

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAVIER CASTILLO,

Plaintiff(s),

v.

Case No. 13-13737
Honorable Linda V. Parker

Q. ROGERS,

Defendant(s).

_____ /

JURY INSTRUCTIONS

Juror Attentiveness to Instructions

Ladies and gentlemen, before you begin your deliberations, I now am going to instruct you on the law. You must pay close attention and I will be as clear as possible.

It has been obvious to me and counsel that until now you have faithfully discharged your duty to listen carefully and observe each witness who testified. Your interest never flagged, and you have followed the testimony with close attention.

I ask you to give me that same careful attention as I instruct you on the law.

Authority: Modern Federal Jury Instructions § 71.01, Part 71-1

Role of the Court

You have now heard all of the evidence in the case as well as the final arguments of the lawyers for the parties.

My duty at this point is to instruct you as to the law. It is your duty to accept these instructions of law and apply them to the facts as you determine them, just as it has been my duty to preside over the trial and decide what testimony and evidence is relevant under the law for your consideration.

On these legal matters, you must take the law as I give it to you. If any attorney has stated a legal principle different from any that I state to you in my instructions, it is my instructions that you must follow.

You should not single out any instruction as alone stating the law, but you should consider my instructions as a whole when you retire to deliberate in the jury room.

You should not, any of you, be concerned about the wisdom of any rule that I state. Regardless of any opinion that you may have as to what the law may be-or ought to be-it would violate your sworn duty to base a verdict upon any other view of the law than that which I give you.

Authority: Modern Federal Jury Instructions § 71.01, Part 71-2

Role of the Jury

As members of the jury, you are the sole and exclusive judges of the facts. You determine the weight of the evidence. You determine the credibility of the witnesses. You resolve such conflicts as there may be in the testimony. You draw whatever reasonable inferences you decide to draw from the facts as you have determined them, and you determine the weight of the evidence.

In determining these issues, no one may invade your province or functions as jurors. In order for you to determine the facts, you must rely upon your own recollection of the evidence. What the lawyers have said in their opening statements, in their closing arguments, in their objections, or in their questions is not evidence. Nor is what I may have said-or what I may say in these instructions-about a fact issue evidence. In this connection, you should bear in mind that a question put to a witness is never evidence; it is only the answer which is evidence. But you may not consider any answer that I directed you to disregard or that I directed struck from the record. Do not consider such answers.

Since you are the sole and exclusive judges of the facts, I do not mean to indicate any opinion as to the facts or what your verdict should be. The rulings I have made during the trial are not any indication of my views of what your decision should be as to whether or not the (plaintiff/defendant) has proven his case.

I also ask you to draw no inference from the fact that upon occasion I asked questions of certain witnesses. These questions were only intended for clarification or to expedite matters and certainly were not intended to suggest any opinions on my part as to the verdict you should render, or whether any of the witnesses may have been more credible than any other witnesses. You are expressly to understand that the court has no opinion as to the verdict you should render in this case.

As to the facts, ladies and gentlemen, you are the exclusive judges. You are to perform the duty of finding the facts without bias or prejudice to any party.

Authority: Modern Federal Jury Instructions §71.01, Part 71-3 (modified)

Juror Oath

In determining the facts, you are reminded that you took an oath to render judgment impartially and fairly, without prejudice or sympathy and without fear, solely upon the evidence in the case and the applicable law. I know that you will do this and reach a just and true verdict.

Authority: Modern Federal Jury Instructions § 71.01, Part 71-4

Jury to Disregard Court's View

I have not expressed nor have I intended to intimate any opinion as to which witnesses are or are not worthy of belief, what facts are or are not established, or what inference or inferences should be drawn from the evidence. If any expression of mine has seemed to indicate an opinion relating to any of these matters, I instruct you to disregard it. You are, I repeat, the exclusive, sole judges of all of the questions of fact submitted to you and of the credibility of the witnesses. Your authority, however, is not to be exercised arbitrarily; it must be exercised with sincere judgment, sound discretion, and in accordance with the rules of law which I give you. In making your determination of the facts in this case, your judgment must be applied only to that which is properly in evidence. Arguments of counsel are not in evidence, although you may give consideration to those arguments in making up your mind on what inferences to draw from the facts which are in evidence.

