

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JEFFREY AARON,

Plaintiffs,

Case No. 15-11014

Honorable Victoria A. Roberts

v.

JACKIE DYER, et al.,

Defendant.

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**JURY INSTRUCTIONS**

Additional Keywords:

Prisoner Civil Rights

1st Amendment

42 U.S.C. § 1983

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## **Jury Instruction #1**

### **General Introduction**

Now that you have heard the evidence and the argument, it is my duty to instruct you about the applicable law. It is your duty to follow the law as I will state it and to apply it to the facts as you find them from the evidence in the case. Do not single out one instruction as stating the law, but consider the instructions as a whole. You are not to be concerned about the wisdom or any rule of law stated by me. You must follow and apply the law.

The lawyers have properly referred to some of the governing rules of law in their arguments. If there is any difference between the laws stated by the lawyers and as stated in these instructions, you are governed by my instructions.

Nothing I say in these instructions indicates that I have any opinion about the facts. You, not I, have the duty to determine the facts.

You must perform your duties as jurors without bias or prejudice as to any party. The law does not permit you to be controlled by sympathy, prejudice, or public opinion. All parties expect that you will carefully and impartially consider all the evidence, follow the law as it is now being given to you, and reach a just verdict, regardless of the consequences.

## **Jury Instruction #2**

### **Multiple Defendants**

Although there is more than one Defendant in this action, it does not follow from the 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. No Defendant is to be prejudiced should you find against the others. All instructions I give you govern the case as to each Defendant.

## **Jury Instruction #3**

### **Objections**

During the trial, I made rulings of law on objections or motions made by the lawyers. Testimony and exhibits can be admitted into evidence during a trial only if they meet certain criteria or standards. Lawyers have a right – and sometimes a duty – to object when they believe something should not be a part of the trial. Only by offering an objection can a lawyer request and obtain a ruling from me on the admissibility of the evidence being offered by the other side. You should not be influenced against any lawyer or the lawyer’s client because the lawyer has made objections.

If I sustain a lawyer’s objection to a question or an exhibit, that means the law does not allow you to consider that information. When that happens, you have to ignore the question or the exhibit, and you must not try to guess what the information might have been.

Do not attempt to interpret my rulings on objections as somehow indicating how I think you should decide this case. I am simply making a ruling on a legal question.

## **Jury Instruction #4**

### **Testimony**

You will determine the facts from all the testimony and other evidence that is presented. You are the sole and exclusive judge of the facts. I must stress that you are required to accept the rules of law that I give you, whether or not you agree with them.

## **Jury Instruction #5**

### **Judge's Questions to Witnesses**

During the trial, I may have asked a witness questions. Please do not assume that I have any opinion about the subject matter.

## **Jury Instruction #6**

### **Bench Conferences**

From time to time it may have been necessary for me to talk to the lawyers out of your hearing. The purpose of these conferences is to decide how certain matters are to be treated under the rules of evidence. You are not to speculate as to what was discussed or considered during those conferences in your deliberations.



## **Jury Instruction #7**

### **Evidence in the Case**

The evidence in the case consists of the following:

1. The sworn testimony of the witnesses, no matter who called a witness.
2. All exhibits received in evidence, regardless of who may have produced the exhibits.

Statements and arguments of the lawyers are not evidence, unless made as an admission or stipulation of fact.

If I sustained an objection to any evidence or if I ordered evidence stricken, that evidence must be entirely ignored.

## **Jury Instruction #8**

### **Burden of Proof**

When a party has a burden to prove any matter by a preponderance of the evidence, it means that you must be persuaded by the testimony and exhibits that the matter sought to be proved is probably more true than not true. You should base your decision on all of the evidence, regardless of which party presented it.

## **Jury Instruction #9**

### **Reasonable Doubt**

You may have heard of the term “proof beyond a reasonable doubt.” That is a stricter standard that applies in criminal cases. It does not apply in civil cases such as this. You should, therefore, put it out of your minds.

## **Jury Instruction #10**

### **Direct and Circumstantial Evidence**

Generally speaking, there are two types of evidence presented during a trial: direct evidence and circumstantial evidence. “Direct evidence” is the testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness. “Indirect or circumstantial” evidence is proof of a chain of facts and circumstances indicating the existence or nonexistence of a fact.

The law generally makes no distinction between the weight or value to be given to either direct or circumstantial evidence. A greater degree of certainty is not required of circumstantial evidence. You are required to find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

## **Jury Instruction #11**

### **Inferences**

You are to consider only the evidence in the case. However, you are not limited to the statements of the witnesses. You may draw from the facts you find have been proved, such reasonable inferences as seem justified in light of your experience.

