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U.S. DISTRICT COURT
DISTRICT OF NEBRASKA

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GARY D. McFARLAND
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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| ROBERT EUGENE COLEMAN,<br><br>Plaintiff,<br><br>vs.<br><br>DAVID G. RIECK, LOUIS J. TOMSU IV, JERAD KRUSE, and GREGG BARRIOS,<br><br>Defendants. | ) | 8:00CV293<br><br>JURY INSTRUCTIONS |

INSTRUCTION NO. 1

Now that you have heard all the evidence, it is my duty to inform you concerning the legal principles and considerations to be used by you in arriving at a proper verdict.

You must follow the law given in these instructions and apply these rules of law to the facts as you find them from the evidence. Do not single out one instruction as a statement of all the law. You must consider all the instructions collectively as a whole.

You are not to concern yourselves with the wisdom of any rule of law stated by the court. Regardless of any opinion you may have as to what the law ought to be, basing a verdict on any view of the law other than that given in these instructions would be a violation of your sworn duty as a juror. Also, basing a verdict on anything but the evidence in this case and reasonable inferences arising from such evidence would be a violation of your sworn duty as judges of the facts.

Do not allow sympathy or prejudice to influence you. The law requires that you reach a just verdict, unaffected by anything except the evidence, your common sense and the law stated in these instructions given to you by me.

INSTRUCTION NO. 2

The word "evidence" is used in these instructions. "Evidence" includes the testimony of witnesses; documents and other things received as exhibits; and any facts that have been stipulated, that is, formally agreed to by the parties.

Certain things are not evidence, namely:

1. Statements, arguments, questions and comments by lawyers are not evidence.

2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I have sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.

3. Testimony that I have stricken from the record, or told you to disregard, is not evidence and must not be considered.

4. Anything you see or hear about this case outside the courtroom is not evidence.

You must not speculate or form any opinion as to how a witness might have testified in answer to a question or questions which I have rejected during the trial. Further, you must not speculate on any subject or matter into which I have forbidden inquiry.

In arriving at any conclusion in this case, you must be governed by the evidence and by the evidence alone. You have no right to indulge in speculation, conjecture or inference unsupported by the evidence.

Furthermore, a particular item of evidence is sometimes received for a limited purpose only, that is, evidence that can be used by you only for one particular purpose, and not for any other purpose. Therefore, if any evidence has been received for a limited purpose, you must consider the evidence only for the purpose specified in the court's

instructions.

You may have heard the terms "direct evidence" and "circumstantial evidence." You are instructed that you should not be concerned with those terms, since the law makes no distinction between the weight to be given to direct and circumstantial evidence.

While you must consider only the evidence received in this case, you are permitted to draw any 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 which have been established by the evidence in this case.

INSTRUCTION NO. 3

You, as jurors, are the sole judges of the facts, which means that after you have considered all the evidence, you alone must decide what is established, and what is not established, in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of a witness' testimony, part of a witness' testimony, or none of a witness' testimony.

In deciding what testimony to believe, you may consider the witness' intelligence, the opportunity the witness had to see or hear the things testified about, the witness' memory, any motive the witness may have for testifying a certain way, the manner of the witness while testifying, whether the witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

You have heard evidence that the plaintiff, Robert Eugene Coleman, has been convicted of felonies. You may use that evidence only to help you decide whether to believe Coleman and how much weight to give his testimony.

You have heard testimony from witnesses described as experts. Persons who, by knowledge, skill, training, education or experience, have become expert in some field may state their opinions on matters in that field and may also state the reasons for their opinion. Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness' education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

INSTRUCTION NO. 4

Throughout the course of the trial, you have been allowed to take notes of the testimony. You may take your notes into the jury room for use in your deliberations. Remember, however, your notes are not evidence.

Your notes should be used only as aids to your memory. You should not give your notes precedence over your independent recollection of the evidence; you should rely on your own independent recollection of the proceedings; and you should not be influenced by the notes of other jurors. Your notes are not entitled to any greater weight than each juror's recollection or impression of the testimony given during this trial.