From time to time the court has been called upon to pass upon the admissibility of certain evidence, although I have tried to do so, in so far as it was practicable, out of your hearing. You have no concern with the reasons for any such rulings and you are not to draw any inferences from them. Whether offered evidence is admissible is purely a question of law in the province of the court and outside the province of the jury. In admitting evidence to which objection has been

made, the court does not determine what weight should be given to such evidence, nor does it pass on the credibility of the evidence. Of course, you will dismiss from your mind, completely and entirely, any evidence which has been ruled out of the case by the court, and you will refrain from speculation or conjecture or any guesswork about the nature or effect of any colloquy between court and counsel held out of your hearing or sight.

Authority: Modern Federal Jury Instructions § 71.01, Part 71-5

Conduct of Counsel

It is the duty of the attorney on each side of a case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. Counsels also have the right and duty to ask the court to make rulings of law and to request conferences at the side bar out of the hearing of the jury. All those questions of law must be decided by me, the court. You should not show any prejudice against an attorney or his client because the attorney objected to the admissibility of evidence, or asked for a conference out of the hearing of the jury or asked the court for a ruling on the law.

As I already indicated, my rulings on the admissibility of evidence do not, unless expressly stated by me, indicate any opinion as to the weight or effect of such evidence. You are the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

Authority: Modern Federal Jury Instructions § 71.01, Part 71-6

Sympathy

Under your oath as jurors you are not to be swayed by sympathy. You should be guided solely by the evidence presented during the trial, without regard to the consequences of your decision.

You have been chosen to try the issues of fact and reach a verdict on the basis of the evidence or lack of evidence. If you let sympathy interfere with your clear thinking there is a risk that you will not arrive at a just verdict. All parties to a civil lawsuit are entitled to a fair trial. You must make a fair and impartial decision so that you will arrive at the just verdict.

Authority: Modern Federal Jury Instructions § 71.01, Part 71-10

Whether Party is Insured is Irrelevant

Whether a party is insured has no bearing whatever on any issue that you must decide.

You must refrain from any inference, speculation, or discussion about insurance.

Authority: Michigan Civil Jury Instructions § 3.06.

What Is and Is Not Evidence

The evidence in this case is the sworn testimony of the witnesses, the exhibits received in evidence, stipulations, and judicially noticed facts.

By contrast, the questions of the lawyers are not to be considered by you as evidence. It is the witnesses' answers that are evidence, not the questions. At times, a lawyer may have incorporated into a question a statement which assumed certain facts to be true, and asked the witness if the statement was true. If the witness denied the truth of a statement, and if there is no direct evidence in the record proving that assumed fact to be true, then you may not consider it to be true simply because it was contained in the lawyer's question.

Testimony that has been stricken or excluded is not evidence and may not be considered by you in rendering your verdict. Also, if certain testimony was received for a limited purpose- such as for the purpose of assessing a witness's credibility- you must follow the limiting instructions I have given.

Arguments by lawyers are not evidence, because the lawyers are not witnesses. What they have said to you in their opening statements and in their summations is intended to help you understand the evidence to reach your verdict. However, if your recollection of the facts differs from the lawyers' statements, it is your recollection which controls.

To constitute evidence which may be considered by you, exhibits must be received in evidence. Exhibits marked for identification but not admitted are not evidence, nor are materials brought forth only to refresh a witness' recollection.

Finally, statements which I may have made concerning the quality of the evidence do not constitute evidence.

It is for you alone to decide the weight, if any, to be given to the testimony you have heard and the exhibits you have seen.

Authority: Modern Federal Jury Instructions §74.01, Part 74-1 (modified)

Direct and Circumstantial Evidence

There are two types of evidence which you may properly use in reaching your verdict. One type of evidence is direct evidence. Direct evidence is when a witness testifies about something he knows by virtue of his own senses-something he has seen, felt, touched, or heard. Direct evidence may also be in the form of an exhibit when the fact to be proved is its present existence or condition.

The other type of evidence is circumstantial evidence. This is evidence which tends to prove a disputed fact by proof of other facts. Circumstantial evidence consists of proof of facts and circumstances from which, in terms of common experience, one may reasonably infer the ultimate fact sought to be established. Such evidence, if believed, is of no less value than direct evidence.

There is a simple example of circumstantial evidence which is often used in this courthouse. Assume that when you came into the courthouse this morning the sun was shining and it was a nice day. Assume that the courtroom blinds were drawn and you could not look outside. As you were sitting here, someone walked in with an umbrella which was dripping wet. Then a few minutes later another person also entered with a wet umbrella. Now, you cannot look outside of the courtroom and you cannot see whether or not it is raining. So you have no direct evidence of that fact. But on the combination of facts which I have asked you to

assume, it would be reasonable and logical for you to conclude that it had been raining.