“Inferences” are deductions or conclusions that reason and common sense lead you to draw from facts established by the evidence in the case.

## **Jury Instruction #12(a)**

### **Credibility**

1. Another part of your job as jurors is to decide how credible or believable each witness was. This is your job, not mine. It is up to you to decide if a witness's testimony was believable, and how much weight you think it deserves. You are free to believe everything that a witness said, or only part of it, or none of it at all. But you should act reasonably and carefully in making these decisions.

2. Let me suggest some things for you to consider in evaluating each witness's testimony.

(A) Ask yourself if the witness was able to clearly see or hear the events.

Sometimes even an honest witness may not have been able to see or hear what was happening, and may make a mistake.

(B) Ask yourself how good the witness's memory seemed to be. Did the witness seem able to accurately remember what happened?

(C) Ask yourself if there was anything else that may have interfered with the witness's ability to perceive or remember the events.

(D) Ask yourself how the witness acted while testifying. Did the witness appear honest? Or did the witness appear to be lying?

(E) Ask yourself if the witness had any relationship to the Plaintiff or the Defendant, or anything to gain or lose from the case that might influence

the witness's testimony. Ask yourself if the witness had any bias, or prejudice, or reason for testifying that might cause the witness to lie or to slant the testimony in favor of one side or the other.

- (F) Ask yourself if the witness testified inconsistently while on the witness stand, or if the witness said or did something (or failed to say or do something) at any other time that is inconsistent with what the witness said while testifying. If you believe that the witness was inconsistent, ask yourself if this makes the witness's testimony less believable. Sometimes it may; other times it may not. Consider whether the inconsistency was about something important, or about some unimportant detail. Ask yourself if it seemed like an innocent mistake, or if it seemed deliberate.
- (G) And ask yourself how believable the witness's testimony was in light of all the other evidence. Was the witness's testimony supported or contradicted by other evidence that you found believable? If you believe that a witness's testimony was contradicted by other evidence, remember that people sometimes forget things, and that even two honest people who witness the same event may not describe it exactly the same way.

3. These are only some of the things that you may consider in deciding how believable each witness was. You may also consider other things that you think shed some light on the witness's believability. Use your common sense and your

everyday experience in dealing with other people. And then decide what testimony you believe, and how much weight you think it deserves.



## **Jury Instruction #12(b)**

### **Not Required to Accept Uncontradicted Testimony**

You are not required to accept testimony, even though the testimony is uncontradicted and the witness is not impeached. You may decide, because of the witness's bearing and demeanor, or because of the inherent improbability of the witness's testimony, or for other reasons you find sufficient, that such testimony is not worthy of belief.

## **Jury Instruction #12(c)**

### **Impeachment – Inconsistent Statement (Prior Conviction)**

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

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

The fact that a witness has previously been convicted of a felony is also a factor you may consider in weighing the credibility of that witness. The fact of such a conviction does not necessarily destroy the witness' credibility, but is one of the circumstances you may take into account in determining the weight to be given to his or her testimony.

## **Jury Instruction #13**

### **What Is Not Evidence**

In deciding the facts of this case, you are not to consider the following as evidence: statements and arguments of lawyers, questions and objections of the lawyers, testimony that I instruct you to disregard, and anything you may see or hear when the court is not in session, even if what you see or hear is done or said by one of the parties or by one of the witnesses.

## **Jury Instruction #14**

### **First Amendment Retaliation Claim**

In order to prove his claim, the burden is upon Plaintiff Aaron to establish by a preponderance of the evidence each of the following elements:

FIRST. That Plaintiff Aaron was engaged in protected conduct.

SECOND. That the Defendants took an adverse action against him.

THIRD. That the Defendants' adverse action against Plaintiff was motivated at least in part by Plaintiff's protected conduct.

If you find that the Plaintiff has proven by a preponderance of the evidence each of these elements, your verdict will be for the Plaintiff. If you find that the Plaintiff has not proven by a preponderance of the evidence each of these elements, your verdict will be for the Defendants.

## **Jury Instruction #14(a)**

### **Protected Conduct**

Filing a grievance is protected conduct under the First Amendment. Filing a frivolous grievance is not.

## **Jury Instruction #14(b)**

### **Adverse Action**

An adverse action is an action that would deter a person of ordinary firmness in Plaintiff's circumstances from continuing to engage in the protected conduct.

## **Jury Instruction #14(c)**

### **Causation**

Once the Plaintiff has met his burden to establish that his protected conduct was a motivating factor behind an adverse action taken by the Defendant, if the Defendant can show that he/she would have taken the same action in the absence of the protected activity, the Defendant is entitled to prevail.