After you have reached a verdict, your notes may be destroyed, if you wish.

INSTRUCTION NO. 5

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 or contention depends upon that fact. The party who has the burden of proving a fact must prove it by the greater weight, or preponderance, of the evidence. To prove something by the greater weight, or preponderance, of the evidence is to prove that something is more likely true than not true. The greater weight, or preponderance, of the evidence 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 cannot find that issue has been proved.

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

You may have heard of the term "proof beyond a reasonable doubt." That is a stricter standard which applies in criminal cases, but does not apply in civil cases such as this.

INSTRUCTION NO. 6

The parties to this action are the plaintiff, Robert Eugene Coleman, and the defendants, David G. Rieck, Louis J. Tomsu IV, Jerad Kruse, and Gregg Barrios. Throughout these instructions, the plaintiff may be referred to as the plaintiff or by his name, as abbreviated in these instructions. Each defendant may be referred to as the defendant or by his name, as abbreviated in these instructions.

INSTRUCTION NO. 7

Although there is more than one defendant in this action, it does not follow from that fact alone that if one defendant is liable to the plaintiff, all defendants are liable. Each defendant is entitled to a fair consideration of the evidence. A defendant is not to be prejudiced, if you find against another defendant. Unless otherwise stated, all instructions I give you govern the case as to each defendant.

INSTRUCTION NO. 8

The plaintiff, Robert Eugene Coleman, has filed a complaint under 42 U.S.C. § 1983, alleging that the defendant police officers, David G. Rieck, Louis J. Tomsu IV, Jerad Kruse, and Gregg Barrios, used unconstitutional force against him, in violation of the Fourth Amendment. Coleman seeks money damages to compensate him for the injuries which he alleges were proximately caused by the defendants' actions. The alleged injuries include physical pain, emotional distress, mental anguish, and humiliation. The plaintiff also seeks punitive damages. Each of the defendants has filed an answer, denying the plaintiff's allegations.

INSTRUCTION NO. 9

Your verdict must be for the plaintiff and against a particular defendant if all the following elements have been proved by the preponderance of the evidence as to that particular defendant:

First, the particular defendant used force against the plaintiff in the course of attempting to detain or arrest the plaintiff; and

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

Third, as a direct result, the plaintiff sustained damages.

In determining whether such 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. Also, you must consider whether a particular defendant officer's actions are reasonable in light of the facts and circumstances confronting that 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 or preponderance of the evidence as to a particular defendant, then your verdict must be for that particular defendant.

INSTRUCTION NO. 10

Unreasonable force by police is prohibited by the Fourth Amendment of the Constitution of the United States of America. To comply with the Fourth Amendment, only reasonable force by police is permissible. Reasonableness of force depends on not only when the force is used, but how the force is applied.

However, "reasonable force," under the Fourth Amendment, cannot be defined with precision or mechanically applied, but does require careful attention to the particular facts and circumstances of each individual case.

"Reasonableness" is determined by you in your inquiry to answer the question in this case: Whether each particular defendant's actions were objectively reasonable in view of the facts and circumstances confronting him at the scene and without regard to any underlying intent or motivation on the part of the particular defendant.

INSTRUCTION NO. 11

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 Police 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 the defendants, or a particular defendant, used excessive force against Coleman, in violation of Coleman's right against unreasonable seizures secured by the Fourth Amendment of the United States Constitution. Consequently, you should refer to the court's instruction regarding excessive force when determining whether such force was used by the defendants against Coleman.

INSTRUCTION NO. 12

If you find in favor of the plaintiff, then you must award the plaintiff such sum, as you find from the preponderance of the evidence, that will fairly and justly compensate the plaintiff for any damages which you find that the plaintiff sustained as a direct result of the violation of the plaintiff's constitutional rights. You should consider the following elements of damages:

1. The physical pain and mental suffering the plaintiff has experienced;

2. The nature and extent of the injury; and

3. The duration of the injury.

An injury or damage is a direct result of an act, or a failure to act, whenever it appears from the evidence that the act or omission was a substantial part in bringing about or actually causing the injury or damage, and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission.