That is all there is to circumstantial evidence. You infer on the basis of reason and experience and common sense from one established fact the existence or non-existence of some other fact. Circumstantial evidence is of no less value than direct evidence; for, it is a general rule that the law makes no distinction between direct evidence and circumstantial evidence but simply requires that your verdict must be based on (e.g., a preponderance of) all the evidence presented.

A claim must be established by the party bearing the burden of proof for that particular claim, and that party may use either direct or circumstantial evidence.

Authority: Modern Federal Jury Instructions § 74.01, Part 74-2 Federal Jury Practice & Instructions § 71.08

Sarter v. Arkansas Gas Corp., 321 U.S. 620 (1943)

Judicial Notice and Stipulations

I have taken judicial notice of certain facts which are not subject to reasonable dispute. I have accepted these facts to be true, even though no direct evidence has been introduced proving them to be true. You are required to accept these facts as true in reaching your verdict.

Authority: Modern Federal Jury Instructions § 74.02, Part 74-3

Statements to Doctors

You have heard the testimony of physicians, concerning statements made by Plaintiff Javier Castillo, who was a patient, for the purpose of facilitating medical diagnosis or treatment. These statements included descriptions of the patient's medical history and symptoms and the general cause of his illness. You may consider these statements as evidence of the facts stated. It is up to you, the jury, to decide what weight, if any, to give these statements, just as you would any other evidence.

Authority: Modern Federal Jury Instructions § 74.05, Part 74-10

Use of Depositions

Some of the testimony before you is in the form of depositions which have been received in evidence. A deposition is simply a procedure where prior to trial the attorneys for one side may question a witness or an adversary party under oath before a court stenographer. This is part of the pretrial discovery, and each side is entitled to take depositions. You may consider the testimony of a witness given at a deposition according to the same standards you would use to evaluate the testimony of a witness given at trial.

Authority: Modern Federal Jury Instructions § 74.07, Part 74-14

Inferences

During the trial you have heard the attorneys use the term "inference," and in their arguments they have asked you to infer, on the basis of your reason, experience, and common sense, from one or more established facts, the existence of some other fact.

An inference is not a suspicion or a guess. It is a reasoned, logical conclusion that a disputed fact exists on the basis of another fact which has been shown to exist.

There are times when different inferences may be drawn from facts, whether proved by direct or circumstantial evidence. The plaintiff asks you to draw one set of inferences, while the defense asks you to draw another. It is for you, and you alone, to decide what inferences you will draw.

The process of drawing inferences from facts in evidence is not a matter of guesswork or speculation. An inference is a deduction or conclusion which you, the jury, are permitted to draw-but not required to draw-from the facts which have been established by either direct or circumstantial evidence. In drawing inferences, you should exercise your common sense.

So, while you are considering the evidence presented to you, you are permitted to draw, from the facts which you find to be proven, such reasonable

inferences as would be justified in light of your experience.

Authority: Modern Federal Jury Instructions § 75.01, Part 75-1

Effect of Inference

The mere existence of an inference against the defendant does not relieve the plaintiff of the burden of establishing his case by a preponderance of the evidence. If Plaintiff Javier Castillo is to obtain a verdict, you must still believe from the credible evidence that he has sustained the burden cast upon him. If he has failed, then your verdict must be for Defendant Quintin Rogers. If you should find that all of the evidence is evenly balanced, then Plaintiff Javier Castillo has failed to sustain the burden of proof and your verdict should be for Defendant Quintin Rogers.

If and only if you determine, after carefully weighing all the evidence, that the facts favor Plaintiff Javier Castillo by the standard I have articulated, then he has met the burden of proof.

Authority: Modern Federal Jury Instructions § 75.01, Part 75-2

Presumptions

You have heard arguments by counsel which call on you to make certain presumptions. What is a presumption? A presumption requires you to find one fact from the existence of another fact.

Before you may find the presumed fact to exist, you must, therefore, determine whether the underlying or basic fact has been proved. Only if you find the basic fact to exist will the presumption operate to require you to find that the presumed fact also was proved.