## **Jury Instruction #15**

### **Actual/Compensatory/Presumed Damages**

If you find in favor of Plaintiff, then you must award Plaintiff such sum as you find from the preponderance of the evidence will fairly and justly compensate him for any damages you find he sustained as a direct result of the violation of his First Amendment rights.

When it is difficult to quantify precisely the damages caused by that injury, presumed damages may be awarded, but the award must focus on the real damages sustained and not on either the abstract value of the constitutional right at issue or the importance of that right in our system of government.

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.



## **Jury Instruction #15(a)**

### **Damages - Reasonable - Not Speculative**

Damages must be reasonable. If you find that the Plaintiff is entitled to a verdict, you may award the Plaintiff only such damages as will reasonably compensate the Plaintiff for such damage as you find, from a preponderance of the evidence in the case, that was sustained as a proximate result of the Defendants' acts or omissions. Except for punitive damages, which is described below, damages are not allowed as a punishment and cannot be imposed or increased to penalize the Defendant.

You are not permitted to award speculative damages. So, you are not to include in any verdict compensation for any prospective loss which, although possible, is not reasonably certain to occur in the future.

**Jury Instruction #15(b)**

**No Recovery for Mental and Emotional Damages**

Plaintiff cannot recover damages for mental, psychological, or emotional distress.

## **Jury Instruction #15(c)**

### **Avoidance of Double Recovery**

If you find that more than one of the Defendants violated the Plaintiff's rights, Plaintiff is entitled to be compensated only for the damages he actually suffered.

Thus, if more than one Defendant violated the Plaintiff's rights, but the resulting damages were not greater than they would have been had just one Defendant violated those rights, you should award damages in an amount that compensates Plaintiff only for the damages he actually suffered.

## **Jury Instruction #16**

### **Punitive Damages**

In addition to the damages mentioned in the other instructions, the law permits you to award an injured person punitive damages under certain 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 and against the Defendants and if you find that the Defendants' conduct was recklessly and callously indifferent to Plaintiff's First Amendment rights, then, in addition to any other damages to which you find the Plaintiff is 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.

## **Jury Instruction #17**

### **Nominal Damages**

If you find in favor of the Plaintiff, 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 (on account of actual damages).

## **Jury Instruction # 18**

### **Effect of Instruction on Damages**

The fact that I have instructed you as to the proper measure of damages should not be considered as indicating any view of mine as to which party is entitled to your verdict in this case. Instructions as to the measure of damages are given for your guidance only in the event you should find in favor of the Plaintiff from a preponderance of the evidence in the case in accordance with the other instructions.

## **Jury Instruction #19**

### **Duty to Deliberate**

Now that all the evidence is in and the arguments are completed, you are free to talk about the case in the jury room. In fact, it is your duty to talk with each other about the evidence, and to make every reasonable effort you can to reach unanimous agreement. Talk with each other, listen carefully and respectfully to each other's views, and keep an open mind as you listen to what your fellow jurors have to say. Try your best to work out your differences. Do not hesitate to change your mind if you are convinced that other jurors are right and that your original position was wrong.

Also, be mindful that you each may process information differently or have different approaches to your deliberations. For example, some of you may need to think quietly while others may want to openly discuss their thoughts. It may take more time for some of you, than for others, to reach a decision. Be patient and considerate of each other's needs as you deliberate. Try your best to work out your differences. Do not hesitate to change your mind if you are convinced that other jurors are right and that your original position was wrong.

But do not ever change your mind just because other jurors see things differently, or just to get the case over with. In the end, your vote must be exactly

that--your own vote. It is important for you to reach agreement, but only if you can do so honestly and in good conscience.



## **Jury Instruction #20**

### **Verdict - Unanimous**

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

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.

## **Jury Instruction #21**

### **Election of a Foreperson - General Verdict**

Upon retiring to the jury room, you will select one of your members to act as your foreperson. The foreperson will preside over your deliberations, and will be your spokesperson in Court.

Forms of verdict have been prepared for your convenience. [Forms for verdict read.]

You will take these forms to the jury room and, when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in, date and sign the form which sets forth the verdict upon which you unanimously agree; and then return with your verdict to the courtroom.

## **Jury Instruction #22**

### **Communications Between Court and Jury During Deliberations**

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by a bailiff signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing, and the Court will never communicate with any member of the jury on any subject touching the merits of the case by any means other than in writing or orally here in open court.

You will note from the oath about to be taken by the bailiffs that they too, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind also that you are never to reveal to any person -- not even the Court -- how the jury stands, numerically or otherwise, on the questions before you, until after you have reached a unanimous verdict.