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

INSTRUCTION NO. 13

If you find in favor of plaintiff, but you find that plaintiff's injury has no monetary value under Instruction No. 12, then you must return a verdict for plaintiff in the nominal amount of $1.00.

INSTRUCTION NO. 14

In addition to the damages mentioned in other instructions, the law permits the jury under certain circumstances to award the injured person punitive damages in order to punish the defendant for some extraordinary misconduct and to serve as an example or warning to others not to engage in such conduct.

If you find in favor of plaintiff and against a particular defendant, and if you find the conduct of that particular defendant, as submitted in Instruction 9, was recklessly and callously indifferent to plaintiff's constitutional rights, then, in addition to any other damages to which you find plaintiff entitled, you may, but are not required to, award plaintiff an additional amount as punitive damages if you find it is appropriate to punish the defendant or deter the defendant and others from like conduct in the future. Whether to award plaintiff punitive damages and the amount of those damages are within your sound discretion.

You may assess punitive damages against any or all defendants or you may refuse to impose punitive damages. If punitive damages are assessed against more than one defendant, the amounts assessed against such defendants may be the same or they may be different.

INSTRUCTION NO. 15

Neither these instructions nor any ruling, action, or remark by me in the course of this trial is intended, and shall not be taken by you, as my opinion or suggestion as to what your verdict should be.

INSTRUCTION NO. 16

When you retire to the jury room, first select one of your number to be the foreperson who will preside over your discussions and who will eventually sign the form of the verdict after your deliberations. You will then begin your study of the evidence and deliberations toward your verdict.

It is your duty, as jurors, to discuss the case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because any verdict must be unanimous. Short of unanimity, you cannot consider that you have reached a verdict.

Your verdict must be based solely on the evidence and on the law which I have given to you in these instructions. Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed all of the evidence fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should change your opinion. However, do not come to a decision simply because other jurors believe that their decision is correct, or simply to reach your verdict. When you have reached your verdict and when your foreperson has completed the form of the verdict, you will have concluded your task and you will notify me accordingly.

If it becomes necessary during your deliberations to communicate with me, use the intercom-telephone in the jury room to contact my courtroom deputy. Then your foreperson or any one of you may deliver a note to the courtroom deputy who will forward your note to me. I will respond as soon as possible. Bear in mind that you are not to reveal to me, or to anyone else, how the jury stands, numerically or otherwise, until you have reached a unanimous verdict.

A verdict form has been prepared and will be taken with you when you retire for your

deliberations. This form is adequate for the expression of any verdict on which you may properly agree. You will take the verdict form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the courtroom deputy that you are ready to return to the courtroom. I shall be available throughout the remainder of the day and during your deliberations until your verdict is returned. I shall receive your verdict promptly.

If you do not arrive at your verdict during the present court day, you will continue your deliberations until you arrive at your verdict. However, you will be allowed time for meals and an intermission or recess between 5:00 p.m. each day and 9:00 a.m. of the next morning of your deliberations. If your deliberations are not complete by Friday evening, you will resume deliberations on the following Tuesday.

During the time allowed for meals and a night's rest, you will be permitted to separate, but you should return promptly at the time set for continuation of your deliberations. During the period of your separation, and to insure fairness to the parties, you, as jurors, must obey the following rules:

(1) Do not talk with anyone other than your fellow jurors about this case, or about anyone involved with it, until your deliberations are completed, your verdict has been accepted by me, and you have been discharged as jurors. Until you have been discharged as jurors, you should only discuss this case with your fellow jurors during deliberations within the confines of the jury room;

(2) When you are outside the jury room, do not let anyone tell you anything about the case, until your verdict has been accepted by me;

(3) Do not read any news stories or articles about the case, or about anyone involved with this case, or listen to any radio or television reports about this case, until your verdict has been accepted by me; and

(4) Do not do any research or make any investigation about this case. Consequently, you shall not use, or make any reference to, a dictionary for the purpose of your deliberations.

Once again, your verdict must be unanimous.