One word of caution. The mere existence of a presumption never shifts the burden of proof. In this case, even if you find the basic fact that compels you to find the presumed fact, the burden of proof still remains on the plaintiff to prove all the elements of his claim. The presumptive fact, therefore, would only be a circumstance to be considered along with all of the other circumstances in this case in deciding the issue of liability.

Authority: Modern Federal Jury Instructions § 75.02, Part 75-8

Witness Credibility

You have had the opportunity to observe all of the witnesses. It is now your job to decide how believable each witness was in his or her testimony. You are the sole judges of the credibility of each witness and of the importance of his or her testimony.

It must be clear to you by now that you are being called on to resolve various factual issues raised by the parties in the face of very different pictures painted by both sides. In making these judgments, you should carefully scrutinize all of the testimony of each witness, the circumstances under which each witness testified, and any other matter in evidence that may help you decide the truth and the importance of each witness's testimony.

How do you determine where the truth lies? You watched each witness testify. Everything a witness said or did on the witness stand counts in your determination. How did the witness impress you? Did he or she appear to be frank, forthright, and candid, or evasive and edgy as if hiding something? How did the witness appear; what was his or her demeanor-that is, his or her carriage, behavior, bearing, manner, and appearance while testifying? Often it is not what a person says but how he or she says it that moves us.

You should use all the tests for truthfulness that you would use in determining matters of importance to you in your everyday life. You should

consider any bias or hostility the witness may have shown for or against any party as well as any interest the witness has in the outcome of the case. You should consider the opportunity the witness had to see, hear, and know the things about which he or she testified, the accuracy of the witness's memory, the witness's candor or lack of candor, the witness's intelligence, the reasonableness and probability of the witness's testimony and its consistency or lack of consistency and its corroboration or lack of corroboration with other credible testimony.

In other words, what you must try to do in deciding credibility is to size a witness up in light of his or her demeanor, the explanations given, and all of the other evidence in the case. Always remember that you should use your common sense, your good judgment, and your own life experience.

Authority: Modern Federal Jury Instructions §76.01, Part 76-1

Interest of Witnesses

In evaluating the credibility of the witnesses, you should take into account any evidence that a witness may benefit in some way from the outcome of the case. Such interest in the outcome creates a motive to testify falsely and may sway a witness to testify in a way that advances his own interests. Therefore, if you find that any witness whose testimony you are considering may have an interest in the outcome of this trial, then you should bear that factor in mind when evaluating the credibility of his or her testimony, and accept it with great care.

Keep in mind, though, that it does not automatically follow that testimony given by an interested witness is to be disbelieved. There are many people who, no matter what their interest in the outcome of the case may be, would not testify falsely. It is for you to decide, based on your own perceptions and common sense, to what extent, if at all, the witness's interest has affected his testimony.

Authority: Modern Federal Jury Instructions § 76.01, Part 76-3

Discrepancy in Testimony

You have heard evidence of discrepancies in the testimony of certain witnesses, and counsel have argued that such discrepancies are a reason for you to reject the testimony of those witnesses.

You are instructed that evidence of discrepancies may be a basis to disbelieve a witness's testimony. On the other hand, discrepancies in a witness's testimony or between his or her testimony and that of others do not necessarily mean that the witness's entire testimony should be discredited.

People sometimes forget things and even a truthful witness may be nervous and contradict himself. It is also a fact that two people witnessing an event will see or hear it differently. Whether a discrepancy pertains to a fact of importance or only to a trivial detail should be considered in weighing its significance; but a willful falsehood always is a matter of importance and should be considered seriously.

It is for you to decide, based on your total impression of the witness, how to weigh the discrepancies in his or her testimony. You should, as always, use common sense and your own good judgment.

Authority: Modern Federal Jury Instructions § 76.01, Part 76-4

Impeachment by Prior Inconsistent Statement

You have heard evidence that at some earlier time the witness has said or done something that counsel argues is inconsistent with the witness's trial testimony.

Evidence of a prior inconsistent statement is not to be considered by you as affirmative evidence in determining liability. Evidence of a prior inconsistent statement was placed before you for the more limited purpose of helping you decide whether to believe the trial testimony of the witness who contradicted himself. If you find that the witness made an earlier statement that conflicts with his trial testimony, you may consider that fact in deciding how much of his trial testimony, if any, to believe.

In making this determination, you may consider whether the witness purposely made a false statement or whether it was an innocent mistake; whether the inconsistency concerns an important fact, or whether it had to do with a small detail; whether the witness had an explanation for the inconsistency, and whether that explanation appealed to your common sense.

