the instructions contained in this form. It is possible that you will answer some but not all questions.

VERDICT

Excessive Use of Force Claim

I. Liability

Note: Complete this Part I of the Verdict Form by writing in the names required by your verdict.

A. Defendant Jonathan Waller

On the excessive use of force claim of Plaintiff Wilfredo Villalta against Defendant Jonathan Waller, we find in favor of:

[Plaintiff Wilfredo Villalta] or [Defendant Jonathan Waller]

B. Defendant Christopher Duffek

On the excessive use of force claim of Plaintiff Wilfredo Villalta against Defendant Christopher Duffek, we find in favor of:

[Plaintiff Wilfredo Villalta] or [Defendant Christopher Duffek]

C. Defendant Jason Slossen

On the excessive use of force claim of Plaintiff Wilfredo Villalta against Defendant Jason Slossen, we find in favor of:

[Plaintiff Wilfredo Villalta] or [Defendant Jason Slossen]

II. Damages

Note: Complete this Part II of the Verdict Form only if you have found in favor of Plaintiff on his excessive use of force claim as against one or more Defendants. Otherwise, leave the spaces below blank and proceed to Execution of Verdict Form.

A. Defendant Jonathan Waller

Note: Complete the following statement only if the finding in Part I.A. above is in favor of Plaintiff. If your finding is in favor of Defendant, leave the space below blank.

On Plaintiff's excessive use of force claim against Defendant Jonathan Waller, we find Plaintiff's damages to be:

\$ _____ (stating the amount or, if you find that Plaintiff's damages have no monetary value, set forth the nominal amount of \$1.00).

B. Defendant Christopher Duffek

Note: Complete the following statement only if the finding in Part I.B. above is in favor of Plaintiff. If your finding is in favor of Defendant, leave the space below blank.

On Plaintiff's excessive use of force claim against Defendant Christopher Duffek, we find Plaintiff's damages to be:

\$ _____ (stating the amount or, if you find that Plaintiff's damages have no monetary value, set forth the nominal amount of \$1.00).

C. Defendant Jason Slosson

Note: Complete the following statement only if the finding in Part I.C. above is in favor of Plaintiff. If your finding is in favor of Defendant, leave the space below blank.

On Plaintiff's excessive use of force claim against Defendant Jason Slosson, we find Plaintiff's damages to be:

\$ _____ (stating the amount or, if you find that Plaintiff's damages have no monetary value, set forth the nominal amount of \$1.00).

EXECUTION OF VERDICT FORM

Note: The Foreperson shall sign and date the verdict form, and such signature shall mean that the verdict of the jury was unanimous.

DATED this _____ day of _____, 2005.

FOREPERSON