It is exclusively your duty, based on all the evidence and your own good judgment, to determine whether the prior statement was inconsistent, and if so how much, if any, weight to give to the inconsistent statement in determining whether

to believe all or part of the witness's testimony.

Authority: Modern Federal Jury Instructions § 76.01, Part 76-5

Expert Witnesses

In this case, I have permitted certain witnesses to express their opinions about matters that are in issue. A witness maybe permitted to testify to an opinion on those matters about which he or she has special knowledge, skill, experience, and training. Such testimony is presented to you on the theory that someone who is experienced and knowledgeable in the field can assist you in understanding the evidence or in reaching an independent decision on the facts.

In weighing this opinion testimony, you may consider the witness's qualifications, his or her opinions, the reasons for testifying, as well as all of the other considerations that ordinarily apply when you are deciding whether or not to believe a witness's testimony. You may give the opinion testimony whatever weight, if any, you find it deserves in light of all the evidence in this case. You should not, however, accept opinion testimony merely because I allowed the witness to testify concerning his or her opinion. Nor should you substitute it for your own reason, judgment, and common sense. The determination of the facts in this case rests solely with you.

Authority: Modem Federal Jury Instructions §76.01, Part 76-9

Summary of Plaintiff's Claims

Plaintiff Javier Castillo claims that his parole officer, Defendant Quintin Rogers, violated his constitutional right to be free from cruel and unusual punishment by forcing Plaintiff to wear for ten weeks an alcohol detection bracelet that Defendant had affixed to Plaintiff's ankle far more tightly than was necessary despite the fact that Defendant knew that the bracelet was causing needless and severe pain to Plaintiff and that it risked causing and did cause lacerations and serious damage to the tissue and the nerves in Plaintiff's legs.

Plaintiff Javier Castillo alleges that Defendant Quintin Rogers was deliberately indifferent to the pain and to the obvious risk of injury to Plaintiff. Plaintiff seeks damages against Defendant for the injuries and losses that he suffered.

Authority: Fifth Circuit Pattern Civil Jury Instructions § 4.3 (modified)

Modern Federal Jury Instructions § 90.02, Part 90-1 (modified)

Actions by Private Citizens Against a Parole Officer

As you know, this action was brought by a private citizen against a Parole Officer for the State of Michigan. This case should be considered and decided by you as an action between persons of equal standing in the community of equal worth, and holding the same or similar situation in life.

The fact that Defendant Quintin Rogers worked for the State of Michigan must not affect your decision in any way. Nor should the fact that Plaintiff Javier Castillo was on parole at the time of the alleged violation affect your decision in any way.

All persons stand equal before the law and are to be dealt with as equals in a court of justice.

Authority: Schwartz and Pratt, Section 1983 Litigation Jury Instructions, v. 4 (2016 Supp), Instructions 3.04.1-3.04.3

Kerr v. Chicago, 424 F.2d 1134, 1138 (7th Cir. 1970), cert den. 400 U.S. 833 (1970).

Right to Sue for Violation of Constitutional Rights

The federal civil rights act under which Plaintiff Javier Castillo brings this suit, 42 U.S.C. § 1983, was enacted by Congress so that citizens could bring lawsuits for damages caused by what they believed was a violation of their Constitutional rights.

In this case, Plaintiff Javier Castillo, who was on parole to the State of Michigan, alleges that Defendant Quintin Rogers, his parole officer, violated his right to be free from cruel and unusual punishment in violation of the Eighth Amendment to the Constitution of the United States. Defendant Quintin Rogers denies violating Plaintiff Javier Castillo's rights.

O'Malley, Grenig & Lee, Federal Jury Practice and Instructions, 6th Ed,
§ 166.1 (as modified).

Elements of the Plaintiff's Claim

As Plaintiff, Javier Castillo has the burden of proving by a preponderance of the evidence each of the following elements:

First, that Defendant Quintin Rogers secured the SCRAM bracelet in a way that he knew would cause Plaintiff Javier Castillo to suffer serious injury or should have known that serious injury to Plaintiff Javier Castillo was highly foreseeable as a result;

Second, that Defendant Quintin Rogers was deliberately indifferent to Plaintiff Javier Castillo's right to be free from cruel and unusual punishment, either because Defendant Quintin Rogers intended to deprive Plaintiff Javier Castillo of his constitutional rights, or because he acted with reckless disregard of Plaintiff Javier Castillo's right to be free from cruel and unusual punishment;

Third, that Defendant Quintin Rogers' action actually did cause Plaintiff Javier Castillo to suffer serious harm;

Fourth, that Defendant Quintin Rogers' actions were taken under color of state law and

Fifth, that Defendant Quintin Rogers' actions were the proximate cause of injury and consequent damage to Plaintiff Javier Castillo.

The parties in this case stipulate to the fact that Defendant Quintin Rogers'

actions were taken under color of state law.

O'Malley, Grenig & Lee, Federal Jury Practice and Instructions, 6th Ed,

§ 166.20 (as modified).

Preponderance of the Evidence

I will now define for you some terms, beginning with the term “preponderance of the evidence.”

The burden is on Plaintiff Javier Castillo to prove every essential element of his claim by a preponderance of the evidence. If the proof should fail to establish any essential element of Plaintiff Javier Castillo’s claim by a preponderance of the evidence, you should find for Defendant Quintin Rogers as to that claim.

To establish by a “preponderance of the evidence” means to prove that something is more likely so than not. In other words, a preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force, and produces in your minds a belief that what is sought to be proved is more likely true than not true. If, on any issue in the case, the evidence is equally balanced, you cannot find that issue has been proven by a preponderance of the evidence.

This rule does not require proof to an absolute certainty, since proof to an absolute certainty is seldom possible in any case.

Furthermore, this does not require proof beyond a reasonable doubt. Proof beyond a reasonable doubt is a stricter standard that applies in criminal cases. It

does not apply in civil cases such as this.

O'Malley, Grenig & Lee, Federal Jury Practice and Instructions, 6th Ed, § 166.20

(as modified).

Cruel and Unusual Punishment

Under the Eighth Amendment, a person on parole has the right to be free from "cruel and unusual punishments." This includes the right to be free from unnecessary and wanton infliction of pain.

Hope v. Pelzer, 536 U.S. 730, 737 (2002).

Deliberate Indifference

Deliberate indifference is established only if Defendant Quintin Rogers had actual knowledge of a substantial risk that Plaintiff Javier Castillo could suffer unnecessary pain and injury as a result of the way in which Defendant Quintin Rogers affixed the SCRAM bracelet to Plaintiff Javier Castillo's ankles and if he disregarded that risk by refusing or failing to take reasonable measures to deal with the problem. Mere negligence or inadvertence does not constitute deliberate indifference.

O'Malley, Grenig & Lee, Federal Jury Practice and Instructions, 6th Ed, § 166.30
(as modified).

Damages--Causation

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

Plaintiff Javier Castillo, as I have said, has the burden of proving each and every element of his claim by a preponderance of the evidence. If you find that Plaintiff Javier Castillo has not proved any of the elements by a preponderance of the evidence, you must return a verdict for Defendant Quintin Rogers.

O'Malley, Grenig & Lee, Federal Jury Practice and Instructions, 6th Ed,
§ 166.50 (as modified)

Elements of Damages

If you find for Plaintiff Javier Castillo, then you must award him such sum as you find from the preponderance of the evidence will fairly and justly compensate him for any damages that you find that he has sustained or is reasonably certain to sustain in the future as a direct result of the manner in which Defendant Quintin Rogers affixed the SCRAM bracelet to his ankles. You should consider the following elements of damages:

1. The physical pain and mental and emotional suffering Plaintiff Javier Castillo has experienced and is reasonably certain to experience in the future; the nature and extent of the injury, and whether the injury is temporary or permanent and whether any resulting disability is partial or total;
2. The reasonable value of medical care and supplies reasonably needed by and actually provided to Plaintiff Javier Castillo; and
3. The wages, salary, or reasonable value of working time that Plaintiff Javier Castillo has lost because of his diminished ability to work.

O'Malley, Grenig & Lee, Federal Jury Practice and Instructions, 6th Ed, § 166.60
(as modified)

Punitive Damages

In addition to the damages mentioned in the preceding instruction, the law permits you to award the injured person punitive damages under some circumstances 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 Javier Castillo and find that Defendant Quintin Rogers was recklessly and callously indifferent to Plaintiff Javier Castillo's constitutional right to be free from cruel and unusual punishment, then, in addition to any other damages to which you find Plaintiff Javier Castillo entitled, you may, but are not required to, award Plaintiff Javier Castillo an additional amount as punitive damages if you find it is appropriate to punish Defendant Quintin Rogers or to deter Defendant Quintin Rogers or others from like conduct in the future. Whether to award Plaintiff Javier Castillo punitive damages and the amount of those damages are within your sound discretion.

You may assess punitive damages against Defendant Quintin Rogers or you may refuse to impose punitive damages.

O'Malley, Grenig, & Lee, Federal Jury Practice and Instructions (2016 Supp, at 43)(as modified).

Mitigation of Damages

If you find that Plaintiff Javier Castillo was injured as a result of conduct by Defendant Quintin Rogers in violation of Section 1983, you must determine whether Plaintiff Javier Castillo could have done something to lessen the harm suffered. Defendant Quintin Rogers has the burden to prove by a preponderance of the evidence that Plaintiff Javier Castillo could have lessened or reduced the harm done to him and that Plaintiff Javier Castillo failed to do so.

If Defendant Quintin Rogers establishes by a preponderance of the evidence that Plaintiff Javier Castillo could have reduced the harm done to him but failed to do so, Plaintiff Javier Castillo is entitled only to damages sufficient to compensate for the injury that he would have suffered had he taken appropriate action to reduce the harm.

O'Malley, Grenig & Lee, Federal Jury Practice and Instructions, 5th Ed,
§166.63.

Impeachment by Conviction of Crime

You have heard evidence that Plaintiff Javier Castillo was convicted of a crime. Evidence of a witness' prior conviction of a crime may be considered by you only insofar as it may affect the credibility of the witness. You may use that evidence only to help you decide whether to believe that witness and how much weight to give that witness' testimony.

O'Malley, Grenig & Lee, Federal Jury Practice and Instructions, 5th Ed, §102.44.

Deliberations -Introduction

You are about to go into the jury room and begin your deliberations. If during those deliberations you want to see any of the exhibits, you may request that they be brought into the jury room. If you want any of the testimony read back to you, you may also request that. Please remember that it is not always easy to locate what you might want, so be as specific as you possibly can in requesting exhibits or portions of the testimony.

Your requests for exhibits or testimony-in fact any communication with the court- should be made to me in writing, signed by your foreperson, and given to one of the marshals. In any event, do not tell me or anyone else how the jury stands on any issue until after a verdict is reached.

Authority: Modern Federal Jury Instructions § 78.01, Part 78-1

Duty to Deliberate to Unanimous Verdict

You will now return to decide the case. In order to prevail, Plaintiff Javier Castillo must sustain his burden of proof as I have explained to you with respect to each element of the complaint. If you find that he has succeeded, you should return a verdict in his favor on that claim. If you find that he has failed to sustain the burden on any element of the claim, you should return a verdict against him.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement. Each of you must decide the case for himself or herself, but you should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. To reach a verdict six of the seven of you must reach a decision, but you are not bound to surrender your honest convictions concerning the effect or weight of the evidence for the mere purpose of returning a verdict or solely because of the opinion of other jurors. Discuss and weigh your respective opinions dispassionately, without regard to sympathy, without regard to prejudice or favor for either party, and adopt that conclusion which in your good conscience appears to be in accordance with the truth.

Again, each of you must make your own decision about the proper outcome of this case based on your consideration of the evidence and your discussions with

your fellow jurors. No juror should surrender his or her conscientious beliefs solely for the purpose of returning a verdict.

Authority: Modern Federal Jury Instructions § 78.01, Part 78-3

Selection of Foreperson

When you retire, you should elect one member of the jury as your foreperson. That person will preside over the deliberations and speak for you here in open court.

Authority: Modern Federal Jury Instructions § 78.01, Part 78-5

Return of Verdict

After you have reached a verdict, your foreperson will fill in the form that has been given to you, sign and date it and advise the marshal outside your door that you are ready to return to the courtroom.

I will stress that six of the seven of you must be in agreement with the verdict which is announced in court. Once your verdict is announced by your foreperson in open court and officially recorded, it cannot ordinarily be revoked.

Authority: Modern Federal Jury Instructions § 78.01, Part 78-6

Special Verdict

I have prepared a special verdict form for you to use in recording your decision. The special verdict form is made up of questions concerning the important issues in this case. These questions are to be answered "yes" or "no." Your answers must be agreed to by six of the seven of you and must reflect the conscientious judgment of each juror. You should answer every question except where the verdict form indicates otherwise.

Authority: Modern Federal Jury Instructions § 78.01, Part 78-9